

1. GENERAL REQUIREMENTS

STANDARD GUIDANCE

(COP 1) Legal Compliance

A. Definitions and applicability

Compliance is a state of being in accordance with established guidelines, specifications, or legislation.

Legal compliance generally refers to behaviours and practices that are conducted in accordance with supra-national and/or national and/or state and/or local laws of the country or countries in which the business operates.

Systems are management processes and documentation that collectively provide a systematic framework for ensuring that tasks are performed correctly, consistently and effectively to achieve the desired outcomes, and to drive continual improvement in performance.

The **Legal Compliance** section of the COP is applicable to all Members.

B. Issue background

Legal and regulatory compliance is a primary business concern. Managing legal risk effectively is widely seen as contributing to the good reputation and sustainability of a business. There are an ever-increasing number of regulations, more severe penalties for breaking the law and a fairly widespread lack of understanding about what is required for a company to be legally compliant. Legal compliance obligations may include:

- legislation, regulations and legally required codes or standards;
- permits, licences and other forms of authorisation;
- local by-laws; and
- decisions, directions, rulings or interpretations issued by relevant courts and tribunals.

Identifying applicable regulations, interpreting them, and determining their impacts on your operations can be a time-consuming task. Methods for obtaining information about Applicable Laws or regulations, including advice about changes of law, include:

- commercial services;
- regulatory agencies;
- government departments;
- trade groups and industry associations;
- the Internet;
- public libraries;
- seminars and courses;
- subscriptions to newsletters and magazines;
- consultants and legal professionals; and
- customers, vendors and other companies.

Most countries prescribe consequences for non-compliances, including:

- Imposition of financial penalties;
- Elimination (for many offences) of the obligation of the prosecution to prove intent (i.e. strict liability for pollution);
- Imposition of civil or criminal liability on companies for the acts of their employees;

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- Imposition of civil or criminal liability on directors and managers for offences committed by their companies;
- Disqualification of directors; and
- Follow-on damages actions by affected parties.

The RJC certification process does not aim to encompass a full legal compliance audit. The focus of this provision is for Members have systems in place to be aware of, and to become aware of developments in, relevant Applicable Laws. Members should therefore be able to access to current information about the Applicable Law and take steps to maintain compliance.

In addition to the general requirement in this provision, legal compliance requirements are also specified in various provisions of the COP, including:

- COP 9 Bribery and Facilitation Payments
- COP 10 Money Laundering and Finance of Terrorism
- COP 13 General Employment Terms
- COP 14 Working Hours
- COP 15 Remuneration
- COP 17 Child Labour
- COP 18 Forced Labour
- COP 19 Freedom of Association and Collective Bargaining
- COP 21 Health and Safety
- COP 24 Wastes and Emissions
- COP 26 Product Disclosure
- COP 27 Kimberley Process Certification Scheme
- COP 31 Indigenous Peoples and Free Prior Informed Consent
- COP 39 Mercury

Box X: Changes from the 2009 Code of Practices

The 2013 Code of Practices contains a number of changes to improve consistent implementation of the Legal Compliance provision.

- The Guidance emphasizes that the RJC Certification process is not designed to encompass a full legal compliance audit.
- The focus of the requirement is on having an *appropriate system/s in place* to maintain awareness of, and compliance with, Applicable Law.
- The definition of Major Non-Conformance has been revised, and does not automatically elevate all legal non-compliances to Major Non-Conformance findings. A **Major Non-Conformance** will apply to situations where the Member has not identified legislative or regulatory requirements relevant to the Code of Practices, or there is a known non-compliance of such legislative or regulatory requirements **and**:
 - There is *inadequate* attempt to rectify the non-complying condition, **and**
 - This situation *has the potential* to result in an imminent Risk to Workers, the Community or the Environment.
- A **Minor Non-Conformance** will apply to situations where the Member has a known non-compliance of legislative or regulatory requirements **and**:
 - There is *adequate* attempt to rectify the non-complying condition, **and**
 - The non-compliance *does not* result in an imminent Risk to Workers, the Community or the Environment.

C. Key regulations

This Guidance provides no specific advice on Applicable Law for individual Members as these laws vary based on the location of the Members' facilities and the nature of the facility.

Law typically consists of legislation made by governments and rules made by the courts. Legal obligations often extend beyond specific statutory laws and regulations. Many principles and precedents have been established based upon the decisions of previous cases heard by the courts. These principles are referred to as Common Law or case law.

It is essential that Members be familiar with local legislation and regulations in all areas of operations, and keep abreast of legal developments in legislation and associated case law. Members should seek legal advice on their obligations where they do not understand their legal compliance requirements.

D. Suggested implementation approach

- **COP 1.1: Legal Compliance:** Members shall have systems in place to maintain awareness of and ensure compliance with Applicable Law.
Points to consider:

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- Systems, processes, procedures or methods should be in place to monitor legal developments and identify key areas of legal risk.
- Members should seek legal advice from qualified professionals where there is uncertainty about legal requirements.
- A designated person, group of people or subject matter experts should be responsible for identifying, and maintaining in a register (see example Legal Compliance Register below):
 - relevant applicable legislation and regulations, required licences and permits, and reporting and disclosure obligations;
 - associated developments concerning these requirements;
 - the status of compliance and future actions needed to maintain compliance.
 - measures for bringing any potentially non-complying situation into compliance.
- Processes, policies, approaches or procedures should be in place for communicating and providing training about legal requirements to employees and contractors, and ensuring an appropriate level of understanding.

Q&A: Legal Compliance

1. What if there is a difference between legal requirements and the RJC Code of Practices?

RJC COP provisions may defer to Applicable Law as setting the standard relevant to a Member's business and/or jurisdiction. In this case, Members should follow Applicable Law.

In some jurisdictions, Applicable Law may set a higher or more specific standard than an RJC provision on that issue. In this case, Members are expected to comply with the legislative and regulatory requirements that apply to them.

On other issues, RJC may set a higher or more specific standard than Applicable Law, without deferring to Applicable Law in the provision. In this case, Members are expected to conform with the RJC requirements as they are set out in the Code of Practices, even where this exceeds legal requirements.

If compliance with the COP would result in a violation of Applicable Law, then Applicable Law must prevail.

2. What happens when there is a dispute about legal requirements?

Sometimes the law may not be clear for a particular situation, or may be being challenged in court. For the purposes of RJC Certification, this may impact Conformance and Non-Conformance findings where it relates to a provision in the Code of Practices that defers to Applicable Law.

Auditors determining their findings in such situations should consider any guidance provided by the relevant government authority, as well as any proper legal opinions provided by the Member as part of the Self Assessment process. In situations of legal dispute where an Auditor nevertheless believes there is a Non-Conformance, and the Member can demonstrate an understanding of the legal requirements and the matters under dispute, then any Non-Conformance would normally be a Minor only. If Auditors find there is uncertainty about the correct interpretation, and implementation of a lower standard creates threats to workers, communities or environments, then Auditors may consider a Major Non-Conformance finding. If there are no such threats, then Auditors may consider a Minor Non-Conformance finding, or a Conformance finding.

Check:

- ✓ Have you nominated a person or group to be responsible for legal compliance?
- ✓ Can you show the auditor how you maintain awareness of legal requirements and changes in the law?
- ✓ Can you show the auditor the steps you take to monitor your compliance with Applicable Law?

Legal Compliance Registers

A Legal Compliance Register can be a useful tool for businesses, and usually contains the following:

- The name of the Act, Regulation, Standard, Code, Policy, Permit, etc. Most governments and regulatory authorities provide access to legislation via the internet, so include a link or description of its location where possible.
- The jurisdiction where the legal instrument applies. For instance this may cover local, regional, national or international practices.
- Information about the governing body or authority that enforces or manages this legal instrument can also be included. Consider listing a relevant contact name and details (where known).

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- A description of the purpose and key requirements specified in the legal instrument. This can be in plain and simple language rather than the legal jargon. Changes (actual or proposed) can also be documented in the register.
- A description of how the legal requirements affect the business. This includes how these requirements relate to specific activities or processes carried out by the Member in that jurisdiction. This information can be used to communicate and train employees and contractors about their legal obligations. It is useful to relate this to any specific management system documentation such as:
 - procedures to manage its activities
 - external statutory reporting expectations
 - timing and framework for paying licence or permit fees.
- Nominate the person within the business with responsibility for ensuring compliance and for accessing information about the legal requirement.
- Specify how often and when compliance evaluations will be carried out. In some instances the compliance evaluation frequency may be prescribed by law. However, it mostly depends on the business and should be carried out at a frequency commensurate with the risk associated with the requirements.
- The register can be used to list the evidence and records used to demonstrate compliance. It can also be used to reference and track corrective actions where non-compliances have been identified.

The following table provides an example Legal Compliance Register, which may be useful to businesses wishing to develop their own system. Note that Members are free to take their own approach to conformance with the Legal Compliance provision.

Acts, Regulations, Standards, Codes & Policies	Jurisdiction	Regulatory Body	Description of Key Regulatory or Other Requirements	Relevance to Members' Business	Responsible Person	Compliance Evaluation Date / Frequency	Records	CORRECTIVE ACTIONS
Regulations On The Management Of The Import And Export Of Goods 1996	China	Ministry of Foreign Trade and Economic Cooperation, the General Administration of Customs, the State Environmental Protection Administration	China has two basic laws regarding waste transports: <ul style="list-style-type: none"> • the "Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste" ("the Solid Waste Law"), and • the "Interim Provision on the Administration of Environmental Protection in the Import and Export of Hazardous Waste" The law requires import licensing and pre-shipment inspections.	This is a condition when exporting items containing certain categories of prohibited metals, minerals, animal products, laboratory waste, industrial wastes, etc to China	International Dispatch Manager	Quarterly	Logistics Office	None Required
Industrial Waste Management Policy (National Pollutant Inventory) 1998	Vic Australia	Environment Protection Authority www.epa.vic.gov.au	The Policy aims include reducing the existing and potential impacts of emissions of substances and to assist government, industry and the community in achieving the desired environmental outcomes The Policy provides the framework to report on the types and amounts of certain chemicals being emitted to the air, land, and water and for this information to be provided publicly available..	The Member triggers the reporting thresholds for emission of carbon monoxide and sulphur dioxide based on the fuel consumption and electricity usage. The Member must report by 30 September each year the annual emissions for the year 1 July to 30 June. This must be calculated in accordance with NPI Procedure No. 123.	Operations Manager	Annual by 30 September.	NPI Reports in Environment Department	None required

E. Further information

Members should seek legal advice regarding their business' compliance with Applicable Law.

STANDARD GUIDANCE

(COP 2) Policy and Implementation

A. Definition and applicability

A **policy** is a statement of principles and intentions.

Source:

- *ISO14001 and ISO14004*
www.iso14000-iso14001-environmental-management.com/

The **Policy and Implementation** section of the COP is applicable to all Members.

B. Issue background

A policy is a statement by a business of its intentions and principles in relation to its overall performance. A policy:

- Demonstrates commitment from the top;
- Demonstrates corporate responsibility and governance;
- Is consistent with other management policies and practices;
- Is a public document – it can be used by stakeholders to judge the members performance.

The policy required under the Code of Practices supports implementing and improving responsible business practices as a Member of the RJC. Members should document their policy and communicate it to all persons working for, or on behalf of the business. This can be achieved through formal awareness sessions, public newsletters, via the internet or publications in newspapers. Members should review implementation of the policy in their business and identify any gaps where improvements are needed, on at least an annual basis.

C. Key regulations

International Standards

Many standards initiatives recommend developing a policy as a formal demonstration of the business' commitment to the issue/program, and regularly reviewing that implementation is effective throughout the business enterprise.

D. Suggested implementation approach

- **COP 2.1: Written policy:** *Members shall adopt a policy/ies that documents the Member's commitment to responsible business practices, is endorsed by senior management, communicated to Employees and made publicly available.*

Points to consider:

- The policy/ies may refer specifically to the RJC Code of Practices, or may make a more general commitment to responsible business practices, including those covered by the Code of Practices. The policy/ies may be stand-alone, or part of a broader policy statement.
- Ensure the policy is applicable to all parts of the Member's business covered by the Certification Scope and is formally endorsed by senior management.
- Ensure those who work for or on behalf of the company are made aware of the policy. Awareness raising and capacity building will help staff to embed the policy in their own work and procedures.

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- The policy/ies must be available to the public, such as by posting it on the company website. If the company does not have a website, consider how to make it available on request or visible to visitors to the premises.
- Consider appending the policy/ies to company contracts, where relevant, to raise awareness of the policy commitment with business partners, service providers and suppliers.

An example policy statement for RJC Members that expresses commitment to achievement of the RJC Code of Practices is included in Appendix X. Members are also free to develop their own policy statement/s on responsible business practices as best suits their business.

- **COP 2.2: Policy implementation review:** *Senior management shall conduct, at least annually, reviews to assess the ongoing suitability and adequacy of the Member's business practices in achieving the policy, and implement improvements to address any gaps.*

Points to consider:

- Appoint a member of senior management to monitor and take note of potentially relevant performance issues as they arise.
- Check that the policy is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.
- Hold a discussion among senior management at least annually to identify potential gaps between the policy and actual business practices, and document the results of the discussion.
- Implement action plans to address any gaps and document the results.
- Coordinate with the results of recent RJC audits if applicable.

Box X: Small business

Even small businesses can benefit from discussions about ongoing its commitment to responsible business practices, and conformance with the Code of Practices. These can take place as part of the Self Assessment process leading up the certification audit, as well as after Certification. An annual discussion among senior management can be an opportunity to review any non-conformance issues, and check on progress against corrective action plans. Where non-conformances have all been addressed, discuss whether there are any improvement opportunities either within the business or in communication of the policy to key stakeholders. Brief minutes of such meetings can serve as objective evidence of conformance with this provision.

Check:

- ✓ Do you have a written policy or policies that commit to responsible business practices?
- ✓ Is it available on the company website or by other means?
- ✓ Do you review the policy and how it is being achieved, at least annually? Use this as an opportunity to identify and make improvements.

E. Further information

The following website has further information on the RJC's Code of Practices:

- Responsible Jewellery Council (RJC) - Certification
www.responsiblejewellery.com/certification/

STANDARD GUIDANCE

(COP 3) Reporting

A. Definition and applicability

Reporting is a process for publicly communicating about an organization's business practices relevant to the RJC Code of Practices.

Source:

- *RJC Code of Practices (2013)*
- *Global Reporting Initiative (GRI)*
<https://www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx>

The **Reporting** provision 3.1 is applicable to all Members, whereas 3.2 is applicable to Members in the Mining Sector. Conformance with provision 3.2 will result in conformance with 3.1.

B. Issue background

Increasingly, companies are incorporating economic, environmental and social information into their public reporting. This form of reporting responds to the expectations of stakeholders, including regulators, civil society, shareholders, communities, employees, and customers, in understanding the impacts of companies on society.

Many larger companies, particularly public companies, already issue non-financial sustainability reports as part of their normal reporting practice. For example, CorporateRegister.com, an online directory, provides access to sustainability reports issued by approximately 10,000 companies.

Companies must follow a generally accepted reporting framework for financial reporting. This common framework provides credibility, consistency, and comparability (see **Financial Accounts**). The need for a similar common framework for sustainability reporting led to the development of the Global Reporting Initiative (GRI). The GRI was launched in 1997 and has become the global voluntary standard in sustainability reporting. The GRI's vision is that reporting on economic, environmental and social performance by all organizations is as routine and comparable as financial reporting. The Guidelines and supporting tools provide useful information about how to approach reporting in general, even if a company does not intend to formally report using the GRI.

Reporting can benefit from alignment with stakeholder and community engagement processes, to identify relevant issues for data collection and reporting. Some reports take the opportunity to include third party commentary, such as from stakeholder panels, community groups, unions, non-government organisations or subject-matter experts.

C. Key initiatives

International initiatives

The GRI Reporting Framework contains the core product of the Sustainability Reporting Guidelines ("the Guidelines"), as well as Tools, Protocols and Sector Supplements. The Guidelines contain principles and guidance as well as standard disclosures – including indicators – to outline a disclosure framework that organizations can voluntarily, flexibly, and incrementally, adopt.

The Mining and Metals Sector Supplement, which was released in 2010, complements the Guidelines and includes supplementary reporting tools specific to the mining and metals sector. The Supplement deals with

the aspects of sustainable development that characterize the mining and metals sector. The main issues that set the context for the Supplement include:

- The control, use, and management of land
- The contribution to national economic and social development
- Community and stakeholder engagement
- Labour relations
- Environmental management
- Relationships with artisanal and small-scale mining
- An integrated approach to minerals use

The GRI “Application Levels” rate the extent to which the G3 Guidelines have been utilised in a report on sustainability. They are intended to provide GRI reporters with a pathway in which they can continuously improve their reporting. There are three Application Levels: A, B and C. All GRI-aligned reports should include an Application Level.

External assurance focuses on verifying the content of the report and is designated with a “+” after the Application Level ie C+, B+ and A+. External assurance mechanisms must comply with the following key qualities, defined by the GRI:

- Conducted by groups or individuals external to the organization who are demonstrably competent in both the subject matter and assurance practices;
- Implemented in a manner that is systematic, documented, evidence-based, and characterized by defined procedures;
- Assesses whether the report provides a reasonable and balanced presentation of performance, taking into consideration the veracity of data in a report as well as the overall selection of content;
- Utilizes groups or individuals to conduct the assurance who are not unduly limited by their relationship with the organization or its stakeholders to reach and publish an independent and impartial conclusion on the report;
- Assesses the extent to which the report preparer has applied the GRI Reporting Framework (including the Reporting Principles) in the course of reaching its conclusions; and
- Results in an opinion or set of conclusions that is publicly available in written form, and a statement from the assurance provider on their relationship to the report preparer.

Common external assurance frameworks which fulfil the GRI’s requirements include:

- International Standard for Assurance Engagements (ISAE) 3000; and
- AA1000 AS, issued by the non-profit organisation AccountAbility.

In 2005, members of the International Council on Mining and Metals (ICMM) committed to report in accordance with the GRI Guidelines and a Mining and Metals Sector Supplement. In 2008, ICMM members committed to report in accordance with the GRI’s G3 Guidelines and to update the Mining and Metals Sector Supplement. ICMM’s Assurance Procedure was also launched in 2008. It outlines ICMM’s members’ commitment to independent external assurance of the implementation and measurement of performance against the 10 ICMM Principles, and public reporting of performance. In addition, the ICMM Assurance Procedure helps guide ICMM member companies in developing their sustainability reports and in engaging with assurance providers.

The OECD’s *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* includes, as one of the 5 due diligence steps, an annual reporting of information on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas. This information should be integrated where practicable into annual sustainability or corporate responsibility reports.

National law

Some jurisdictions may impose a requirement for regular public reporting from the mining sector, or on significant environmental impacts in general. It is important to be fully informed of all relevant legislation and regulations in every jurisdiction of operation.

D. Suggested implementation approach

- **COP 3.1: Communication to Stakeholders:** Members shall communicate to stakeholders at least annually on their business practices relevant to the RJC Code of Practices.

Points to consider:

- Nominate a senior manager to oversee the preparation of the report/communication.
- Identify relevant issues – those that pertain to the COP and are of interest to stakeholders, and/or are of concern to the Member. These could include, for example, human rights due diligence, factory working conditions, promotion of responsible business practices with business partners, reduction of wastes, local procurement, or other issues of most relevance to the business, or that have been raised as concerns by affected stakeholders. Review issues relevant to the report during the course of the year, integrating it where possible with regular business review processes.
- Review the GRI Guidelines for a general orientation about sustainability reporting and consider whether the company could adopt some or all of the reporting framework.
- Identify relevant stakeholders (employees, civil society, business partners etc.)
- Establish mechanisms for communication, such as through use of email, social media, mail-outs etc. As a minimum, companies that have a website should post the report/communication on the website.
- Adopt a flexible, practical approach to the form and content of the report/communication, taking into account the scale and impacts of the business. For example for a small business, the report/communication could be in the form of a memorandum or email, it does not need to be a printed publication. It may be useful if the report/communication could be timed to tie into the annual process for [Policy and Implementation](#).
- In the report/communication, consider how to communicate the following in a suitable form for your relevant stakeholders:
 - The company's policies or positions with respect to the relevant issues that have been identified above.
 - Any actions the Member has taken or plans to take with respect to the identified relevant issues, and / or any other matters that are relevant to the COP. Note these actions could apply to the Member's own operations, or could apply more broadly, such as through a Member's involvement in community initiatives.
 - Where possible, quantitative or qualitative outcomes that the actions are expected to achieve.
 - Where particular issues such as human or labour rights impacts have been raised with the Member by affected stakeholders, the report/communication should aim to provide information sufficient to assess the adequacy of the Member's response.
- *Note: RJC also welcomes the opportunity to work with Members on case studies for the RJC website.*

- **COP 3.2: GRI Mining and Metals Sector Supplement:** Members with Mining Facilities shall report annually on their sustainability performance using the Global Reporting Initiative (GRI) Guidelines and GRI Mining and Metals Sector Supplement. The reports shall have external assurance.

Points to consider:

- The GRI Supplement provides detailed guidance for the preparation of the report, including content, quality, boundary, disclosure, assurance etc., and should be followed.
- A responsible senior manager should be appointed to oversee the report content, strategies for report quality, data collection and external assurance.
- Opportunities for harmonisation of reporting should be identified, for example:
 - annual financial reporting
 - communicating progress under the Global Compact
 - disclosing revenues under the Extractive Industries Transparency Initiative
 - business contributions to the Millennium Development Goals
 - stakeholder, community and employee engagement processes
 - regulatory reporting
 - information for ethical investment markets

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- Systems for data collection, integrity and verification should be established and coordinated with existing management systems.
- Reports should prepare information for all three types of disclosures – strategy and profile, management approach, and performance indicators – addressing all core indicators for economic, environmental, social performance, labour, human rights, society, and product responsibility in the G3 Guidelines and Mining and Metals Sector Supplement.
- Reports should disclose their approach to external assurance (see GRI Guidelines for details)
 - Key stakeholders, including local and affected communities at a Facility level, should be able to access Member’s reports and/or a summary of their content in appropriate languages and formats, in addition to any site-based reporting.
 - Reports should be made available on the external website, and in hard copy if appropriate.
 - RJC does not specify an Application Level (A, B or C), but does require external assurance of whichever Level is chosen (i.e. A+, B+ or C+). Members may elect the GRI Application Level appropriate to their business.
- *Note: Members in the Mining Sector automatically comply with 3.1 by complying with 3.2.*

Check:

- ✓ All Members: do you communicate at least annually to relevant stakeholders about your business practices?
- ✓ Members in the Mining Sector: do you prepare an annual sustainability report according to GRI Guidelines?

E. Further information

The following websites have further information on sustainability and public reporting:

- CorporateRegister.com
www.corporateregister.com/
- Global Reporting Initiative (GRI)
www.globalreporting.org/Pages/default.aspx
- Global Reporting Initiative (GRI) G3.1 Guidelines
www.globalreporting.org/reporting/latest-guidelines/g3-1-guidelines/Pages/default.aspx
- International Council on Mining and Metals (ICMM) - Sustainable Development Framework – Public Reporting
www.icmm.com/our-work/sustainable-development-framework/public-reporting
- International Council on Mining and Metals (ICMM) – Sustainable Development Framework - Assurance Procedure (2008)
www.icmm.com/document/439
- KPMG - KPMG International Survey of Corporate Responsibility Reporting (2011)
www.kpmg.com/NL/en/Issues-And-Insights/ArticlesPublications/Pages/KPMG-International-Survey-of-Corporate-Responsibility-Reporting-2011.aspx
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- The International Corporate Sustainability Reporting Site
www.enviroreporting.com/
- United Nations Global Compact – Communicating Progress
www.unglobalcompact.org/COP/index.html

STANDARD GUIDANCE

(COP 4) Financial Accounts

F. Definition and applicability

Financial Accounting involves the structured presentation of financial information, typically in four basic financial statements - balance sheet, income statement, earnings statement, and cash flow statement - in addition to notes to the statements.

National and international standards include the generally accepted accounting principles (GAAP) of the applicable jurisdiction, which are typically issued by a national standards setting body (such as the Financial Reporting Standards Board for the United States), or by the International Financial Reporting Standards (IFRSs), issued by the International Accounting Standards Board.

Audited Financial Statements provide the user with the auditor's opinion that the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework. The auditor is required to obtain an understanding of the entity's internal control and assess fraud risk, and to corroborate the amounts and disclosures included in the financial statements by obtaining audit evidence.

Reviewed Financial Statements provide the user with comfort that, based on the accountant's review, the accountant is not aware of any material modifications that should be made to the financial statements for them to be in conformity with the applicable financial reporting framework.

Source:

- *American Institute of CPAs*
<http://www.aicpa.org/interestareas/privatecompaniespracticesection/resources/keepingup/downloadabledocuments/brochure%20customizable-%20difference%20between%20comp%20reviewaudit.pdf>

The **Financial Accounts** section of the COP is applicable to all Members.

G. Issue Background

Financial accounts, prepared in accordance with a recognised accounting standard, provide outside parties, such as investors, creditors, regulators, suppliers and other stakeholders, with financial information that assists them in making decisions. Financial accounting addresses problems that may occur when company management has information that is not available to, and incentives that are not necessarily aligned with those of its stakeholders.

Audited financial statements are often prepared for companies because outside parties require an auditor's opinion on a company's financial statements. A financial audit increases the credibility of the financial statements prepared by management.

A financial review may be a more relevant approach when a company does not require audited financial statements, such as private companies.

Maintaining appropriate financial accounts supports Member's business systems implemented for other provisions in the Code of Practices, including **Bribery and Facilitation Payments**, **Money Laundering and Finance of Terrorism**, **Extractive Industries Transparency Initiative** and **Mine Rehabilitation and Closure**, for example.

H. Key regulations

Specific requirements for the content of financial statements are determined by the Applicable Law. Having financial statements independently audited is also often legally required, depending on the nature and size of the business, its ownership structure (for example if it is publicly listed) and where it is located. In some cases the requirement for an audit may be waived by the company. The Sarbanes-Oxley Act in the United States has established significant reforms to improve the auditing and accounting procedures of public companies.

Auditors should follow generally accepted auditing standards (GAAS), which set out requirements and guidance on conducting audits. Auditing standards may be set by national or international organizations, such as the International Auditing and Assurance Standards Board (IAASB) and adopted by national regulatory bodies. According to the IAASB, over 80 jurisdictions are using or are in the process of adopting or incorporating the clarified International Standards on Auditing (ISAs), issued by the IAASB, into their national auditing standards or using them as a basis for preparing national auditing standards.

The International Accounting Standards Board is responsible for the development and publication of International Financial Reporting Standards (IFRSs). Three-quarters of the G20 countries now require the use of IFRSs.

I. Suggested implementation approach

- **COP 4.1: Financial Management:** *Members shall maintain financial accounts of all business transactions in accordance with national or international accounting standards.*

Points to consider:

- The management of a company is responsible for preparing the financial statements, which should be carried out with the oversight of a qualified accountant.
- Members should be aware of the applicable law and the generally accepted accounting principles (GAAP) for the jurisdictions in which they operate.

- **COP 4.2: Independent financial audit or review:** *Members shall annually undertake a financial audit, or financial review in jurisdictions where permitted, by an independent qualified accountant.*

Points to consider:

- Determine whether an audit is required under law (statutory audit) and thus whether there are specific requirements that apply.
- Auditors or reviewers must be independent, in accordance with applicable regulations and professional standards.
- The audit or review process provides an opportunity for company management to identify and address risks that could lead to material misstatements in the financial statements, including fraud.

Check:

- ✓ Do you know if there are any applicable statutory requirements for your financial accounts?
- ✓ Are your financial accounts maintained in accordance with national or international accounting standards?
- ✓ Has an independent and qualified accountant audited or reviewed your financial accounts?

J. Further information

The following websites have further information on financial accounting:

- American Institute of CPAs
www.aicpa.org
- IFRS Foundation and the International Accounting Standards Board (IASB)
www.ifrs.org/Pages/default.aspx
- International Auditing and Assurance Standards Board (IAASB)
www.ifac.org/auditing-assurance
- International Accounting Standards Board - Presentation of Financial Statements
www.iasplus.com/en/standards/standard5
- U.S. Securities and Exchange Commission (SEC) - Beginners Guide to Financial Statements (2007)
www.sec.gov/investor/pubs/begfinstmtguide.htm
- Deloitte - Audit of statutory financial statements (Belgium)
www.deloitte.com/view/en_BE/be/services/aers/audit/auditrequirementsinbelgium/audit-of-statutory-financial-statements/index.htm
- Dube – Cuttini – Financial Statements
<http://dubecuttini.com/services/financial-statements/>

2. RESPONSIBLE SUPPLY CHAINS AND HUMAN RIGHTS

STANDARD GUIDANCE

(COP 5) Business Partners

A. Definition and applicability

A **business partner** is an organisation or business Entity with which an Entity has direct business relations and that buys and/or sells a product or service that directly contributes to the extraction, manufacture or sale of Diamond, Gold and/or Platinum Group Metals Jewellery products. For the avoidance of doubt, this includes Contractors, agents, customers, Suppliers and joint venture Partners. This includes Entities that provide services related to sections of the Code of Practices, such as security providers and recruitment agencies, or that through a Risk Assessment or under Applicable Law are subject to due diligence. It does not include end consumers, or Entities that provide general support products and services, for example, office equipment and supplies and utilities.

Source:

- Summarised from RJC Code of Practices (2013)

The **Business Partners** section of the COP is applicable to all Members.

B. Issue background

Companies operating in a global economy are increasingly called upon to assume greater responsibility for business ethics, human rights, and social and environmental performance in their supply chains. Transnational corporations in particular are being held more accountable by consumers and civil society for promoting and protecting the rights of workers who make their products in sub-contracting and outsourcing arrangements, even when they are not the direct employer. As a result, many larger companies have developed policies, codes of conduct, contractual obligations and/or monitoring to govern the behaviour of their business partners throughout the world.

All RJC Members aspire to demonstrate responsible business practices and should expect high standards of their business partners, such as associate companies, contractors, suppliers and customers. The Code of Practices requires Members to use their best endeavours, commensurate with their ability to influence, to promote responsible business practices among their significant business partners.

For the avoidance of doubt, the RJC does not require that Member's business partners adhere to the Code of Practices, except if they are contractors working on the Member's premises. The specific approach to performance of business partners is a matter for each Member to determine. There are legal constraints on the extent to which the RJC Code of Practices can require compliance with the Code of Practices by Members' business partners who are not RJC Members, except where they are operating on the premises of Members.

Significant Business Partners

Judgement must be used to determine whether a business partner is significant, taking into account the nature of the relationship and its impact on the Member's business. Significant business partners could include those that:

- Major customers or suppliers, for example those with materially important business relationships;
- Business partners whose actions could impact on your reputation or performance, for example through poor business practices;
- Business partners whose activities pose risks of significant adverse impacts on workers, communities and/or environments.

Promoting responsible business practices

The level of effort to promote responsible business practices should take into consideration the nature of the business partner's practices, and the significance of its impacts on workers, communities and the environment. Evidence that the business partner already engages in responsible business practices, such as having certifications under recognised international standards (including the RJC), or having operations that are already low-risk and/or highly regulated, may be sufficient for the purposes of the provision, and active promotion is not necessary. Promotion of responsible business practices should be commensurate with the opportunity to effect positive change.

Best endeavours

Best endeavours means acting honestly, reasonably and making a positive effort to perform the relevant obligation, in this case to promote responsible business practices amongst Members' business partners. However, a Member's ability to do so must be balanced against countervailing commercial and other considerations. These include (but are not limited to):

- **Commercial and financial interests**
If promotion of responsible business practices amongst business partners could lead to financial ruin or undermine commercial standing it might not be considered reasonable.
- **Existing duties or obligations**
Pre-existing obligations owed to third parties could legitimately compromise a Member's ability to promote responsible business practices amongst business partners and override an obligation to use best endeavours.
- **Timing**
The reasonableness of any actions will be considered with reference to the circumstances and facts at the time of a Member's Self Assessment or Verification Assessment.

Ability to influence

Members' influence over business partners will vary, depending on the nature of the relationship, the size of each organisation, and the economic and social context of the business. For example, small businesses which represent only a minority of a supplier's customer base will have less influence over that supplier than a larger customer. Auditors will take a Member's ability to influence into account when assessing best endeavours.

Business partners on premises

Contractors who are working on the premises of Members are generally considered to be under the legal responsibility of the Member business. For this reason, the Code of Practices requires these business partners to comply with the Member's management and operating systems established to meet RJC obligations.

C. Key regulations

International Standards

International standards such as SA8000 Social Accountability, ISO14001 Environmental Management Systems and OHSAS 18001 Occupational Health & Safety Management Systems all contain elements which require a systematic approach to the management of business partners so that the risks to business partners, employees and other stakeholders are minimised. Organisations are required to extend to those business partners operating on-site the same level of management as would be afforded to directly employed personnel. Under such standards:

- Business partners must be aware of the hazards and controls that are in place in the same way as employees.
- Regular management communication and relevant training needs to be provided to business partners based on the nature, scope and complexity of their work.
- Organisations should establish processes to evaluate and select Business Partners based on their ability to work and supply goods within the organisation's stipulated practices, policies and procedures.

The UN Guiding Principles on Business and Human Rights promotes human rights due diligence processes that include business partners that are directly linked to the business' operations, products or services. For more information see [Human Rights](#).

National law

Most countries have legislation that ensures the wellbeing of business partners whilst working on a facility. Because of the nature of the activity, it is essential that Members are aware of the specific legislative and regulatory requirements in the operating jurisdiction. However, most regulations mandate the need to have controls and a reasonable level of supervision for activities conducted by business partners.

Laws are generally based on the premise that responsibility for the lawful conduct of business partners performing duties on site rests with the Member organisation. Members need to ensure that business partners are aware of the activities conducted on site and ensure that materials brought onto site and disposed of comply with the business' management practices and Applicable Law.

D. Suggested implementation approach

- **COP 5.1: Promote Responsible Business Practices:** *Members shall use their best endeavours, commensurate with their ability to influence, to promote responsible business practices among their significant Business Partners.*

An approach to this process could include the following steps:

- First, review all important business relationships and determine those that are significant. Significant business partners could include those that:
 - Major customers or suppliers, for example those with materially important business relationships;
 - Business partners whose actions could impact on your reputation or performance, for example through poor business practices;
 - Business partners whose activities pose risks of significant adverse impacts on workers, communities and/or environments.
 - Second, conduct an assessment to establish the level and nature of risks attributed to significant business relationships. Assessments can be carried out prior to commercial arrangements being established or for existing commercial arrangements where risks are identified.
 - See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.
 - Specific human rights and labour-related risks to assess may include, where relevant: [Human Rights](#), [Sourcing from Artisanal and Small-Scale Mining](#), [Conflict-Affected Areas](#), [Security](#), [Child Labour](#), [Forced Labour](#) and [Health and Safety](#). If separate due diligence has been carried out for the above, it could be drawn on for this assessment, or an integrated approach can be taken.
 - Identify those business partners which have already made a commitment to responsible business practices, for example through RJC Membership, or commitment to other initiatives such as the UN Global Compact, SA8000, OHSAS, ISO 14001, De Beers Best Practice Principles, and other relevant programs.
 - Identify those business partners where the Member has a reasonable ability to influence, using best endeavours.
 - Third, engage with the identified significant business partners and raise awareness about responsible business practices. Promotion of responsible business practices should be commensurate with the opportunity to effect positive change.
 - Promotion could include providing business partners with copies of the Member's policy commitment to responsible business practices (see [Policy and Implementation](#)).
 - Consider appending the policy/ies to company contracts, where relevant.
 - Keep records of communications that promote responsible business practices with business partners.
 - *Note: In assessing this provision, Members and Auditors should review the actions of Members to promote responsible practices, not the practices of non-Members.*
- **COP 5.2: Contractors:** *Contractors working on Members' Facilities and Visitors to these Facilities shall be required to comply with the Member's policies, systems and procedures relevant to the Code of Practices.*

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Points to consider:

- Establish and document clear reporting relationships, accountabilities and lines of communications with on-site contractors. Consider incorporating policies and obligations into contract documentation.
- Provide all visitors and contractors with orientation explaining relevant policies, systems and procedures.
- Monitor the contractor to ensure that specified business systems and risk control measures are implemented.

Box X: Small business

Small to medium enterprises (SMEs) are collectively significant in the jewellery supply chain, with family-owned retail and design/manufacturing businesses a tradition in many countries. At the mining end of the supply chain, small-scale producers are common and eventually link into complex downstream supply chains. Many RJC Members are SMEs who take their commitment to responsible practices seriously. While small businesses may think they don't have much ability to influence larger business partners, they can still undertake simple steps to assess risks, identify significant partners, and communicate the importance of responsible practices and their own commitments. Nevertheless, it is still possible for a small company to deliver a strong message to a larger company.

The RJC Risk Assessment Toolkit provides a general risk assessment template that has been designed particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.

Check:

- ✓ Have you identified your significant business partners?
- ✓ Do you need to prioritize your communications with these business partners? A risk assessment process can help assess the level and nature of risks with significant business partners – see the Appendix for an example template.
- ✓ Can you show the auditor how you have promoted responsible business practices to the identified / prioritized business partners?
- ✓ Can you show the auditor how business partners working on your premises are required by you to comply with your requirements, relevant to the Code of Practices?

E. Further information

The following websites have further information on the standards and initiatives referenced in Sections C and D:

- De Beers Best Practice Principles
www.debeersgroup.com/sustainability/ethics/best-practice-principles/
- ISO 14000/ISO 14001 Environmental Management Systems Standard (2007)
www.iso14000-iso14001-environmental-management.com/
- OHSAS 18001 Occupational Health and Safety Standard (2007)
www.ohsas-18001-occupational-health-and-safety.com
- Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)
[www.sai-intl.org/ data/n_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sai-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf)
- UN Guiding Principles on Business and Human Rights
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

STANDARD GUIDANCE

(COP 6) Human Rights

A. Definitions and applicability

Human rights are universal rights and freedoms regarded as belonging to all people, above the laws of any individual nation. Human rights in the RJC Code of Practices specifically include those articulated in the International Bill of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, and Applicable Law.

Source:

- *United Nations Human Rights – What are Human Rights?*
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

The **Human Rights** section of the COP is applicable to all Members.

B. Issue background

Human rights are relevant to all businesses, regardless of sector or country of operation. The kinds of rights which are regarded as human rights include:

- Labour rights – such as the right to freedom of association and collective bargaining, and freedom from forced labor, child labour and discrimination;
- Social, cultural and economic rights – such as the right to participate in culture, the right to food, the right to work, and the right to education;
- Civil and political rights – such as the right to life and liberty, freedom of expression, and equality before the law.

While some of these human rights might sound abstract from a business perspective, they are often the underlying rationale for a company's policies and procedures. For example, a company's health and safety procedures may not use 'human rights' language, but in effect respects employees' right to life, the right to just and favourable conditions of work and the right to health. A company policy on child labour in effect respects the right to protection of the child and the right to education.

In 2011, the United Nations (UN) Human Rights Council released the Guiding Principles for Business and Human Rights, to support the UN Framework for human rights adopted in 2008. The UN's "Protect, Respect and Remedy" Framework rests on three pillars:

- State duty to **protect** against human rights abuses through appropriate policies, regulation, and adjudication;
- Corporate responsibility to **respect** human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that are linked to their activities; and
- Access by victims to effective **remedy**, both judicial and non-judicial.

The Framework recognises that States' legal obligation to protect their citizens against human rights abuses is critical. Serious human rights abuses are unfortunately often associated with weak governance, high levels of corruption, conflict situations and low levels of development. While governments need to tackle these issues where present, businesses still have a responsibility to respect

Box X: Small business

Even small businesses have a responsibility to respect human rights. However the way small businesses approach this responsibility will vary according to their size, sector, operational context and structure, as well as the risks of creating adverse human rights impacts. Smaller enterprises often have more informal processes and management structures than larger companies, so their policies and processes for respecting human rights can usually be more informal. But where smaller enterprises have severe human rights impacts, this will require corresponding measures irrespective of the size of the business.

(Source: *UN Guiding Principles on Business and Human Rights - Principle 14*)

human rights wherever they operate. This starts with a baseline of legal compliance and is supported by proactive actions to prevent, mitigate and, where appropriate, remediate adverse human rights impacts.

Respecting human rights is made more difficult in situations where national law or weak governance conflicts with international rights. In these situations, companies should attempt to meet the principles of internationally recognized rights when faced with conflicting requirements. The risk of human rights abuses should be treated as a legal risk.

Where business enterprises have large numbers of entities in their value chains, the UN Guiding Principles recognises that it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. In this situation, business enterprises can identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or customers' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

C. Key regulations

International standards

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. The most well known international human rights instrument is the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. Although the UDHR is a non-binding resolution, it is now considered to be a central component of international customary law, along with the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). Together these form the International Bill of Human Rights.

Coupled with these UN instruments, the International Labour Organisation (ILO) has identified eight Core Conventions on labour rights in its Declaration on Fundamental Principles and Rights at Work. These rights are directly addressed in the RJC Code of Practices in the following provisions: [Child Labour](#), [Forced Labour](#), [Freedom of Association and Collective Bargaining](#) and [Non-Discrimination](#). More information on these can be found in the relevant chapters of this Standards Guidance.

The UN Guiding Principles on Business and Human Rights (also known as the "Ruggie Principles") was adopted in 2011 and has become the primary reference for the private sector's responsibility to respect human rights. While it does not create any new international laws or obligations, it elaborates the implications of existing standards and practices for States and businesses and integrates them within a single, comprehensive template. The Guiding Principles have been welcomed by all stakeholder groups. For example, the Guiding Principles have been incorporated into the revised OECD Guidelines for Multinational Enterprises, the ISO 26000 standard and the Performance Standards of the International Finance Cooperation (IFC). The European Union has also recognised the Guiding Principles as one of the cornerstones of an evolving global framework for corporate social responsibility.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas includes recommendations for companies in the gold supply chain to avoid contributing to or being associated with significant adverse impacts, including serious human rights abuses and conflict. The Guidance provides recommendations for due diligence for responsible supply chain management and aims to help companies to respect human rights through their sourcing decisions.

National law

Human rights principles are also enshrined in the national law of the majority of countries. It is essential to ensure that all business operations are aware of and consistent with these legal principles. Most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Some national courts have accepted or instigated lawsuits alleging that multinational companies have knowingly contributed to human rights violations in other countries. Government sanctions and restrictions may be applicable to commercial transactions with certain regions or countries. Members should strive to comply with all Applicable Laws and respect internationally recognized human rights wherever they operate.

D. Suggested implementation approach

The UN Guiding Principles on Business and Human Rights brings an expanded set of human rights issues to the attention of business. This will take time to implement in companies and Members and auditors should take into account the need for systems to be put in place over successive years as part of a continual improvement process.

The UN Guiding Principles on Business and Human Rights can provide additional guidance to support the following approach:

- **COP 6.1 (a): Written policy:** *Members shall respect Human Rights and support implementation of Section II of the UN Guiding Principles on Business and Human Rights in ways appropriate to their size and circumstances, including as a minimum: a) A policy commitment to respect Human Rights.* The policy statement can be a stand-alone policy or incorporated in the **Policy and Implementation** requirement (also see example policy template in Appendix X). The policy statement should be:
 - Approved at senior levels of the company;
 - Informed by internal and/or external expertise, as appropriate;
 - Clear on expectations of employees, contractors and business partners;
 - Publically available and communicated externally;
 - Reflected in operational policies and procedures.
- **COP 6.1 (b): Carry out due diligence:** *b) A Human Rights due diligence process that seeks to identify prevent, mitigate and account for how they address their impacts on human rights.* Human rights due diligence:
 - a. Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
 - b. Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
 - c. Should be regularly updated, for example when starting a significant new activity or business relationship, recognizing that the human rights risks may change over time.

Points to consider:

- A Human Rights due diligence process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
- Human rights due diligence needs to assess the risks to rights-holders (such as customers, employees, suppliers, communities and other stakeholders), not just risks to the company itself.
- Divide the assessment into two parts. First, review risks in your business' own activities, wherever it operates. Second, review risks arising through activities directly linked to your operations, products or services through your business relationships.
 - Many of the identified risks and rights areas overlap with existing RJC Code of Practices provisions, so a human rights risk assessment can be used as an umbrella assessment for a comprehensive range of business risks, as part of the RJC Self Assessment process.
 - RJC has developed a **Risk Assessment Toolkit** designed particularly for smaller businesses or those doing risk assessments for the first time. The human rights section draws on the European Commission's useful 2012 guide *My business and human rights. A guide to human rights for small and medium-sized enterprises*. The RJC toolkit is designed to help integrate the various requirements of the RJC Code of Practices into one simple framework. However Members are free to use their own approach.
 - Alternatively, using your own systems, considering integrating this step into part of the assessment for **Business Partners**, or integrated into Know Your Customer assessments, or your own stand-alone assessment focusing particularly on human rights risks.
- Focus on the most salient risk areas, which are those most likely to affect you or your stakeholders. These could include (but may not be restricted to): child labour, forced labour and human trafficking, health and safety, freedom of association and collective bargaining,

Comment [FS1]: In progress – being designed as an Excel toolkit, like the Self Assessment, that can be used to pull together the various risk assessment/ due diligence requirements of the COP.

discrimination and gender equity, disciplinary practices, working hours, remuneration, Indigenous Peoples, or sourcing from artisanal and small-scale mining or conflict-affected areas.

- It might not be feasible or practical to assess every single supply chain risk. Where it is necessary to prioritize, try to prevent and mitigate the potentially severe or most severe or irremediable.
- Map your suppliers to find pointers to where the most likely or severe impacts will occur. Look at region, types of production or service processes, employee demographics, etc. Consider whether your purchasing practices might impact your suppliers – for example, seasonality of orders, lead times, pricing, etc.
- Remember that once the risks are assessed, the due diligence process includes integrating your risk assessment into business operations and tracking and communicating your impacts.

- **COP 6.1 (c): Remediation process:** *c) Where Members identify that they have caused or contributed to adverse Human Rights impacts, they shall provide for or cooperate in legitimate processes to enable the remediation of those impacts.*

Businesses in this situation need to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. The remediation process should be prioritised based on the scale and/or severity of the identified adverse human rights impacts. The RJC Complaints Mechanism has been designed as a rights-compatible mechanism that is available to Members for this purpose. Alternatively, businesses may establish their own mechanism, based on engagement and dialogue, to make it possible for grievances to be remediated directly. Businesses should also cooperate with legitimate state-based and judicial mechanisms.

Points to consider:

- The remediation provision applies if your company has caused or contributed to an adverse human rights impact. The recognition of your involvement may have come from your own assessment or it may have been brought to your attention by others.
- Remediation can take many forms: acknowledgement and apology, undertaking steps to ensure the harm cannot recur, compensation (financial or other) for the harm, ceasing the activity or relationship, or some other form of remedy agreed by the parties.
- It may be appropriate for remediation to be provided by an entity other than the company, such as a government agency or court.
- Members with Mining Facilities are required to have rights-compatible operational-level complaints or grievance mechanisms that are accessible to affected communities, under [Community Engagement](#).
- See the UN Guiding Principles on Business and Human Rights, section III on 'Access to Remedy' (particularly Principle 31), for additional guidance on appropriate remediation processes.
- Consider how to communicate progress and outcome of remediation processes, as part of [Reporting](#).

- **COP 6.2: Sourcing from Conflict-Affected Areas:** *Members, if operating in, or sourcing Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area, shall use the Human Rights due diligence process to assess the heightened Risks of adverse Human Rights impacts.*

d) Review the heightened Risks of adverse Human Rights impacts.

e) Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.

For a Suggested Implementation Approach on COP 6.2, please read the separate Guidance Chapter [Conflict-Affected Areas](#)

Check:

- ✓ Can you show the auditor a written policy commitment to respect human rights? This could be a stand-alone policy or integrated in other policy/ies.
- ✓ Can you show the auditor how you have carried out a human rights due diligence process? This could be a stand-alone process, such as a risk assessment, or integrated in another process.
- ✓ Have you made efforts to integrate the results of your risk assessment into business operations?
- ✓ If you have caused or contributed to adverse human rights impacts, can you show how you have provided for or cooperated in remediation processes?

Q&A: Human Rights

1. Do we have to use the term “human rights” in our policies?

Not necessarily. For some businesses, particularly small to medium enterprises, it might be more relevant to frame the policy statement around the specific issues that have tangible meaning to employees, such as worker health and safety, labour rights, responsible business practices generally and/or responsible sourcing efforts. Appendix 2 to this Guidance includes some example language for a policy statement that discusses human rights which may be adapted where appropriate.

2. The Guiding Principles and RJC Code of Practices requires remediation where a business ‘causes’ or ‘contributes’ to adverse human rights impacts. Does a business (contractual) relationship necessarily mean that you have “contributed” to any or all adverse impacts that they may cause?

The key issue is the actual impact itself, not the business relationship. If some action of yours impels the business partner to cause an adverse impact, you have “contributed” to that impact. However simply having a business relationship with that person/entity does not mean you have “contributed” to any or all adverse impacts that they may cause. The business relationship may, however, create leverage that you can potentially use to “seek to prevent or mitigate” future adverse impacts.

3. What if my business has no leverage with my suppliers? If I identify adverse human rights impacts by that supplier, what should I do?

Where adverse human rights impacts are being caused by a supplier, you may consider aligning with other customers to apply leverage on the supplier to prevent or mitigate the impacts. Alternatively, you may consider ending the supplier relationship, but in making this decision you should also assess the potential adverse human rights impacts of doing so. Ending the relationship might be difficult when the supplier provides a product or service that is essential and for which no reasonable alternative source exists. In this situation, you may decide to prolong the relationship, after careful review of the legal and non-legal consequences to your company and the severity of the human rights impact. However the more severe the impact, the quicker you should try to find an alternative.

4. Does human rights due diligence involve a full audit of all my business partners?

RJC does not require this. However for some situations where risks are high, businesses may choose to audit or visit business partners as part of their due diligence process.

5. What would a human rights due diligence process look like for a small business?

Appendix X provides a template for the risk/assessment due diligence process that has been designed for small business use. An integrated approach may work best for small businesses, such as considering human rights risks alongside the **Business Partners** assessment. The benefit of carrying out a due diligence of your own and linked activities is a better understanding of your business and broader supply chain risks. This enables you to answer customer and supplier questions with confidence.

E. Further information

The following websites have been referenced for this guidance and/or provide further information on human rights:

- Alliance for Responsible Mining (ARM) – Approaching Artisanal and Small-Scale Mining Through the Lens of Human Rights A Call for International Action (2013)
www.communitymining.org/attachments/059_Human_Rights_and_ASM_full%20version.pdf
- Business and Human Rights Resource Centre – Jewellery (2013)
www.business-humanrights.org/Categories/Sectors/Consumerproductsretail/Jewellery
- Business & Human Rights Initiative/Global Compact Network Netherlands - How to Do Business with Respect for Human Rights: A Guidance Tool for Companies (2010)
gcnetherlands.nl/report_business_human_rights.htm
- European Commission – My business and human rights. A guide to human rights for small and medium-sized enterprises (2012)
http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf
- Guide to Human Rights Impact Assessment and Management (2010)

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http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management/

- Harvard Kennedy School - Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders(2008)
www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf
- International Council on Mining and Metals (ICMM) - Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes (2012)
www.icmm.com/page/75929/human-rights-in-the-mining-and-metals-industry-integrating-human-rights-due-diligence-into-corporate-risk-management-processes
- International Finance Corporation (IFC), Global Compact, International Business Leaders Forum (IBLF) - Guide to Human Rights Impact Assessment and Management (2010)
www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management
- John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Supplement on Gold, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- Social Accountability International (SAI) and Interchurch Organization for Development Cooperation (ICCO) - United Nations Guiding Principles on Business and Human Rights: A Six-Step Approach to Supply Chain Implementation’ (2012)
www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1315
- UN Global Compact – Human Rights – Tools and Guidance
www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html
- United Nations Global Compact/PRI - Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors (2010)
www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf
- United Nations Office of the High Commissioner for Human Rights – What are human rights?
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx
- United Nations Office of the High Commissioner for Human Rights – Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

STANDARD GUIDANCE

(COP 6.2) Conflict-Affected Areas

A. Definitions and applicability

Conflict means armed aggression, widespread violence, and/or widespread human rights abuses.

These can include:

- i) any forms of torture, cruel, inhuman and degrading treatment;
- ii) 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;
- iii) the worst forms of child labour;
- iv) other gross human rights violations and abuses such as widespread sexual violence;
- v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide. [Source: *Annex II, OECD Due Diligence Guidance*]

Conflict-Affected Areas are areas where Conflict is prevalent. The area may be a region, a country, an area within a country, or an area that crosses one or more country boundaries. Operations are not necessarily complicit in Conflict if they are located in a Conflict-Affected Area. The DRC and Adjoining Countries as defined under Section 1502 of the United States' Dodd-Frank Wall Street Reform and Consumer Protection Act are deemed a Conflict-Affected Area.

Human rights are rights inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination.

Source:

- *International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (2005)*
www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries
- *OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)*
www.oecd.org/fr/daf/inv/mne/mining.htm
- *RJC Chain of Custody Standard (2012)*
- *United Nations Human Rights – What are Human Rights?*
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

The **Conflict-Affected Areas** section of the COP is applicable to Members that operate in, or source Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area.

The **Conflict-Affected Areas** section of the COP should be read and implemented in conjunction with the **Sustainability Reporting, Human Rights, Bribery and Facilitation Payments Security, Community Engagement**, and **Impact Assessment** sections of the COP, as appropriate.

B. Issue background

The guidance chapter for **Human Rights** should be read in conjunction with this chapter.

Conflict-affected areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a government itself – where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance about how to avoid contributing to human rights harm in these difficult contexts. In recent years, guidance has been developed by the Organisation for Economic Cooperation and Development (OECD) and the UN Global Compact on responsible practices for businesses operating in such areas.

Conflict threatens human rights, security and the social fabric of a country or region. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States can play roles in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse.

Production of diamonds, gold and platinum group metals can sometimes provide opportunities for the financing of illegal armed groups, which can trigger and accelerate conflict. However it is important to stress that mining facilities located in a conflict-affected area are not necessarily complicit in conflict, and can provide important economic and other social development benefits to local communities which may be vital against a background of conflict and instability.

Companies must ensure that they do not contribute to conflict, either through their own activities or directly linked to their operations, products or services through their business relationships. The obligation to avoid contributing to conflict should be a component of human rights due diligence and should specifically cover the risk of any direct or indirect support to illegal armed groups, who are often the perpetrators of serious human rights abuses.

Mining in conflict zones

Human rights abuses are more likely to occur in conflict zones. Extractive industries in particular can find themselves close to the front-line of conflict when operating in conflict-affected areas. Mining activities can inadvertently trigger or sustain violence, or become the focus of resentment. The range of costs imposed by conflict on companies can be direct and indirect. Direct costs most obviously relate to the increased cost of protecting staff and property. Indirect costs are those that impact the operating environment, only to rebound as costs on the company. A ‘conflict-sensitive’ approach to doing business is one that seeks to avoid these costs by developing informed conflict-management strategies. Companies need to avoid any complicity in harms committed in conflict situations.

Observation of national law in host societies is a primary obligation for RJC Members. However in a conflict zone, laws may be inadequately enforced or fail to create the correct enabling environment for conflict-sensitive business practices. Companies should actively uphold relevant international instruments, ensuring their operations are in line with international law and good practice, even when governments are too weak to do so. Key instruments include the Voluntary Principles on Security and Human Rights and the Extractive Industries Transparency Initiative. These are both requirements for RJC Members in the Mining Sector.

Beyond compliance, companies should be aware of their ability to create or exacerbate conflict and develop mitigation measures to avoid or minimise negative impacts. Through improved conflict risk and impact assessment, stakeholder engagement and relationship building processes, conflict-sensitive business practices help companies to identify conflict issues directly or indirectly impacted by a project. This informs the design of mitigating strategies to alleviate them and contribute to peace, in partnership with others, through core business, social investment or policy dialogue activities.

C. Key initiatives

International Initiatives

The RJC Chain-of-Custody (CoC) Standard provides more guidance on carrying out conflict-sensitive due diligence in the jewellery supply chain and the CoC Guidance can be used as a general reference to support conformance with this provision. Certification against the RJC CoC Standard, or similar conflict-sensitive due diligence initiatives, would provide the objective evidence for conformance with COP 7.

Other relevant standards available as a reference and/or assurance tool include:

- World Gold Council Conflict-Free Gold Standard: provides guidance on operating gold mines in conflict-affected areas. Independent assurance against this standard provides objective evidence for conformance with COP 7.
- London Bullion Market Association Responsible Gold Guidance: provides guidance to gold refiners on due diligence for responsible supply chains. Independent assurance against this standard provides objective evidence for conformance with COP 7.

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- Conflict-Free Smelter program (EICC-GeSI): provides guidance to gold refiners on due diligence relevant to Section 1502 of the Dodd-Frank Act (USA). Inclusion on the Conflict-Free Smelter list provides objective evidence for conformance with COP 7.
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: includes a Supplement on Gold which provides recommendations for the gold supply chain.
- International Alert - Conflict-Sensitive Business Practice Guidance for Extractive Industries: a generic guidance tool help ensure business operations are conflict-sensitive.

Also see the guidance chapter for [Human Rights](#) for information on the UN Guiding Principles for Business and Human Rights.

National law

The US Dodd Frank requires SEC reporting companies to disclose annually whether any conflict minerals ‘necessary to the functionality or production of a product’ manufactured by the company originate in the DRC or an adjoining country. The Final Rule implementing the legislation requires companies to produce a ‘Conflict Minerals Report’ if they have reason to believe that the minerals they use may have originated in the region. The report must contain a description of the due diligence efforts taken to determine the source and chain of custody of the conflict minerals and conform to a recognized due diligence framework, such as the OECD Due Diligence Guidance.

D. Suggested implementation approach

- **COP 6.2: Conflict-Affected Areas:** *Members, if operating in, or sourcing Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area, shall use the Human Rights due diligence process to assess the heightened Risks of adverse Human Rights impacts.*
 - d) *Review the heightened Risks of adverse Human Rights impacts.*
 - e) *Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.*
- **Points to consider:**
 - Identifying whether this provision applies involves first identifying any relevant conflict-affected areas where you may have operations or direct suppliers. If you are unsure whether you operate in or source from any conflict-affected areas, seek guidance from:
 - UN Security Council Resolutions. Note if any international sanctions apply, it may not be possible to operate in accordance with Applicable Law.
 - UN Peacekeeping Operations.
 - US State Department “Conflict Minerals Map” and associated reports required by the Dodd-Frank Act.
 - US State Department Country Reports on Human Rights Practices.
 - Heidelberg Institute Conflict Barometer.
 - Uppsala Conflict Data Program.
 - International Alert.
 - International Crisis Group.
 - The business’ in-country risk assessments and/or incident monitoring and reporting.

Box X: Geneva Academy: Indicators for conflict-affected and high-risk areas

Between states:

- One or more states attack another state’s territory or armed forces with ground forces;
- One or more states attack another state’s territory or armed forces with air forces;
- One or more states’ navies attack another state’s territory or armed forces; and/or
- One or more states occupy another state’s territory without the latter’s consent.

Instability:

- UN Security Council has stated that international humanitarian law applies to a particular situation;
- Organised NSAG controls territory of a state;
- Organised NSAG is fighting with armed forces of a state on a regular basis;
- Many civilians are fleeing combat zones; and/or
- In failed state or area where rule of law has broken down, members of two or more organised NSAGs

fighting each other on regular basis.

Armed conflict:

- Area falls within territory on which armed conflict is ongoing;
- Area contains internally displaced persons fleeing armed conflict, and/or
- Area contains a refugee camp or refugees who have fled across the border from a state in which an armed conflict is ongoing.

High-risk areas:

- The state is no longer effectively able to tackle ordinary crime;
- The police or other security forces are killing or beating ordinary people with apparent impunity; or are conducting widespread, arbitrary arrests of ordinary people;
- The police or other security forces cannot enter or patrol safely;
- The state cannot provide basic health services and/or primary education;
- Children are engaged in dangerous forms of labour;
- There are high levels of sexual violence;
- People are forced to carry out labour;
- Children are being recruited into armed forces or armed groups;
- Bribes are demanded for ordinary state services;
- The law is not enforced impartially by the judiciary; and/or
- Organised crime networks operate successfully and with apparent impunity.

Points to consider:

- Integrate conflict-sensitive sourcing commitments into your company policy/ies. This could be via:
 - Including a commitment to avoid contributing to conflict in the business' policy statement on respecting human rights (**Human Rights**) and/or responsible business practices generally (**Policy and Implementation**); or
 - Establishing a more specific company supply chain policy for diamond, gold and platinum group metals from conflict-affected areas. Model policies and templates are available in the OECD Due Diligence Guidance and in the RJC Chain-of-Custody Standard Guidance.
- Use a risk assessment or due diligence process to document and review the heightened risks of adverse human rights impacts and contributing to conflict.
 - If the business operates in a conflict-affected area:
 - Check that systems are in place to identify all illegal armed groups and their affiliates in the conflict affected area, and establish systems to prevent payments, logistical assistance or equipment being provided to such Illegal Armed Groups or their affiliates. Further guidance for conflict-free due diligence for mining companies operating in conflict-affected areas can be found in the RJC Chain of Custody Guidance document, provision 4.2 Due Diligence. Other types of businesses can adapt this guidance to suit their circumstances. General guidance for companies managing conflict risks can be found in the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.
 - The level of detail in the due diligence should be commensurate with the level of risk that conflict could occur, based on current social or political conditions and/or proximity of operations to existing or recent conflict, and/or the complexity and nature of the company's local suppliers.
 - If the business sources diamonds, gold or platinum group metals directly from a conflict-affected area:
 - A direct source means a supplier that engages directly with the Member, including entities that are affiliated with or under the control of the supplier.
 - Assess the risks of the supplier contributing to conflict, particularly the risk of direct or indirect assistance to illegal armed groups. Determine whether the identified risks can be mitigated by continuing, suspending or terminating the relationship with the supplier/s. Further guidance for companies managing supply chain risks can be found in the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

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- The level of detail in the due diligence should be commensurate with the nature and complexity of the supplier base, and whether any supplier operates in an area that is proximate to existing or recent conflict.
- o Wherever possible, integrate steps to address the identified risks with implementation of other COP provisions:
 - Consider heightened risks of bribery and corruption in conflict-affected areas, and regularly review implementation of the policies and procedures developed under **Bribery and Facilitation Payments**.
 - Consider heightened risks associated with use of security forces. Members with Mining Facilities are required to conduct security risk assessments and ensure that security personnel receive training and operate in accordance with the Voluntary Principles on Security and Human Rights, under **Security**.
 - Consider how to promote responsible business practices to significant **Business Partners**.
 - Members operating in, or sourcing from, a conflict-affected area should publicly report on their supply chain due diligence policies and practices. This may be incorporated with **Reporting**.

Check:

- ✓ Do you know whether or not you operate in, or directly source from, conflict-affected areas?
- ✓ Can you show the auditor how you have reviewed heightened risks of adverse human rights impacts for those operations or suppliers in conflict-affected areas? Some kind of documented risk assessment or due diligence process will be required – this can be stand-alone or integrated in other Code of Practices assessments, for example Business Partners and/or Human Rights.
- ✓ Are you also documenting, and where appropriate communicating, what steps you are taking to avoid contributing to conflict? This could be related to other Code of Practices provisions, such as Security, Business Partners and Bribery and Facilitation Payments.

E. Further information

The following websites have further information on conflict-affected areas:

- Geneva Academy
www.geneva-academy.ch
- Heidelberg Institute for International Conflict Research
www.hiik.de/en/
- International Alert
www.international-alert.org/
- International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (2005)
www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries
- International Crisis Group
www.crisisgroup.org/
- International Crisis Group – Crisis Watch Monthly Bulletin
www.crisisgroup.org/en/publication-type/crisiswatch.aspx
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- Schulte Roth & Zabel - Conflict Minerals Resource Center
www.srz.com/conflict_minerals_resource_center/
- Uppsala University – Uppsala Conflict Data Program
www.pcr.uu.se/research/UCDP/
- United Nations (UN) Guiding Principles on Business and Human Rights
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- United Nations (UN) Peacekeeping Operations
www.un.org/en/peacekeeping/operations/current.shtml
- United Nations (UN) Security Council Resolutions
www.un.org/en/sc/documents/resolutions/index.shtml

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- U.S. Department of State – Human Rights Reports
www.state.gov/j/drl/rls/hrrpt/
- U.S. Securities and Exchange Commission (SEC) Rule for Disclosing Use of Conflict Minerals - Dodd-Frank Wall Street Reform and Consumer Protection Act (2012)
www.sec.gov/news/press/2012/2012-163.htm

STANDARD GUIDANCE

(COP 7) Sourcing from Artisanal and Small-Scale Mining

E. Definitions and applicability

Artisanal and Small-Scale Mining (ASM) are formal or informal operations with predominantly simplified forms of exploration, extraction, processing and transportation. ASM is normally low capital intensive and uses high labour intensive technology. ASM can include men and women working on an individual basis as well as those working in family groups, in partnership or as members of cooperatives or other types of legal associations and enterprises involving hundreds or thousands of miners.

Source:

- *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Supplement on Gold, Second Edition (2012)*
www.oecd.org/fr/daf/inv/mne/mining.htm

The **Sourcing from Artisanal and Small-Scale Mining** section of the COP is applicable to those Members who source gold, diamond or platinum group metal from ASM producers.

The **Sourcing from Artisanal and Small-Scale Mining** section of the COP should be read and implemented in conjunction with the **Business Partners, Human Rights, Conflict-Affected Areas, Security, Child Labour, Forced Labour, Community Engagement, Impact Assessment, Artisanal and Small-Scale Mining**, and **Mercury** sections of the COP, as appropriate.

F. Issue background

Background information about ASM is provided under the guidance for **Artisanal and Small-Scale Mining**.

As noted in the guidance for **Business Partners**, companies operating in a global economy are increasingly called upon to assume greater responsibility for business ethics, human rights, and social and environmental performance in their supply chains. Sourcing gold, diamond or platinum group metal from ASM producers raises the potential to contribute to harmful practices from ASM, including the use of forced and child labour, risks to health and safety of workers and communities, and major environmental impacts. However ASM is increasingly being recognised as a sector that presents real development opportunities for impoverished families and communities worldwide. ASM is central to a number of international development agendas and a broad spectrum of market players can play a part in positive transformation of the sector.

Best endeavours

Best endeavours means acting honestly, reasonably and making a positive effort to perform the relevant obligation, in this case to reduce or avoid risks of ASM producers engaging in human rights abuses, unsafe work, and generating major environmental impacts.

Ability to influence

Members' influence over ASM producers will vary, depending on the economic and social context of the business and the nature of commercial relations between them and the ASM (if any). Auditors will take a Member's ability to influence into account when assessing best endeavours.

G. Key regulations

International

Standards for responsible ASM practices in gold and diamonds are the focus of organisations such as the Alliance for Responsible Mining (ARM), the Diamond Development Initiative International (DDII) and Fairtrade International (FLO). See the guidance for [Artisanal and Small-Scale Mining](#).

The obligation to assess and reduce or avoid risks caused by ASM suppliers' practices is consistent with and supports a number of international human rights instruments, including the Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, and the ILO Conventions on labour rights. For further information see the guidance for [Human Rights](#).

H. Suggested implementation approach

- **COP 7: Sourcing from ASM:** *Members that source Diamonds, Gold and/or Platinum Group Metals directly from ASM producers that are not under the Control of the Member shall regularly assess risks of forced and child labour, worker health and safety, uncontrolled mercury use, and other significant environmental impacts and use best endeavours, commensurate with their ability to influence, to reduce or avoid the Risks.*

Points to consider:

- If the ASM suppliers are located within the area of operation of a Member with mining facilities, the Member should identify risks, and conduct efforts to reduce or avoid risks, as an integral part of its community engagement program and impact assessments and risk mitigation planning (see [Artisanal and Small-Scale Mining](#), [Community Engagement](#), [Conflict-Affected Areas](#), [Impact Assessment](#), [Mercury](#), [Environmental Management](#) and [Child Labour](#)).
- If the ASM suppliers are located in a different area from the Member, the Member should conduct due diligence appropriate to the circumstances to identify potential risks. Due diligence measures could be conducted in-house and/or use professionals with local experience, and should include site visits.
- A policy needs to be developed, which should be done in collaboration with ASM producers. The process could involve: the Member drafts a policy, ASM producers are then given the opportunity to respond and share comments/concerns about the policy, and finally the Member completes the policy based on feedback received from ASM producers. This policy can be used to set out the conditions and practices that should be followed by both the Member and the ASM suppliers, with allowance made for remedial actions that may need to be undertaken to meet the requirements over time. The policy can clarify any conditions or activities that would cause the Member to withdraw from the relationship.
- Approaches to the identified risks could include:
 - Monitoring of site conditions and practices, potentially via site visits by the Member or its representatives.
 - Training and other forms of technical assistance and advice to improve working conditions and reduce impacts, particularly with respect to the use of mercury, environmental management, and health and safety.
 - Capacity-building measures, such as support for community health and educational projects, and community education on forced and child labour issues.
 - Financial incentives, where appropriate, to encourage and facilitate improvements to site conditions and practices.

Check:

- ✓ Can you show the auditor how you have assessed the risks associated with direct ASM suppliers of gold, diamonds or platinum group metals?
- ✓ Can you show the auditor the approaches you have taken to reduce or avoid the risks?

F. Further information

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The following websites have further information on artisanal and small-scale mining:

- Alliance for Responsible Mining (ARM)
www.communitymining.org
- Alliance for Responsible Mining (ARM) – Legalization Guide for Artisanal and Small-Scale Mining (ASM) – Draft for Discussion (2011)
www.communitymining.org/attachments/059_ARM_Series5_Legalisation_guide_ASM.pdf
- Alliance for Responsible Mining (ARM) – Rock-Solid Changes for Responsible Mining (2011)
www.communitymining.org/attachments/059_RSC_FINAL_web_low.pdf
- AngloGold Ashanti – Approach to artisanal and small scale mining (2006)
www.anglogoldashanti.com/subwebs/InformationForInvestors/ReportToSociety06/artisanal-mining.htm
- Artisanal and Small-Scale Mining in Protected Areas and Critical Ecosystems Programme (ASM-PACE)
www.asm-pace.org
- Artisanal Gold Council (AGC)
www.artisanalgold.org/home
- CommDev – Artisanal and Small-Scale Mining (ASM) (2012)
commdev.org/section/topics/artisanal_mining
- CommDev/CASM/ICMM - Working Together: How large-scale mining can engage with artisanal and small-scale miners (2008)
commdev.org/content/document/detail/2018/
- Communities and Small-Scale Mining (CASM) – hosted by World Bank Group
www.artisanalmining.org/index.cfm
- Diamond Development Initiative (DDI) – Artisanal Alluvial Diamond Mining (2009)
www.ddiglobal.org/pages/ddi_artisanaldiamond.php
- Diamond Development Initiative (DDI) – Mechanization of Artisanal Alluvial Diamond Mining: Barriers and Success Factors (2010)
www.ddiglobal.org/login/Upload/Mechanisation-Alluvial-Artisanal-Diamond-Mining.pdf
- Estelle Levin Ltd. – Publications
www.estellelevin.com/publications
- Human Rights Watch - A Poisonous Mix. Child Labor, Mercury, and Artisanal Gold Mining in Mali (2011)
www.hrw.org/sites/default/files/reports/mali1211_forinsertWebUpload_0.pdf
- International Labour Organisation (ILO) – Facts on Small Scale Mining
www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067582.pdf
- International Institute for Environment and Development (IIED) - Responding to the challenge of artisanal and small-scale mining: How can knowledge networks help? (2013)
pubs.iied.org/16532IIED.html?c=energy/mining
- Global Mercury Project – Global Impacts of Mercury Supply and Demand in Small-Scale Mining (2007)
www.globalmercuryproject.org/documents/non_country%20specific/2006%20GMP%20Report%20to%20UNEP%20GC24.pdf
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- United Nations Environment Programme (UNEP) Global Mercury Partnership – A Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Techdoc/UNEP%20Tech%20Doc%20APRIL%202012_120608b_web.pdf
- United Nations Environment Programme (UNEP) Global Mercury Partnership - Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Formalization_ARM/For%20malization%20Document%20Final%20June%202012.pdf
- The World Bank - Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit (2012)
commdev.org/userfiles/Gender_and_ASM_Toolkit.pdf

STANDARD GUIDANCE

(COP 8) Community Development

A. Definitions and applicability

Community is a term generally applied to the inhabitants of immediate and surrounding areas who are affected in some way by a company's activities; these effects may be economic and social as well as environmental in nature.

There is a diversity of values and interests held within a group of people who identify as a community. Communities are not homogenous or static.

Community development is the process whereby people increase the strength and effectiveness of their communities, improve their quality of life, enhance their participation in decision making and achieve greater long term control over their lives. It is done with, rather than for, communities, thereby reflecting local people's needs and priorities.

Source:

- *Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Community Engagement and Development (2006)*
www.minerals.org.au/file_upload/files/resources/enduring_value/CED.pdf
- *International Council on Mining and Metals (ICMM) - Community Development Toolkit (2012)*
www.icmm.com/news-and-events/news/articles/icmm-presents-updated-community-development-toolkit

The **Community Development** section of the COP is applicable to Facilities that operate within a community as defined above.

The **Community Development** provisions should be implemented in conjunction with the **Human Rights** and, for Members in the Mining sector, with **Community Engagement, Indigenous Peoples and Free Prior and Informed Consent** provisions and **Artisanal and Small-scale Mining**.

B. Issue background

Community Development

Community development encompasses economic, social and cultural development and is closely linked with principles of human rights. Voluntary company contributions to community development can vary markedly across different settings, for example in developed or developing countries, or in rural or city areas. A company's approach should be determined by local conditions, including the nature and scale of the business, available resources and partners, and most importantly, local people's needs and priorities.

Community consultation, regional cooperation and partnering with other agencies are essential parts of designing sustainable community development. Businesses should seek to work in support of local community priorities, national development goals and existing programs wherever possible and appropriate. Programs often have a long term focus and can address issues such as education, health, gender, environment, economic development and cultural activities. Where practical, businesses should avoid filling roles which are the responsibility of others, especially governments, and should instead take a partnership or collaborative approach to community development.

Practical approaches to community development can include:

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- Designing programs for training, employing and retaining underutilised workers;
- Offering supplier diversity programs;
- Supporting community-based and minority-owned businesses;
- Investing in community development financial instruments and institutions;
- Siting retail stores, headquarters, manufacturing, warehouses or logistics facilities in underserved markets;
- Liaising with local and regional educational centres to promote excellence in educational opportunities;
- Training local community members in environmental monitoring and natural resource management.

In a mining context, the existence of a mine and its associated community development programs can play a significant, perhaps dominant, role in local, regional or even national development. This calls for greater rigour in program planning and design. The following may need to be addressed:

- Baselines, monitoring and regular evaluations of socio-economic impacts, working with development partners and local community members as appropriate;
- Skills and capacity building for community participation and ability to take up program opportunities during the life of an operation;
- Multi-stakeholder planning and capacity development for post-mining livelihoods.

Community development can be a challenging concept to apply in practice. Issues to consider include creating opportunities so that women can participate more meaningfully in decision-making processes and development opportunities; sharing control with communities; reaching marginalised and vulnerable people in communities; balancing expert knowledge with community knowledge; and contributing to longer term local sustainable development strategies. In some cultures, businesses may be active in community development activities but reluctant to promote them publicly, as this is considered contrary to the spirit of the giving.

Despite the challenges, successful community development efforts can help to address workforce recruitment and retention, enhance brand image and employee loyalty and contribute to healthier communities. Negotiated settlements help avoid expropriation and eliminate the use of governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Members are encouraged to acquire land rights and/or access through negotiated settlements wherever possible. However consideration should be given to the rights of vulnerable people, such as those renting land from a landholder who is involved in negotiations.

C. Key initiatives and frameworks

Community development

Community development is in most cases a voluntary business activity. However it is increasingly a component of agreements with communities or governments, or a regulatory requirement as part of development approvals for new or expanding industrial projects. It is essential to be aware of applicable law in all jurisdictions of operation.

A key international framework for development is the Millennium Development Goals (MDGs) program of the United Nations Development Programme (UNDP). There are eight MDGs – end poverty and hunger, universal education, gender equality, child health, maternal health, combat HIV/AIDS, environmental sustainability, and global partnerships. Together these MDGs form a blueprint agreed to by all the world's nations and all the world's leading development institutions, with a timeframe to 2015. While the MDGs are committed to by governments, they provide an important framework for community development planning by the private sector and civil society organisations.

D. Suggested management approach

- **COP 8: Community Development:** *Members shall seek to support the development of the communities in which they operate through the support of community initiatives.*
Points to consider:

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- Draw on appropriate community development expertise, so that local, regional and/or national contexts are understood and addressed. A strategic approach to community development can work to align company objectives with existing and future community and/or regional development plans.
- Undertake a stakeholder mapping exercise to identify those parts of the community who are interested in and affected by company activities, with priority on those who are vulnerable or marginalized.
- Identify existing community development programs and consider partnerships or other forms of support.
- Outline the aims of your community initiatives, the key principles to be followed, and the expectations of staff and other stakeholders.
- Enabling communities to participate in decisions about the allocation of project benefits will enhance the sustainability of community development programs. Include a diversity of community members, ensuring that women and vulnerable and/or marginalized groups are included.
- Working in formal or informal partnerships can reduce duplication, costs, and dependency on the mining operation. Private, governmental, NGO and community organizations can bring different skills and resources to collaborative efforts.
- Monitor your community development initiatives and periodically evaluate them against selected indicators. Regular monitoring and evaluation enables the adjustment of programs to enhance success.
- Including community members in participatory monitoring processes is a useful way to enhance feedback and facilitates the communication of progress to the wider community. Additional communication of progress and challenges, through internal and external reporting of results, can encourage a broader support base for programs.

Check:

- ✓ Have you identified priority stakeholders in the affected community?
- ✓ Are community members involved in the delivery of your community initiatives?
- ✓ What initiatives have you undertaken to support the development of affected communities?
- ✓ How will they have a beneficial impact and how will this be evaluated?

E. Further information

The following websites have further information on community development issues:

- Anglo American – Community Engagement
www.angloamerican.com/development/social/community-engagement/engagement
- Business for Social Responsibility – BSR Insight Articles About Community Engagement & Development
www.bsr.org/en/topic/channel/bsr-insight/community-engagement-development
- Centre for Social Responsibility in Mining (CSRSM) - Community Engagement and Development
<http://www.csrsm.uq.edu.au/Research/CommunityEngagementandDevelopment.aspx>
- International Council on Mining and Metals (ICMM) - Community Development Toolkit (2012)
www.icmm.com/news-and-events/news/articles/icmm-presents-updated-community-development-toolkit
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Community Engagement and Development (2006)
www.minerals.org.au/file_upload/files/resources/enduring_value/CED.pdf
- Millennium Development Goals
www.un.org/millenniumgoals/
- World Bank - Community Driven Development
web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html

STANDARD GUIDANCE

(COP 9) Bribery and Facilitation Payments

A. Definitions and applicability

Bribery means the offering, promising or giving, as well as demanding or accepting of any undue advantage, whether directly or indirectly, to or from:

- a public or government official (politically exposed persons);
- a political candidate, party or official; or
- any private sector employees, directors or officers (including a person who directs or works for a private sector enterprise in any capacity) or their agents or representatives.

Facilitation payments are paid to receive preferential treatment for something that the payment receiver is otherwise still required to do.

Source:

- *United Kingdom Bribery Act (2010)*
www.thebriberyact2010.co.uk/what-is-a-bribe.asp
- *RJC Code of Practices (2013)*

The **Bribery and Facilitation Payments** section of the COP is applicable to all Members.

B. Issue background

Two decades ago, bribes were a tax deductible business expense in many countries. In the early 1990s, non-government organisations began international campaigns against corruption. It became recognised that corruption – an abuse of entrusted power for private gain – hinders economic development, corrodes the fabric of society, and distorts national and international trade. Corruption can also undermine environmental and labour standards, access to human rights and the rule of law.

Bribery is the most widely condemned form of corruption. Today, nearly all countries have criminalised bribery where it occurs domestically. In many countries it can be prosecuted even where the offence takes place overseas. Bribes may take the form of cash, gifts in kind, hospitality, expenses, advantage or promises. In some cases, the briber holds a powerful role and controls the transaction. In other cases, a bribe may be effectively extracted from the person paying.

Facilitation payments have historically attracted a more mixed response. In countries where wages are low or gift-giving is intrinsic to relationships, facilitation payments emerged as more or less acceptable. However, making a clear distinction between a facilitation payment and a bribe can be difficult in practice. For this reason, facilitation payments are often treated as equal to bribes and prohibited in anti-corruption initiatives.

Businesses are increasingly taking a strong stand against corruption. Investor confidence and the reputations of some sectors have been eroded by business ethics scandals. Corruption is now understood to add a financial burden to business. The UN Global Compact estimates that 10% or more can be added to the costs of doing business in some parts of the world. A consensus is emerging that corruption and bribery damage company integrity, degrade the business environment and fail to create competitive advantage.

C. Key regulations

International standards

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) was the first international instrument to fight corruption in cross-border business deals. It has since been ratified by all 34 OECD countries and six non-member countries. National governments and businesses have used the Convention to improve legislation and raise standards. Bribing a foreign official is now a criminal offence in all signatory countries.

Transparency International, a non-government organisation, introduced the Business Principles for Countering Bribery in 2002. These principles aim to provide a model for companies to implement a comprehensive anti-bribery program. The approach ranges from internal policies and practices to how to deal with business partners and the supply chain. The Principles are intended for use by companies of all sizes.

The United Nations (UN) adopted its Convention against Corruption for ratifying states in 2003. It was the first legally binding, international anti-corruption instrument. This paved the way for the 10th Principle against corruption to be added to the UN Global Compact in 2004.

National law

In most jurisdictions, any form of bribery is illegal. In some countries however, facilitation payments are customary to conduct business and personal activities, and may even be legal. It is essential to be fully informed of all relevant legislation and regulations in every jurisdiction of operation.

UK Bribery Act

In 2010, the UK Bribery Act was enacted to update and enhance UK law on bribery including foreign bribery in order to address better the requirements of the 1997 OECD Anti-Bribery Convention. It is now among the strictest legislation internationally on bribery. The UK Bribery Act (which entered into force on 1 July 2011) has important implications for companies registered in the UK and foreign companies doing business in the UK.

The Bribery Act creates four prime offences:

- Two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage;
- A discrete offence of bribery of a foreign public official; and
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage (should an offence be committed, it will be a defence that the organisation has adequate procedures in place to prevent bribery).

D. Suggested implementation approach

- **COP 9.1: Policy:** *Members shall establish policy/ies that: a) Prohibit Bribery in all business practices and transactions carried out by the Member and by agents acting on behalf of the Member; b) Protect Employees from any penalty or adverse consequences for identifying in good faith concerns related to suspected Bribery, or for refusing to participate in Bribery or pay a Facilitation Payment where Facilitation Payments are prohibited, even if this action may result in the enterprise losing business; c) Set the criteria and approval procedures to be followed by Employees in respect of the offer and/or acceptance of gifts with third parties.*

Points to consider:

- A senior manager should have designated operational responsibility for anti-corruption programs.
- A policy/ies in conformance with the RJC's COP requirements on **Bribery and Facilitation Payments** should be formally established and clearly endorsed by the highest level of the business.
- The policy/ies should be communicated to all employees and any party who may act as an agent on behalf of the Member, and referenced in appropriate contract documents.
- Training should be provided to ensure the policy/ies is understood by relevant employees, agents and contractors, particularly if the policy/ies is new or has been significantly changed.
- The policy/ies should seek to establish awareness of corruption issues and risks, and provide the foundation for embedding an anti-corruption culture in the organisation.

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- The policy/ies should include sanctions for non-compliance.
 - Members should consider establishing a contact person or office to provide advice and receive complaints or concerns about compliance with the Member's policy/ies. For larger companies where significant risks are identified, the policy/ies should consider providing employees and agents with access to a whistleblowing mechanism.
 - The policy/ies should address political donations, charitable (and similar or equivalent) contributions and sponsorships.
 - Criteria and procedures for the recording and approval of the offer and acceptance of third party gifts, including hospitality and entertainment, should be clear and practical and communicated to employees and relevant agents and contractors. Judgment may be needed to set the criteria of acceptable thresholds, in the context of customary exchanges vs the risk of corruption.
 - Members should ensure they are aware of the Applicable Law, including the extraterritorial reach of some countries' legislation. If uncertain, advice should be sought from qualified legal advisors.
- **COP 9.2: Systems:** *Members shall have systems in place to manage Bribery Risk in their organization. The systems shall include: a) Identification and monitoring of those parts of the Member's business that pose high Risks of participation in Bribery; b) Recording of relevant gifts to and from third parties in a gift register, as per the Member's policy; c) Investigation of any incidences of suspected Bribery within their organisation; d) Sanctions for Bribery and attempted Bribery.*

Points to consider:

 - Members should conduct a risk assessment to identify those parts of the business that are exposed to bribery risk. Consider seeking professional expertise to assist, particularly for complex business operating in multiple locations. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.
 - Risks may vary depending on the type of business and geographical location, but can frequently involve individuals in a position to influence (or be influenced) in respect of transactions or business relationships with third parties, including government entities (and entities in which government or public officials have interests).
 - The risk assessment should identify relevant types of risk, based on the nature of the business, and distinguish between different parts of the business according to their level of risk, such that anti-corruption programs, controls, training and monitoring can concentrate on areas of greatest risk.
 - A documented anti-corruption program should be established to mitigate identified risks, such as through the provision of training, formal approval procedures that avoid concentration of authority with single individuals, enhanced oversight of higher-risk transactions, use of documented selection criteria supported by due diligence for the selection of new agents and relevant contractors, incorporation of appropriate anti-corruption compliance provisions in contract documents, and recording of any instances of attempted bribery and their investigation.
 - A third party gift register should be established, and used to record given, received and accepted gifts, as identified by the criteria set under provision 9.1. Gifts include major charitable contributions, sponsorships, or community payments, and significant hospitality expenses that are offered in commercial circumstances with bribery risks. A gift register does not need to be stand-alone and could be integrated within a Member's payment system, for example.
 - Compliance with the anti-corruption program should be reviewed periodically by competent personnel who are free of conflict of interest.
 - Monitoring arrangements should be appropriate to the business' circumstances and may incorporate financial analysis, interviews, testing of approvals, and training that raises awareness of 'red flags'.
 - **COP 9.3: Facilitation Payments:** *Where Facilitation Payments are permitted by Applicable Law, Members shall: a) Undertake actions to eliminate all Facilitation Payments, or to reduce the size and frequency of Facilitation Payments over time; b) Ensure that any Facilitation Payments are of limited nature and scope; c) Implement controls to monitor, oversee and fully account for any Facilitation Payments made by or on behalf of the Member.*

Points to consider:

- Members should be aware of the Applicable Law regarding facilitation payments. Where facilitation payments are not permitted by Applicable Law, they must be addressed under the bribery-related provisions above.
- Policy/ies should include clear and practical guidance on acceptable and unacceptable facilitation payments, tailored where appropriate to location. Where facilitation payments are not permitted by law, or by the Member's own anti-bribery program, they do not need to be separately distinguished in the Member's policy/ies.
- The policy/ies should provide for approval requirements under the authority of a responsible manager.
- All facilitation payments should be fully accounted for and recorded, such as in a register.
- Consideration should be given to informing those external parties who receive facilitation payments about the Member's policy/ies that limit their nature and scope.
- The implications and consequences of reduced facilitation payments should be monitored, with a view to identifying payments that could be reduced or eliminated.

Check:

- ✓ Do you know the Applicable Law regarding bribery and facilitation payments?
- ✓ Have you established an anti-bribery policy and communicated it to employees and agents?
- ✓ Can you show the auditor your supporting systems, such as a risk assessment, a gift register and procedures for investigation and sanctions?
- ✓ Do you have appropriate controls over facilitation payments, where permitted and if you make them, with the intent to reduce and eliminate them over time?

E. Further information

The following websites have further information on bribery and corruption issues:

- Transparency International
www.transparency.org.uk/our-work/bribery-act
- Transparency International – Adequate Procedures – Guidance to the UK Bribery Act 2010
www.transparency.org.uk/our-work/publications/10-publications/95-adequate-procedures-guidance-to-the-uk-bribery-act-2010
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html
- PwC - UK Bribery Act: the British act against corruption is not something that Belgian business can just ignore (2011)
www.pwc.be/en/press/2011-08-30-british-act-against-corruption.jhtml
- Publish What You Pay
www.publishwhatyoupay.org
- United Kingdom Bribery Act (2010)
www.thebriberyact2010.co.uk/default.asp
- United Nations (UN) Global Compact – Principle 10 on Anti-Corruption (2004)
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/anti-corruption.html
- United Nations Office on Drugs and Crime (UNODC) - Action against Corruption and Economic Crime
www.unodc.org/unodc/en/corruption/index.html
- World Economic Forum – Partnering Against Corruption Initiative
www.weforum.org/en/initiatives/paci/index.htm

STANDARD GUIDANCE

(COP 10) Money Laundering and Finance of Terrorism

A. Definitions and applicability

Beneficial owner is the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

Money laundering is the process by which the financial proceeds of crime are disguised to conceal their illegal origin.

The **financing of terrorism** is any kind of financial support to those who encourage, plan or engage in terrorism. The meaning of terrorism is not universally accepted due to significant political, religious and national implications that differ from country to country.

Know Your Customer (KYC) principles are principles established to combat money laundering and finance of terrorism. KYC principles require businesses to establish the identity of all organisations with which they deal, have a clear understanding of their business relationships and have a reasonable ability to identify and react to transaction patterns appearing out of the ordinary or suspicious.

Source:

- World Bank - Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism
http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf
- Financial Action Task Force – RBA Guidance for Dealers in Precious Metal and Stones
www.fatf-gafi.org/documents/riskbasedapproach/fatfguidanceontherisk-basedapproachfordealersinpreciousmetalsandstones.html

The **Money Laundering and Finance of Terrorism** section of the COP is applicable to all Facilities.

B. Issue background

Money laundering is the term for a multitude of practices designed to hide illegal or 'dirty' money. The profits from criminal activities – such as illegal arms sales, drug trafficking, prostitution, fraud, insider trading, theft or tax evasion – go through a succession of transfers and deals until the illegal source of the funds is obscured. The money then takes on the appearance of legitimate or 'clean' funds or assets.

The money laundering process usually follows three stages. In the initial – or placement – stage of money laundering, the launderer introduces the illegal profits into the financial system. This is often done by breaking up large amounts of cash into smaller sums. These are then deposited as cash, cheques or money orders directly into bank accounts in various locations.

After the funds have entered the financial system, the second – or layering – stage takes place. In this stage, a series of conversions or movements of the funds are carried out to distance them from their illegal source. The funds might be channelled through the purchase and sales of investments, or wired through a series of international bank accounts. This use of widely scattered accounts is especially prevalent in jurisdictions that do not co-operate in anti-money laundering investigations.

In the third stage – integration – the funds re-enter the legitimate economy. Legitimate and illicit proceeds may be commingled in the accounts of trading companies. The launderer might choose high value assets or goods for purchase and perhaps resale. These items can include real estate, business ventures, or products such as such as precious metals, diamonds, jewellery, cars or antiques.

Terrorist financing uses similar kinds of transactions for concealment and disguise, but with differences in stages one and three. In the first stage, funds for terrorist financing may originate from legitimate sources as well as criminal activities. Legitimate sources may include donations to foundations or charities that are in turn used to support terrorist activities or organisations. In the third stage, the distribution of funds is toward illegal organisations or their activities, while money laundering goes in the opposite direction – integrating criminal funds into the legitimate economy.

Money laundering and the financing of terrorism can, and do occur in any country in the world. As dealers in high value goods, various parts of the jewellery supply chain may be targeted during the process of laundering money. It is therefore vital that the sector adopts very strict systems to minimize the risk of becoming involved in money laundering or terrorism financing.

C. Key regulations

International Standards

To co-ordinate an international response to money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989. In 2001, the FATF mission was expanded to include reducing or eliminating the financing of terrorism.

The 2012 FATF Recommendations which set out the measures that national governments should take to implement programs for preventing, detecting and suppressing both money laundering and terrorist financing, as well as other types of financial crime. The FATF has also issued a guidance document for a risk-based approach to combating money laundering and terrorist financing, designed specifically for dealers in precious metal and stones.

National Law

Most countries have enacted strict anti-money laundering legislation and regulations. Because of the criminal nature of the activity, it is essential to be aware of the relevant legislation in every operating jurisdiction. Dealing in high value goods, such as precious metals, stones or jewels, often triggers regulatory requirements to implement internal transaction monitoring and controls. In the case of no national law, RJC requires Members to monitor and maintain records of all cash transactions equal to or above 15,000 Euro / US Dollars, where the transaction is carried out in a single operation or in several operations that appear to be linked. Members, when engaged in international transactions that may be subject to more than one regulatory jurisdiction, need to be aware of and comply with the Applicable Law for all relevant jurisdictions.

D. Suggested implementation approach

- **COP 10.1: Know Your Customer principles:** *Members shall apply Know Your Customer principles for Business Partners that are suppliers or customers of Diamonds, Gold and Platinum Group Metals or Jewellery Products containing these, including:*
 - a) *Establishing the identity, and where triggered by a Risk Assessment or Applicable Law, the beneficial ownership and principals of the supplier or customer;*
 - b) *Maintaining an understanding of the nature of their business;*
 - c) *Monitoring transactions for unusual or suspicious activity and reporting suspicions of money laundering or finance of terrorism to the relevant designated authority.*
- Points to consider:**
- Members should ensure they are aware of the Applicable Law for all relevant jurisdictions.
 - A risk assessment should be carried out for the business to identify vulnerability to involvement in money laundering or the finance of terrorism. High risk indicators or 'red flags' should be established for screening of new customers or suppliers prior to initial transactions, and for ongoing monitoring of transactions.

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- Higher-risk suppliers or customers would include those who show any of the following characteristics (see the FATF Guidance on the Risk-Based Approach for additional information):
 - Lack of knowledge of the industry
 - Requests for unusual financial terms and conditions
 - Lack of an established place of business, or an unusual location
 - Proposing a transaction that makes no sense
 - Use of banks that are unusual or distant
 - Use of non-bank financial institutions for no apparent legitimate business purpose
 - Frequent and unexplained changes in bank accounts
 - Frequent and unexplained changes in accounting personnel
 - Use of companies that do seem to have any legitimate fiscal, legal or commercial reason to be used
 - Unusually complex organizational structure
 - Offices located in higher risk jurisdictions
 - Involvement of third parties in transactions
 - Refusal to identify beneficial owners or controlling interests, where this would be commercially expected
 - Seeking of anonymity by conducting ordinary business through accountants, lawyers, or other intermediaries
 - Use of cash in a nonstandard manner
 - Involve politically exposed persons.
 - KYC procedures should be in place for establishing identity, and also the beneficial owners and principals of customers and/or suppliers (sometimes also called counterparties) where required by Applicable Law and/or where warranted based on the risk assessment.
 - Provide training for relevant employees on Know Your Customer and related compliance procedures, including relevant risk indicators.
 - Seek and maintain up to date records that document identification and awareness of the business for all relevant customers and suppliers.
 - The level of monitoring should be commensurate with the level of risk. Increased monitoring and tighter controls and approval authorities should apply for any customers or suppliers that are deemed higher risk, based on the risk assessment.
 - Establish procedures to identify and properly report suspicious activity to the appropriate authorities. If risks of money laundering or terrorism financing are identified, it is not the responsibility of Members to determine the type of underlying criminal activity, or intended terrorist purpose. The obligation is to identify and report the suspicious activity to the proper authorities. Reporting may be triggered as a result of a risk assessment, or through reporting rules that are set out in legislation.
 - For larger businesses or those exposed to high risks, a formal anti-money laundering/counter-terrorist financing (AML/CFT) program should be established under the authority of a designated manager. It may be appropriate to implement the program in coordination with other business compliance and security programs. Consider engaging an independent qualified auditor to regularly review and test the AMC/CFT program and procedures.
- **COP 10.2: Cash Transactions:** *Members shall maintain records of all cash or cash-like transactions which occur above the relevant defined financial threshold under Applicable Law and, where required, report these to the relevant designated authority. Where no Applicable Law exists, Members shall monitor and maintain records of all cash transactions equal to or above 15,000 Euro / US Dollars, where the transaction is carried out in a single operation or in several operations that appear to be linked.*

Points to consider:

 - The circumstances that will trigger a requirement to report a suspicious transaction or activity to a dealer's competent authority are usually rules-based and set forth in national law.
 - Members should be aware of the relevant thresholds in all jurisdictions where they operate.
 - Procedures should be in place that can automatically trigger a reporting requirement when the thresholds are exceeded.
 - Transactions that are or appear to be linked should be considered a single transaction.

Check:

- ✓ Have you documented the identity of all business partners that are suppliers or customers of diamonds, gold and platinum group metals or jewellery products containing these?
- ✓ Have you carried out a risk assessment of these business partners to identify vulnerability to involvement in money laundering or the finance of terrorism?
- ✓ For high-risk suppliers and customers, or where required by regulation, have you established the beneficial ownership and principals of these businesses?
- ✓ Can you show the auditor how you monitor transactions for unusual or suspicious activity, against a general knowledge of the nature of their business?
- ✓ Do you have procedures for reporting suspicious transactions to the relevant designated authorities?

Q&A: Money Laundering and Finance of Terrorism

1. What happens if we seek identity information from customers or suppliers, but we don't receive it for everyone, despite chasing? Does our conformance rating rest on how our system and procedures work or achievement of 100% data?

The COP requires Members to establish the identity of all customers and suppliers, and where triggered by a risk assessment or Applicable Law, the beneficial ownership and principals of the supplier or customer. This does not necessarily mean '100% data' at all times. Auditors should take into consideration the extent and nature of any missing information, the reasons why the information is missing, and whether it demonstrates weaknesses in the Member's management systems.

For example, there could at times be reasonable, practical reasons for certain identity information to be missing, such as information about a company that is out of date but the business relationship is inactive, or due to a move or a change of a phone number, or to a minor clerical error. However if basic identity information is missing such that an active counterparty could not be contacted or located, or there are frequent information gaps that indicate systems are not performing properly, then the Member is likely to be in a situation of non-conformance.

Gathering information about beneficial owners may not be as straightforward as basic identity information. For example, the results of a risk assessment may cause a Member to request information about beneficial ownership, but it may not be legally required, and the counterparty may not be cooperative, or the information may need to be 'chased' for a new customer or one that has recently changed ownership. However if information is legally required and missing, particularly for several accounts, or the Member is not able to demonstrate that it is taking action to gather the necessary information, then the Member is likely to be in a situation of non-conformance.

2. How can small business get information from very large companies?

Publicly available resources can sometimes provide access to relevant information. For example, Members may not need to recreate or verify counterparty information if the counterparty is already registered under a regulatory program and/or industry association that requires similar information, for example members of bourses that are members of the World Federation of Diamond Bourses, companies listed on the Officially Registered Belgian Diamond Companies website, or member companies of the LBMA [Source: FATF - RBA Guidance for Dealers in Precious Metal and Stones.] There may also be exemptions under some national law for identification of beneficial owners of listed companies and financial institutions. There are also some sectoral initiatives to support Know Your Customer approaches. For example in the Belgian diamond sector, the AWDC and the Federal Public Service Economy have collaborated to create a website tool for KYC: <http://www.registereddiamondcompanies.be/>

3. Is there a list of financial reporting thresholds by country?

The FATF Recommendations are the primary driver for financial reporting legislation in individual countries. There are currently over 180 jurisdictions that have committed to the FATF Recommendations via membership of the FATF or FATF-style-regional bodies. The designated threshold for occasional transactions under Recommendation 10 is USD/EUR15,000. Some countries will use the same threshold, while other countries may have lowered that threshold to a lower amount.

The FATF has not maintained a list of the reporting thresholds by countries. However information about reporting thresholds is available in the FATF Mutual Evaluation reports, which are accessible on the FATF website at: <http://www.fatf-gafi.org/topics/mutualevaluations/>

E. Further information

The following websites have further information on anti-money laundering and combating the financing of terrorism:

- Basel Committee on Banking Supervision
www.bis.org/bcbs/index.htm
- Deloitte - Audit of statutory financial statements (Belgium)
www.deloitte.com/view/en_BE/be/services/aers/audit/auditrequirementsinbelgium/audit-of-statutory-financial-statements/index.htm
- Dube – Cuttini – Financial Statements
<http://dubecuttini.com/services/financial-statements/>
- Financial Action Task Force (FATF)
www.fatf-gafi.org
- FATF Recommendations – 2012
www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf
- FATF – RBA Guidance for Dealers in Precious Metals and Stones
www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf
- FATF Mutual Evaluations, by country
<http://www.fatf-gafi.org/topics/mutualevaluations/>
- International Money Laundering Information Network (IMoLIN)
www.imolin.org/imolin/index.html
- Jeweler’s Vigilance Committee (US)
www.jvclegal.org/
- Officially Registered Belgian Diamond Companies – A Tool for Know Your Customer
<http://www.registereddiamondcompanies.be/>
- United Nations Office on Drugs and Crime (UNODC) - The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit
www.unodc.org/unodc/en/money-laundering/index.html
- World Bank Group – Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (2006)
http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

STANDARD GUIDANCE

(COP 11) Security

A. Definitions and applicability

Security personnel are formally employed or contracted to protect property, assets and/or people.

The **Use of Security Personnel** section of the COP is applicable to Facilities that handle Jewellery Products and/or use security guards or engage public or private security providers for security services or support.

Implementation of provision 11.3 regarding Voluntary Principles on Security and Human Rights is applicable to Members with Mining Facilities and should be implemented in conjunction with the **Human Rights** provision of the COP. Implementation of 11.4 is applicable to Members that provide secure transport services to the Jewellery supply chain.

B. Issue background

As acknowledged by the Voluntary Principles on Security and Human Rights, security is a fundamental need, shared by individuals, communities, businesses, and governments alike.

Security is relevant to all parts the jewellery supply chain. Diamonds, gold and platinum group metals are high value materials that can be targeted by criminal elements for financial gain. The resulting risks for personal safety and property require that responsible measures be put in place to minimise security threats. Unfortunately, some kinds to security measures, including security personnel, can in some circumstances raise other types of risks, which must be managed.

The primary role of security personnel is the protection of the company's people, property, product and reputation. Whilst carrying out this role, security personnel require a wide range of procedures and associated training to ensure that security is provided in an effective and responsible manner. In some cases, security personnel are trained to enforce company rules, though under the Code of Practices this should not include disciplining employees. At all times, and particularly when armed, security personnel should use the minimum force proportionate to a threat.

Ongoing social unrest and conflict create a very difficult environment for business. Company personnel, assets or strategic facilities can be the target for violent action. In these situations, private security forces will often be used to protect people and property. Where justified by threat and risk assessments, public security may also be engaged to provide security support.

Some public security organisations have a troublesome history, particularly in repressive societies. There are many documented cases where public security forces have been implicated in serious human rights abuses, or have pursued corrupt policies or practices. There have been examples where public security groups engaged to protect personnel and assets have become involved in corrupt activity, profit from criminal activity, resort to inappropriate use of force or firearms, or otherwise create conflict.

Companies have a legitimate responsibility to staff and shareholders to ensure that their personnel and property are protected from violent or illegal acts. Security threats can emanate from criminal groups, local communities, company employees, illegal artisanal miners and migrant workers. Potential security threats include:

- General theft
- Fraud
- Violent disturbances
- Sabotage of pipelines and other installations
- Illegal mining (armed entry to a mine to steal ore)
- Organized theft of fuel and other commodities

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- Organized theft of ore or product (gold/platinum/diamonds)
- Kidnapping, intimidation or assassination of staff.

The security strategy deployed by the company will have an impact on all stakeholders, both internal and external. To avoid increasing the potential for conflict, a security strategy must be risk based and for Members with Mining Facilities, include compliance with the Voluntary Principles on Security and Human Rights.

Public security

Although governments have the primary role of maintaining law and order, security and respect for human rights, companies have an interest in ensuring that actions taken by public security, such as the police and military, are consistent with the protection and promotion of human rights. In some cases where there is a need to supplement private security, companies may be required or expected to contribute to the costs of protecting company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, abuses may nevertheless occur.

In particular, mining operations in some locations may have police and/or military personnel protecting mine property or concessions who are located on site, using mine facilities or otherwise supported by the mine. In these situations, the potential for corruption, conflict and political violence is increased and companies must be vigilant to the risks of human rights abuses. While the issues can be complex, companies should seek commitment to the Voluntary Principles on Security and Human Rights in formal agreements with governments, wherever possible.

C. Key initiatives

International standards and initiatives

The Voluntary Principles on Security and Human Rights were developed through collaboration between four national governments, non-government organisations, and companies in the energy and extractive sectors. The Principles seek to guide companies in maintaining the safety and security of their operations within a framework of respect for human rights and fundamental freedoms. The Principles fall into three categories: risk assessment; relations with public security; and relations with private security. They call for a regularly updated security risk assessment, and the engagement of local communities in security issues. The Principles stipulate that private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities.

International Alert, in collaboration with companies, governments, inter-governmental agencies and other NGOs, has developed a guide to Conflict-Sensitive Business Practices for extractive industries from pre-feasibility to closure. It provides guidance and toolkits for doing business in societies at risk of conflict for field managers working across a range of business activities, as well as headquarters staff in political risk, security, external relations and social performance departments.

The International Code of Conduct for Private Security Service Providers (ICoC) articulates principles for private service providers in accordance with international humanitarian law and international human rights standards. These include rules for the use of force, prohibitions on torture, human trafficking and other human rights abuses, and specific commitments regarding the management and governance of companies, including how they vet personnel and subcontractors, manage weapons and handle grievances internally. The ICoC stems from 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".

National law

Most countries have legislation and regulation regarding the appropriate role of security and military forces in the society. Many national and state jurisdictions require training and licenses for carrying weapons such as firearms, batons or pepper sprays. Police or military certification may be required for certain security duties.

D. Suggested implementation approach

- **COP 11.1: Security Measures:** *Members shall establish measures that assess security Risks and protect against product theft, damage or substitution of products within the premises and during shipments. Product security measures shall prioritise the protection of Employees, Contractors, Visitors and personnel employed by other relevant Business Partners.*

Points to consider:

- Responsibility for managing security should fall to a senior management function.
 - A security risk assessment should be conducted in order to understand the overall security risk environment. The assessment should identify:
 - types of threats, the level of exposure to these threats, and weaknesses and vulnerabilities.
 - security risks from a broad range of perspectives, including political, economic, civil, social or environmental factors where applicable.
 - potential for human rights abuse through the application of the security measures.
 - Establish processes that can identify structural and emergent security threats and address them at various levels, including effective security management strategies and, where relevant, through community engagement activities. This could include as appropriate:
 - Security policies and procedures that clearly place priority on the protection of people over the protection of product.
 - Training for employees and contractors working at the Member's facilities on relevant security policies and procedures.
 - Internal control procedures to enable rapid detection of theft, should it occur.
 - Appropriate arrangements for security during shipments and for protection of security personnel involved in transportation.
 - Relationships with local law enforcement agencies, where appropriate.
 - Regular consultation with host governments and local communities about the impact of their security arrangements on those communities, where appropriate.
 - Sensitive security-related documentation should be strictly controlled and protected. Auditors may not always be able to have access to the specifics of security measures, as part of the business' risk control, but interviews and observation can be used to determine that the security measures are appropriate.
- **COP 11.2: Security personnel:** *Members shall ensure that all security personnel respect the Human Rights and dignity of all people and use force only when strictly necessary and the minimum proportionate to the threat.*

Points to consider:

- A written policy or agreement should be established on the conduct of security personnel that establishes the importance of respect for human rights, the boundaries for security activities, appropriate procedures for managing security issues and conflicts, and the consequences of any human rights abuses.
 - Arrangements should be in place for monitoring performance against the policy, and for investigations and disciplinary actions.
 - Certain situations and activities may require that security personnel be armed, and this may be determined by the security provider in accordance with their own risk assessments. Any armed personnel must be properly trained and licenced in accordance with Applicable Law.
- **COP 11.3: Voluntary Principles on Security and Human Rights:** *Members with Mining Facilities shall ensure that security personnel receive training on and operate in accordance with the Voluntary Principles on Security and Human Rights (2000). The human rights of any Artisanal and Small-Scale Mining (ASM) should be explicitly addressed in training of private security personnel.*

Points to consider:

- Implementation Guidance Tools are available from the Voluntary Principles website.
 - Note that security risk assessments should include risks relating to interactions between the mining facilities and any local artisanal and small-scale miners (ASM).

Training of security personnel should specifically include policies for conduct when interacting with ASM and with local communities generally.

- Public security providers:
 - Arrangements for engagement with public security providers should be in accordance with the Voluntary Principles section on 'Interactions between Companies and Public Security'.
 - This should include communication of policies regarding ethical conduct and human rights, and expression of the Member's expectation that security be provided in a manner consistent with those policies by personnel with adequate and effective training.
 - Private security providers:
 - Agreements with private security providers should include reference to the principles outlined in the Voluntary Principles section on 'Interactions between Companies and Private Security'.
 - Agreement should include requirements for adequate and effective training of personnel on the relevant principles, and on the Member's policies regarding appropriate conduct and the local use of force, such as through 'rules of engagement'.
 - In-house security personnel:
 - Equivalent requirements should apply to any in-house security personnel.
 - Records should be kept on training delivered to all security personnel.
 - Monitoring arrangements should be established to ensure that policies and requirements are adhered to and allegations of non-compliance are investigated, and reported where appropriate.
- **COP 11.4: International Code of Conduct for Private Security Service Providers (ICoC):** *Members whose business is to provide secure transport services to the Jewellery supply chain shall be a signatory to the International Code of Conduct for Private Security Service Providers (ICoC).*
- Points to consider:**
- Under the ICoC, signatory companies commit to operate in accordance with the Code and to respect the human rights of, and fulfil humanitarian responsibilities towards, all those affected by their business activities.
 - The ICoC itself creates no legal obligations and no legal liabilities on the signatory companies, beyond those which already exist under national or international law.

Check:

- ✓ Have you assessed security risks and do you have appropriate security measures in place based on those risks?
- ✓ Do the security measures prioritise the protection of people?
- ✓ Do security personnel know the expectations of their conduct?
- ✓ Members in the Mining Sector: Are security personnel trained on and operate in accordance with the Voluntary Principles on Security and Human Rights?
- ✓ Members that provide secure transport services: Are you a signatory to the International Code of Conduct for Private Security Service Providers?

E. Further information

The following websites have further information on the use of security personnel and conflict situations:

- Business and Human Rights Resource Centre
www.business-humanrights.org/
- International Alert – Implementation of Conflict Sensitive Business Practice
www.international-alert.org/our-work/implementation-conflict-sensitive-business-practice-csbp
- International Business Leaders Forum

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- www.iblf.org/
- International Code of Conduct for Private Security Service Providers (ICoC)
www.icoc-ppsp.org/
- International Committee of the Red Cross (ICRC) – Resource Centre
www.icrc.org/eng/resources/index.jsp
- [Montreaux Document on private military and security companies](http://www.eda.admin.ch/psc)
www.eda.admin.ch/psc
- OECD - Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones (2006)
- www.oecd.org/daf/inv/mne/weakgovernancezones-riskawarenesstoolformultinationalenterprises-oecd.htm
- OECD Watch Fact Sheet 3 - Assessing Adherence to the OECD Guidelines' Human Rights Provisions
http://oecdwatch.org/publications-en/Publication_2402
- Voluntary Principles on Security and Human Rights
www.voluntaryprinciples.org/
- Voluntary Principles on Security and Human Rights Implementation Guidance Tools
www.voluntaryprinciples.org/files/VPs_IGT_Final_13-09-11.pdf

STANDARD GUIDANCE

(COP 12) Provenance Claims

A. Definitions and applicability

A **Provenance Claim** is a claim, made through the use of descriptions or symbols, relating to Diamonds, Synthetics, Gold and/or Platinum Group Metals that are offered for sale, whether as stand-alone materials or set in jewellery, and specifically relate to their:

- Origin - Geographical origin of material, for example country, region, mine or corporate ownership of the Mining Facility/ies ; and/ or
- Source - Type of source, for example recycled, mined, artisanally mined, Synthetic, or date of production; and/or
- Practices - Practices applied in the supply chain relevant to the Code of Practices, including but not limited to, conditions of extraction, processing or manufacturing, conflict-free status, or due diligence towards sources.

Provenance Claims may also relate to origin, sources or practices that are specifically excluded from the supply chain, such as through a 'negative warranty'.

Provenance Claims under the COP do not include claims that relate only to product quality, or that relate only to the place of manufacture, such as 'Made in (country)'. For example, a 'Swiss-made' watch claim is not deemed to be a Provenance Claim. However, claims about beneficiation would be considered a Provenance Claim relating to practices, in terms of conditions of extraction, processing or manufacturing.

The **Kimberley Process Certification Scheme and World Diamond Council System of Warranties** are covered under a separate COP provision and are not within scope for the Provenance Claims provision.

The **Provenance Claims** section of the COP is applicable to Members that make claims to other businesses or to consumers about the provenance of diamond and/or gold and/or platinum group metals used in a jewellery product, as per the definition above. Members are not required to make Provenance Claims and the provision is not applicable to Members that do not make Provenance Claims.

Note that all claims, irrespective of whether they constitute a Provenance Claim, must be made in conformance with the COP provision on **Product Disclosure** which requires that:

- Members shall not make any untruthful, misleading or deceptive representation, or make any material omission in the selling, advertising or marketing of any Diamond, Synthetic or Simulant, and/or any Gold, and/or any Platinum Group Metals Jewellery Products.

B. Issue background

Increasingly, businesses in the jewellery supply chain are being asked questions about the source of the diamonds, gold and platinum group metals in the products they sell. A range of stakeholders, including legislators, international institutions and civil society are focusing on issues such as conflict, child labour, human rights abuses, poor mining practices and other risks in the 'upstream' part of the jewellery supply chain. Provenance claims are increasingly being used by companies to provide assurance that these types of conditions are not found in the supply chain of the materials in their products.

Initiatives such as the *OECD Due Diligence Guidance for the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and Section 1502 on Conflict Minerals of the US *Dodd Frank Act* have created specific business drivers for supply chain due diligence on these issues. This creates a more compliance-driven culture for provenance claims, where successive businesses in the supply chain rely on the representations of their suppliers. A number of industry programs have therefore been established to support supply chain due diligence in this context, including the RJC Chain-of-Custody Standard, the London Bullion

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Market Association’s Responsible Gold Guidance, the electronics industry Conflict-Free Smelter program and the World Gold Council’s Conflict-Free Gold Standard.

For these and other reasons, Members may choose to make claims about the origin, history, provenance or other characteristic of the supply chain for gold, platinum group metals and diamond jewellery products to business customers and/or end consumers. If such claims are made, they must be truthful, and supported by verifiable evidence to support the claim. Misleading or deceptive claims about provenance and other product attributes pose a significant risk to the reputation of individual companies and the industry as a whole, and may raise legal compliance issues under laws that prohibit false and deceptive advertising or reporting.

The Provenance Claim provision is therefore designed to reduce risks involving RJC Members’ representations about their supply chains, particularly in the context of regulatory requirements such as the Dodd Frank Act, and US/EU sanctions on certain entities that may be part of jewellery supply chains. The provision enables and requires those Members making various Provenance Claims about their supply chains to have the supporting systems audited under the Code of Practices. The Member’s Certification Information on the RJC website would identify whether the Provenance Claims provision was applicable to the Member, and if so, which type/s of Claims had been audited at the time of the Certification Audit. The following table provides three examples, for illustrative purposes:

<i>Provenance Claim Certification – (Member name)</i>			
	Diamonds	Gold	PGM
Origin	<i>Canadian mined</i>		
Source		<i>Recycled Gold</i>	
Practices			<i>SA 8000 certification</i>

C. Key regulations

International standards

The World Jewellery Confederation, CIBJO, hosts the Blue Book: a publication outlining terminology, classification and ethical guidelines for diamonds, as referenced under the [Product Disclosure](#) guidance. The Blue Book includes standards relating to misleading and deceptive statements involving, among other matters, origin, formation, or production. The Blue Book also stipulates that names of geographical areas shall only be used when they denote the areas where geographically mined or harvested (place of origin), and that names of cutting, processing or exporting centers shall not be used to imply geographical origin.

The RJC launched a Chain-of-Custody (CoC) Standard in 2012 for precious metals, which is voluntary for RJC Members. Conformance with the Provenance Claims provision of the Code of Practices is **not** equivalent to the conformance with the CoC Standard, because the Code of Practices applies only to the business practices of the Member of the RJC, whereas the CoC Standard applies a consistent standard to each successive business engaged throughout the supply chain of CoC material. RJC Members that implement and become certified under the RJC’s Chain-of-Custody Standard can, however, use this as objective evidence for conformance with the Provenance Claims provision for related claims. The CoC Standard is available for Members to use as general guidance on establishing internal procedures and carrying out due diligence.

A number of other relevant industry standards have been developed, including (but not limited to) those listed below. Systems and procedures that conform with such standards could be used to provide evidence for conformance with the Provenance Claims provision:

- London Bullion Market Association (LBMA), Responsible Gold Programme
- EICC – GeSI Conflict-Free Smelter Assessment Program
- World Gold Council, Conflict-Free Gold Standard
- Fairtrade-Fairmined Standard
- Voluntary Code of Conduct for Canadian Diamond Claims
- US Diamond Source Warranty Protocol

National law

Provenance Claims are a form of representation and may be regulated by consumer protection laws that prohibit false and misleading advertising (See [Product Disclosure](#) and [Grading and Appraisal](#)). It is essential that Members are aware of and comply with Applicable Law in all jurisdictions in which they operate.

D. Suggested implementation approach

Determining Applicability: As a first step, Members should confirm whether the Provenance Claims provision is applicable to their business and therefore part of their Certification Scope. If in doubt, due for example to the complexity of the business and its sales channels, Members should review all advertising, marketing and other sales-related documentation to determine whether any provenance claims are made. If the review determines the provision is not applicable, the results should be documented and approved by an appropriate senior manager.

The Provenance Claims provision in the RJC Code of Practices is not intended to limit the legitimate use of terminology and descriptions in consumer marketing materials or advertising, which may involve creative expressions that are not expected to be interpreted literally. Rather, a Provenance Claim should relate to information that is objective or factual in nature. Provenance Claims within scope are those that are specific to origin, source or practices applied in the supply chain of materials offered for sale. Marketing themes and imagery applied at the level of a company or Facility, and that do not relate to actual Jewellery Products offered for sale, would not generally be considered a Provenance Claim and therefore would not be within the Certification Scope. Provenance Claims may therefore be most commonly applied in business to business transactions, thereby allowing the information to be passed through a supply chain, however may also be made at the consumer level.

In some cases, judgement may need to be applied to determine whether a Provenance Claim is being made, such as through the use of suggestive imagery or written descriptions that are implied but not explicit. This should be determined on the basis of whether the claim would reasonably be interpreted by the purchaser as applying to origin, source or practices in the supply chain of the physical product being purchased. In this case, the requirements of the COP Provenance Claims provision would apply.

Within the Certification Scope: illustrative examples of Provenance Claims include:

- “Country of origin”
- “Not from a certain country or region”
- “Origin from certain mines only”
- “Recycled gold”
- “Refined before January 2012”
- “Synthetic”
- “Cyanide-free mining”
- “Conflict-free gold”
- “Responsibly sourced”
- “Sourced in accordance with certain policies”
- “Produced in accordance with beneficiation policies”

Note: Provenance Claims could apply only to a percentage of content of diamonds, gold or platinum group metals contained in the jewellery product. In this case, the fact that the claim applies only to a percentage of the materials must be clearly stated so as not to cause confusion.

Not within the Certification Scope: examples of representations that are **not** considered Provenance Claims under the Code of Practices include:

- Warranties and claims that relate to compliance with the Kimberley Process Certification Scheme and/or the World Diamond Council's System of Warranties, which are addressed by the Kimberley Process and System of Warranties provision of the Code of Practices.
- A representation only about the place of assembly or manufacture of a Jewellery Product.
- Marketing themes and imagery applied at the level of a company or Facility that do not relate to actual jewellery products or component materials (diamonds, synthetics, gold, platinum group metals) offered for sale.

Provision implementation:

- **COP 12.1: Systems:** *Members that make a Provenance Claim(s) shall have systems in place to ensure that the Provenance Claims(s) is valid and supported by evidence.*

Points to consider:

- Some elements of the Member's systems may be implemented by external parties eg suppliers, external auditors, or third-party standards systems;
- The nature of the claim and the design of the systems are not prescribed by the Code of Practices;
- The claim must not state or imply information about provenance that is not supported through implementation of the systems.

- **COP 12.1.a: Documented criteria:** *Documented criteria or requirements that are compatible with the Provenance Claims(s).*

The criteria must be:

- Clearly compatible with the provenance claim itself;
- Documented and made available to the RJC auditor, but may otherwise be kept confidential;
- Verifiable or auditable, such that achievement of the criteria can be demonstrated through objective evidence.

- **COP 12.1.b: Procedures:** *Procedures for record keeping and verification that the criteria or requirements are met.*

Points to consider:

- Records must be available providing evidence that verifications have been conducted and that there is process for ensuring that any non-conformances against the criteria set in accordance with provision 12.1a are addressed;
- Verifications may be carried out in-house by the Member, by suppliers or by independent third parties.
 - If the verification is conducted by a supplier or other third party, the Member must be able to provide evidence of their determination that the verification was conducted in accordance with the requirements of this provision;
 - If the third party involves the use of a relevant industry standard, the necessary evidence can be demonstrated by publicly available records of compliance with the standard. For example, evidence of LBMA Good Delivery in accordance with the LBMA Responsible Gold Programme, should be sufficient evidence of verification being conducted.
 - Similarly, contractual measures to comply with relevant legal requirements, such as contracts and audits following the US Diamond Source Warranty Protocol, or 'flow-down' contract provisions that assist in implementation of the Conflict Minerals provision of the Dodd Frank Act, should also provide evidence of implementation of relevant procedures.
- Verifications are to be conducted by persons who are competent and free of any conflicts of interest that would be likely to adversely affect the assessment;
- The complexity of the criteria and the risk of non-conformances should be taken into account in determining the frequency and nature of verification.

- **COP 12.1.c: Internal Material Controls.** Controls to maintain the integrity of the materials covered by the Provenance Claim(s).

Points to consider:

- Document how the materials covered by the Provenance Claim(s) are accepted into and tracked while in inventory, and how they are kept segregated from other materials for which the Provenance Claim(s) do not apply, where relevant.
- Identify all points where the materials covered by the Provenance Claim(s) could be inadvertently mixed with materials not covered by the Claims(s), and establish mechanisms to prevent any such mixing.
- If external contractors are used to manage or process materials covered by the Provenance Claims(s), establish formal procedures for how they maintain segregation of the materials and test performance against these procedures.

- **COP 12.1.d: Complaints Mechanism:** A complaints or grievance mechanism appropriate to the nature, scale and impact of the business, to allow interested parties to voice concerns about the veracity of the Provenance Claim(s).

Points to consider:

- The mechanism should be documented and information about it should be available to interested parties, including customers;
- The document should describe the types of complaints that are admissible and are not admissible, and the procedures followed in investigating and addressing complaints;
- Members, particularly smaller businesses, may wish to use the Example Complaints Mechanism in Appendix 2 of the RJC Chain-of-Custody Standard Guidance.
- Further Guidance on supply chain policies and complaints mechanisms can be found in the OECD's *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and *Supplement on Gold*.

Check:

- ✓ Have you confirmed whether you make any provenance claims? If in doubt, review all advertising, marketing and other sales-related documentation.
- ✓ If you do not make any provenance claims, can you provide documentation of the results of your review?
- ✓ If you make Provenance Claims, do you have systems in place to ensure they are valid and supported by evidence?
- ✓ Have you established documented criteria or requirements that are consistent with the claim and can be met through objective evidence?
- ✓ Do you have procedures in place for conducting verifications that the criteria are met?
- ✓ Do you have internal controls to protect the integrity of materials covered by any Provenance Claims?
- ✓ Do you have a complaints mechanism in place?

E. Further information

The following websites have further information:

- Canadian Diamond Code of Conduct
www.canadiandiamondcodeofconduct.ca/index.html
- Electronic Industry Citizenship Coalition (EICC)/ Global e-Sustainability Initiative (GeSI) - Conflict-Free Smelter Program (2011)
www.conflictreesmelter.org/
- Fairtrade/Fairmined Standard
www.fairgold.org/
www.communitymining.org/index.php/en/fairtrade-and-fairmined-standard
- London Bullion Market Association (LBMA) - Responsible Gold Programme (2012)
www.lbma.org.uk/pages/index.cfm?page_id=137
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Supplement on Gold (2012)

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- www.oecd.org/corporate/guidelinesformultinationalenterprises/goldsupplementtotheduediligenceguidance.htm
- Responsible Jewellery Council (RJC) - Chain of Custody Certification (2012)
www.responsiblejewellery.com/chain-of-custody-certification/#RJCChain-of-CustodyCertification
- The World Jewellery Confederation (CIBJO) – The Blue Books
www.cibjo.org/index.php?option=com_content&view=article&id=270&Itemid=261
- U.S. Diamond Source Warranty Protocol (2012)
<http://www.jewelers.org/files/diamond-source-warranty-protocol.pdf>
- U.S. Securities and Exchange Commission (SEC) Rule for Disclosing Use of Conflict Minerals - Dodd-Frank Wall Street Reform and Consumer Protection Act (2012)
www.sec.gov/news/press/2012/2012-163.htm
- World Gold Council (WGC) - Conflict-Free Gold Standard (2012)
www.gold.org/about_gold/sustainability/conflict_free_standard/

3. LABOUR RIGHTS AND WORKING CONDITIONS

STANDARD GUIDANCE

(COP 13) General Employment Terms

A. Definitions and applicability

Employment relationships are the legal link between employers and employees that exist when a person performs work or services under certain conditions in return for remuneration.

An **Employee** is an individual who has entered into or works under a contract of employment or a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing, or as defined by Applicable Law, with a Member. This includes permanent, temporary, full-time, part-time, casual, home-work and/or seasonal employees at any level.

Home-work is where a person who is contracted by the company or by a supplier, sub-supplier or subcontractor, but does not work on their premises.

Source:

- *International Labour Organisation (ILO) - Industrial and Employment Relations Department*
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm
- *International Labour Organisation (ILO) - Decent Work Indicators - Concepts and definitions*
www.ilo.org/stat/Publications/WCMS_183859/lang-en/index.htm
- *Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard*
www.sa-intl.org/_data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf

The **General Employment Terms and Practices** section of the COP is applicable to all Members with employees.

B. Issue background

The employment relationship is the legal link between employers and employees. It exists when a person performs work or services under certain conditions in return for remuneration. The corresponding legal instrument is a contract of employment, which may be expressed or implied, in writing or verbal.

It is through the employment relationship, however contractually defined, that reciprocal rights and obligations are created between the employee and the employer. It is also the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security. Accurate record-keeping of employees' benefits and entitlements is an essential part of the employer's role to ensure that workers rights and benefits are upheld.

The traditional employment relationship used to be based on full time work with a single employer, under a contract of employment for unlimited duration, with protection against unjustified dismissal. Over the last thirty years, new patterns of employment have emerged in the global economy. These include an increasing use of fixed term contracts and contractual arrangements where workers are not strictly employees. Some workers under these arrangements may have weak protection under labour or social security law, particularly migrant workers and home-workers. Exploitative working arrangements have also emerged, such as false apprenticeship schemes where workers are on lower wages during a 'training period' but there is no real intent to impart skills or provide regular or ongoing employment once that period ends.

Home-working, successive short-term contracts, apprenticeships, sub-contracting and labour-only contracting can all be legitimately used within employment relationships. However these kinds of arrangements can present higher risks that legal obligations to workers are not being upheld. Therefore the RJC Code of Practices

does not unduly restrict general use of these working arrangements, but does require that they *not* be used as a means to avoid labour and social security obligations.

C. Key regulations

International standards

In recognition of the increasing number of workers who lack protection in their employment relationships, the International Labour Organisation (ILO) adopted Recommendation 198 on the Employment Relationship in 2006. This provides guidance to member States on reforming national law and practice to protect workers against the circumvention of obligations through contractual and/or other legal arrangements.

National law

National laws and regulations, as well as collective agreements, offer protections to workers which are linked to the existence of an employment relationship between an employer and an employee. It is essential to keep up to date on the legal requirements for employment contracts in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 13.1: Employment terms:** *Members shall ensure that Employees understand their current employment terms with regards to wages, working hours and other employment conditions.*

Points to consider:

- Written contracts of employment are a straightforward way to communicate employment terms. Members should provide written contracts of employment in a language that workers can understand, and that indicate their rights and responsibilities with regard to wages, working hours and other conditions.
 - Contracts of employment are not always written, for example in some small businesses or for some or long-standing senior staff. In these cases, Members need to ensure that such employees are familiar with their employment terms and conditions. These might consist of statutory information made available to the employee.
 - The following practices *do not* meet the requirements of 13.1:
 - The terms and conditions of employment agreed upon at the time of recruitment are not those contained in the employment contract, because changes have been made without the knowledge or consent of the worker;
 - The original contract provisions agreed to at the time of recruitment are replaced by provisions less favourable to the worker, either one or more times over the course of the hiring and deployment process (“contract substitution”) or once the worker arrives at the worksite (so-called “supplemental agreements”).
 - Migrant workers in manufacturing, production or low-skill occupations can be more vulnerable in the negotiation of employment terms, because of language barriers, cultural and social differences.
 - Check that senior managers are aware of legal requirements for employment relationships, as well as the key risk areas across all areas of the business accountable for compliance.
- **COP 13.2: Avoiding labour and social security obligations:** *Members shall not avoid fulfilling obligations to Employees relating to labour and social security under Applicable Law through the use of labour-only contracting arrangements, false apprenticeship schemes, excessive consecutive short-term employment contracts, and/or sub-contracting or home-working arrangements.*
- #### **Points to consider:**
- Some forms of labour-only contracting are prohibited under applicable law. Many jurisdictions will have established guidelines or criteria for distinguishing permissible contracting arrangements of this nature. These can include, for example, whether the worker provides the materials and/or equipment to undertake the task, whether they have the right to delegate their work, whether they are providing their services through an independent business, and whether they also provide these services to others. Members using labour-only contracting should ensure the contracts are legitimate and not being used as a means to avoid fulfilling legal obligations to employees.

- Apprenticeship schemes play an important role in training and are permitted under the Code of Practices. Many jurisdictions regulate the period of training and compensation that is payable to apprentices in various sectors. ‘Apprenticeships’ or ‘traineeships’ are false if they are used for the purpose to underpay workers or avoid legal obligations, with no real intent to impart skills or provide regular employment. Child labour and young persons are particularly vulnerable to being exploited through such false schemes. Members must ensure that apprenticeships and training positions are legitimate and in accordance with Applicable Law.
- Use of short-term employment contracts (e.g. temporary employees), sub-contracting and home-working is permitted under the Code of Practices. Temporary or outsourced labour is sometimes needed to manage varying business demand. However, these employment arrangements cannot be used to avoid statutory obligations to employees. For example, the use of short-term contracts (such as less than six months) might be considered excessive if large numbers of workers are employed under these, and workers need to continue to re-apply for successive short-term contracts, sometimes over many years. Where such practices exist, consider developing policies and programs for how business planning could be improved to enhance job security for workers.
- The use of labour brokers can present risks where the conditions of recruitment and hiring are no longer under the control over oversight of employers. See [Forced Labour](#) for guidance on monitoring for risks of human trafficking.

- **COP 13.3: Record-keeping:** *Members shall maintain appropriate Employee records, including records of piece rate and wage payments as well as working hours, for all Employees, whether on a full time, part time or seasonal basis.*

Points to consider:

- Where wage payments vary depending on working hours, those individual employees’ hours should be recorded on a daily, weekly or monthly basis, as appropriate.
- A piece rate wage system is one in which employees are paid on the basis of the units of output produced, rather than the time spent. Because piece rates systems can be complex, accurate records of output as well as the basis for corresponding calculations of wages are essential. Recording hours worked and total wage payments are also relevant for checking conformance with the RJC’s [Working Hours](#) and [Remuneration](#) requirements.
- Employee records should be maintained in a manner that is consistent with the terms and conditions of the employment contract. Where working hours do not vary or are set, such as in a general office or retail environment, or are at the discretion of the employee (for example, those in management roles), it is sufficient to have working hours recorded at the level of the premises or as described in contracts of employment.

Check:

- ✓ Can you show the auditor that employees understand their employment terms, either via written contracts or other means?
- ✓ If you use labour-only contracting, apprenticeships, consecutive short-term employment contracts, sub-contracting or home-work arrangements, are they structured to ensure that employees receive the relevant labour and social security benefits?
- ✓ Do you have appropriate records of piece rate and wage payments and working hours for all employees?

E. Further information

The following websites have further information on general employment terms and practices:

- International Labour Organisation (ILO) – Employment relationship
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm
- International Labour Organisation (ILO) – The Employment Relationship: An Annotated Guide to Recommendation 198 (2007)
www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS_172417/lang--en/index.htm
- International Labour Organisation (ILO) - Industrial and Employment Relations Department
www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm

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- International Labour Organisation (ILO) - Decent Work Indicators - Concepts and definitions
www.ilo.org/stat/Publications/WCMS_183859/lang--en/index.htm
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/_data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- Verité - A Fair Hiring Framework for Responsible Business (2011)
www.verite.org/sites/default/files/images/Verite-Help-Wanted-A Fair Hiring Framework for Responsible Business.pdf
- Verité - Fair Hiring Toolkit
www.verite.org/helpwanted/toolkit
- Verité - What Should You Look For? Identifying Company Risk & Vulnerability to the Human Trafficking and Forced Labor of Migrant Workers
www.verite.org/node/719/

STANDARD GUIDANCE

(COP 14) Working Hours

A. Definitions and applicability

Working Hours is the time during which the persons employed are at the disposal of the employer.

Rest periods are time during which the persons employed are not at the disposal of the employer.

The **normal work week** is a maximum of 48 hours, or any number of fewer normal maximum weekly hours that are set either by national or local law or a collective bargaining agreement.

Overtime is hours worked in addition to those of the normal work week.

A **Collective Bargaining Agreement** is a legally enforceable written contract between the management of a company and its employees, represented by a trade union or equivalent, that sets out terms and conditions of work. Collective bargaining agreements must comply with Applicable Law.

Source:

- *ILO Convention 30 – Hours of Work*
www.ilo.org/ilolex/cgi-lex/convde.pl?C030
- *Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard*
[www.sa-intl.org/ data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf](http://www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf)

The **Working Hours** section of the COP is applicable to Facilities with employees.

B. Issue background

Working hours are a fundamental component of safe and humane working conditions. The first ever International Labour Organisation (ILO) Convention in 1919 was on working hours – stipulating a maximum of 48 hours per working week. Excessive working hours in manufacturing and extractive industries remains one of the most regularly raised issues by civil society and trade unions. In addition to concerns about exploitation and impact on family life, there are workplace health and safety risks from excessive working hours.

Long working hours are common in the mining industry, though a combination of remote sites, migrant or expatriate workers, and premium compensation paid for long shifts. Long working hours and inadequate breaks or leave has also been documented in manufacturing industries such as diamond cutting. Customer demands, the ability of the business to deal with those demands, and the desire of workers to work overtime can contribute. Working hours are also strongly linked to wages, such that employees may seek longer hours in order to increase their income. For example, arrangements where workers are paid by the piece, rather than by the hour, can result in long working hours.

All hours worked beyond the legislated or agreed working week is considered overtime. Overtime should be voluntary and not enforced. If workers are forced to work overtime in order to earn the minimum wage, or if they are coerced into working overtime beyond legal limits, this may constitute forced labour. Many agreements between employers and workers require that workers be available to work 'reasonable' overtime or a specific agreed number of hours. Requests to work overtime should take into account health and safety considerations as well as the workers' personal circumstances, including family responsibilities.

The reason for limiting working hours is to promote better work-life balance and reduce workers' stress-related occupational conditions and accident rates. Weekly rest and paid annual leave are a normal part of most worker agreements and must be provided. Where shift rosters, such as at many mine sites, mean that one rest day in seven consecutive working days is not met, alternative arrangements should be agreed in

compensation. Special leave, such as maternity and paternity leave and compassionate leave should be provided for in compliance with applicable national laws.

C. Key regulations

International standards

The International Labour Organisation has a number of conventions on working hours, weekly rest and annual leave. ILO Convention 1 on Hours of Work (Industry) 1919 set the basic principle for the 8 hours day or 48 hour week. The subsequent ILO Convention 30 on Hours of Work (Commerce and Offices) 1930 reinforced this principle. This has become the basis of many nations' legislation for weekly working hours of 48 hours or less.

Both Conventions 1 and 30 do allow for some departure from these limits in defined circumstances. For example, there are exceptions for categories of employees whose work is by nature intermittent or must be done outside the limits laid down for other employees. There is recognition of the need for temporary exceptions, which should take place under guidelines from national regulators. These include, for example, exceptional or urgent pressures for work or repairs, and arrangements for alternative working hours that are agreed between workers' and employers' organisations and by the Government. There are also exceptions for work that must be carried out continuously by a succession of shifts. In these cases, the weekly maximum is prescribed as 56 hours per week, with weekly rest days compensated by a process secured under national law.

Recommendation 116 on Reduction of Hours of Work 1962 later set out the principle of a 40 hour work week, which was steadily introduced in industrialised countries.

ILO Convention 14 on Weekly Rest (Industry) 1921 and Convention 106 on Weekly Rest (Commerce and Offices) 1957 provides that all workers should be entitled to at least 24 hours consecutive rest each week. Employers may agree to exceptions or alternative arrangements in consultation with trade unions or other worker representatives.

ILO Convention 132 on Holidays with Pay (Revised) 1970 provides that workers should have a guaranteed minimum holiday period per year. This annual leave should be no less than three weeks for one year of service.

ILO Convention 183 on Maternity Protection 2000 provides that women should have access to maternity leave following childbirth. On women's return to work, Convention 183 also makes provision for time during the day to breastfeed.

National law

Nearly all countries have legislation determining appropriate hours of daily and weekly work, for the country as a whole and/or for specific sectors or jobs. In many countries there will be a fixed number of hours per week maximum, which may vary from 35 to 48 hours per week. This may be a fixed maximum or an average over a period of time. Legislation will also usually stipulate a maximum number of overtime hours that can be worked, along with requirements for weekly rest days and annual holiday entitlements. Many countries make provision for employers to provide maternity and/or paternity leave to workers for the birth of a child.

National law applicable to the business' circumstances may vary from the above ILO Conventions and takes precedence under the RJC System. It is essential to be aware of all relevant legislation and regulation in the jurisdictions of all operations. A failure to comply with laws on working hours, rest and leave can lead to penalties ranging from fines to imprisonment of individuals.

D. Suggested implementation approach

General suggestions for systems to manage implementation of this provision:

- Assign responsibility for setting and overseeing working hours and other rest and leave entitlements to a senior management function, such as human resources.

- Understand the applicable law related to working hours and leave in all countries of operation. Any collective bargaining agreement with trade unions or other worker organisations should deal with working hours, overtime, breaks and leave.
 - Develop an effective system for recording the amount of hours worked by each worker, and tracking overtime and leave entitlements. Make sure that managers and workers understand the system so that they can easily record hours and any changes to regular working hours.
 - Provide training on the business' working hours arrangements and the recording system to those responsible for day to day management of working hours.
 - Where relevant, conduct a risk assessment appropriate to the business' circumstances to assess where there is a risk of maximum working hours being exceeded or leave entitlements being breached.
- **COP 14.1: Normal work week:** *Members shall comply with Applicable Law on working hours. The normal work week, not including overtime, shall not exceed 48 hours unless higher limits have been set by Applicable Law for the sector in which the Member operates.*

Points to consider:

- There is no explicit limit under the COP on the working hours allowed for any work day, but note this is often set by national law.
- Normal work week limits and overtime limits (14.2) apply to managers who have a contract with defined working hours, but do not apply to those managers who genuinely set their own work schedules and working hours .
- Longer working hours may apply to Mining Facilities and similar industrial environments that operate on a roster cycle or rotational shift basis, or in emergency / force majeure situations, however these hours must be in compliance with Applicable Law.
- Production quotas under piece rate or other incentive systems should be set such that the minimum daily quota should be achievable by the majority of workers within an 8 hour shift, and that the majority of workers do not have to work beyond an 8 hour shift to earn at least the minimum wage or the prevailing industry wage. Quota and piece rate incentives should be structured such that a significant portion of the workers exceed the daily quota in order to earn extra pay
- Where allowed under Applicable Law, hours of work may be calculated as an average over a period of longer than one week.
- The normal work week for part-time workers should be calculated on a pro-rata basis against a normal full-time week.
- Where allowed under Applicable Law, hours of work can be calculated as an average over a period of longer than one week. Formal and procedural requirements may be attached to such calculations, such as obtaining permission from the relevant authorities, and there may be limits to the period during which such calculations can be made.

- **COP 14.2: Overtime:** *If overtime work is required for business needs, Members shall ensure that:*
 - a). Overtime work is requested under a voluntary overtime system. Required overtime is permitted only where it is within the limits allowed under Applicable Law or Collective Bargaining Agreements.*
 - b). The sum of the normal work week and overtime hours shall not exceed 60 hours in a week unless defined otherwise by Applicable Law or permitted under a Collective Bargaining Agreement.*

Points to consider:

- The reason for limiting working hours is to promote better work-life balance and reduce workers' stress-related occupational conditions and accident rates.
- Members should always try to make allowances for

Box X: Maximum working hours

Previously the RJC COP defined a limit of overtime hours as 12 hours per week. The revised COP defines maximum working hours through the combined sum of the normal work week and overtime hours not exceeding 60 hours per week.

The change is designed to accommodate the seasonal nature of the jewellery supply chain. Some companies set a shorter normal work week, which allows more flexibility for expanded hours during peak demand.

Since in all cases, the normal work week must be at or above minimum wage and overtime hours are paid at a premium rate, workers can benefit from these kinds of arrangements. The wider band of working hours can also greatly assist with production planning.

the personal and domestic circumstances of individual workers when requesting overtime. Members should make provision for pregnant or nursing mothers or people with disabilities. Children should not work overtime (see [Child Labour](#)).

- In the absence of trade unions, as may frequently be found in countries such as India, arrangements setting out required overtime may be established through written records of meetings between the employer and representatives who have been freely designated by the workers, without obstruction or intervention from the employer. For more information on determining conformance in such situations, see [Box X – Collective Bargaining Agreements and Working Hours and Remuneration](#), of the guidance for [Freedom of Association and Collective Bargaining](#).
 - Collective bargaining agreements do not take precedence over the Applicable Law. If the Applicable Law does not permit the maximum of 60 hours in a week of combined normal work week and overtime to be exceeded via a collective bargaining agreement, then it cannot be allowed.
 - Where allowed under Applicable Law, hours of work including overtime may be calculated as an average over a period of longer than one week. For example, in India, overtime limits are 50 hours per quarter so averaging could be used over busy periods, such as before Diwali.
- **COP 14.3: Rest days:** *Members shall provide all Employees with at least one rest day in seven consecutive working days in accordance with ILO Convention 14. Work time exceeding this limit is permitted only under a Collective Bargaining Agreement and/or Applicable Law that allows for work time averaging including adequate rest periods.*

Points to consider:

 - When work time averaging has been agreed through a collective bargaining agreement, make sure that workers occupational safety and health has been assessed and is not being compromised.
 - One day off should be interpreted to mean at least 24 consecutive hours.
 - If workers must work on a rest day, an alternative consecutive 24 hours should be provided within that same seven-day period or immediately following.
 - The equivalent of at least one day off for every seven-day period will be provided to Employees operating on a roster cycle at Mining Facilities.
 - **COP 14.4: Leave:** *Members shall provide Employees with all legally mandated public holidays and leave, including maternity and paternity, compassionate and paid annual leave. Where no Applicable Law exists, paid annual leave shall be provided in accordance with ILO Convention 132.*

Points to consider:

 - Where commonly observed holidays require operations to be temporarily shut down at certain times of the year, the period of vacation may be set off against annual leave.
 - Where allowed under Applicable Law, a collective bargaining agreement may provide for swapping alternative periods of leave in lieu of public holidays.

Check:

- ✓ Do you have a system in place for recording the amount of hours worked by each worker, and for tracking overtime and leave entitlements?
- ✓ Are you aware of and do you comply with applicable law related to working hours and leave in all countries of operation?
- ✓ If you use production quotas or piece rate systems, do they allow the minimum daily quota to be achievable by the majority of workers within an 8 hour shift?
- ✓ Is any required overtime within the limits allowed under Applicable Law or Collective Bargaining Agreements? Otherwise, is all overtime voluntary?
- ✓ Is the sum of the normal work week and overtime hours within the limit of 60 hours in a week? If not, is it in compliance with Applicable Law or a Collective Bargaining Agreement?
- ✓ Is at least one rest day in 7 consecutive working days provided? If not, does the work time comply with a Collective Bargaining Agreement or applicable law that allows for work time averaging including adequate rest periods?

E. Further information

The following websites have further information on working hours, rest and leave:

- Employers and Work-Life Balance (UK)
www.employersforwork-lifebalance.org.uk/
- Fair Labour Association (FLA) - FLA Workplace Code of Conduct and Compliance Benchmarks (2011)
www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf
- International Labour Organisation (ILO) Convention 30 – Hours of Work
www.ilo.org/ilolex/cgi-lex/convde.pl?C030
- International Labour Organisation (ILO) Conventions 1, 14, 132 and 183: (links to text)
www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO::
- International Labour Organisation (ILO) Better Work - Guidance Sheet 8: Working Time
betterwork.com/global/wp-content/uploads/8-Working-Time.pdf
- International Labour Organisation (ILO) – Conditions of Work and Employment Branch (TRAVAIL)
www.ilo.org/public/english/protection/condtrav/database/
- International Labour Organisation (ILO) – Working Time around the World (2007)
www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_104895/lang--es/index.htm
- International Labour Organisation (ILO) – Q&As on business and working time (2012)
www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- The Factories Act, 1948 as amended by the Factories (Amendment) Act, 1987 (India)
www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm

STANDARD GUIDANCE

(COP 15) Remuneration

A. Definitions and applicability

Remuneration is paid by employers to workers. It includes wages or salaries and any other benefits in cash or in kind.

The legally required **minimum wage** is the higher of that set by the government or that contained in an applicable collective bargaining agreement.

A **Collective Bargaining Agreement** is a legally enforceable written contract between the management of a company and its employees, represented by a trade union or equivalent, that sets out terms and conditions of work. Collective bargaining agreements must comply with Applicable Law.

Source:

- *ILO Convention 100 – Equal Remuneration*
www.ilo.org/ilolex/cgi-lex/convde.pl?C100
- *Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)*
www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf
- *RJC Code of Practices (2013)*

The **Remuneration** section of the COP is applicable to all Members with Employees.

B. Issue background

Wage-related benefits vary by country, but often include items such as holiday, overtime pay, sick pay, health benefits, incentives and bonuses, limited family leave benefits with pay, and savings plans. In some cases, non-wage benefits may be provided to workers such as health care, accommodation, employee education, and basic services such as water and electricity.

The minimum wage is the minimum amount that must be paid to the workers of a country. It is generally set on an hourly, daily or monthly basis. There is legislation for minimum wage fixing in more than 90% of countries. Ideally, this wage is determined to cover the minimum needs of the worker and his/her family, in light of the country's prevailing economic and social conditions (a 'living wage'). However this is not always the case in labour-intensive industries, which can lead to a cycle of employees taking on excessive working hours and/or overtime in order to make ends meet. Working hours and remuneration are those closely linked.

In addition to wage levels, it is important that workers receive their payments regularly in order to meet their domestic needs. The frequency of payments – weekly, fortnightly or monthly, for example – should be pre-determined and respected. Wages should be paid either as a bank transfer, in cash or as a cheque, as agreed with workers. It is usually a legal requirement for employers to provide clear information to workers on how their wages are calculated and keep certain time, wage and leave records (see [General Employment Conditions](#)). Regular wage slips should be provided to workers that clearly show the rates of pay, any benefits paid, and any applicable deductions.

Any amounts deducted from wages must be determined by due process. Legitimate deductions include income taxes, pension contributions and union membership, for example. Examples of unacceptable deductions under the RJC Code of Practices are recruitment fees either to the employer or agencies, charges for personal protective equipment, and any form of deposit or advance on equipment. Deductions should not be made as a disciplinary measure for employee behaviour, except where explicitly provided for in employee contracts or collective bargaining agreements. Workers must not be forced to buy provisions or services from

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their employer or workplace. Overall, it is important to ensure that deductions do not result in workers' payments being below the minimum wage.

C. Key regulations

International standards

In 1928, the International Labour Organisation (ILO) adopted Convention 28, which required signatory nations to establish a minimum wage fixing body that should "take account of the necessity of enabling the workers to maintain a suitable standard of living." In 1970, the ILO adopted Convention 131, which delineated the factors that must be included in the calculation of a minimum wage: "the need of workers and their families, their general level of wages in the country, the cost of living, social security benefits, relative living standards of other social groups, requirements of economic development, the country's level of productivity and maintenance of high levels of employment." ILO Convention 30, Hours of Work (Commerce and Offices) Convention, Article 7.4, recommends that signatory nations establish an overtime rate of no less than one-and-a-quarter times the regular rate.

The right to just and favourable remuneration is also enshrined in Article 23.3 of the Universal Declaration of Human Rights (1948). This states that remuneration should ensure for the worker and his/her family an existence worthy of human dignity.

National law

Nearly all countries have a national body which determines minimum wages nationally, or for sectors and/or occupations. Wages and other benefits may also be directly negotiated through collective bargaining agreements between employers and workers represented by independent trade unions. In most jurisdictions, overtime attracts a premium above the ordinary rate of pay. As this varies between sectors and countries, overtime pay should be calculated in accordance with the rates specified in national legislation or any applicable collective bargaining agreements. It is essential to be aware of all relevant wage conditions in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 15.1: Wages for normal work week:** *Members shall pay all Employees a wage for a normal work week, not including overtime, based on the higher of either the applicable legal minimum wage plus associated statutory benefits, or the prevailing industry standards. Wages calculated on a performance-related basis shall not be less than the legal minimum wage for a normal work week.*

Points to consider:

- Assign responsibility for setting and overseeing remuneration to a senior management function such as human resources.
- Understand the Applicable Law related to remuneration and statutory benefits in all countries of operation. The correct minimum wage rate will vary according to region, type of factory and skill level of the worker. Any collective bargaining agreement should deal with wages, overtime rates, methods of payment, and deductions (if applicable).
- It should not be necessary to work overtime or achieve performance bonuses to earn the legal minimum wage, including under piece rate systems.
- For part-time workers, the applicable wages levels are pro-rated as appropriate.
- Where probationary or training employment is legally allowed, the wage shall not be below the legal minimum applicable to that category of work.
- Piece rate payments are common in the diamond cutting/polishing sector and to some extent in the manufacture of jewellery. Members shall not set production targets, piece rates or any other incentive or production system at such a level that workers need to work beyond the applicable normal work week, excluding overtime, in order to make at least the minimum wage or the prevailing industry wage, whichever is higher.
- Where payment of statutory benefits depends on registration of employees into social insurance schemes and the like, Members are responsible for the required administration to ensure that employees receive their benefits in accordance with the Applicable Law.

- As calculation of remuneration may depend on hours worked, see also the [Working Hours](#) guidance.

Box X: India – Employees Provident Fund

In 2011, the Madras high court and the Madhya Pradesh high court in two separate cases held that various allowances paid by the employer to its employees under different heads such as conveyance, education, food concession, medical, special holidays, night shift incentives, city compensatory allowance, etc., qualified as basic wages under section 2(b) of the PF Act and needed to be included while computing the PF contribution. The Employees Provident Fund Organisation (EPFO) issued a circular dated November 30, 2012 to clarify the calculation basis for Provident Fund (PF) contributions. The circular states that basic wages will include all allowances which are "ordinarily, necessarily and uniformly" paid to the employees. Thus, various allowances such as conveyance, educational allowance, medical allowance, etc., will have to be taken into consideration while computing the PF contribution. In December 2012, the circular was put in temporary abeyance pending further investigation by the EPFO. In view of the ongoing clarification process being undertaken by the EPFO, the RJC position on calculating employees' PF contributions is that Members need to be able to justify their calculation basis to auditors, based on section 2(b) of the PF Act. Applicable Law, which includes applicable high court decisions, should be taken into account in making this determination.

- **COP 15.2: Overtime wages:** *Members shall reimburse overtime work at a rate at least equal to that required by Applicable Law or a Collective Bargaining Agreement, or where unregulated by either, at a premium rate at least equal to the prevailing industry standards.*
Points to consider:
 - A premium rate means a higher rate of pay than the regular workweek rate. There is no common international rate for overtime so it is important to be aware of Applicable Law, collective bargaining agreements and/or comparable industry standards. See also guidance on [Legal Compliance](#).
 - Overtime pay benefits should be calculated in accordance with Applicable Law or any collective agreements. Where neither provide specific direction on method of overtime calculation, overtime benefits should be calculated at a premium rate on the wages paid to that employee for a normal work week. The rate should be equal to or greater than the prevailing industry standards.
 - Overtime pay benefits apply to those workers and to those managers who have a contract with defined hours. It is not required for managers who genuinely set their own work schedules and hours.
 - Any piece work production in hours worked beyond the normal work week should be paid at a premium rate, as overtime. Calculating overtime incentives under a variable piece rate compensation structure can be very complex. A simple incentive system such as a flat rate (for example, 1 cent extra per item for piece rate production above quota and/or beyond the 40- or 48-hour week) can be easier to understand and therefore implement for both workers and managers.
 - As calculation of overtime depends on hours worked, see also the [Working Hours](#) guidance.
- **COP 15.3: Method of payment:** *Members shall make wage payments to Employees that are: a) On a regular and pre-determined basis, and not delayed or deferred; b) By bank transfer or in cash or cheque form, in a manner and location convenient to the Employees, and not in the form of vouchers, coupons or promissory notes; c) Accompanied by a wage slip which clearly details wage rates, benefits and deductions where applicable.*
Points to consider:
 - Frequency of remuneration should comply with national laws and regulations, where applicable.
 - Workers should not be obliged to travel any significant distance or incur costs to collect their pay. Employers may not use promissory notes, coupons or merchandise in lieu of wages.
 - Wage slips should accompany all payments to Employees, including piece rate workers. The wage slips should provide adequate information as to how the wage was calculated and should identify the amount and reason for any deductions from their pay.
- **COP 15.4: Deductions:** *Members shall only make employer-determined deductions from wages where: a) Deductions are determined and calculated following a documented due process that is clearly*

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communicated to Employees; b) Employer-determined deductions do not result in an Employee making less than the minimum wage; c) Any deductions for disciplinary purposes are governed by a Collective Bargaining Agreement and/or are permitted under Applicable Law.

Points to consider:

- Common legally-required deductions include taxes, health care and social insurance. It may also include lawful garnishments, where employers are required to deduct funds from employees' salary/wage before it is paid to the employee, for example to repay back taxes or an employee loan or purchase over which the employer has no control. These types of mandated deductions are subject to Applicable Law and fall outside the scope of the provision 15.4b.
 - Common legally-permissible deductions include transportation, meals, medical assistance, child care, union fees, loan repayments and lodging, and such deductions must always comply with Applicable Law. If the employer *requires* these deductions, then they must not result in the employee earning less than the minimum wage. If the deductions are at the discretion of the employee, including for a loan they have voluntarily undertaken from the employer, they fall outside the scope of the provision. Written consent for voluntary wage deductions needs to be documented in employee records.
 - PPE is not an allowable deduction as it must be provided to employees free of charge.
 - Workers should have access to clear information on the terms and process for any disciplinary deductions, particularly under piece rate systems.
- **COP 15.5: Provisions:** *Members shall not force Employees to buy provisions from the Member's own business or Facilities.*

Points to consider:

 - Being forced to buy provisions from your employer can be a form of bonded labour and can undermine the intent of proper remuneration practices.
 - If employees buy provisions from the Member, check whether 15.4 on Deductions, above, may also be applicable.
 - **COP 15.6: Loans:** *Members that provide wage advances or loans shall ensure that the interest and repayment terms are transparent and fair, and not deceptive to the Employee.*

Points to consider:

 - Ensure that any wage advances or loans comply with the law.
 - Interest rates and terms for repayments must be fair and not excessive – consider other available sources of credit for comparison.
 - The repayment period for the loan should not exceed the term of the employee's employment contract, as this can be a form of bonded labour.
 - Advanced written agreement to the terms and conditions of the loan and its repayment must be signed by both parties.

Check:

- ✓ Can you show the auditor that wages for all employees are the higher of minimum wage or prevailing industry standards?
- ✓ Is overtime paid in accordance with Applicable Law and/or a collective bargaining agreement?
- ✓ Are employee wage payments made regularly, by bank transfer/cash/cheque, and accompanied by a wage slip?
- ✓ Are employer-determined deductions only made with a documented due process, and do not result in less than minimum wages?
- ✓ Are employees forced to buy provisions from you?
- ✓ If you provide wage advances or loan, can you show the auditor that the repayment terms are transparent and fair?

E. Further information

The following websites have further information on remuneration:

- International Labour Organisation (ILO) Convention 100 – Equal Remuneration
www.ilo.org/ilolex/cgi-lex/convde.pl?C100
- International Labour Organisation (ILO) – Database of Conditions of Work and Employment Laws
www.ilo.org/dyn/travail/travmain.home
- International Labour Organisation (ILO) – Resource guide on minimum wages
www.ilo.org/public/english/support/lib/resource/subject/salary.htm
- Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)
www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/_data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- Verité – Conducting a Review of Documentation
www.verite.org/zh-hans/node/705

STANDARD GUIDANCE

(COP 16) Discipline and Grievance Procedures

A. Definitions and applicability

Workplace **discipline** is a means to correct or improve job-related behaviour or performance.

Disciplinary procedures make sure that a company's standards of conduct and performance at work are followed. They also provide a fair and humane method of dealing with workers who fail to meet these standards.

Grievance procedures are a means for employees to raise concerns about management practices or decisions and have these investigated and resolved. All workers, and migrant workers in particular, should have access to grievance procedures.

Source:

- *Sedex Supplier Workbook Chapter 1.10 : Discipline and Grievance (2013)*
www.sedexglobal.com/wp-content/uploads/2013/03/1.10-Discipline-Grievance_Sedex-Supplier-Workbook.pdf

The **Discipline and Grievance Procedures** section of the COP is applicable to all Facilities that have employees working under supervision.

B. Issue background

Discipline in the workplace should be viewed as a way to correct problem behaviours or performance issues. It should not be viewed simply as a way to punish employees. Supervisors and other persons in authority should be aware that the object of disciplinary action is to correct the problem, action, or behaviour, not the person.

Unfortunately, in some workplaces discipline can take an extreme form. This can include physical (corporal) punishment and mental, psychological, or sexual abuse. Examples of unreasonable practices that have been documented in workplaces include: being forced to do push-ups or run laps; standing in the sun for extended periods; being beaten or hit over the head; threats of violence; sexual or racial harassment; or withholding of wages, food or services. These and similar actions are considered to be violations of basic human dignity and human rights.

Disciplinary measures, if required, should be applied consistently and fairly among all employees. Supervisors, and contractors such as security forces, should be trained in how to appropriately manage any disciplinary issues. Disciplinary measures should not include compulsory labour as a punishment for participating in a strike. All workers should be reinstated after a strike (absent serious misconduct or criminal acts). Deducting more wages than those corresponding to the days lost during a strike, terminating workers, failing to renew workers' contracts, reducing benefits or seniority, and imposing heavier workloads all would be considered punishment. When subject to disciplinary action, workers should have access to the details of the allegations and have the right to respond to and/or appeal any disciplinary decisions without any negative consequences in return. Security guards and the military should not be allowed to take part in disciplining the workforce. Their role must be clearly limited to safeguarding the premises and the personnel and product located in the premises.

Where disciplinary procedures take place at a workplace, it is essential to put grievance procedures in place. These should permit workers to report unfair treatment to someone other than their supervisor. Employers should ensure that no worker is excluded from participation in grievance procedures. Therefore all communication regarding grievance mechanisms should be available in languages that all workers understand. Translators should be employed where necessary.

The procedures need to establish confidentiality and anonymity, so as to respect employee privacy and protect against possible retaliation. Workers should be able to be accompanied by a fellow worker or union official during formal processes.

It is important to establish that workers who do report problems or abuses should not suffer negative consequences.

C. Key regulations

International standards

Both the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) prohibit torture or “cruel, inhuman or degrading treatment or punishment.” Article 23 of the UDHR further states that everyone has the right to “just and favourable conditions of work.”

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) states that “any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”

These treaties and declarations have been ratified by most of the United Nations member states.

National law

Many countries prohibit corporal punishment, usually within their constitutional framework. In addition, some countries have elaborated specific legislation for employers regarding disciplinary practices, abuse, harassment, and grievance procedures. Members should be aware of the local legal requirements in countries where they operate.

D. Suggested implementation approach

- **COP 16.1: No abusive punishment or treatment:** *Members shall not subject Employees to corporal punishment, harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation, or threats of these towards themselves, family or colleagues.*
Points to consider:
 - Responsibility for discipline and grievance procedures should be part of a senior management function, such as human resources.
 - Risks of inappropriate disciplinary measures may be higher or more evident in certain countries, industry sectors or in particular occupations. A risk assessment appropriate to the business’ circumstances is one way to check where there may be a risk of inappropriate or unacceptable discipline or grievance procedures. Security forces can present particular risks and should also be assessed where present. **See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises.** Alternatively Members may use their own risk assessment process.
- **COP 16.2: Disciplinary process:** *Members shall clearly communicate the business’ disciplinary process, and related standards on appropriate disciplinary procedures and Employee treatment, and apply these equally to all management and staff.*
Points to consider:
 - Develop a written policy and procedures for discipline and grievance procedures, which outline the legal and company-specific penalties for different types of inappropriate action – both in terms of worker and supervisor behaviour.
 - Consider establishing a series of escalating steps for disciplinary procedures, according to the seriousness of the behaviour.
 - Security forces should be prohibited from disciplining employees.
 - Provide training on appropriate disciplinary procedures, particularly to personnel who supervise workers or have other forms of authority such as maintaining security. Refer to the policy and emphasise the appropriate procedures for disciplining workers.
 - Make sure workers are aware of the disciplinary procedures allowed by the business.

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- Record keeping is a key element to demonstrating fair and consistent disciplinary procedures. Keep records of verbal and written warnings, suspensions and dismissals.
 - When subject to disciplinary action, workers should have access to the details of the allegations and have the right to respond to and/or appeal any disciplinary decisions without any negative consequences in return.
- **COP 16.3: Grievance procedures:** *Members shall provide clear grievance procedures and investigation processes and clearly explain these to all Employees. a) Employees acting individually or with other workers shall be free to submit a grievance without suffering any penalty or retaliation. b) Grievance procedures shall be designed to function effectively and reach a timely outcome. c) Records of Employee grievances raised, investigation processes and outcome shall be maintained.*

Points to consider:

 - Establish procedures for workers to raise grievances that do not put them at risk of retaliation. Design the procedures so that they can effectively investigate the grievance and reach timely outcomes.
 - Provide training on the company's grievance procedures, particularly to personnel who supervise workers.
 - Nominate a trusted person, who may be outside of the business in some circumstances, as responsible for administering grievances.
 - No worker should be excluded from participation in grievance procedures, so communication regarding grievance mechanisms should be available in languages that all workers understand.
 - Ensure that workers know how to raise grievances and can do so without negative consequences.
 - Workers should be able to be accompanied by a fellow worker or union official during formal processes.
 - Confidentiality should be maintained during grievance procedures, to respect employee privacy and protect against possible retaliation.
 - Record keeping is a key element for clear and effective grievance procedures. Keep records of grievances raised by employees, the investigations that were carried out and the outcomes.

Check:

- ✓ Have you assessed the risks of abusive treatment or punishment in the workplace? The risks will vary across different types of businesses.
- ✓ Have you documented policies and procedures on the business' disciplinary process and communicated these to all workers?
- ✓ Do you have clear and effective grievance procedures for employees, which do not result in penalty or retaliation for submitting a grievance?

E. Further information

The following websites have further information on the issue of discipline and grievance procedures:

- Advisory, Conciliation and Arbitration Service (ACAS) – Advisory Handbook on Discipline and Grievances at Work (UK) (2011)
www.acas.org.uk/index.aspx?articleid=890
- Chartered Institute of Personnel and Development (CIPD) – Discipline and Grievances at Work (UK) (2012)
www.cipd.co.uk/subjects/emplaw/discipline/disciplingrievprocs.htm
- Ethical Trade Initiative (ETI) - Promoting equal treatment of workers
www.ethicaltrade.org/in-action/projects/eti-supervisor-training-project
- International Labour Organisation (ILO) Better Work - Guidance Sheet 6: Contracts and Human Resources (2009)
www.betterwork.com/global/wp-content/uploads/6-Contracts-and-Human-Resources.pdf

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- Sedex Supplier Workbook Chapter 1.10 : Discipline and Grievance
www.sedexglobal.com/wp-content/uploads/2013/03/1.10-Discipline-Grievance_Sedex-Supplier-Workbook.pdf
- Smart Manager – Addressing workplace discipline
www.smartmanager.com.au/eprise/main/cms/content/au/smartmanager/en/pages/115_work.html
- United Nations (UN) Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
<http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html>
- Verité - An Introduction to Grievance Mechanisms
www.verite.org/helpwanted/toolkit/suppliers/establishing-effective-grievance-mechanisms/tool-1

STANDARD GUIDANCE

(COP 17) Child Labour

A. Definitions and applicability

The term **child labour** is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their social, physical and mental development. This refers to work that is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling by:

- depriving them of the opportunity to attend school;
- obliging them to leave school prematurely; or
- requiring them to attempt to combine school attendance with excessively long and heavy work.

Not all work done by children should be classified as child labour that is to be targeted for elimination. **Light work** is defined as children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling, and is generally regarded as being something positive.

Whilst child labour takes many different forms, a priority is to eliminate without delay the **Worst Forms of Child Labour** (WFCL) as defined by Article 3 of ILO Convention No. 182:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) **Hazardous Child Labour** which includes work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. ILO Convention 190 notes the following should be considered when determining whether work is Hazardous Child Labour:

- work which exposes children to physical, psychological or sexual abuse;
- work underground, under water, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

National laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

No child under 18 years old should be engaged in Hazardous Child Labour or other Worst Forms of Child Labour.

Source:

- *International Labour Organisation (ILO) – What is Child Labour?*
www.ilo.org/ipec/facts/lang--en/index.htm
- *International Labour Organisation (ILO) Convention 138 - Minimum Age (1976)*
www.ilo.org/ilolex/cgi-lex/convde.pl?C138
- *International Labour Organisation (ILO) Recommendation 146 - Minimum Age (1976)*
www.ilo.org/ilolex/cgi-lex/convde.pl?R146
- *International Labour Organisation (ILO) Convention 182 - Worst Forms of Child Labour (1999)*
www.ilo.org/ilolex/cgi-lex/convde.pl?C182
- *International Labour Organisation (ILO) Recommendation 190 – Worst Forms of Child Labour (1999)*
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312528:NO

The **Child Labour** section of the COP is applicable to all Members. See also the Guidance for **Human Rights** and **Sourcing from Artisanal and Small-Scale Mining**.

B. Issue background

Child labour is one of the most high profile and widely-condemned social performance issues.

The use of child labour is still widespread in many parts of the world. The ILO's most recent Global Report on child labour found that some 215 million children (aged 5-17) across the world are still trapped in child labour, with 115 million in its worst forms¹.

Child labour usually refers to work that interferes with children's schooling. It may deprive children of the opportunity to attend school, oblige them to leave school prematurely, or require them to combine school attendance with demanding work. Whether or not particular forms of 'work' are prohibited as 'child labour' depends on a number of factors. These can include the child's age, the type and hours of work performed, the conditions under which it is performed and the legal framework of individual countries and sectors.

It is important to understand the context in which child labour occurs and the impacts it can have. There are various reasons why children are employed, but the main reason is one of economic necessity. Families in marginal economic circumstances may depend on children earning incomes. However, child labour ultimately impedes economic growth and development. It deprives children of the opportunity to be educated for productive and decent work, consigning them to low-paying and unskilled jobs in adulthood at best. Child labour can also have a negative effect on adult working conditions, creating a downward pressure on wage levels and leading to increased adult unemployment rates. This in turn reinforces the problems of poverty and lack of development that drive child labour in the first place. As a result, addressing child labour is a complex issue and unfortunately not always simply a matter of removing children from the workforce. It must be approached with an understanding of its economic drivers and sensitivity to the alternatives.

Under the UN Guiding Principles on Business and Human Rights, business enterprises have a responsibility to respect human rights, which includes the right to be free from child labour. Companies should avoid causing or contributing to child labour through their own activities and, where human rights abuses occur, provide for or cooperate in their remediation. Furthermore, they should seek to prevent or mitigate child labour that is directly linked to their operations, products or services by their business relationships, such as suppliers.

C. Key regulations

On 20 November 1989 the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child (CRC). The Convention spells out the basic human rights to which children everywhere are entitled, such as the right to survival and the right to the development of their full physical and mental potential. The CRC defines a 'child' as anyone up to the age of 18 years.

¹ ILO: *Accelerating action against child labour*. ILO Global report on child labour 2010. Geneva, 2010. Available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_126752.pdf.

International conventions

The International Labour Organisation (ILO), a tripartite United Nations agency, has passed two major conventions on child labour. These are the Minimum Age Convention 138 (1973) and the Worst Forms of Child Labour Convention 182 (1999).

ILO Convention 138 sets the minimum working age at 15 years, or statutory school-leaving age, whichever is higher. Under certain conditions, a member country whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years. However the RJC Code of Practices requires that a basic minimum working age of 15 years should be achieved by the end of the Member’s first Certification Period.

There are two main exceptions to the minimum age of 15 as set in ILO Convention 138:

- a lower age minimum of 13 for ‘light work’. Factors to consider in determining whether a particular job constitutes ‘light work’ for a young person are: hours of work, school attendance and performance, and the working environment. While not stated explicitly, ‘light work’ is generally understood to exclude industrial work. ‘Light work’ is defined as:
 - work not likely to be harmful to a young person’s health or development; and
 - work not such as to prejudice their attendance in school
- a higher minimum age of 18 for ‘hazardous work’.

ILO Convention 182 calls on member States to prohibit and eliminate the Worst Forms of Child Labour, and applies to all children under 18. ILO Recommendation 182 is accompanied by Recommendation 190 which gives guidance on whether work can be considered as ‘hazardous’.

- **Hazardous work:** work which puts at risk children’s physical or psychological well-being, due to the nature of the work, or because of the conditions under which it is carried out. Examples of hazardous work include:
 - work underground, underwater, at dangerous heights or in confined spaces;
 - work with dangerous machinery or tools, or which involves heavy loads;
 - work in unhealthy environments which may expose children to hazardous substances (such as chemicals or pesticides), temperatures, noise or vibrations;
 - work requiring dangerous or unsafe manual handling practices (for example, children requiring to lift heavy loads);
 - work under particularly difficult conditions such as long hours, during the night or where a child is confined to the premises of the employers.
- **Worst Forms of Child Labour:** ILO Convention 182 calls for the immediate elimination of ‘unconditional worst forms of child labour’ and defines a child as anyone under 18. ‘Worst forms of child labour’ are defined as slavery, trafficking and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and other unlawful activities.

Box X: What sectors and/or activities are considered as ‘hazardous’?

The definition of hazardous work is country specific. Many countries have now established lists of hazardous work for children, but many need to update their lists, and others have yet to establish lists.

Conventions 138 and 182 are included in a small group of ‘core conventions’ by the ILO, under the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the core conventions, regardless of whether they have ratified them.

In summary:

	The minimum age at which children can start work
Hazardous work	18 (or 16 under strict conditions)
Basic minimum age	15 (or 14 under strict conditions?)
Light work	13-15

Source: ILO International Programme on Elimination of Child Labour (IPEC) – About Child Labour.

National law

Most countries have national legislation dealing with minimum ages for working, often with particular provisions for different sectors. RJC Members should follow the requirement of national law where this sets a tougher standard than the ILO.

Box X: The Child & Adolescent Labour (Prohibition and Regulation Act) India

On the 28th of August 2012, the Union Cabinet of India approved amendments to the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986. The act, if implemented, would ensure that all forms of child labour under the age of 14 will be banned, making the employment of children below 14 years a criminal offence, and the employment of children (referred to as adolescents in the Act) aged 14-18 in hazardous work will be prohibited.

Under the 2012 Amendment Bill, what is considered as 'hazardous work' includes the following 'occupations' that can be relevant to RJC Members: any occupation connected with mines (underground and underwater) and collieries; gem cutting and polishing, and the following 'processes': using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. No person under the age of 18 is allowed to work in these sectors.

To read the Child Labour (Prohibition and Regulation) Amended Bill (2012), visit:
www.prsindia.org/uploads/media/Child%20Labour/Child%20Labour%20%28Prohibition%20and%20Regulation%29%20%28A%29%20Bill,%202012.pdf

D. Suggested implementation approach

- **COP 17.1: A basic minimum working age of 15 years:** Members shall not engage in or support Child Labour, as defined in ILO Convention 138 and Recommendation 146, which sets the following minimum ages for work:
 - a) A basic minimum working age of 15 years, to enable Children to complete compulsory schooling.
 - b) Members operating in developing countries where compulsory schooling ends earlier than 15 years, may initially adopt a minimum working age of 14 subject to Applicable Law, but should achieve a minimum working age in Facilities of 15 years by the end of the Member's first Certification Period.
 - c) Light Work is permitted for Children between the ages of 13 and 15 years old, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.

Points to consider:

- A risk assessment appropriate to the business' circumstances can be used to assess where there may be a risk of child labour. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises, which also covers human rights due diligence processes as a means to assess child labour risks. Alternatively Members may use their own risk assessment process. Issues to assess may include:
 - Areas of hazardous labour, mapping current worker ages against tasks. Confirm that no worker under 18 is involved in hazardous work.
 - Contractors working at the Member's facilities.
 - Migrant workers and availability of personal identity information.
 - Relationships with suppliers/sub-contractors as a potential supply chain risk (see also guidance for [Human Rights](#)).
 - Any artisanal mining sourcing relationships (see also guidance for [Sourcing from Artisanal and Small-Scale Mining](#)).
- Confirm that awareness of and responsibility for child labour issues is part of a senior management function, such as human resources.
- Develop policies and procedures against child labour. This should include effective procedures for verifying age prior to recruitment and for not accepting into employment any person who lacks proper identification with proof of age and appears to be under 18. Where there are on-site contractors, ensure that they comply with your child labour policy.

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- Members must not engage in dismissals of under-age workers in advance of the RJC audit.
- Record keeping: Maintain copies of documentary evidence of worker ages (or equivalent, for example start dates of long-term employees) on file. Investigate any potential discrepancies. For each worker under 18, records should include a description of the worker's role or duties, so as to confirm there is no involvement in hazardous work or the Worst Forms of Child Labour.
- **COP 17.2: Worst Forms of Child Labour:** Members shall not engage in or support Worst Forms of Child Labour, as defined in ILO Convention 182 and Recommendation 190, which includes:
 - a) Hazardous Child Labour, which by its nature or circumstances is likely to jeopardise the Health, Safety or morals of persons younger than 18 years. Where allowed by Applicable Law and supported by assessment of Risks and implementation of controls under **Health and Safety**, a minimum age of 16 is permitted on condition that the health, safety and morals of the Children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.
 - b) All forms of child slavery and practices similar to slavery, including debt bondage, the trafficking of children, forced child labour and the use of children in armed conflict.
- **COP 17.3: Where Child Labour is found at a Facility:** Notwithstanding 17.1, where Child Labour is found at a Facility, Members shall develop documented Child Labour Remediation processes that include steps for the continued welfare of the Child/ren and consider the financial situation of the Child/ren's family/ies. Remediation shall include:
 - a) For a Child/ren still subject to compulsory education laws or attending school, providing adequate support to enable the Child/ren to attend and remain in school until the completion of compulsory education.
 - b) Where a Child/ren are not engaged in Worst Forms of Child Labour remain in partial employment during the Remediation process, ensuring that the Child/ren are not employed during school hours, that combined hours of daily transportation to and from work and school, time at school and work does not exceed 10 hours a day; a minimum period of night time rest of 12 hours and customary weekly rest days; fair payment for the Child/ren's work; and prohibition of overtime for the Child/ren.
 - c) A systemic review of the Member's approach to avoiding Child Labour, to identify root causes of non-conformances and implement controls to avoid any recurrence.

Points to consider:

- Remember that instances of child labour require considered responses that take account of local circumstances and applicable law.
- Ensure that any light work undertaken by children does not interfere with schooling. A structured formal education program should be supported for young people found to be in employment.
- Ensure that any child workers found to be in employment receive fair payment for their work, at least 12 hours nightly rest time and weekly rest days, and do not work overtime.
- Develop appropriate remediation strategies to deal with instances of non-conformance with the ILO conventions and/or applicable state laws.
 - If children are found to be performing hazardous tasks, good practice is that they be removed from these functions immediately. Worst Forms of Child Labour situations may be a crime that needs to be reported to relevant authorities.
 - If not engaged in hazardous work, children should be supported rather than withdrawn from labour until adequate alternative sources of support for their families are available. The key is for children to have access to good quality education with real prospects of meaningful employment when they leave school. This is especially important where there is the risk that those children, if withdrawn from employment, may work for other organisations with uncontrolled working conditions.
 - Under the RJC system, remediation of child labour through the above will not be considered a situation of Critical Breach. However the business must immediately develop procedures to prevent any additional children being employed.

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- Consider supporting community development programs aimed at eradicating the root causes of child labour. These can usually only be implemented in co-operation with other agencies such as national or local government, international institutions such as the International Labour Organisation (ILO), trade unions, NGOs and community groups. Companies could consider programs and projects that aim to 1) improve access to education, and 2) withdraw larger groups of children from child labour and enrol them in school or vocational training.

Check:

- ✓ Is awareness of and responsibility for child labour issues part of a senior management function, such as human resources?
- ✓ Can you show the auditor a written policy commitment against child labour?
- ✓ Have you identified areas of Hazardous labour and checked to ensure no workers under 18 are involved?
- ✓ Do you have procedures in place to verify age and maintain records?
- ✓ If a Child/Children are found in employment, is a proper remediation program in place in accordance with Provision 17.3?

E. Further information

The following websites have further information on child labour issues:

- Child Labour Platform - Report 2010-2011. Business practices and lessons learned on addressing child labour (2011)
www.gcnetherlands.nl/docs/child_labour_platform_report_2010-2011.pdf
- Human Rights Watch - A Poisonous Mix. Child Labor, Mercury, and Artisanal Gold Mining in Mali (2011)
www.hrw.org/sites/default/files/reports/mali1211_forinsertWebUpload_0.pdf
- International Labour Organisation (ILO) – What is Child Labour?
www.ilo.org/ipec/facts/lang--en/index.htm
- International Labour Organisation (ILO) Convention 138 - Minimum Age (1976)
www.ilo.org/ilolex/cgi-lex/convde.pl?C138
- International Labour Organisation (ILO) Recommendation 146 - Minimum Age (1976)
www.ilo.org/ilolex/cgi-lex/convde.pl?R146
- International Labour Organisation (ILO) Convention 182 - Worst Forms of Child Labour (1999)
www.ilo.org/ilolex/cgi-lex/convde.pl?C182
- International Labour Organisation (ILO) Recommendation 190 – Worst Forms of Child Labour (1999)
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312528:NO
- International Labour Organisation (ILO) - Employers' and Workers' Handbook on Hazardous Child Labour (2011)
www.ilo.org/public/english/dialogue/actemp/downloads/projects/cl_handbook.pdf
- International Labour Organisation (ILO) - Accelerating action against child labour. ILO Global report on child labour (2010)
www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_126752.pdf
- International Programme on the Elimination of Child Labour (IPEC)
www.ilo.org/ipec/index.htm
- International Programme on the Elimination of Child Labour (IPEC) – Children in Hazardous Work (2011)
www.ilo.org/public/english/dialogue/actemp/downloads/projects/cl_handbook.pdf
- ILO/IPEC - Tackling child labour: From commitment to action (2012)
www.ilo.org/ipec/Informationresources/WCMS_181875/lang--en/index.htm
- John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011)
www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf
- Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)

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- [www.sa-intl.org/ data/n_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf)
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
[www.sa-intl.org/ data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf](http://www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf)
- UNICEF - Child Labour Resource Guide
www.unicef.org.uk/campaigns/publications/clrg/index.asp
- UNICEF/UN Global Compact/Save the Children - Children's Rights and Business Principles (2012)
[www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens Rights and Business Principles.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)
- United Nations Global Compact – Principle 5 on Child Labour
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html

STANDARD GUIDANCE

(COP 18) Forced Labour

A. Definitions and applicability

Forced labour is all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This includes work or service that is demanded as a means of repayment of debt.

Types of forced labour can include:

Bonded labour, also known as 'debt bondage', involves the taking of a loan or wage advance by a worker from an employer or labour recruiter, in return for which the worker pledges his or her labour and sometimes that of family members in order to repay the loan. The terms of the loan or work, however, may be such that the worker is trapped with that employer for years without being able to pay back the loan.

Indentured labour arises when a third party, often a parent or guardian, offers a worker in exchange for a sum of money. In this situation, workers must work for either a defined period of time, or until the proprietors determine that they have received fair value.

Prison labour: involuntary work performed by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority is considered forced labour. Similarly, involuntary work performed by a prisoner for the benefit of a private undertaking is also considered forced labour.

Human trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. In recent years, human trafficking has taken on new forms and dimensions, often linked to developments in information technology, transportation and transnational organised crime. Human trafficking can lead to forced labour.

Source:

- *International Labour Organisation (ILO) Convention 29 – Forced or Compulsory Labour (1930)*
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029
- *International Labour Organisation (ILO) - Combating Forced Labour: A Handbook for Employers and Business (2008)*
www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm
- *Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)*
www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf
- *UN Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children (2000)*
www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_enq.pdf

The **Forced Labour** section of the COP is applicable to all Facilities with employees.

B. Issue background

Forced labour is a global problem that exists in industrialised as well as in developing countries, in formal and informal economies, in global supply chains of multinational companies as well as small and medium sized enterprises. Worldwide, at least 20.9 million people are victims of forced labour – women and men, adults and children. According to ILO estimates, the majority of the victims of forced labour are exploited by private agents. Providing wages or other compensation to a worker does not necessarily mean that the labour is not forced or compulsory. Forced labour also includes situations where workers cannot leave their job without facing a penalty or a threat of penalty of any kind. The penalty could mean physical constraint or punishment,

but it could also refer to other forms of abuse such as threats of deportation, restricting workers' movements, the confiscation of passports, or the non-payment of wages that effectively binds a worker to a job or employer.

Forced labour can take many forms. Although some is imposed by the State, the majority takes place in the private economy. Forced labour can sometimes involve physical violence or sexual abuse. The following examples of forced labour might be relevant for the diamond and gold jewellery supply chain:

- **Withholding and keeping of documentation:** Where an employer takes away identity documents and/or passports, making it difficult for an employee to leave employment. Where such documents are surrendered for security purposes, this should only be a temporary arrangement.
- **Debt-bondage:** This can arise from a pledge by a debtor of his/her personal services (or those of a person under his/her control, for example a child) as security for a debt over a period of time. Sometimes workers are allowed to gradually increase debts, such as salary advances, store credit and loans, beyond their wage capacity. This can create a continuous state of bondage over many years, where workers are earning wages only to pay off debts or the interests arising from those debts. In many cases, the value of services pledged is not reasonably assessed and/or is not fairly applied towards the settlement of the debt.
- **Compulsory work:** Forms of compulsory work can include forced overtime, where workers are unable to decline overtime without fear or threat of retaliation such as threat of dismissal, and additional labour required as punishment for participating in a strike.
- **Physical confinement and/or verbal or physical intimidation:** Physically confining workers within the workplace, or unreasonable prohibitions on workers leaving factory grounds and dormitories, are infringements on workers' freedom. However it is important to clarify that restrictions during working hours in the workplace, as long as appropriate and not unreasonable, would not be considered forced labour. Also, outside working hours, some restrictions may exist for security reasons, so some assessment of the reasonableness of the restriction is similarly required. Forms of intimidation include threats of physical punishment or non-payments of salary in case of the worker leaving employment.

Migrant workers are particularly vulnerable to forced labour. They may have illegal or restricted employment status, may be economically vulnerable, and/or may be members of an ethnic group subject to discrimination. These factors can be used unfairly by coercive recruiters or labour intermediaries, who remove identity documents and threaten workers with public exposure (for example, threat of denunciation to authorities facing migrants in an irregular situation) or deportation. Faced with these threats, migrant workers may accept sub-standard conditions of work such as debt-bondage or indentured labour.

If companies have migrants in their workforce, and particularly if a third party is used to recruit them, they should know who these workers are and where they come from, and ensure that their recruitment into the workplace was completely above board and without deception or coercion. Developing a company policy to act as a guideline on recruiting migrant workers and engaging only reputable recruitment and employment agencies is also important. Other categories of vulnerable workers based on ILO estimates include women workers, indigenous peoples, as well as poor or illiterate workers, and those in geographically remote regions.

Human Trafficking

Trafficking in persons, or human trafficking, can lead to forced labour. It involves the movement of a person, sometimes across international borders but more commonly within a country, for the purpose of exploitation. In recent years, human trafficking has taken on new forms and dimensions, often linked to developments in information technology, access to transport and organised crime. It can take place in developing countries, countries in transition and industrialised market economy countries alike.

Companies can be affected by human trafficking in a number of ways. They can be directly linked to it through the recruitment, transport, harbouring, or receipt of a person for the purpose of exploitation (in other words, a trafficking victim). However businesses can also be indirectly linked to trafficking through the actions of their suppliers or business partners, including sub-contractors, labour brokers or private employment agencies. In this way, companies can be implicated if they source goods or use services that are produced or provided by trafficking victims. Recruitment agencies can play a role in increasing the risk of trafficking in global supply chains, and relationships with such agencies should be monitored.

C. Key regulations

International conventions

The right to give work freely is enshrined in Article 4 of the Universal Declaration of Human Rights (1948), which states no one shall be held in slavery or servitude.

The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions on forced labour. These are Conventions No.29 on Forced Labour (1930) and No.105 on Abolition of Forced Labour (1957). Key aspects of the definition in Convention 29 are that there is some form of menace or penalty involved and that the worker has not voluntarily agreed to work.

Conventions 29 and 105 are included in a small group of 'core conventions' by the ILO, under the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the core conventions, regardless of whether they have ratified them.

The growing awareness of human trafficking has resulted in the elaboration of new international and regional anti-trafficking instruments, for example the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000), or "the Palermo Protocol", and the Council of Europe Convention on Action against Trafficking in Human Beings (2005). These new instruments convey a growing consensus that trafficking in persons can include, result in or be undertaken for the purpose of forced labour, slavery and servitude. The adoption and ratification of these instruments has contributed to rapid changes in legislation and practice in many countries, and led to the adoption of new policies in this field.

National law

Relevant national and applicable local laws and regulations may be in the areas of trafficking, involuntary servitude, prison labour or bonded labour. It is essential to be aware of all relevant legislation and regulation in the jurisdictions of all operations.

D. Suggested implementation approach

- **COP 18.1: No Forced Labour:** *Members shall not use Forced Labour as defined in ILO Convention 29, including bonded, indentured or involuntary prison labour.*

Points to consider:

- A risk assessment appropriate to the business' circumstances can help to assess where there may be a risk of forced labour and human trafficking. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process. Issues to consider may include:
 - Carefully regulate the use of contractors, suppliers, agencies and labour providers. Indicators of risk include recruitment fees charged to workers, passport retention, deception in wage payment, loans offered to workers or other practices which have the potential to bind the worker to the agency.
 - Where migrant workers are employed, examine the process of recruitment to ensure that there is no form of coercion involved.
 - Check that compulsory labour is not used as punishment for a strike.
 - Confirm that awareness of and responsibility for forced labour issues is part of a senior management function, such as human resources.
 - Use standard employment contracts, including statutory and collectively-agreed terms, working hours and wages. Standard regular wage payments made directly to the worker cannot be supplanted by in-kind remuneration. See also [General Employment Terms](#).
 - Formally prohibit the use (or threat) of violence, use (or threat) of penalties, or intimidating practices, such as bullying, by any employee or contractor. Provide a mechanism for employees to anonymously report instances of threats, violence or other infringements of policy. See also [Discipline and Grievance Procedures](#).
- **COP 18.2: Freedom of Movement:** *Members shall not: a) Unreasonably restrict the freedom of movement of Employees in the workplace nor in on-site housing. b) Retain original copies of Employee personal documentation, such as identity papers. c) Require any form of deposit, recruitment fee, or*

equipment advance from Employees either directly or through recruitment agencies. d) Prevent Employees from terminating their employment after reasonable notice or as established by Applicable Law.

Points to consider:

- In the jewellery supply chain, security measures such as locked doors and security guards at exits may often be required to protect people and property (see guidance on [Security](#)). If there is no threat of a penalty and work is undertaken voluntarily, and workers freedom of movement is not unreasonably restricted inside and outside the workplace, this is not considered a forced labour situation.
- Access to food, water, toilets, or medical care in the workplace cannot be used as a means to maintain labour discipline.
- Unreasonable restrictions on freedom of movement are not permitted in any employer-provided housing, including both employer-operated and third-party-contracted residences.
- Keep only copies of identity documents and passports. Where the original documents are kept for security or legal purposes, this should be a temporary arrangement and with the agreement and understanding of the worker. The worker should have ready access to their documents and the right to take them back into his or her possession at any time without restriction (for example on exit from the workplace).
- Fees or deposits from employees for their recruitment are not permitted.
- Carefully consider whether loans made to employees may create situations of forced labour if employees are not able to meet the repayments (see also guidance on [Remuneration](#)). Key issues here are typically high rates of interest, very long repayment terms and fraud used by the employer to deceive the worker or artificially inflate the debt.

- **COP 18.3: Human Trafficking:** *Members, and any entity supplying labour to a Member, shall not engage in or support Human Trafficking. Members shall monitor relationships with recruitment agencies for Risks of Human Trafficking.*

Points to consider:

- Particular issues Members should take into consideration when dealing with recruitment agencies are:
 - Ensure that such agencies do not engage in fraudulent practices that place workers at risk of forced labour and trafficking for labour exploitation;
 - Prevent the abuse of workers contracted by such agencies, for example by ensuring that such workers receive adequate protection in relation to wage-related matters, working hours, overtime and other working conditions;
 - Ensure that fees or costs related to recruitment are not borne by workers but by the contracting company;
 - Use only those recruitment agencies that are licensed or certified by the competent authority.

Check:

- ✓ Have you assessed the risks of forced labour and human trafficking in your company, direct suppliers and any recruitment agencies?
- ✓ Do your security arrangements unreasonably restrict movement via threat of penalty to workers?
- ✓ Can workers access their identity documents and passports when they need to?

Q&A: Forced Labour

1. If an employee has verbally or in writing provided his or her consent to work, how can there be a question of forced labour?

The formal consent of an employee does not always guarantee that the employee works out of free will. For example, where consent to work has been given under the threat of a penalty (for example, a threat of violence) there can be no "voluntary offer" by the employee. In this case, an external constraint or indirect coercion interferes with a worker's freedom to offer him- or herself voluntarily. This constraint may result from an act of the authorities, such as a statutory instrument, or it may result from an employer's practice, for example where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer. Such practices are considered forced labour as defined by ILO Conventions.

2. Is the retention of personal documents during the term of employment considered forced labour?

Not necessarily. However, the retention of identity documents or other valuable personal possessions can be considered an indication of forced labour if workers are unable to access these documents at their discretion and if they feel they cannot leave employment without risking the loss of the documents. In many cases, without such documentation, the employee may not be able to obtain another job or even access certain services as a citizen.

3. Is compulsory overtime required to meet production deadlines considered forced labour?

The obligation to do overtime work is not considered forced labour if it stays within the limits permitted by national legislation or agreed to in collective agreements. This means that, according to international standards, forced labour only occurs if overtime beyond the weekly or monthly limits allowed by law is compulsory, irrespective of the reasons for such overtime. If an employer requires employees to work under such conditions, in clear violation of the law and with the threat of a penalty, forced labour may occur.

4. If I am providing full wages and benefits, can a forced labour problem ever arise?

If a person is not free to leave his or her employment under the threat of penalty this constitutes forced labour, regardless of whether you provide wages or other forms of compensation.

5. To prevent theft and protect the security of my employees and property, I hire security personnel and lock the doors of my workplace. Is this considered forced labour?

As with the retention of personal documents, locking doors can be considered an indication of forced or compulsory labour. It restricts workers' freedom of movement and raises questions about the voluntary nature of employment. However, the important point here is to remember that forced labour is characterised by the threat of a penalty and concerns work or service that is undertaken involuntarily. If there is no threat of a penalty and work is undertaken voluntarily, this is not considered forced. Similarly, posting security guards at factory exits for security reasons is not to be considered forced labour. However, the inappropriate use of security personnel could be an indication of forced labour and should therefore be avoided and treated with caution.

Source: ILO Combating Forced Labour: A Handbook for Employers and Business (2008)

E. Further information

The following websites have further information on forced labour and human trafficking:

- International Labour Organisation (ILO) Convention 29 – Forced or Compulsory Labour (1930)
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029
- International Labour Convention (ILO) Convention 105 - Abolition of Forced Labour (1957)
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO
- International Labour Organisation (ILO) - Combating Forced Labour: A Handbook for Employers and Business (2008)
www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm
- International Labour Organisation (ILO) - Special Action Programme to Combat Forced Labour
www.ilo.org/sapfl/lang--en/index.htm
- Social Accountability International (SAI) – Social Accountability SA 8000 International Standard (2008)

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- [www.sa-intl.org/ data/n_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf)
- Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard
[www.sa-intl.org/ data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf](http://www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf)
- United Nations Global Initiative to Fight Human Trafficking (UNGIFT) - Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking (2012)
www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf
- United Nations Global Initiative to Fight Human Trafficking (UNGIFT) - Human Trafficking and Business: An eLearning Course on How to Prevent and Combat Human Trafficking:
www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-private-sector.html
- United Nations Global Compact – Principle 4 on Forced and Compulsory Labour
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle4.html
- United Nations Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children (2000)
www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf
- Verité - A Fair Hiring Framework for Responsible Business (2011)
www.verite.org/sites/default/files/images/Verite-Help-Wanted-A_Fair_Hiring_Framework_for_Responsible_Business.pdf
- Verité - Fair Hiring Toolkit
<http://www.verite.org/helpwanted/toolkit>.

STANDARD GUIDANCE

(COP 19) Freedom of Association and Collective Bargaining

A. Definitions and applicability

Freedom of association is the right of workers and employers to freely form and join Workers Organisations such as trade unions, worker associations and worker councils or committees for the promotion and defence of occupational interests.

Collective bargaining is a process through which employers (or their organisations) and workers' associations (or in their absence, freely designated workers' representatives) negotiate terms and conditions of work. Both are fundamental rights and they are linked. Collective bargaining cannot work without freedom of association because workers' views cannot be properly represented. Workers must be free to choose whether and how they are to be represented and employers must not interfere in this process.

A **Collective Bargaining Agreement** is a legally enforceable written contract between the management of a company and its employees, represented by a Workers Organisation, that defines terms and conditions of work. Collective bargaining agreements must comply with Applicable Law.

A **Workers Organisation** is a voluntary association of workers organised on a continuing basis for the purpose of maintaining and improving their terms of employment and workplace conditions.

Source:

- *ILO Declaration on Fundamental Principles and Rights at Work*
<http://www.ilo.org/declaration/principles/freedomofassociation/lang--en/index.htm>
- *ILO Better Work, Guidance Sheet 4: Freedom of Association and Collective Bargaining*
<http://betterwork.com/global/wp-content/uploads/4-Freedom-of-Association.pdf>
- *RJC Code of Practices (2013)*

The **Freedom of Association and Collective Bargaining** section of the COP is applicable to all Members with employees.

B. Issue background

The right to freedom of association is proclaimed in the Universal Declaration of Human Rights. At work, this means the right to freely form workers organisations. Those workers who do not wish to join such organisations also have their rights protected, and may not be coerced into doing so against their will. Freedom of association does not mean that companies should organise workforces or invite unions into the workplace. It means that employers must not interfere in an employee's decision whether to join an association or discriminate against the employee for their choice.

Collective bargaining is a voluntary process that takes place between representatives of workers and representatives of employers. It usually focuses on the negotiation of terms and conditions of employment, such as wages, working hours, conditions, grievance procedures and the rights and responsibilities of each party. The main principle for the negotiation is that it should be carried out in good faith where genuine effort is made to reach agreement in reasonable time. The parties often refer to the mutually acceptable result of the negotiation as a 'collective bargaining agreement'.

Box X: Countries where freedom of association is currently restricted by law

- Most of the Gulf States (Bahrain, Oman, Qatar, Saudi Arabia, United Arab Emirates): Trade unions are banned completely
- China and Vietnam: Union is government controlled and not independent

Source: *Sedex Supplier Workbook - Chapter 1.3 – Freedom of Association & Collective Bargaining (2013)*.

Where agreement is not reached, dispute settlement procedures range from conciliation, through mediation to arbitration.

Freedom of association is sometimes restricted for political and/or economic reasons. In some countries or their special economic zones, or for some categories of workers such as migrants, independent trade unions are completely banned. Employers have sometimes worked against freedom of association in an effort to bypass the negotiating power of workers.

On the whole, freedom of association has probably not yet received the same attention from companies as health and safety or abolition of child labour. However international attention on freedom of association has recently been magnified by trends such as globalisation, privatisation, and legal actions against companies. It continues to be a critical issue for companies because it forms part of the framework of basic human rights. Worker representation facilitates local responses to a globalised economy, and can serve as a basis for sustainable growth and investment.

C. Key regulations

International standards

Freedom of association is enshrined in Article 20 of the Universal Declaration of Human Rights (1948), which states that everyone has the right to freedom of peaceful assembly and negotiation, and that no one may be compelled to belong to an association. Article 23.4 specifically provides for the right to join a trade union.

These rights have been most defined and elaborated in international labour law. The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions on freedom of association and collective bargaining:

- Convention 87 on Freedom of Association and Protection of the Right to Organise (1948)
- Convention 98 on the Right to Organisation and Collective Bargaining (1949)

Conventions 87 and 98 are included in a small group of 'core conventions' by the ILO, under the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the core conventions, regardless of whether they have ratified them.

National law

Most national labour and employment laws have very specific provisions on freedom of association, collective bargaining and the structures which support these. It is essential to be aware of all relevant legislation in the jurisdictions of operation.

D. Suggested implementation approach

- **COP 19.1 Respect right of Employee to associate freely:** *Members shall respect the right of Employees to associate freely in trade unions or workers organisations of their choice, without interference or negative consequences to them from the Member.*

Points to consider:

- Confirm that awareness of and responsibility for compliance with freedom of association and access to collective bargaining requirements is part of a senior management function, such as human resources.
- Procedures for hiring, termination and performance review must not discriminate against union members, or those seeking to form a union in accordance with Applicable Law (see also guidance on [Non-Discrimination](#)). Grievance mechanisms should be established which allow workers to raise any concerns.
- Employees have the freedom to form or join a union or worker association of their own choosing without interference from employers.
- The business should not promote any particular union or workers' association, nor should it coerce workers to join or leave one. Election of union representatives should be without obstruction or intervention from the employer.
- Unions have the right to carry out their activities as described under Applicable Law.

- **COP 19.2 Respect right of Employee to collective bargaining:** *Members shall respect the right of Employees to collective bargaining, and shall adhere to collective bargaining agreements, where such agreements exist. Members shall, subject to Applicable Law, participate in any collective bargaining processes in good faith.*

Points to consider:

- Where a workers organisation exists, the business or its representative should enter into negotiation for the purposes of reaching a collective bargaining agreement. Once a collective bargaining agreement is reached – whether at a company, sector or national level – it should be implemented within the business.
- Consider how the business can negotiate and bargain in good faith, which involves a willingness to discuss, compromise and reach a mutually agreed solution.
- Applicable Law varies significantly across different jurisdictions - make sure the business understands its legal obligations.

Box X: Collective Bargaining Agreements and Working Hours and Remuneration

Collective bargaining agreements are legally enforceable contracts that set out terms and conditions at work, based on negotiations between an employer and a workers organisation, so are also relevant to the Code of Practices provisions for:

- **Working Hours**, as workers may collectively agree to required overtime in some circumstances, longer working hours, or work-time averaging of rest days; and
- **Remuneration**, where they may define the wage rate agreed for overtime, or govern any deductions for disciplinary purposes.

In some businesses or jurisdictions, forms of worker engagement or agreements may not satisfy the requirements of the Freedom of Association and Collective Bargaining provisions.

For example, in India, many companies do not have trade unions and therefore collective bargaining does not take place. However, Worker Representative Committees may be formed to provide a forum to raise and discuss issues between the committee and the management. Under the Indian Industrial Disputes Act, the function of these committees is to secure and preserve amity and good relations between the employer and workers, to comment upon matters of their common interest or concern, and endeavour to compose any material difference of opinion in respect of such matters.

Workers who are members of such committees are not elected and are generally nominated by general consensus among the workers. Meeting minutes and sometimes Memoranda of Understanding (MOUs) are used to document discussions, outcomes and agreements between the committee and management. However these are not considered equivalent to 'collective bargaining agreements' as defined under Indian law, because the committee is not a freely associating workers organisation or trade union.

RJC recognises that Members aim to bring their practices into conformance with the RJC Code of Practices, and that depending on the circumstances, this may take time. The following guidance can be used by Members and Auditors in assessments of conformance with the **Working Hours** and **Remuneration** provisions in situations where there is no Collective Bargaining Agreement, and the terms and conditions are at variance from the Applicable Law, but the terms and conditions would be permitted if they were part of a Collective Bargaining Agreement (for example, required overtime):

- **Conformance:** Collective Bargaining Agreements exist as defined under Applicable Law and govern the relevant work terms/conditions.
- **Minor Non-conformance:** some form of legally constituted worker engagement exists and there is agreed documentation (eg minutes of properly constituted meetings) that governs the relevant work terms/conditions; and the agreed terms/conditions would be permitted by law if they were part of a Collective Bargaining Agreement, but the agreed documentation does not constitute a Collective Bargaining Agreement under the Applicable Law. Corrective action will be required over the Member's certification period to bring the matter into conformance. This could be via instituting processes to enable proper Collective Bargaining Agreements, or alternatively, ensuring compliance with Applicable Law for the employment terms and conditions.

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- Major Non-conformance: no form of legally constituted worker engagement governs the relevant terms/conditions.

- **COP 19.3 Countries where rights are restricted:** *Members who operate in countries where Applicable Law restricts the right to freedom of association and collective bargaining shall not obstruct alternative means of association for Employees that are permitted under Applicable Law.*

Points to consider:

- Employers shall respect legal alternative means for workers to associate.
- Companies must not pressure workers to join a company-controlled organisation in place of an organisation created by and controlled by workers.

Check

- ✓ Do you allow workers to associate freely in the organisations or unions of their choice?
- ✓ Do you participate in collective bargaining agreements in good faith and adhere to the agreed outcomes?
- ✓ In countries where workers' rights to associate are restricted, do you allow workers to associate in state controlled unions and/or alternative legal means of association?

E. Further information

The following websites have further information on freedom of association and collective bargaining:

- Ethical Trading Initiative (ETI) – Base Code (2012)
www.ethicaltrade.org/resources/key-eti-resources/eti-base-code
- International Labour Organisation (ILO) Convention 87 – Freedom of Association and the Right to Organise (1948)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C087
- International Labour Organisation (ILO) Convention 98 – Right to Organise and Collective Bargaining (1949)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098
- International Labour Organisation (ILO) - Declaration on Fundamental Principles and Rights at Work
www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm
- International Labour Organisation (ILO) Better Work - Guidance Sheet 4: Freedom of Association and Collective Bargaining (2009)
<http://betterwork.com/global/wp-content/uploads/4-Freedom-of-Association.pdf>
- Sedex Supplier Workbook - Chapter 1.3 – Freedom of Association & Collective Bargaining
www.sedexglobal.com/wp-content/uploads/2013/03/1.3-Freedom-of-Association-Collective-Bargaining_Sedex-Supplier-Workbook.pdf
- Universal Declaration of Human Rights – Article 20
www.un.org/Overview/rights.html
- United Nations (UN) Global Compact Principle 3 – Freedom of Association and Collective Bargaining
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle3.html

STANDARD GUIDANCE

(COP 20) Non-Discrimination

A. Definitions and applicability

Discrimination is where people are treated differently because of certain characteristics – such as race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status, or age, or any other applicable prohibited basis – which results in the impairment of equality of opportunity and treatment.

Discrimination may be direct or indirect, and it does not have to be intentional. Practices that appear neutral but result in unequal treatment of people with certain characteristics are considered indirect discrimination. Harassment (behaviour that creates an intimidating, hostile or humiliating working environment) also is considered discrimination when it is based on discriminatory grounds. All workers must be free from discrimination, including nationals, non-nationals, migrants, home-based workers, and job applicants.

Source:

- *International Labour Organisation (ILO) – Workplace Discrimination*
www.ilo.org/global/Themes/Equality_and_Discrimination/WorkplaceDiscrimination/lang-en/index.htm
- *International Labour Organisation (ILO) Better Work - Guidance Sheet 2: Discrimination (2009)*
<http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>

The **Discrimination** section of the COP is applicable to all Facilities with employees.

B. Issue background

Discrimination in occupation and employment takes many forms and occurs in all kinds of work settings. It can occur in developed or developing countries, in rural or city settings, and in low or high technology workplaces. It may affect people gaining access to employment or particular occupations. Or once at work, it can result in different treatment of employees in their responsibilities, conditions, training, promotion, or job security. Ultimately, discrimination creates and reinforces inequalities and is a breach of human rights.

Non-discrimination means that employees are selected on the basis of their ability to do a job, without exclusion or preference on any other grounds. Distinctions based strictly on the inherent requirements of particular work are not discrimination.

Globally, women continue to be the largest discriminated group according to International Labour Organisation (ILO) reports. Gender disparities are evident in labour force participation rates, unemployment rates, remuneration and the types of jobs performed.

Other forms of discrimination are also being recognised, such as unfair treatment of both young and older persons, people with disabilities and those with HIV/AIDS. However, monitoring levels of discrimination can be hampered by a lack of available data. Privacy protection and ideological or political barriers often prevent the collection of data on certain groups.

For employers, discrimination can be difficult to identify in practice. Discriminatory practices may be direct, such as when laws, rules or customs explicitly cite a reason such as sex or race to deny equal opportunity. However, indirect discrimination is much more common and consequently more difficult to pinpoint. It arises where rules, practices or attitudes have the appearance of being neutral but in fact lead to exclusions or preferential treatment. Harassment is also considered discrimination when it is based on discriminatory grounds. Where discrimination exists informally or is culturally ingrained, it requires a conscious effort from employers to identify and address in a purposeful way.

C. Key regulations

International standards

Non-discrimination principles are enshrined in the Universal Declaration of Human Rights (1948). Article 2 states that everyone is entitled to the rights and freedoms of the Declaration, without distinction of any kind. Article 7 states that all are equal before the law and are entitled to equal protection against any discrimination in violation of the Declaration. Article 23 states that everyone has the right to equal pay for equal work.

These rights have also been defined in international labour law. The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions against discrimination:

- Convention 100 on Equal Remuneration (1951)
- Convention 111 on Discrimination (Employment and Occupation) (1958)

Conventions 100 and 111 are included in a small group of 'core conventions' by the ILO, under the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the core conventions, regardless of whether they have ratified them.

National law

Most national labour and employment laws have provisions for non-discrimination. However there are jurisdictions where discrimination is legally permitted. In some countries, there is provision for 'positive' discrimination that seeks to redress historical inequalities such as gender or race. It is essential to be aware of all relevant legislation in the jurisdictions of operation.

D. Suggested implementation approach

- **COP 20.1: No practice or condone any form of discrimination:** *Members shall not practice or condone any form of discrimination in the workplace in terms of hiring, remuneration, overtime, access to training, promotion, termination or retirement based on race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status, or age, or any other applicable prohibited basis, such that all individuals who are "Fit for Work" are accorded equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.*

Points to consider:

- Awareness of and responsibility for discrimination issues should be part of a senior management function, such as human resources.
- Risks of discrimination may be higher or more evident in certain countries, industry sectors or in particular occupations, or on particular issues such as union membership or pregnancy/maternity. Potential instances of discrimination will require careful responses that take account of local circumstances. **See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises.** Alternatively Members may use their own risk assessment process.
- Where appropriate to the size and nature of the organisation, develop policies and procedures to address any potential or actual discrimination issues. Make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of staff at all levels.
- In larger organisations, grievance procedures can allow employees to raise complaints, and that handle disputes and appeals in a culturally appropriate and sensitive process.
- Provide diversity and anti-discrimination training, particularly in areas where discrimination is most likely to occur such as hiring and promotion practices. Use the training to raise awareness of formal and informal practices of discrimination.

Check:

- ✓ Are there risks of discrimination in your company and are senior management aware of these?
- ✓ Do you have policies and procedures that can address discrimination risks?

E. Further information

The following websites have further information on the issue of discrimination:

- International Finance Corporation (IFC) – Good Practice Note: Non-Discrimination and Equal Opportunity (2006)
www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_gpn_nondiscrimination
- International Labour Organisation (ILO) – Equality and Discrimination
www.ilo.org/global/Themes/Equality_and_Discrimination/lang--en/index.htm
- International Labour Organisation (ILO) – Database on Conditions of Work and Employment Laws
www.ilo.org/dyn/travail/travmain.home
- International Labour Organisation (ILO) Better Work - Guidance Sheet 2: Discrimination (2009)
<http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>
- Universal Declaration of Human Rights – Articles 2, 7 and 23
www.un.org/Overview/rights.html
- United Nations Global Compact - Principle 6 - Discrimination
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle6.html

4. HEALTH, SAFETY AND ENVIRONMENT

STANDARD GUIDANCE

(COP 21) Health & Safety

A. Definitions and applicability

The aim of **health and safety** initiatives is to prevent accidents and injury to personal wellbeing arising out of, linked with or occurring in the course of work. This is done by minimising, as far as is reasonably practicable, the causes of hazards inherent in the working environment.

A **hazard** is a source of potential harm, injury or detriment.

Personal Protective Equipment (PPE) refers to protective clothing and other garments such as gloves, protective footwear, helmets, goggles and ear plugs, all designed to protect the wearer from exposure to job related occupational hazards.

Source:

- *International Labour Organisation (ILO) Convention 155 - Occupational Safety and Health (1981)*
www.ilo.org/ilolex/cgi-lex/convde.pl?C155
- *Social Accountability International (SAI) - SA® 8000 Abridged Guidance: 2008 Standard*
www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf

The **Health and Safety** section of the COP is applicable to all Members.

B. Issue background

The safety of work varies enormously between countries, economic sectors and social groups. Every year more than 2 million people globally die from occupational injuries or diseases. Often it is the poorest and least protected, such as women, children and migrants, who are the most affected by unsafe and unhealthy workplaces.

Most countries have legislation relating to employee health and safety. It has become a fundamental responsibility of business to ensure that workers are not harmed as a result of their work. Health and safety management systems and programs are usually designed to cover direct employees, any contract or agency workers, and members of the public (such as visitors and local communities) who may be impacted by a company's operations.

A preventative health and safety culture can deliver substantial productivity benefits. These include reductions in injuries, illnesses and consequently sick days, insurance claims, premiums and regulatory fines, and improvements in staff motivation and performance. By contrast, poor management of health and safety has the potential to undermine reputation and commercial performance. Most importantly, it directly increases the risk of work place injuries, illnesses and fatalities.

Company health and safety programs focus primarily on the prevention of workplace injuries and diseases. However, some businesses are finding it strategic to develop programs for the general health and wellbeing of workers. These businesses are addressing broader aspects of health, such as stress, obesity, fatigue, fitness for work, substance addiction and abuse, and work-life balance.

Specific types of occupational health and safety risks that may be present in the diamond and gold jewellery supply chain are outlined below.

Mining

Mines can be hazardous workplaces. Some of the most common occupational health and safety risks are:

- Exposure to substances, such as dust which can cause silicosis, or hazardous chemicals, such as cyanide and mercury;
- Noise, vibration, heat, poor ventilation, over-exertion and inadequate workspace, particularly in underground operations;
- Exposure to natural elements including extreme heat and cold climates;
- Injuries or deaths due to mine collapse, rock falls or subsidence through instability of excavations or misuse of explosives;
- Risks from working at heights and objects dropped from heights;
- Use of poorly maintained, outdated or otherwise inappropriate equipment;
- Mobile equipment-related accidents, including passenger vehicles and specialised mining vehicles;
- Lack of knowledge or training, particularly among workforces with low levels of general education;
- Vector-borne diseases such as malaria, yellow fever, dengue and others.

Gold Processing and Refining

Gold metal processing and refining may expose workers to risks including:

- Molten metal, electro-magnetic radiation and other high temperature sources;
- Exposure to toxic chemicals including hydrochloric acid and chlorine fumes.
- Exposure to rotating plant and equipment such as pumps, crushers and dryers, and to mobile equipment.

Cutting and polishing

Cutting and polishing risks include dust inhalation, eye strain, poor posture leading to back and shoulder problems, long working hours and accidents with machinery. Specific examples include:

- Lack or misuse of personal protective equipment (PPE): Goggles, rubber gloves, boots, respirators, and dust masks may all be needed at different stages of production;
- Locked emergency exits: Some factories have all their doors, including the emergency exit doors, locked. The main reason is to avoid theft and/or higher insurance premiums. This practice is illegal in most jurisdictions;
- Unsanitary working conditions: In polishing factories, large amounts of dust may be produced. Factories that do not have proper ventilation systems in place risk contributing to serious or fatal respiratory problems;
- Exposure to chemicals: There is often a lack of training on chemical substances and protective measures for workers.

Jewellery Manufacturing

Similar issues are associated with jewellery manufacturing, including PPE and emergency exits, toxic fumes and chemicals (for example, cadmium used in solders for gold manufacture or silica dust from the casting process), eye strain, lack of machinery safety, and unhealthy working conditions.

Trading and retail

General workplace risks apply to this part of the supply chain. These include, for example, slips and trips, manual handling, workstation ergonomics, basic hygiene or transport. More specifically, there are risks from occupational overuse problems such as repetitive strain or eye strain from the handling of products.

C. Key regulations

International standards

The International Labour Organisation (ILO) has more than 70 Conventions and Recommendations dealing with health and safety issues. These cover specific industries, risks that affect a variety of sectors, and preventative or protective measures. ILO Convention 176 (1995), for example, deals with health and safety in mines. Part III provides general recommendations on issues such as handling of chemicals, emergency preparedness, and the right of employees to report accidents to local authorities. Article 8 requires the preparation of an emergency response plan specific to each mine, while ILO Recommendation 183 provides more detail on what these plans should contain. Other general ILO health and safety conventions, such as Conventions 155 (1981) and 187 (2006), lay out standards and recommendations regarding identification of hazards, education and training, and provision of clothing and personal protective equipment. While these

recommendations are usually addressed in government regulation, they may be referred to by companies for additional guidance.

There are also a number of voluntary self-regulatory initiatives such as the International Council on Mining and Metals (ICMM) Sustainability Framework, which has a health and safety component, and the International Cyanide Management Code (addressed in COP 3.2 Hazardous Substances). International finance corporations and major banks have also developed standards that can be used for guidance when developing health and safety programs. Examples of such standards are the World Bank/International Finance Corporation's Environment, Health, and Safety Guidelines and the Equator Principles for project financing.

The international standard OHSAS 18001 Occupational Health and Safety Management Systems (OHSMS), grew from the need for managing safety in the work environment. The standard was created from the British Standard for Occupational Health and Safety Management Systems BS 880, and is similar in its structure to the ISO 9000 (for quality) and ISO 14000 (for environment) series of standards.

National law

Regulation on health and safety issues largely resides at a national or even regional level. It is therefore vital to be aware of local standards, reporting requirements, enforcement processes and potential penalties for non-compliance. Legislative frameworks usually define the roles, responsibility, and rights of authorities, employers, and workers. Many countries have government departments set up specifically to oversee occupational health and safety. These standards and guidelines can assist in the development of in-house programs. Applicable legislation for consumer health and safety may fall under consumer protection, fair trading or nuclear regulation agencies.

Methods of enforcement vary from country to country, as do sanctions for non-compliant employers. In some countries, local law may require rehabilitation and/or compensation for injured workers. Serious accidents at work often incur significant fines or compensation costs and can jeopardize operating licences and other permits. There are usually substantial penalties attached to any criminal conviction. In some jurisdictions, these can include personal criminal liability for the relevant senior managers or directors of a business.

D. Suggested implementation approach

- **COP 21.1: Working conditions:** *Members shall ensure that safe and healthy working conditions are provided for all Employees and on-site Contractors in accordance with Applicable Law and other relevant industry standards.*
 - **Points to consider:**
 - Health and safety is important for all workplaces, including office environments. Members need to provide:
 - a safe workplace and safe ways of working
 - equipment, tools and machinery in a safe condition
 - safe and hygienic facilities, including toilets, eating areas and first aid
 - information, training and supervision to all workers
 - a process for consultation with workers and to keep workers informed and involved in decisions that may affect their health and safety
 - processes for identifying hazards, assessing risks and controlling risks.
 - Members should seek to establish a safety culture in all workplaces.
 - Members should establish a written policy on health and safety and display it in common areas in the workplace.
 - A senior manager should have responsibility for health and safety at each workplace.
 - Procedures should be in place to keep up to date on key legislation related to workplace health and safety, regulatory guidance, compliance issues and procedures, and reporting/record-keeping requirements in all jurisdictions of company operations. See guidance on [Legal Compliance](#).
- **COP 21.2: Workplaces:** *Members shall provide and maintain workplaces, and on-site housing where provided, that have:*

- a. safe and accessible potable drinking water;
- b. sanitary facilities for food consumption and storage;
- c. clean and hygienic washing and toilet facilities commensurate with the number and gender of staff employed;
- d. fire safety equipment and alarms;
- e. clearly marked, unlocked and unblocked emergency exits and escape routes;
- f. access to adequate power supply and emergency lighting.

Points to consider:

- o Facilities should be in compliance with local regulations and building codes.
- o Emergency exits must not be locked or impeded (but may be alarmed).
- o Ensure that emergency exits are clearly identified and there is back up power available for emergency lighting and signage should main power be interrupted.
- o Management should regularly visit workplaces to monitor conditions to confirm conformance with these requirements.

- **COP 21.3: Risks of workplace hazards:** *Members shall assess the Risks of workplace Hazards and implement controls to minimise the Risks of accidents and injury to Employees and on-site Contractors. The Risk Assessment shall consider Hazards associated with the Member's activities and products which shall include, where relevant: use of machinery and mobile equipment; storage and handling of chemicals including cleaning materials; exposure to excessive fumes, airborne particles, noise and temperature levels, and/or inadequate lighting and ventilation; repetitive strain activities; considerations for any workers under 18 years of age and expectant mothers; and general hygiene and housekeeping issues.*

Points to consider:

- o The risk assessment should be appropriate to the business' circumstances and should identify where issues may arise, the likelihood of occurrence and potentially deficient procedures. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.
- o A common approach is to identify improvement opportunities to address risks in the following order of priority:
 - *Eliminate* the hazards by removing or modifying the activity from the work process. Examples include substitution with less hazardous chemicals and other hazardous substances, or using different manufacturing processes;
 - *Control* the hazard at the point where it starts. Examples include local exhaust ventilation, isolation rooms, machine guarding or acoustic insulating and noise control;
 - *Minimize* the hazard through design of safe work systems and administrative or institutional measures. Examples include provision of information such as Safety Data Sheets, job rotation, training safe work procedures, workplace monitoring, limiting exposure or work duration, and use of PPE.
- o Systems should be in place to ensure improvements identified from the risk assessment are implemented in a timely manner.

- **COP 21.4: Health and Safety committees:** *Members shall provide Employees and on-site Contractors with a mechanism, such as a joint Health and Safety committee, by which they can raise and discuss Health and Safety issues with management.*

Points to consider:

- o The mechanism should allow for discussion to be held on a regular basis and in response to incidents.
- o A record of meetings should be maintained, including matters discussed and actions undertaken.
- o Workers should be able to raise health and safety issues without fear of criticism or reprisal.
- o While on-site Contractors may not be eligible to participate in the committee in some situations, the committee should still function as a mechanism by which they raise health and safety issues.
- o Consider informal processes, such as suggestion boxes or team meetings, for consulting workers about health and safety issues or improvements.

- **COP 21.5: Training:** *Members shall provide training and information about Health and Safety to Employees and on-site Contractors in an understandable form and in an appropriate language. This will include:*
 - a. Specific role-related Health and Safety Hazards and controls;

- b. *Appropriate action to take in the event of an accident or emergency;*
- c. *Appropriate training in fire safety and emergency procedures;*
- d. *First-aid training to designated Employee representatives;*
- e. *Employee and Contractor awareness that they have the right and responsibility to stop work or refuse to work in situations that have Uncontrolled Hazards, and to immediately bring these situations to the attention of those at imminent Risk and to management.*

Points to consider:

- Safety training should be part of employee induction to the workplace or when training occurs for use of new types of work or equipment.
 - Tailored training may be delivered to relevant employees depending on specific responsibilities eg designated fire wardens and use of specialised fire fighting equipment.
 - Training should take language and levels of education into account.
 - Monitoring and testing should occur to confirm employees are following procedures correctly. Consider setting targets to encourage employees to follow key procedures.
 - Consider displaying procedures and information for reference in areas where high risk activities are undertaken, using simple signs and symbols where appropriate.
 - Keep records of training undertaken, including participants, and update regularly as required.
- **COP 21.6: Personal Protective Equipment:** *Members shall ensure that appropriate Personal Protective Equipment (PPE) is provided free of charge and verify that it is current, worn and used correctly.*

Points to consider:

 - Personal protective equipment (PPE) refers to protective clothing and other garments such as gloves, protective footwear, helmets, goggles and ear plugs, all designed to protect the wearer from exposure to job related occupational hazards.
 - Some businesses may also stipulate special requirements for safe attire in the workplace, for example long sleeves, closed footwear or respirators.
 - The Member must provide information about where and how PPE must be worn, when personal protective equipment must be provided and the standards governing its use.
 - PPE must be appropriate to each individual, properly maintained, clean and hygienic, properly stored to avoid any damage and replaced when expired or damaged.
 - The person using the PPE must be trained in its use and have any limitations of the PPE explained to them.
 - Signs should be posted in the workplace wherever it is necessary to use PPE. These signs serve as a useful reminder to workers of the kind of PPE that should be used.
 - PPE selection processes should include:
 - Detailed evaluation of the risk and performance requirements for the PPE;
 - Consultation with users;
 - Ensuring compatibility of PPE items where more than one type of PPE is required (eg ear muffs with a hard hat);
 - Consideration of workers' medical conditions and fitting requirements;
 - Preference for PPE that complies with recognised standards.
 - **COP 21.7: Medical facilities:** *Members shall provide access to adequate on-site Health and medical facilities, including clearly marked first aid provisions and trained first-aid personnel, and have appropriate procedures in place for transportation to local medical facilities in the case of a medical emergency.*

Points to consider:

 - All workplaces must as a minimum have first aid provisions and at least one trained first-aid provider, even in low-risk environments that are close to a health clinic or hospital.
 - The health and medical facility must be adequate to the workplace, and should take into account the number of workers, the risks of workplace hazards, and proximity and means of transport to clinics or hospitals.
 - Consider making educational materials on personal health and wellbeing available to employees.
 - **COP 21.8: Emergency procedures:** *Members shall establish emergency procedures and evacuation plans for all reasonably foreseeable emergencies, which are accessible or clearly displayed regularly tested (including evacuation drills), and periodically updated.*

Points to consider:

RIC Standards Guidance – Revisions for Comment May 2013

- The risk assessment should identify reasonably foreseeable emergencies.
 - When developing, implementing and testing emergency procedures, involve and consult with available local emergency response services such as fire departments, medical providers and the police, where available.
 - Evacuation plans to respond to these emergencies should be documented and tested.
 - Learnings from tests or actual incidents should be used to review and improve emergency procedures.
 - Concerns about product theft during emergency drills can be addressed by planning drills in advance and holding them after all product has been secured.
 - Evacuation routes and exits should be prominently displayed.
 - Emergency exits and evacuation routes must comply with local building codes.
- **COP 21.9: Incident investigation:** *Members shall investigate Health and Safety incidents and feed the results into reviews of the controls of related Hazards to identify opportunities for improvement.*

Points to consider:

 - Incidents should include near-miss situations, where the direct consequences were inconsequential, but the possible consequences could have been serious.
 - Investigations should seek to find the underlying or root cause(s) of the incident, not just the last event that may have directly caused in the incident to happen.
 - Where available and practicable, use independent personnel and external expertise as part of the investigation team, particularly for significant incidents.
 - Ensure the implementation of corrective actions are tracked, and once in place, determine the effectiveness of these actions at preventing a recurrence.
 - Larger workplaces should analyse incidents to determine trends.
 - Records of workplace incidents may be required under local regulations, or where regulations do not exist, for at least 3 years. Where there is the potential for long latency diseases, such as noise induced hearing loss or occupational cancers, occupational health data may need to be kept for 30 years.
 - **COP 21.10: Cobalt-free scaifes:** *Members who are engaged in the cutting and polishing of Diamonds shall use cobalt-free Diamond-impregnated scaifes.*

Points to consider:

 - Inhalation of cobalt-containing dust can have serious health effects.
 - Confirm that all Diamond-impregnated scaifes used in cutting and polishing facilities are guaranteed by the supplier to be cobalt-free.

Check:

- ✓ Have you nominated a person to be responsible for health and safety at each workplace?
- ✓ Are you aware of local health and safety laws and regulations?
- ✓ Are workplaces inspected to ensure conformance with the requirements set out in COP 26.2?
- ✓ Have you assessed the risks of workplace Hazards and implemented controls to minimise the risks?
- ✓ Is there a mechanism in place for workers to raise health and safety issues with management?
- ✓ Do employees know what to do in the event of an accident or emergency?
- ✓ Is training provided on role-related hazards and controls?
- ✓ Is appropriate PPE provided, free of charge, and used in accordance with company policy and regulatory requirements?
- ✓ Are there adequate on-site health and medical facilities?
- ✓ Are evacuation plans in place for reasonably foreseeable emergencies, and are the plans displayed and tested?
- ✓ Are procedures in place to conduct investigations of incidents?

Managing Health and Safety for Small Business:

Typical hazards areas for a small business, and ways to address them, include:

1. **Fire** Ensure extinguishers are in place, maintained and clearly marked for type of fire. All fire exits are clear and exit signs illuminated.
2. **Electrical** Plugs, sockets, switches are in good condition. Floors are clear of extension cords, which are tested and tagged where required by Applicable Law. Safety switches are hardwired into electrical switchboards.
3. **Chemical** Workplace chemicals register and Safety Data Sheets (SDS) are current. Chemicals are handled and stored to SDS guidelines, and employees who use chemicals are trained in their safe use.
4. **Slips, trips and falls** Work areas are kept clean, uncluttered and well lit. Employees wear suitable footwear.
5. **Storage and racking** Racking systems are stable and in good condition, and they display and comply with the specified Safe Working Load. Safe access is provided to storage areas.
6. **Noise** Eliminate or reduce noise from loud processes or equipment. Where applicable, hearing protection is available and signage indicates it must be worn.
7. **Heights** Mezzanine floors have safe access and fall protection, handrails are secure and steps are well maintained, platform ladders are industrial grade and comply with standards.
8. **Manual handling** Hazardous manual handling is eliminated. Adequate space is provided for work or storage and trolleys are used to move items. The work area is between knee and shoulder height, and is close to the worker's body.
9. **First aid** A first aid box is readily available and appropriately stocked. Qualified first aid staff are available and known to staff. Sufficient amenities are present for all staff.
10. **Machinery** Safe access to machinery and equipment is provided. Moving parts cannot strike or reach people, and other hazards associated with machinery such as fumes, chemicals and noise have been assessed.

Workplace safety doesn't have to be difficult. You can use the following steps to improve the way health and safety matters in the workplace are managed:

STEP 1 – Applicable Law and Responsibilities

The first place to start is to find out the occupational health and safety laws and regulations that apply to your business. In doing this, become aware of who has a specific responsibility. This can form the basis of your approach to occupational health and safety.

STEP 2 – Plan to work safely

Safety at work involves planning and thinking about what activities happen in your facilities. Doing this can help you identify the tasks and procedures which will control the risks arising from those activities.

STEP 3 – Involve your employees

It is important to consult and talk to Employees and where relevant on-site Contractors and set up ways for them to be involved and contribute to decisions that may affect health and safety in the workplace. For example, raise health and safety issues with staff and display health and safety information in a format that can be easily understood.

STEP 4 – Develop procedures

Develop and implement procedures and processes to manage hazards, implement controls and assess any risks to health and safety with their use.

STEP 5 – Inform and train your Employees

Inform and train Employees and where relevant on-site Contractors about hazards in their job and workplace. Provide employees, particularly those who are new to the workplace or job, with information, training and supervision. Training may vary from simple training checklist to on the job or more formalised training. Use the most appropriate or a combination, based on the nature of the activities, the hazards and the controls.

STEP 6 – Monitor and review

Regularly monitor and review all steps you have taken to manage health and safety. Adjust the controls, procedures and information to address any changes to the law or changes to the activities and materials handled in your premises. Managing health and safety is an ongoing process that should form part of the way you do business. Your processes, operation and staff may change over time and so may the risks. Make sure you continually review your systems to ensure they still provide for the wellbeing of Employees and on-site Contractors and a safe workplace environment.

E. Further information

The following websites have further information on health and safety issues:

- Awareness and Preparedness at the Local Level (APELL) for Mining (2001)
www.unep.fr/scp/publications/details.asp?id=WEB/0055/PA
- Equator Principles
www.equator-principles.com/
- International Council on Mining and Metals (ICMM) - Good Practice in Emergency Preparedness and Response
www.icmm.com/page/1169/library/documents/good-practice-in-emergency-preparedness-and-response
- International Council on Mining and Metals (ICMM) - Sustainable Development Framework – Principle 5 – Seek continual improvement of our health and safety performance
www.icmm.com/our-work/sustainable-development-framework/10-principles#05
- International Council on Mining and Metals (ICMM) - Guidance on Health Risk Assessment (2009)
<http://www.icmm.com/page/14733/new-guidance-on-health-risk-assessment>
- International Finance Corporation (IFC) – Environment, Health, and Safety Guidelines
http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/sustainability+framework/environmental%2C+health%2C+and+safety+guidelines/ehsguidelines
- International Labour Organisation (ILO) Convention 176 Safety and Health in Mines (1995)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C176
- International Labour Organisation (ILO) Convention 155 - Occupational Safety and Health (1981)
www.ilo.org/ilolex/cgi-lex/convde.pl?C155
- International Labour Organisation (ILO) Recommendation 183 - Safety and Health in Mines (1995)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R183
- International Labour Organisation (ILO) Code of Practice on Safety and Health in Opencast Mines
www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/normativeinstrument/wcms_107828.pdf
- International Labour Organisation (ILO) – Occupational Health & Safety
www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang-en/index.htm
- International Labour Organisation (ILO) - Programme on Safety and Health at Work and the Environment (SafeWork)
www.ilo.org/public/english/protection/safework/
- Mining Association of Canada (MAC) – Crisis Management Planning Guide (2007)
www.mining.ca/www/media_lib/TSM_Documents/TSM_Publications/2007/Crisis_Man_03_2007.pdf
- National Skin Centre - Nickel Allergy
www.nsc.gov.sg/showpage.asp?id=137
- Social Accountability International (SAI) - SA[®] 8000 Abridged Guidance: 2008 Standard
www.sa-intl.org/data/n_0001/resources/live/SAI_AbridgedGuidance_SA8000_2008.pdf
- U.S. Nuclear Regulatory Commission – Fact Sheet on Irradiated Gemstones
www.nrc.gov/reading-rm/doc-collections/fact-sheets/irradiated-gemstones.html

STANDARD GUIDANCE

(COP 22) Environmental Management

I. Definitions and applicability

The **Environment** is the surroundings in which the Facility operates, including air, water, land, natural resources, flora, fauna, habitats, ecosystems, biodiversity, humans (including human artefacts, culturally significant sites and social aspects) and their interaction. The Environment in this context extends from within an operation to the global system.

Environmental management is the process of regulating and administering environment-related risks and aspects. It may involve directly managing the environment itself, but more often is about controlling an organisation's activities, products and services which interact with the natural environment. These are controlled to minimise adverse impacts and where possible, have a positive effect on the environment.

Source:

- Summarised from the RJC Code of Practices (2013)

The **Environmental Management** section of the COP is applicable to all Members.

The **Environmental Management** provision of the COP should be read and implemented alongside the **Hazardous Substances, Wastes and Emissions, Use of Natural Resources**, and **Impact Assessment** provisions.

J. Issue background

Companies of all sizes and sectors are increasingly able to achieve tangible business benefits from taking environmental protection seriously. Bottom-line business benefits of environmental protection initiatives can include reduced operating costs, reduced material use, increased worker commitment and enhanced brand values. Leading companies now aim for effective integration of environmental considerations into planning, operation and decommissioning of all industrial activities. Companies looking at and defining their commitment to environmental performance have harnessed the same business systems and management approaches that make their overall enterprise successful.

An environmental management system can provide tangible benefits for a business, such as:

- Improved the company's reputation
- Take advantage of innovation and build competitive advantages.
- Reduce operating costs for electricity and water
- Demonstrated environmental due diligence
- Improved industry-government-community relations
- Better informed workforce through informed learning and awareness
- Better supply chain management and ability to meet market needs of customers and investors
- Reduced licensing fees and greater assurance of compliance with Applicable Law
- Time to spend more time on business processes and less time with crisis management
- Reduction in liability and risk - lower insurance premiums
- Establish a new vision or strategy for the company.

Developing an approach to environmental protection depends on the governing laws and regulations, aspects and impacts of the industry, and interests of stakeholders such as investors, consumers, communities and environmental organisations. Careful evaluation of a business' activities and processes should always be undertaken to avoid serious or irreversible damage to the environment. Where a number of options are under consideration, preference should be given to the option which offers the greatest likelihood of avoiding

irreversible damage to the environment. This should include consideration of the effects of the "do nothing" option.

At the landscape level, reducing adverse impacts to the environment can be measured through the protection of ecosystems, such that they are capable of performing all essential ecological processes and maintaining its evolutionary potential in the long term. When the ecological integrity of an ecosystem is reduced, the capacity of the system and its genetic and species diversity to survive the changes associated with development is also reduced. Businesses large and small can all play a part in contributing to sustainable development in the management of their environmental impact.

K. Key regulations

International Standards

A number of standards for environmental protection, management and reporting have been developed. Voluntary initiatives for industry include the United Nations Global Compact, International Finance Corporation (IFC) Performance Standards and the Global Reporting Initiative. The Global Compact states that businesses should 1) support a precautionary approach to environmental challenges; 2) undertake initiatives to promote greater environmental responsibility, and 3) encourage the development and diffusion of environmentally friendly technologies. IFC Performance Standards are required of IFC clients, but are increasingly referenced in other standards initiatives such as the Equator Principles. The Global Reporting Initiative (GRI) promotes international harmonization in the reporting of corporate environmental, social and economic performance information to enhance responsible decision-making.

The most commonly referenced management standards are those developed by the International Standards Organisation, which are designed to be applicable to all types of organisations. The ISO 14000 series aims to provide industry with a risk based management framework for the implementation of systems for the management of environmental issues. ISO 14001 aims to provide organisations with the specifications for and guidance on the key elements of an effective environmental management system.

National Law

The concept of environment, in legislative terms, has traditionally focussed on human surroundings, both man-made and natural. Most countries have legislation and regulation regarding environmental protection, pollution control and environmental management. Many national and state jurisdictions require additional specific conditions that need to be met especially in relation to air and water quality, biodiversity and land management, noise, and waste disposal. Some kinds of industrial operations must be licensed under environmental protection laws and these licences must be valid and complied with at all times.

L. Suggested implementation approach

- **COP 22.1: Risks, impacts and performance:** *Members shall identify environmental Risks, significant environmental impacts, and opportunities for improving environmental performance.*

Points to consider:

- All business processes and activities should be reviewed to identify any that have the potential to cause significant adverse impacts on the environment, such as through the emission of large volumes of wastes, or through the use of hazardous materials or process. Risks and impacts may involve pollution of air and water, use of materials and energy, noise and visual effects,
- Sensitive and surrounding environmental receptors should be identified, such as natural waterways, vegetation, fauna and fauna habitat, and nearby communities that may be affected.
- Opportunities to improve environmental performance should focus on eliminating the risks and impacts at their source, by using less hazardous materials or processes, followed by the use of effective controls to minimise risks and impacts.
- Risks should consider the potential consequences if hazards are not effectively managed or discharges exceed acceptable limits.
- The risk assessment should be appropriate to the business' circumstances and should identify where issues may arise, the likelihood of occurrence and potentially deficient procedures. **See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises.** Alternatively Members may use their own risk assessment process.

- **COP 22.2: Controls:** *Members shall implement and regularly review controls to minimise identified environmental Risks and significant environmental impacts, and to improve environmental performance.*

Points to consider:

- When developing controls to manage risks and minimise environmental impacts, the hierarchy of controls should be considered. In order of the most preferred to the least preferred option, the hierarchy is elimination, substitution, reduction, treatment and disposal. These options may be achieved through changes to operational processes, products, work practices or raw materials.
 - **Elimination** is where the risk is longer exists. For example a pollutant is no longer generated or produced.
 - **Substitution** involves the replacement of one raw material or process with another with less potential to cause an impact.
 - **Mitigation** involves methods to reduce the severity of the risk or impact and may involve re-use and recycling practices.
 - **Treatment** of risks is on the lower end of the control and abatement hierarchy. Risks are treated in order to reduce the toxic or hazardous impacts to the environment.
 - **Disposal** is the least preferred option of environmental management, and applies mainly to waste generation.
 - Written policies and procedures regarding control measures should be developed, especially where business operations and processes have the potential to cause significant impacts or breach environmental regulations. Procedures may need to include monitoring, measurement and reporting on processes, discharges and emissions, as appropriate. Quantifying change in impacts can be a useful way to track improvements and benefits of the control measures, however this may not always be possible for smaller businesses or for some types of risks.
 - All Members, regardless of whether their operations have the potential to cause significant adverse impacts on the environment, should identify and implement opportunities to improve performance, such as through reduced use of materials, recycling, and substitution to use less hazardous substances.
- **COP 22.3: Training:** *Members shall provide training and information about environmental Risks and controls to relevant Employees and on-site Contractors in an understandable form and in an appropriate language.*

Points to consider:

- Develop and conduct induction training for Employees, on-site contractors and visitors.
- Ensure all relevant personnel understand the potential risks and management controls and their roles and responsibilities, especially where they are engaged in activities that have been identified to have potential to cause significant adverse impacts on the environment.
- Maintain records of training and use these to plan refresher training sessions.

Check:

- ✓ Have you reviewed all of your business activities and identified those that have the potential to cause adverse environmental impacts?
- ✓ Have you identified and implemented controls to eliminate or minimize risks and significant adverse impacts?
- ✓ Have you identified opportunities for improvement in your environmental performance, and are they being implemented?
- ✓ Do you have an overall environmental management system in place that is appropriate to the level of risks and impacts?

Tips for Small Business

Small businesses can benefit from good environmental management by making better use of resources (water, gas and electricity) as well as being aware of requirements specified by Applicable Law. Environmental issues typical for a small business include:

- ✓ Energy consumption, usually electricity for lighting and power, and gas for heating
- ✓ Water
- ✓ Waste and wastewater disposal
- ✓ Hazardous chemicals and disposal of hazardous waste

These tend to have low environmental impacts and therefore do not require management systems or controls. However, low risk or low environmental impact does not mean these can or should be ignored. For instance, in most jurisdictions where Members operate (small or large) there are strict controls for managing hazardous substances and for the disposal of hazardous waste. Even minor quantities of incorrect disposal of hazardous waste to general waste can lead to significant fines. So it is important that the environmental risks are identified and properly managed. Simple improvement opportunities for small business include:

- ✓ Informing employees about proper disposal of general office waste
- ✓ Installing special bins that are properly labeled for hazardous waste – often the hazardous waste collectors can provide you with special bins for hazardous materials
- ✓ Engaging your water or energy provider to conduct an audit which may identify savings
- ✓ Speak to peers and other members of your industry associations for ideas on how to improve environmental performance, whilst minimizing cost to the business. There is a good chance someone else has the same issue and has done something simple about it.

Also see the guidance for [Hazardous Substances, Wastes and Emissions](#) and [Use of Natural Resources](#).

M. Further information

The following websites have further information on environmental management:

- Business for Social Responsibility (BSR) – Environmental Strategy
www.bsr.org/en/our-work/consulting-services/environmental-assessment-strategy
- Environment Agency (UK)
www.environment-agency.gov.uk
- Environment Canada
www.ec.gc.ca
- Global Reporting Initiative (GRI)
<https://www.globalreporting.org/Pages/default.aspx>
- International Finance Corporation (IFC) Performance Standard 3 - Resource Efficiency and Pollution Prevention (2012)
www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 3 - Resource Efficiency and Pollution Prevention (2012)
www1.ifc.org/wps/wcm/connect/9187330049800a6baa9cfa336b93d75f/Updated_GN3-2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) - Environmental, Health, and Safety Guidelines
www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental,+Health,+and+Safety+Guidelines/
- International Organisation for Standardisation (ISO) – ISO 14000 Environmental Management Systems
www.iso.org/iso/iso_catalogue/management_standards/iso_9000_iso_14000/iso_14000_essentials.htm
- United Nations (UN) Global State of the Environment Report
www.unep.org
- United Nations Global Compact
www.unglobalcompact.org
- United Nations (UN) Sustainable Development Knowledge Platform
www.un.org/esa/sustdev/
- U.S. Environmental Protection Agency (EPA)

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- www.epa.gov
U.S. Environmental Protection Agency (EPA) - Small Business Gateway
www.epa.gov/smallbusiness/

STANDARD GUIDANCE

(COP 23) Hazardous Substances

A. Definitions and applicability

A **Hazardous Substance** is any material that poses a threat to human Health and/or the Environment.

In the Jewellery supply chain hazardous substances may consist of input or raw materials (e.g. organic solvents, acids or welding fluxes), or waste streams and by-products (discharges to air, water or land, empty hazardous substance packaging, residues, acid sulphate soil, etc).

The Hazardous Substances section of the COP is applicable to all Members that use Hazardous Substances. Note that the use or presence of mercury or cyanide in the Mining Sector is addressed under separate [Mercury](#) and [Cyanide](#) provisions.

The Hazardous Substances section of the COP should be read and implemented in conjunction with the [Health and Safety](#), [Environmental Management](#), and [Wastes and Emissions](#) sections of the COP.

B. Issue background

As industrial processes grew and expanded during the twentieth century, governments started to adopt measures to regulate the use and management of chemicals with the aim of protecting people and the environment. Today there are numerous rules and regulations introduced in many industrialised countries to assess and manage the workplace health and safety and environmental risks in relation to hazardous substances.

The use of hazardous substances and dangerous goods is widespread at most workplaces. Often it may only include cleaning products and substances used in controlled environments such as laboratories, but can of course include complex and extremely hazardous chemicals. Typical hazardous substances may include but are not limited to:

- Asbestos
- Carbon monoxide
- Cyanide
- Dust and fumes
- Fibreglass
- Flammable liquids
- Inorganic lead
- Isocyanate in paints
- Mercury
- Ozone Depleting Substances (ODSs)
- Poly chlorinated biphenyls (PCBs)
- Soldering fluxes
- Synthetic Mineral Fibres

Hazardous materials may be used or generated as waste at many points during the jewellery supply chain. Though definitions vary across jurisdictions, materials are often designated as hazardous if they are flammable, oxidising, corrosive, toxic, radioactive or explosive and pose threats to public health or the environment. Examples relevant to the sector may include mining overburden, gold beneficiation and refining wastes, electroplating residues, degreasing wastes, mercury, paints and solvents, used oils, electronics, batteries, refrigerants, and many industrial chemicals and cleaning agents. These materials, and others, all attract different regulatory conditions, depending on the jurisdiction.

Mercury emissions from gold refining vary greatly based on the mercury content of the ore being used, production process, and control technology. Recovering mercury during the refining process may be done to comply with regulatory requirements, or if the value of the mercury recovered provides an incentive. Mercury is sometimes used in laboratories for gold assaying and as a gold-plating agent in small-scale jewellery manufacturing, though these uses are diminishing because of its toxicity.

Further information on managing wastes is provided in the guidance for [Waste and Emissions](#).

C. Key regulations

International standards

Standards and regulations exist for many of the hazardous substances used in the gold and diamond jewellery supply chain. Some of the key international regulations relating to hazardous substances include:

- The Rotterdam Convention (1998) with the objective to protect human health and the environment from potential harm from the movement and trade of hazardous substances and to contribute to the environmentally sound use of those hazardous chemicals. The Convention creates legally binding obligations for signatory countries including the need for Prior Informed Consent about the movement and effects of hazardous substances. It covers pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons. Countries ratify the obligations in the Convention by setting up government agencies to manage hazardous substances within their jurisdictions. Therefore, compliance with local Applicable Law generally means that this Convention is being followed.
- The Stockholm Convention (2004) is an international legally binding convention aiming to end the release and use of persistent organic pollutants (POPs). POPs are defined as chemical substances that persist in the environment, bio-accumulate through the food web, and pose a risk of causing adverse effects on the environment and human health. Substances targeted under this Convention for reduction and ultimate elimination are nine kinds of pesticides, two industrial chemicals (hexachlorobenzene and polychlorinated biphenyls (PCBs)), and two families of chemical byproducts (dioxins and furans) from combustion processes and production of chlorinated substances.
- The Montreal Protocol on Substances that Deplete the Ozone Layer (1989) phases out production of a number of ozone-depleting substances. To date, the primary focus has been on chlorofluorocarbons (CFCs), with slower phasing out of other substances.
- In 2002, the United Nations Economic Commission for Europe proposed an international system for the safe use, transport and disposal of chemicals and hazardous substances. The new system, which was called "Globally Harmonized System of Classification and Labelling of Chemicals (GHS)", addressed classification of chemicals by types of hazard and a common language to communicate information about the chemical including labels and safety data sheets. The GHS is primarily written for governments, regional institutions and international organizations, it also contains sufficient context and guidance for those in industry who will ultimately be implementing the requirements which have been adopted. Implementation has already occurred in 67 countries with the aim of global implementation by 2015. Significant changes to domestic regulation in many countries are anticipated as a result of GHS implementation. The GHS includes harmonised criteria for the classification of:
 - physical hazards,
 - health hazards, and
 - environmental hazards.

National law

Most countries have legislation and regulation regarding the proper handling, management, use and disposal of hazardous substances. Many national and state jurisdictions require additional specific conditions for businesses that need to be met especially in storage and handling of hazardous substances.

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Most countries already have laws regarding the implementation of the UN GHS program regarding the need for all hazardous substance to be accompanied by a safety data sheet (SDS), or equivalent. A SDS is a document containing important information about a hazardous substance and on how to safely handle them, and usually must state:

- a hazardous substance's product name
- the chemical and generic name of certain ingredients
- the chemical and physical properties of the hazardous substance
- health hazard information
- precautions for safe use and handling
- first aid procedures
- the manufacturer's or importer's name, address and telephone number.

The SDS provides employers, self-employed persons, workers and other health and safety representatives with the necessary information to safely manage the risk from hazardous substance exposure. It is important that everyone in the workplace has access to and can read and interpret a SDS. Many jurisdictions require that SDS must have been issued within the previous 3 years. Members thus need to ensure that their SDS are current.

It is essential for Members to be aware of and comply with applicable laws and regulations.

D. Suggested implementation approach

- **COP 23.1: Inventory and documentation:** *Members shall maintain an inventory of Hazardous Substances at Facilities. Safety Data Sheets (or equivalent) shall be accessible where all Hazardous Substances are in use and their associated Risks shall be clearly communicated to all Employees and Contractors who work with them.*

Points to consider:

- You may be surprised at the quantity and diversity of hazardous substances that are present in your workplace, with many present in small quantities and others not used for a long time.
- Many hazardous substances may not be recognised as such, and may be taken for granted without due attention to their proper handling, labelling, storage and disposal.
- Responsible management of hazardous substances requires accurate inventories, and proper handling by trained workers.
- Any worker involved in the handling and use of a hazardous substance must be aware of the relevant risks and procedures for use of the substance.
- Members should review the use and handling of all hazardous substances used in the workplace to determine if there are risks to workers' health or the environment, and implement controls to minimise risk, through for example improved training and procedures, and use of safer alternatives. **See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises.** Alternatively Members may use their own risk assessment process.
- A person should be identified with responsibility for maintaining the inventory at each workplace, including authority for approving the introduction of new chemicals into a facility and the provision of adequate resources to store and respond to incidents specific to the nature of the material.
- For some commonly used hazardous substances purchased in small volumes, the equivalent of a Safety Data Sheet (SDS) will be found on the label printed on the container.
- The system for maintaining inventory records should be appropriate to the quantities and diversity of hazardous substances that are present in your workplace.
- Written policies and procedures regarding the review and use of chemicals, including the need for all substances to be accompanied by SDS's, should be kept in two locations: firstly, in a consolidated register of all hazardous substances; and secondly, close enough to where the good is stored or used.
- For office-type environments and workplaces that use limited quantities of hazardous substances, quantities on-site could be recorded in a range rather than continuously updated, for example: "3 to 5 150ml bottles of isopropyl alcohol".
- For operational workplaces using larger volumes of hazardous substances as part of a process, such as a refiner or manufacturer, more sophisticated systems will be necessary that

regularly update quantities, locations and status of the hazardous substances used. In these types of environments it may be appropriate to maintain the inventory in an electronic database. Various third-party database systems are available for these purposes.

- Also note:
 - Inventories are subject to constant change, as substances are used, moved, replaced and disposed.
 - Hazardous substances that are in longer term storage and not in active use are vulnerable to being misplaced, mislabelled, and improperly handled.
 - Original containers for hazardous substances must not be re-used for a different purpose without being properly cleaned and relabelled.
 - All labels should be properly affixed and protected from damage.
 - Vessels and containers should be stored in a manner that keeps the label visible
 - Caution should be used when hazardous substances are transferred to new containers to ensure they have appropriate physical properties and are properly labelled.
 - Empty hazardous substance containers and packaging should be treated as a hazardous waste as these can be contaminated with residual material. Most countries have laws about disposal of these containers and prohibit disposal with general waste.

- **COP 23.2: International bans:** *Members shall not manufacture, trade, and/or use chemicals and Hazardous Substances subject to international bans due to their high toxicity to living organisms, environmental persistence, or potential for bioaccumulation, irreversible ecological impacts, or depletion of the ozone layer.*

Points to consider:

- Check whether you use hazardous substances subject to international bans. Refer to the adjacent table for some of these substances.
- Hazardous substances should be procured only through legitimate commercial suppliers.
- *Non-consumptive* use of hazardous substances, for example chloro-fluorocarbons (CFCs) that were integrated into equipment before restrictions were introduced, are permitted under this provision if used in accordance with Applicable Law.
- Compliance with Applicable Law should in the vast majority of cases result in the avoidance of hazardous substances subject to international bans.
- If there are any uncertainties about the status of certain substances, Members should take steps to verify compliance.

Hazardous Substances Subject to International Bans

The list of hazardous substances subject to international bans is constantly growing. Internationally banned hazardous substances include, but are not limited to:

- Ozone depleting substances such as
 - Chlorofluorocarbons (CFCs), Hydrobromofluorocarbons (HBFCs) or Hydrochlorofluorocarbons (HCFCs)
 - Halons
 - Carbon tetrachloride (CCl₄) and Methyl chloroform (CH₃CCl₃)
 - Methyl bromide (CH₃Br).
- Persistent Organic Pollutants such as:
 - Aldrin, Chlordane, Dieldrin, Endrin, Hexachlorobenzene, Mirex or Toxaphene
 - Dioxins and Furans
 - Dichlorodiphenyltrichloroethane (DDT)
 - Polychlorinated biphenyls (PCBs), and Polychlorinated terphenyls (PCTs).
- Or other substances such as Tributyl Tin (TBT), Hexavalent chromium, Brominated flame retardants (BFR), Polybrominated biphenyls or Polybrominated diphenyl ether.

- **COP 23.3: Alternatives:** *Members shall employ alternatives to other Hazardous Substances used in business processes wherever technically and economically viable.*

Points to consider:

- Prioritise those hazardous substances used in the workplace that pose the greatest risk to workers' health or the environment.
- Assess the effectiveness of alternatives, and determine if alternatives could be used without compromising business results.
- Minor inconveniences should not stand in the way of the use of a non-hazardous alternative.

Check:

- ✓ Do you have an inventory of hazardous substances?
- ✓ Do they all have Safety Data Sheets that are accessible to employees and contractors that use them?
- ✓ Have you checked whether your business manufacturers, trades or uses any substances subject to international bans?
- ✓ Have you reviewed whether there are suitable alternatives to hazardous substances used in your business?

Tips for Small Businesses

Small businesses will often have a range of hazardous substances many in small quantities in their business. It is useful to carry out a stock-take to determine what is on the premises, how much is stored and how best to dispose of the waste products.

A typical inventory may look like the following:

Facility Name / Location					Date Reviewed			
Product Name	Chemical ID No (e.g. UN No.)	Supplier	Storage Location	Maximum Storage Volume	SDS Location & Date	Waste Disposal Company	PPE / Equipment Required	Comments
List name and alternative names of chemicals	Most hazardous substances have a unique IS or UN No.	Provide the supplier(s) names	Identify the location, room, storage cabinet where the substance is stored. Consider also listing where it is used.	Nominate the maximum volume ever stored on site.	Identify the location and date of all SDSs.	Provide the name(s) of the waste disposal company. Note it may even be the supplier.	List special PPE and equipment for safe handling of the substance.	

This inventory should be regularly reviewed and updated especially whenever there is a change. It can also be used as the basis for a risk assessment associated with the handling, use, storage and disposal of the substances. Note that the RJC Risk Assessment Toolkit provides a general risk assessment template, particularly for small to medium enterprises.

The hazardous substances register can be used to recognise the potential for accidental spillage which may result in the contamination of soil, water or air. Priority actions can be identified using the hierarchy of controls, for example:

- **Eliminate:** Get rid of all the unused and unnecessary chemicals and hazardous substances through a licensed waste contractor
- **Substitute:** Ask your supplier for advice about which toxic substances could be substituted with less toxic ones.
- **Mitigate:** Install a storage area bunded to prevent pollution from accidental spillage, or review the emergency response plan.
- **Administer:** Develop a chemical handling procedure and training for employees.
- **Personal protective equipment:** Ensure that appropriate equipment is available for staff.

Also see the guidance for [Health and Safety](#), [Environmental Management](#) and [Wastes and Emissions](#).

E. Further information

The following websites have further information on hazardous substances:

- Material Safety Data Sheets (MSDS) Solutions Centre
www.msds.com/
- Rotterdam Convention on the Prior Informed Consent for Certain Hazardous Chemicals & Pesticides in International Trade
www.pic.int
- State of Nevada Department of Conservation and Natural Resources – Air Emissions - Mining
http://ndep.nv.gov/mercury/mercury_air.htm
- Stockholm Convention on Persistent Organic Pollutants
www.pops.int/
- The Montreal Protocol on Substances that Deplete the Ozone Layer
www.theozonehole.com/montreal.htm
- United Nations Economic Commissions for Europe (UNECE) - Globally Harmonized System of Classification and Labelling of Chemicals (GHS)
www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html
www.unece.org/trans/danger/publi/ghs/implementation_e.html
- United Nations Environment Programme (UNEP) Global Mercury Partnership
www.chem.unep.ch/mercury/partnerships/new_partnership.htm
- United Nations Environment Programme- Persistent Organic Pollutants
<http://www.chem.unep.ch/pops/>

STANDARD GUIDANCE

(COP 24) Waste and Emissions

A. Definitions and applicability

Wastes and emissions are solid, liquid or gaseous materials that are released, discarded or no longer needed. Wastes and emissions can cause pollution and impact on the environment if not properly managed. In the jewellery supply chain, the main forms of waste include hazardous substances, air and water emissions, and general operational waste.

Source:

- Summarised from RJC Code of Practices (2013)

The **Waste and Emissions** section of the COP is applicable to all Facilities which generate waste.

The **Wastes and Emissions** section of the COP should be read and implemented alongside the **Hazardous Substances, Environmental Management, Use of Energy and Water**, and **Impact Assessment** sections.

B. Issue background

In business, the creation of waste may be directly related to operating processes including raw material management, processing, and the output quality of products. Waste can also be generated from indirect sources such as through infrastructure development, administration and transportation. Effective waste management entails having suitable measures in place for the handling, storage, transport, and disposal of wastes, together with a commitment to waste minimisation.

As waste disposal is attracting increasingly higher costs, waste reduction can create financial benefits as well as environmental benefits. Cleaner production, eco-efficiency and life-cycle approaches, for example, call for industrial processes and products to be re-evaluated and redesigned to reduce environmental impact. Taking this approach, companies can often minimise the waste being generated in the first place, or find uses for waste products in other processes.

The approaches taken to manage waste vary, based on the waste characteristics, the nature of the operation and the available local and national waste facilities. However there are basic principles of waste reduction that apply everywhere. These are to *reduce* the amount of waste produced, *reuse* waste materials, *recycle* if they cannot be used in their existing form, and *recover* resources (such as energy) from wastes. The final measure is then to ensure safe disposal of residual wastes.

Air emissions are of increasing international concern because of their potential contribution to global climate change. Common emissions include carbon dioxide and monoxide, sulphur oxides, nitrous oxides, fluorides, and ozone depleting substances. Water emissions can occur through surface runoff, groundwater leaching, liquid spills, and discharges of waste water. Examples specific to mining include acid mine drainage, and leakage from heap leaching processes or tailings dams. Both air and water emissions are attracting increasingly strict regulatory limits and reporting requirements in many countries. Some countries have introduced emissions trading schemes, creating incentives for accurate measurement and incremental reductions.

General waste may be generated at all points of the jewellery supply chain. Depending on the business, general waste may include wood and paper products, plastics, food and plant items, metal items, office consumables, outdated site or office equipment, and commercial or shop discards, for example. The separation of waste streams within the business is an essential first step to their responsible management. Opportunities for reducing, reusing, recycling and resource recovery should be sought, though these will vary between different businesses and in different countries.

Box X: Understanding wastes

Waste products may be considered as being either liquid, solid or gaseous. The following information can help waste streams to be assessed in more detail:

- Sources;
- Composition;
- Separation;
- Quantities;
- Flow/production rates;
- Transfer of wastes;
- Storage;
- Treatment; and
- Destination/pathways and disposal.

C. Key regulations

International standards

For companies, the most recognised standard for environmental management systems is the ISO14000 family of standards, developed by the International Organisation for Standardisation (ISO). Companies can use these as a framework for developing their own systems, and may seek certification if their approach complies with the standard. The ISO standard does not address performance.

The Global Reporting Initiative is a widely accepted international standard for sustainability reporting. An important component of the standard is public disclosure of company wastes and emissions. There is a core framework that is applicable to all organisations, and supplements have been developed for particular sectors such as mining.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) is the most comprehensive global environmental agreement on hazardous and other wastes. The Convention aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes.

The Bamako Convention bans the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa (1991). The Bamako Convention uses a format and language similar to that of the Basel Convention, but is much stronger in prohibiting all imports of hazardous waste. Additionally, it does not make exceptions on certain hazardous wastes (like those for radioactive materials) made by the Basel Convention.

The Zero Waste International Alliance was established to promote positive alternatives to landfill and incineration and to raise community awareness of the social and economic benefits to be gained when waste is regarded as a resource base.

The International Finance Corporation (IFC) Performance Standard 3 – Resource Efficiency and Pollution Prevention (2012) provides detailed requirements and associated guidance for waste and hazardous materials management. The Standard covers requirements for:

- Avoiding generation of hazardous and on-hazardous waste
- Where waste generation cannot be avoided, measures to reduce its quantity and where possible, recover, reuse and recycle the materials should be considered.
- Waste disposal in accordance with local laws and in an environmentally sound matter. This includes restrictions and permitting associated with of trans-boundary movement of waste.

National law

Regulation on environmental waste issues is often complex with varying responsibilities at national, state and/or local levels. Most countries have detailed environmental legislation and regulatory processes, usually overseen by specific government departments or statutory authorities. The issue of waste management is prominent and there are usually limits on the nature of disposal of many materials, according to impact,

material type and quantity. In some jurisdictions, there are incentives for voluntary waste reduction. It is essential to be aware of all relevant legislation, associated regulations and key bodies in the jurisdictions of operation.

Penalties for non-compliance vary from country to country, but can include significant fines and may extend to criminal liability. Infringement or violation of waste disposal or emissions rules can jeopardize operating licences and other permits. Significant impacts may require remediation to be undertaken at the company's cost.

D. Suggested implementation approach

- **COP 24.1: Identify wastes and emissions:** *Members shall identify significant wastes and emissions to air, water and land generated in their business processes.*

Points to consider:

- All business processes and activities should be reviewed to identify significant wastes and emissions. Identify inputs and outputs associated with key activities and identify waste streams to air, waterways, sewers, land and other offsite disposal routes.
- Conduct a risk assessment to determine when wastes and emissions are 'significant'. Whether wastes and emissions are significant may depend on a number of factors, including volume, composition and toxicity, sensitivity of the receiving environment, intensities of discharges, and regulatory requirements. Wastes and emissions that have the potential to harm the environment and/or are hazardous and require special handling and disposal, and/or are subject to licensing or permits should be considered significant.
- Note that the risk assessment should be appropriate to the business' circumstances and should identify where issues may arise, the likelihood of occurrence and potentially deficient procedures. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.
- Consider opportunities to generate employee awareness of responsible management of wastes and to encourage employees to raise waste management concerns with management.

- **COP 24.2: Management of identified wastes and emissions:** *Members shall responsibly manage the identified wastes and emissions by:*

- Taking into account environmental impact considerations alongside cost considerations;*
- Applying the principles of reduce, recover, re-use and recycle to reduce environmental impact where applicable ;*
- Discharging or disposing wastes and emissions in compliance with Applicable Law, or where Applicable Law does not exist, by adopting prevailing international standards.*

Points to consider:

- Members should ensure they are aware of Applicable Law relating to wastes and emissions for all operations. All wastes and emissions must comply with applicable regulatory limits.
- If operations are located in jurisdictions with weak regulatory systems, Member's wastes or emissions should comply with relevant international standards. Prevailing international standards include those discussed in Section C of this guidance chapter.
- Written policies and procedures should be established for monitoring and controlling all identified significant wastes and emissions, with roles and responsibilities clearly defined.
- The hierarchy for control and abatement of emissions or waste in order of the most preferred to the least preferred option is elimination, substitution, reduction, treatment and disposal:
 - **Elimination** is where the emission or waste is no longer exists. For example a waste stream is no longer generated or produced.
 - **Substitution** involves the replacement of one raw material or a process with another which results in lower or less hazardous emissions or waste.

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- **Mitigation** involves methods to reduce the impact associated with the emission or waste and may involve re-use and recycling practices where economically and technically feasible. .
- **Treatment** of emissions or waste is on the lower end of the control and abatement hierarchy. Emissions or wastes are treated in order to reduce the impacts to the environment.
- **Disposal** is the least preferred option of environmental management, and applies mainly to waste generation.
- Consider a specific assessment using qualified experts to identify and characterise wastes and emissions, calculate costs and liabilities, develop performance metrics and targets, and identify options for improved waste management. Options may include:
 - Technical measures (e.g. pollution control equipment, bunding);
 - Operational controls (e.g. better defined procedures, controls on hours of operations);
 - Production controls (e.g. restricting and controlling the types of materials used in the production process);
 - Management controls (e.g. better supervision, clearly defined responsibilities and authorities); and
 - Training.
- Conduct due diligence regarding the selection and management of waste contractors. This includes a review of the licences held by the waste transporter and disposal site which match the nature of the waste materials and periodic audits of the waste contractors. Responsible waste management should be incorporated into contractor selection criteria and contract documents.

Check:

- ✓ Have you identified significant wastes and emissions streams from all company operations? Can you show how this been done, is it documented?
- ✓ Are you aware of applicable law and comply with all regulatory limits?
- ✓ Have you identified opportunities to reduce wastes and emissions?
- ✓ Can you demonstrate measures taken to reduce, recover, re-use or recycle wastes or emissions?
- ✓ Are significant wastes and emissions monitored regularly and subject to a policy and procedures for responsible management?
- ✓ Is responsible waste management part of your overall environmental management system?

E. Further information

The following websites have further information on waste management:

- Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa
www.ban.org/Library/bamako_treaty.html
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
www.basel.int/
- Environment Protection Authority – Waste Assessment (Victoria (Australia)
www.epa.vic.gov.au/bus/resource_efficiency/waste_assessment.asp
- Global Reporting Initiative (GRI)
www.globalreporting.org/Pages/default.aspx
- International Cyanide Management Code – For the Gold Mining Industry
www.cyanidecode.org/
- International Finance Corporation (IFC) Performance Standard 3 – Resource Efficiency and Pollution Prevention (2012)
http://www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3_English_2012.pdf?MOD=AJPERES
- International Organisation for Standardisation (ISO) 14000 – Environment Management

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www.iso.org/iso/iso_catalogue/management_standards/iso_9000_iso_14000/iso_14000_essentials.htm

- Sustainable Business Associates – Download Tools
www.sba-int.ch/1083-Download_Tools
- Zero Waste International Alliance
www.zwia.org

STANDARD GUIDANCE

(COP 25) Use of Natural Resources

A. Definition and applicability

Natural resources are materials or substances found in nature, such as coal, mineral oil, natural gas, water, and forest products, that are used in human activities.

Source:

- Summarised from RJC Code of Practices (2013)

The **Use of Natural Resources** section of the COP is applicable to all Facilities.

The **Use of Natural Resources** section of the COP should be read and implemented in conjunction with the **Environmental Management**, and **Wastes and Emissions** sections of the COP.

B. Issue background

Natural resources such as energy and water are increasingly the focus of efficiency measures in business. Efficiency improvements are one of the most effective ways to create business cost savings. They can be implemented in buildings and facilities, production processes and end-use products.

One of the strongest arguments for energy efficiency is that its benefits can often be easily forecasted, measured and calculated. Businesses can save energy in many ways including:

- Installing efficient lighting;
- Capturing and reusing waste heat;
- Regular scheduled equipment maintenance;
- Insulating buildings;
- Timers for heating and cooling systems;
- Energy efficient office appliances;
- Minimising the use of hot water;
- Equipment and process optimisation;
- Turning off all lights and equipment when they do not need to be operating.

Businesses have also generated significant cost savings from more efficiently using and treating water in their operations and facilities. Opportunities include:

- Fixing dripping taps and leaking pipes;
- Installing water saving accessories in the business (local water authorities can usually provide advice);
- Consider treating water for reuse rather than disposing;
- Avoid using water where dry techniques are available eg for cleaning or conveying materials;
- Substitution of potable water with lower quality (environmental and social value) water;
- Determine the minimum volume of water required for processes and make improvements where possible.

Metering water and energy consumption can identify what opportunities may exist in the business.

Inefficient use of fossil fuels can exacerbate the contribution of greenhouse gases into the environment leading to climate change. Climate change caused by greenhouse gases is one of the most serious challenges facing communities all over the world. Greenhouse gas abatement is not just for big business. Most measures to reduce energy consumption and greenhouse gas emissions will save money in the long term, increasing profitability. Reducing energy consumption and greenhouse gas emissions should be seen as an opportunity to provide businesses with a strong business advantage.

Carbon or emissions trading has become available in some markets. It is usually run by a government or central authority and aims to provide an economic incentive for businesses to reduce emissions. Carbon offsets generally refer to acts to mitigate emissions arranged by a commercial or not-for-profit provider. Offset methods include tree planting, renewable energy investment, energy conservation and methane capture. There are debates about the ultimate effectiveness of these approaches. They should be seen as complementary to more direct efforts to reduce energy consumption and emissions by facilities and operations, including transportation.

Other resources that businesses can target for efficiency measures include forest products (paper, cardboard and wood) and plastics (for example in packaging).

C. Key regulations

International standards

Despite great advances in energy and water efficiency awareness, relatively few common standards exist. Most energy or water labelling programs, minimum efficiency standards and building codes are voluntary and vary depending upon industry sector and location. However where available, they can provide a means of comparison between different product and process choices.

The United Nations Framework Convention on Climate Change (1994) has been ratified by 192 countries, achieving near universal membership. The Climate Change Convention was created to begin considering what can be done to reduce global warming and how to cope with any inevitable changes. The Kyoto Protocol is an addition to the Convention. It is a legally binding agreement for signatories to reduce greenhouse gas emissions worldwide.

The International Finance Corporation (IFC) Performance Standard 3 – Resource Efficiency and Pollution Prevention (2012) provides detailed requirements and associated guidance to:

- Promote more sustainable use of resources including energy and water
- Reduce project-related greenhouse gas emissions.

Specifically the Standard requires facilities to consider technically and financially feasible and cost effective measures through-out the life-cycle or the operation regarding consumption of energy, water and other materials. Cost-effectiveness is determined according to the capital and operational cost and financial benefits of the measure considered over the life of the measure. For the purpose of the IFC Performance Standard, a resource efficiency or greenhouse gas emissions reduction measure is considered cost-effective if it is expected to provide a risk-rated return on investment at least comparable to the project itself.

National law

Governments at national and regional levels often set regulations, guidelines and industry targets for water and energy efficiency. Under the Convention, governments are required to launch national strategies for greenhouse gas emissions. This can involve national targets for emissions reductions, and include specific legislation and regulations relating to the use of energy and resources.

As this is a rapidly changing area, it is important to keep abreast of legal requirements and business incentives relating to energy and resource use.

D. Suggested implementation approach

- **COP 25.1: Energy and water:** Members shall monitor energy and water usage in their business operations and put in place energy and water efficiency initiatives.
- **COP 25.2: Other resources:** Members shall identify other significant natural resources used in their business processes and seek to ensure their efficient use.
Points to consider:
 - Virtually all workplaces require the use of energy, water and other natural resources, such as minerals, and forest products.

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- Members should identify sources of water extracted and consumed (by source, quality and quantity), energy consumed (including fuel type, and quantity) and any other significant resources.
 - To the extent possible, energy usage should support the establishment of a balance showing emissions of greenhouse gases from key production activities.
 - Significance of other resource use could be determined by the type of the resource (eg scarcity or risk of impact), and/or the volume used by the business.
- Use the general hierarchy of control to eliminate and reduce impacts from water, energy and other significant resource usage.
 - For instance, substitute (select or modify) equipment, processes and/or products to eliminate or reduce water, energy and other resource consumption (and any associated greenhouse emissions) by adopting technically and financially feasible and cost-effective solutions.
- Monitoring of consumption should in most cases be straightforward as the inputs must normally be purchased.
 - Monitoring of water and energy may not be practicable for smaller workplaces that are not separately metered, such as offices in an office building. In these cases, members should still implement initiatives to increase efficiency where feasible (see examples above).
 - For larger workplaces and those that use processes that require the consumption of water, energy or other resources, Members should:
 - establish procedures to monitor consumption and track it over time
 - consider establishing targets for efficiency improvements
 - undertake technical analyses appropriate to the nature of the business processes to identify cost-effective efficiency improvements.
 - Make use of information and advisory services from local utility providers and public agencies, where available and appropriate.
 - Consider use of energy audit services by qualified experts to provide detailed, written assessments of consumption and opportunities for efficiency improvements.
- Prioritise initiatives according to cost, savings and certainty.
 - Meaningful efficiency improvements can frequently be realised without new investments, and should be prioritised. For example, simple actions such as reminding workers to shut off equipment or lighting when not in use can be implemented with very little cost.
 - Consider simple payback calculations (how long it would take for an expenditure to be recovered through reduced consumption costs) to demonstrate and communicate the advantages of efficiency improvements and prioritise initiatives.
 - As a general rule, initiatives that generate a positive financial return should be implemented, unless other risks are identified.
 - Greenhouse gas emissions and efficient energy use over the lifecycle of each product, project or process should be taken into consideration when considering energy efficiency measures.

Check:

- ✓ Are you monitoring energy and water usage?
- ✓ Have you put in place energy and water efficiency initiatives?
- ✓ Have you identified other significant natural resources used in the business, such as paper products?
- ✓ Can you show the auditor how you try to ensure they are used efficiently?

E. Further information

The following websites have further information on water, energy and other natural resources:

- Business for Social Responsibility – Energy
www.bsr.org/en/our-work/industry-focus/energy
- Carbon Catalogue – Carbon Offset Directory
<http://forestcarbonportal.org/>
- Carbon Footprint – Reducing Your Impact
www.carbonfootprint.com/
- Environmental Protection Agency – Conserving Energy (Australia)
www.epa.vic.gov.au/bus/resource_efficiency/conserves_energy.asp
- Environmental Protection Agency – Conserving Water (Australia)
www.epa.vic.gov.au/bus/resource_efficiency/conserves_water.asp
- Friends of the Earth Scotland – Green Travel Plan
www.green-office.org.uk/audit.php?goingto=factsheet7
- Greenhouse Gas Protocol – Corporate Standard
www.ghgprotocol.org/standards/corporate-standard
- Intergovernmental Panel on Climate Change (IPCC)
www.ipcc.ch/publications_and_data/ar4/syr/en/mains1.html
- International Emissions Trading Association (IETA)
www.ieta.org/
- International Finance Corporation (IFC) Performance Standard 3 – Resource Efficiency and Pollution Prevention (2012)
http://www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3_English_2012.pdf?MOD=AJPERES
- United Nations Framework Convention on Climate Change (UNFCCC) – The international response to climate change
unfccc.int/essential_background/items/2877.php
- United States Environmental Protection Agency – WaterSense
www.epa.gov/watersense/

5. DIAMONDS, GOLD AND PLATINUM GROUP METALS PRODUCTS

STANDARD GUIDANCE

(COP 26) Product Disclosure

A. Definitions and applicability

Product disclosure in the jewellery industry concerns proper and accurate disclosure of all relevant information about jewellery products, including diamond, treated diamond, synthetic, simulant, gold and platinum group metals products.

Representation includes illustrations, descriptions, expressions, words, figures, depictions or symbols shown in a manner that may reasonably be regarded as relating to the jewellery product. Representations, particularly to the final consumer, must be truthful and accurate.

Selling includes offering for sale, exposing for sale, displaying in such a manner as to lead to a reasonable belief that the product so displayed is intended for sale. For avoidance of doubt, this includes the accepted industry practice of “memo”, the practice of consigning goods to clients for pre-arranged periods for potential sale.

Advertising includes directly or indirectly promoting the sale or use of a product.

A **treated diamond** has undergone a process to enhance its quality.

A **synthetic** is a diamond that has been man-made, rather than mined, but has the same physical properties.

A **simulant** is a non-diamond material that is used to imitate the appearance of a diamond.

Sources:

- Summarised from RJC Code of Practices (2013)
- The World Jewellery Confederation (CIBJO) – The Blue Books
www.cibjo.org/index.php?option=com_content&view=article&id=270&Itemid=261

The **Product Disclosure** section of the COP is applicable to Facilities which handle diamond and/or gold and/or platinum group metals products.

B. Issue background

Product disclosure within the jewellery industry depends on honesty and transparency about the nature and quality of products being bought and sold. It is of particular importance to the gold, platinum group metals and diamond supply chain, since jewellery is often a high value discretionary purchase. End consumers frequently have limited technical knowledge of the articles they are buying and rely on the advice of sellers. New technologies, such as for the treatment of stones, creation of synthetic and simulant stones and development of new alloys, are making the supply chain and consumer market even more complex.

To protect consumers and to assist the gold and diamond industry, industry guidelines and legal requirements in individual countries have been established in the following areas:

- Gold assaying, quality marking or hallmarking to indicate fineness;
- Diamond grading for larger stones through independent gemmological laboratories; and
- Standards of terminology and classification for the communication of product attributes.

Misinformation about articles sold, at any level of the supply chain through to the end consumer, poses a significant risk to the reputation of individual companies and the industry as a whole. At a company level, failure to disclose all relevant information, or false statements about articles sold, exposes a Member to risk of expulsion from industry organisations and loss of trade.

There is also a substantial legal risk. Selling diamond and/or gold and/or platinum group metals jewellery articles without disclosing full and accurate information about the product or providing misleading information, even unknowingly, is illegal under most jurisdictions. Offenders can face penalties including fines and prison sentences.

C. Key regulations

International standards

The main international standards for product disclosure and representations have been developed by industry organisations as part of a self-regulatory approach. The World Jewellery Confederation, CIBJO, hosts the Blue Books: publications outlining terminology, classification and ethical guidelines for diamonds and precious metals (see the Diamond Book and Precious Metals Book respectively). CIBJO Blue Books are considered an important standard for product disclosure and, while voluntary, are directed to wholesalers, suppliers, manufacturers and retailers at all points in the trade internationally. The standards are designed to apply to all methods of marketing and sales and both direct and indirect assertions about the products.

In 2008, the International Diamond Council launched new Rules for Grading Polished Diamonds. Since their publication, the IDC rules have been recognised by CIBJO and become the reference point for clear diamond terminology aimed at benefiting consumer confidence in diamonds. The revised IDC rules include terminology that broadens the range of descriptors that can be used for gem-quality diamonds that have been created in laboratory or factory, and to date have been referred to as "synthetic." This revision has been reflected in the 2008 RJC Code of Practices.

The World Gold Council (WGC) hosts information about international standards for gold fineness. There are also detailed summaries of national requirements for gold jewellery fineness and marking online. The WGC publishes several handbooks and manuals on gold jewellery manufacture, including technical guidance on assaying and refining gold.

National law

Relevant national law and regulations will vary according to the country concerned, but tend to be in the areas of consumer protection, trading standards or fraud. Most countries have laws regulating trading and consumer marketing that make it unlawful to wrongly describe any goods in terms of their composition, physical characteristics, or history. In addition, some countries have specific laws or regulations relating to gemstones and precious metals. For example, the United States Federal Trade Commission (FTC) has Guides for the Jewelry, Precious Metals and Pewter Industries. Members should use the terms set down in national legislation, and in the case of no Applicable Law, follow the Code of Practices.

Legal obligations may cover knowingly, as well as unknowingly, providing wrongful or misleading information in the sale of goods. Members should ensure that they maintain up to date knowledge of the relevant legislation in all their areas of operation.

Note – if there is a conflict with RJC provisions and Applicable Law, then the law has precedence. Any such situations should be alerted to RJC so that consistent advice to Members and Auditors can be developed.

Box X: "Black Diamond"

Although black diamond may occur in nature, polished diamonds that are back in colour are very likely to have been treated. Some marketers may assume this is commonly known, and may refer to them simply as "black diamond" without providing disclosure of the treatment. This is improper.

Whenever a diamond has been treated, it must be disclosed. As stated in the CIBJO Blue Book, specific reference to the particular treatment must be provided, and the description shall be as conspicuous and immediately preceding the word(s) diamond or synthetic diamond as the case may be.

D. Suggested implementation approach

- **COP 26.1: Representations:** *Members shall not make any untruthful, misleading or deceptive representation, or make any material omission in the selling, advertising or marketing of any Diamond, Synthetic or Simulant, and/or any Gold, and/or any Platinum Group Metals Jewellery Products.*

Points to consider:

 - A misrepresentation or material omission involves the deliberate avoidance or misstatement of information that could influence a purchaser's decision, and may be illegal.
 - Members should ensure they are aware of the Applicable Law regarding false and misleading representations, particularly for consumers.
 - A representation can take many different forms, such as symbols and depictions in addition to words, and may be express or implied.
 - A representation can be made in many different types of mediums, including the Internet.
 - Sales staff should be trained to ensure they are aware of legal obligations and do not engage in misleading or deceptive verbal representations about products being offered for sale.
 - Whether information is material can depend on the business context – for example material information for a retail consumer could be different from material information for a professional engaged in a business to business transaction. If judgement is necessary to determine whether information is material, such as in a business to business context, consideration may be given to whether omission of the information would be inconsistent with accepted business practices in the sector or jurisdiction.

- **COP 26.2: Disclosure:** *Information on the physical characteristics of Diamonds, Synthetics or Simulants, Gold and/or Platinum Group Metals shall be disclosed in compliance with Applicable Law. Unless a conflict with Applicable Law exists, Members shall apply the following requirements to support relevant disclosure about physical characteristics.*

Points to consider:

 - Implementing the **Legal Compliance** provision should include a review of relevant product disclosure standards and regulatory requirements.
 - Evidence of a lack of familiarity with the Applicable Law on the part of senior managers, particularly if the business is engaged in retail sales, will indicate a much higher risk of non-compliance and should be of concern to auditors.
 - Disclosure is required by the seller, even if the purchaser has not requested it.
 - Full written disclosure should be conspicuously included on all commercial documents in clear and plain language so as to be readily understandable to the purchaser. The disclosure should immediately precede the description of the diamond, treated diamond or synthetic and be equally conspicuous to that description.
 - A policy should be established on product disclosure that explains relevant laws, regulations and industry standards, including penalties for non-compliance.
 - Relevant employees should receive training consistent with the policy, and ensures, where appropriate, knowledge of:
 - Diamond identification through the '4 Cs'
 - Applicable Gold Quality Marks and Hallmarks identification;
 - CIBJO Blue Book (or equivalent standards) for disclosure and communication.
 - Procedures should be in place for proper information disclosure in all product transactions, including purchases. Procedures should include a clear statement on how to proceed should a supplier fail to provide appropriate product information.
 - Members should establish, where applicable, procedures for the review and approval of sales and marketing materials to ensure they comply with the law and with the specific requirements in the Code of Practices, and do not contain any information that could be misleading or deceptive.
 - Record keeping is a key element to product disclosure and integrity, especially at the stage where resources are being processed (gold refined, or diamonds cut, for example). Members should clearly identify who is responsible for implementing and checking record-keeping procedures.

- **a. Gold and Platinum Group Metals:** *The fineness Gold or Platinum Group Metal shall be accurately disclosed. The description of fineness or content shall be equally conspicuous as the word "Gold", or the*

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Platinum Group Metal, or abbreviation, and any Quality Marks used shall be applied in accordance with Applicable Law or industry standards.

Points to consider:

- If Quality Marks are applied, it must indicate the quality of the Gold or Platinum Group Metal and be in accordance with Applicable Law or relevant international standards.
- The description of fineness would not be required if Applicable Law allows for it not to be stated; for example some jurisdictions do not require the fineness to be described for Gold that is 24k and Platinum that is more than 950 per thousand.

b. Treated Diamonds: *Treated Diamonds shall be disclosed as either “Treated” or with specific reference to the particular Treatment. The description shall be equally conspicuous as the word(s) “Diamond”. Any special care requirements that the Treatment creates shall be disclosed.*

Points to consider:

- Any term that is designed to disguise that Treatment has occurred, or to imply that a Treatment is part of the normal polishing process, or that misleads the consumer in any way, must not be used. For example, the term “improved” must not be used to describe a Treated Diamond.
- The placement of the description of the treatment is not prescribed in the Code of Practices, providing the required words appear in association with, and are equally conspicuous as word(s) “Diamond” or “Synthetic”. However check Applicable Law for any additional requirements.
- Names of firms, manufacturers or trademarks are not to be used in connection with Treated Diamonds, unless such names are clearly succeeded by the word “Treated” as defined in this section or are otherwise equally conspicuously and prominently disclosed as Treated.

c. Synthetic Diamonds: *Wholly or partially Synthetic diamonds shall be disclosed as “laboratory created”, “laboratory grown”, and/or “Synthetic” and the description shall be equally conspicuous as the word “diamond”.*

Points to consider:

- The term “cultured” is not an acceptable description for Synthetic diamonds.
- Any term that is designed to disguise the fact that a diamond is Synthetic or that misleads the consumer in any way must not be used.
- The term “diamond” without qualification always means a natural diamond.

d. Simulants: *Simulants that imitate the appearance of Diamonds shall be disclosed as the mineral or compound that it is.*

Points to consider:

- Any term that is designed to disguise the fact that a stone is a Simulant or that misleads the consumer in any way must not be used.
- The words “real”, “genuine” or similar to describe any Simulant would be misleading and must not be used. The word “natural” to describe any Simulant must not be used, unless the Simulant is a naturally occurring mineral or compound.
- Note this provision applies to Simulants that are for sale. Simulants used for promotional purposes / display, for example in retail environments, do not require an associated disclosure unless they are offered for sale.

e. Diamond Quality – Polished Diamonds: *When describing the weight, colour, clarity or cut of Diamonds and Synthetics, this shall be in accordance with the recognised guidelines appropriate to the particular jurisdiction.*

Points to consider:

- If the descriptions do not include weight, colour, clarity or cut - for example for small diamonds set in jewellery - it is not necessary for all diamonds to be individually described in accordance with these rules. However when the weight, colour, clarity or cut are described, then the description must be in accordance with International Diamond Council Rules for Grading Polished Diamonds.
- The word “flawless” or “perfect” must not be used to describe:

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- any Diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination by a person skilled in Diamond grading; or
- any article of Jewellery that contains any Diamonds that do not meet the definition of “flawless” or “perfect”.
- o The terms “brilliant”, “brilliant cut” or “full cut” must not be used to describe, identify or refer to any Diamond except a round Diamond that has at least 32 facets plus the table above the girdle, and at least 24 facets below it.

f. Product Health and Safety Information: *Any relevant health and safety information about Diamond, Synthetic, Gold and/or Platinum Group Metals Jewellery Products sold by Members to end consumers shall be disclosed.*

Points to consider:

- o In its natural solid or metallic state, gold is inert and considered non-hazardous. However it is commonly used in varying levels of purity and can be sold in jewellery in fineness ranging from 9 carat (usually 37.5% Au w/w) to 24 carat (usually 99.9% Au w/w). On skin, gold may cause contact dermatitis, while ingestion is generally non-toxic.
- o Gold jewellery that is formed of alloys containing nickel has been documented to cause nickel allergies. Nickel allergies usually appear first in the form of a red itchy rash, normally wherever nickel is in close contact with the skin. While nickel is a common component in many metal alloys found in everyday life, an allergy is most often triggered by metal jewellery containing nickel. It is thus sometimes referred to as ‘jewellery dermatitis’. Treating nickel allergy requires affected people avoiding contact with anything containing nickel.
- o Diamonds in their natural crystalline state are the hardest known natural material and chemically inert. The only potential health hazards that may arise are through treatments designed to improve the stone’s gemological characteristics and value.
- o Irradiation of diamonds is a treatment used to enhance colour. Irradiation can make stones slightly radioactive, and they are usually set aside for a period of time to allow the radioactivity to decay. Distribution of irradiated stones usually undergoes a regulated process to check that radioactivity is below regulatory limits.

Check:

- ✓ Do you know the applicable regulatory requirements and disclosure standards for diamonds, gold and platinum group metals products?
- ✓ Can you show the auditor how you check that sales and marketing materials comply with the law and with the specific requirements in the Code of Practices?
- ✓ Do you have appropriate record-keeping and training to support proper product disclosure?

E. Further information

The following websites have further information on the issue of product disclosure:

- International Diamond Council (IDC) – IDC Rule Book
www.internationaldiamondcouncil.org/books/idc-rule-book/idc-rule-book
- In the Loupe – Advertising Diamonds, Gemstones and Pearls (US)
www.lawpublish.com/ftc-gem.html
- Jewelers Vigilance Committee
www.jvclegal.org
- The World Jewellery Confederation (CIBJO) – The Blue Books
www.cibjo.org/index.php?option=com_content&view=article&id=270&Itemid=261
- The World Jewellery Confederation (CIBJO) – Special Report: Precious Metals Commission reviews changing legislation in European Union (2013)
[congress2013.cibjo.org/CIBJO%20Special%20Report%20\(Precious%20Metals%20Commission\)%202013.pdf](http://congress2013.cibjo.org/CIBJO%20Special%20Report%20(Precious%20Metals%20Commission)%202013.pdf)

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- U.S. Government - Federal Trade Commission - Decision on petition regarding use of term 'cultured' for gemstones (2008)
www.ftc.gov/opa/2008/07/jvc.shtm
- U.S. Government - Federal Trade Commission – Jewelry Guides and Information (2011)
www.ftc.gov/os/statutes/jewelrjump.shtm
- World Gold Council (WGC)
www.gold.org/

STANDARD GUIDANCE

(COP 27) Kimberley Process Certification Scheme and World Diamond Council System of Warranties

A. Definitions and applicability

The **Kimberley Process** is a joint government, international diamond industry and civil society initiative to stem the flow of conflict diamonds.

Conflict diamonds is a term for rough diamonds that are used by rebel movements to finance wars against legitimate governments.

The **World Diamond Council System of Warranties** is a program of self regulation that tracks diamonds, after Kimberley Process certifies them, through the supply chain. The System of Warranties requires all diamond suppliers and diamond jewellery manufacturers to pass on a warranty statement each time diamond goods change hands, assuring the next buyer the diamonds originated within the Kimberley Process system.

Source:

- *The Kimberley Process Certification Scheme*
www.kimberleyprocess.com
- *Jewelers of America (US)*
www.jewelers.org

The **Kimberley Process Certification Scheme and World Diamond Council System of Warranties** section of the COP is applicable to Facilities which handle diamonds.

B. Issue background

The issue of conflict diamonds began gaining public prominence in the late 1990s. Human rights non-governmental organisations (NGOs) drew attention to the illegal trade in rough diamonds. This trade was funding rebel movements in Angola and Sierra Leone and indirectly contributing to human rights atrocities. The diamond industry was brought into the media and consumer spotlight.

In response, the diamond and jewellery industry, through its designated representative organisation the World Diamond Council (WDC), began working with the United Nations, key governments and NGOs to seek a solution. These meetings became known as the Kimberley Process. The outcome was the Kimberley Process Certification Scheme (KPCS) which aims to prevent conflict diamonds from entering the supply chain. The system is implemented by governments and tracks the export and import of shipments of legitimate rough diamonds between participating countries. To support it, the WDC also created a voluntary program of industry self-regulation called the System of Warranties (SoW) which extends to the trade in cut and polished stones.

The diamond industry has made a strong commitment to the Kimberley Process, as complicity in the sale of conflict diamonds poses a significant risk to the reputation of individual companies and for the industry as a whole. For companies, failure to abide by KPCS or the WDC SoW exposes the member to expulsion from industry organisations and loss in trade.

The KPCS/SoW has in recent years been criticised for its lack of effectiveness due to the original definition of 'conflict diamond', which aims at rebel movements but does not include violence and human rights abuses perpetrated by state actors or private security firms. In this sense, while compliance with the KPCS is essential, from a broader perspective it may not necessarily provide assurance against diamonds being connected with other types of conflict-affected or high-risk situations affecting the diamond supply chain. It is also important

to be aware that transactions in diamonds that comply with the KPCS could still be illegal if they involve individuals, entities or organisations who have been targeted by national or international sanctions.

C. Key regulations

The Kimberley Process Certification Scheme (KPCS)

The Kimberley Process Certification Scheme came into effect in 2003. The KPCS requires participating nations to keep conflict diamonds out of legitimate channels of commerce. All imports and exports of rough diamonds must be via a government office. This office verifies the source, packs diamond consignments to be transported in tamper-resistant containers and issues the accompanying government-validated Kimberley Process Certificate. Each forgery-resistant certificate must be uniquely numbered and include data describing the shipment's contents and the country of origin. Government signatories to the Kimberley Process are required to implement internal controls on the movement of diamonds and can only export/import diamonds to/from other countries that are part of the KPCS. Note that rough diamonds which are cut and polished within their country of origin do not fall under the KPCS.

The World Diamond Council System of Warranties (SoW)

To provide industry support for the KPCS and additional assurance to end-consumers, the World Diamond Council (WDC) created a voluntary program of self-regulation, the System of Warranties (SoW). It requires that all consignments of diamonds, whether rough, polished, or set in jewellery, be accompanied by a written warranty on all invoices through the supply chain. This applies each time the diamonds change hands and extends down to retail jewellers (but not to end-consumers). The official WDC warranty statement reads:

"The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds."

Note that the WDC SoW statement is not included on invoices to the final consumer. For retailers, all invoices to buy diamonds and for sales to businesses, as opposed to consumers, have to contain the statement.

Records must be kept of the warranty invoices received and issued, which must be auditable and reconciled on an annual basis. If asked for by a duly authorised government agency, these records must be able to prove compliance with the Kimberley Process for rough diamonds.

Industry Principles of Self-Regulation

In addition to KP and SoW adherence, all diamond and jewellery industry organisations and their members have adopted the following principles of self-regulation, obliging them to:

- trade only with companies that include warranty declarations on their invoices;
- not buy diamonds from suspect sources or unknown suppliers, or which originate in countries that have not implemented the Kimberley Process Certification Scheme;
- not buy diamonds from any sources that, after a legally binding due process system, have been found to have violated government regulations restricting the trade in conflict diamonds;
- not buy diamonds in or from any region that is subject to an advisory by a governmental authority indicating that conflict diamonds are coming from or available for sale in such region, unless diamonds have been exported from such region in compliance with the Kimberley Process Certification Scheme;
- not knowingly buy, sell or assist others to buy or sell conflict diamonds;
- ensure that all company personnel that buy or sell diamonds are well informed regarding trade resolutions and government regulations restricting the trade in conflict diamonds.

National and International Sanctions

Sanctions can encompass a wide variety of measures, including legislation and regulations that restrict or prohibit trade or other economic activity with a target state, or with non-state individuals, entities or organisations. These measures are often applied multilaterally, under UN Security Council Resolutions. Sanctions can prohibit both direct and indirect transactions with blocked entities or individuals. Current information about applicable sanctions can be found through lists maintained by relevant authorities.

D. Suggested implementation approach

- **COP 27.1: Conflict Diamonds:** *Members shall not knowingly buy or sell Conflict Diamonds or assist others to do so.*

Points to consider:

- A senior manager should have responsibility for managing the KPCS/SoW implementation, including the internal program, staff training and any external reporting, and for maintaining up to date information on any applicable sanctions (see also [Legal Compliance](#)).
- A risk assessment appropriate to the business' circumstances may be useful to identify vulnerability to involvement in the sale of conflict diamonds and to transactions with targeted individuals, entities or organisations.
- Systems should be in place, including procedures, testing and training, to prevent transactions of diamonds from suspect sources or unknown suppliers, or which originate in countries that have not implemented the KPCS, or which are likely to involve targeted individuals, entities or organisations.
- Due diligence should be undertaken if there are suspicions that transactions could indirectly involve targeted individuals, entities or organisations.

- **COP 27.2: Kimberley Process Certification Scheme:** *Members, where involved with the international trade of rough Diamonds, shall apply the rough Diamond export and import verification system and controls as laid out by the Kimberley Process Certification Scheme and relevant national legislation.*

Points to consider:

- Each shipment of rough diamonds being exported and crossing an international border must be accompanied by a uniquely numbered and government-validated Kimberley Process Certificate.
- Companies who wish to re-export rough diamonds already imported under a KP Certificate must be able to demonstrate in an auditable manner that the diamonds contained in the shipment are covered by the necessary warranties.
- Members should have access to and be familiar with the relevant national legislation implementing the Kimberley Process in all jurisdictions where they operate.

- **COP 27.3: System of Warranties:** *Members, where involved in buying and selling Diamonds, whether rough, polished or set in Jewellery, shall adopt the World Diamond Council System of Warranties and have systems to ensure that all associated invoices contain the following affirmative statement, or equivalent wording which provides the same warranty:*

"The Diamonds herein invoiced have been purchased from legitimate sources not involved in the funding of conflict and in conformance with United Nations resolutions. The seller hereby guarantees that these Diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the Supplier of these Diamonds."

Points to consider:

- The SOW statement must accompany each individual invoice.
- Procedures should be in place to ensure that shipments of diamonds are not accepted if they are not accompanied by the warranty statement and set out next steps should a supplier fail to provide an adequate warranty.

- **COP 27.4: Audits:** *Members shall keep records of all Kimberley Process certificates and System of Warranties invoices received and issued, and have them audited and reconciled on an annual basis either as part of an RJC Verification Assessment, or by an RJC Accredited Auditor during the Certification Period, or by a separate independent auditor, as suits the circumstances of the business. If asked for by a duly authorised government agency, these records must be able to prove compliance with the Kimberley Process.*

Points to consider:

- Records of warranty invoices received and warrant invoices issued should be kept for five years.
- Every year, your auditor must be able to verify that you have maintained accurate and reconcilable records of warranties received and warranties given.

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- Record-keeping related to the SoW should be integrated into normal internal control procedures.
 - The auditor should be independent of the Member.
 - Consider having the auditor review and test your KPCS/SoW procedures.
- **COP 27.5: Maintain awareness:** *Members shall maintain awareness of and comply with applicable international and national sanctions that prohibit transactions involving Diamonds with targeted individuals, entities or organisations.*
Points to consider:
 - See **Points to consider** under COP 27.1 above.
 - **COP 27.6: Inform Employees:** *Members shall inform all Employees that buy or sell Diamonds about government restrictions on the trade in Diamonds, Conflict Diamonds, the Kimberley Process Certification Scheme and the World Diamond Council System of Warranties.*
Points to consider:
 - The responsible manager should maintain a record of all Employees that buy or sell diamonds and register that they have received training.
 - Training should be appropriate to employees' role and responsibilities and include training on procedures to be followed to ensure compliance with the KPCS and the SoW.
 - Consider a requirement that all such employees sign a document stating that they have read and understand the World Diamond Council's *Essential Guide to Implementing the Kimberley Process*.

Check:

- ✓ Do you have a system in place to prevent purchases of conflict diamonds and transactions with blocked entities?
- ✓ Have your employees received training on the FPCS/SoW?
- ✓ Are you aware of applicable national and international sanctions?
- ✓ Does an independent auditor annually verify you have maintained accurate and reconcilable records of warranties received and given?

E. Further information

The following websites have further information on the Kimberley Process Certification Scheme and System of Warranties:

- De Beers – Conflict Diamonds
www.debeersgroup.com/sustainability/ethics/conflict-diamonds/
- Diamond Development Initiative (DDI)
www.ddiglobal.org
- European Commission European External Action Service - Sanctions
http://eeas.europa.eu/cfsp/sanctions/index_en.htm
- Global Witness – Conflict Diamonds
www.globalwitness.org/conflict-diamonds
- Jewelers of America (US)
www.jewelers.org
- Kimberley Process Certification Scheme:
www.kimberleyprocess.com
- Partnership Africa Canada – Conflict Diamonds
www.pacweb.org/en/conflict-diamonds
- US Department of the Treasury – Office of Foreign Assets Control
www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
- UN Security Council Sanctions Lists
www.un.org/sc/committees/index.shtml
- World Diamond Council - Diamond Facts
www.diamondfacts.org

STANDARD GUIDANCE

(COP 28) Grading and Appraisal

A. Definitions and applicability

Diamond Grading is classifying a diamond's characteristics, in terms of cut, colour, clarity and carat weight.

Diamond grading is a process of classification of characteristics of gemstones, which can be carried out in independent laboratories or in-house. While a diamond can be weighed accurately and given an exact carat value, eg 1.17cts, the cut, colour and clarity of a diamond are classified and reported within a range. For example, an E colour diamond is one that is better than F but worse than D; similarly a VS1 clarity is better than VS2 but worse than VVS2. Standards and methodologies for diamond grading, and information contained in grading reports or certificates, vary depending on the laboratory.

A **Diamond Grading Report** is a report on the grading of a Diamond's physical characteristics, usually in terms of cut, colour, clarity and carat weight. If an opinion on monetary value is included in a Diamond Grading Report, it is also considered to be an Appraisal Report.

Appraising is generating an opinion of monetary value based on the identity, composition, and qualities of a jewellery item.

Appraising (or valuation) draws on the information generated by assaying and grading and assigns and documents a monetary value to a jewellery item. Guides, price lists and expertise are used by appraisers to identify composition and qualities, and put a value on gemstones or jewellery. Appraisals can be generated for insurance, probate or market assessment. Some appraisers offer independent services while others may work in, or own, a retail environment. The use of appraisals in retail sales may raise legal issues under consumer protection laws, which can vary significantly across jurisdictions.

An **Appraisal Report** is a documented opinion of monetary value based on the identity, composition, and qualities of a jewellery item.

B. Issue background

Grading and appraisal reports play an important role in the jewellery industry and can assist consumers in making purchasing decisions and in protecting and insuring their property. Information provided in grading and appraisal reports must therefore be transparent and not used in a manner that could be deceptive.

Both grading and appraisal involves expert judgement and opinion, and may at times be provided by persons who are not independent. If the grader or appraiser has any vested interest in the item being graded or appraised, it is essential that this interest be disclosed.

A diamond grading report, or grading certificate, normally includes the weight, colour, clarity and cut of an un-mounted stone. The report may also include a statement regarding whether the diamond has been identified as natural, or if it is treated or synthetic, the shape and measurements, cut proportions and finish grade, fluorescence, comments on any identification marks, and place and date of issue.

Appraisals in the jewellery industry are frequently provided by retailers for insurance purposes. Applicable law and industry guidelines may draw an important distinction between such appraisals, which may be more accurately referred to as "insurance replacement cost estimates", and appraisals that are carried out by experts in accordance with recognised professional standards such as the International Valuation Standards Council and the Uniform Standards of Professional Appraisal Practice.

C. Key regulations

International standards

Applicable to diamond grading:

The International Diamond Council has established Rules for Grading Polished Diamonds, which were updated in 2009. The IDC rules have been recognised by CIBJO, and have become the reference point for clear diamond terminology aimed at benefiting consumer confidence in diamonds. The revised IDC rules include terminology that broadens the range of descriptors that can be used for gem-quality diamonds that have been created in laboratory or factory, and to date have been referred to as "synthetic."

ISO/IEC 17025:2005 sets out general requirements for the competence to carry out tests and/or calibrations. It is used for laboratories in developing their management system for quality, administrative and technical operations.

CIBJO Gemmological Laboratory Book provides guidance for gemmological laboratories in developing their management system for quality, administrative and technical operations including.

The CIBJO Diamond Book is designed to assist all those involved in the purchase or sale of diamonds, treated diamonds, synthetic diamonds and imitations of diamond to ensure the use of proper nomenclature.

Applicable to appraisal:

The International Valuation Standards Council (IVSC) develops technical and ethical standards for the conduct of valuations.

The Appraisal Foundation publishes the generally accepted standards of the valuation profession in the United States, through the Uniform Standards of Professional Appraisal Practice (USPAP).

National law

Most countries have laws regulating trading and consumer marketing that make it unlawful to wrongly describe any material aspect of a good, including jewellery products. For example in the United States, the FTC Guide for Jewelry, Precious Metals, and Pewter Industries states in S 23.1 Deception (general) states:

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

EU Directives on Misleading and Comparative Advertising address misleading advertising, meaning any advertising which, in any way, either in its wording or presentation:

- deceives or is likely to deceive the persons to whom it is addressed or whom it reaches.
- by reason of its deceptive nature, is likely to affect their economic behaviour.
- or for those reasons, injures or is likely to injure a competitor.

Members must ensure they are aware of Applicable Law in all jurisdictions in which they operate.

D. Suggested implementation approach

Use your approach to [Legal Compliance](#) to identify Applicable Law and any potential breaches of relevant international standards and regulatory requirements for grading and appraising.

- **COP 28.1: Detection of Synthetics or Treatments:** *Members that generate independent Diamond Grading Reports shall identify whether detection of Synthetics and/or any Treatments are part of the assessment.*

Points to consider:

- Grading reports generally include an identification of a diamond as natural diamond, treated diamond or synthetic diamond. However consumers may inaccurately assume that a diamond grading laboratory will always conduct tests to determine whether a diamond is synthetic or treated.

- Members that generate independent Diamond Grading Reports should review the content of their reports to ensure that they clearly explain whether or not the assessment includes the detection of synthetics and/or treatments, and have systems in place to ensure that the proper disclosure is provided in all grading reports.
- **COP 28.2: Purpose of appraisal report:** *Members that generate independent Appraisal Reports for end consumers shall include the name of the consumer to whom the report is given and a statement of the purpose of the appraisal.*

Points to consider:

 - The provision of appraisals in the jewellery industry is a complex subject area and any person engaged in providing opinions of the value of jewellery products should ensure they are aware of their legal obligations.
 - The Code of Practices does not aim to provide detailed standards for appraisers of jewellery products. Members that generate independent Appraisal Reports should do so in accordance with Applicable Law and professional standards. Most jurisdictions where Members operate have national professional organisations that provide codes of conduct and minimum standards for the provision of appraisal or valuation services.
 - Appraisers and retailers who provide insurance replacement cost estimates, particularly those working in the United States, should be familiar with the Jewelers Vigilance Committee's *Appraisal Task Force Recommended Minimum Guidelines for Insurance Replacement Cost Estimate Documentation for Jewelers*. The Task Force recommends that sellers provide an insurance replacement cost estimate in lieu of an "appraisal" unless the documentation would at least qualify as an appraisal according to the USPAP standards.
- **COP 28.3: Disclosure of any vested interest:** *Members that offer Diamond Grading Reports or Appraisal Reports to end consumers that might reasonably be construed to be independent shall disclose any relevant vested interests in the sale of the Jewellery Product held by the grader or appraiser.*

Points to consider:

 - Policies and procedures should be in place to ensure proper disclosure is provided in the applicable grading report or appraisal report.
 - Use of a 'manufacturers suggested list price,' or a suggested retail price by a branded diamond marketer, would not generally be considered deceptive because the information is being provided by a party who is not presenting themselves as independent.
- **COP 28.4: Use of inflated independent appraisal reports as a selling tool:** *Members shall not use price-inflated independent Appraisal Reports as a strategy to mislead end consumers about the attractiveness of the selling price of Diamonds, Synthetics, Gold and/or Platinum Group Metals Jewellery Products.*

Points to consider:

 - Members engaged in selling Diamonds, Synthetics, Gold and/or Platinum Group Metals Jewellery Products must not represent any appraisal documentation that has been prepared by the Member itself as 'independent'. It should be readily apparent to the customer that the Member prepared such documentation, if that is the case.
 - If an independent Appraisal Report is used as part of the selling of Diamonds, Synthetics, Gold and/or Platinum Group Metals Jewellery Products, and the sale price is less than the independent appraisal, the reason for the difference must be explained to the consumer, in writing, in the sales documentation.
 - Use of a 'manufacturers suggested list price,' or a suggested retail price by a branded diamond marketer, would not generally be considered deceptive because the information is being provided by a party who is not presenting themselves as independent.

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Check:

- ✓ If you generate independent diamond grading reports, do you include an explanation of whether or not the assessment includes the detection of synthetics and/or treatments?
- ✓ If you generate independent appraisal reports for end consumers, do you identify the consumer for whom the report is prepared and the purpose of the appraisal in your reports?
- ✓ If you generate diamond grading reports or appraisal reports for end consumers that might be construed as independent, and you actually have a vested interest in the sale of the product/s, this must be disclosed.
- ✓ Do you have procedures in place to ensure that inflated 'independent' valuations are not used to deceive end consumers?

E. Further information

The following websites have further information:

- European Commission – Misleading and Comparative Advertising
http://ec.europa.eu/consumers/cons_int/safe_shop/mis_adv/index_en.htm
- Government of Canada – Competition Bureau
www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home
- International Society of Appraisers (ISA)
www.isa-appraisers.org/
- Jewellery Appraisal Guidelines (2010)
www.jewellersvigilance.ca/docs/Jewellery_Appraisal_Guidelines_2010.pdf
- Jewelers of America (US)
www.jewelers.org
- The Appraisal Foundation
www.appraisalfoundation.org/s_appraisal/index.asp
- U.S Government - Federal Trade Commission - Guides for the Jewelry, Precious Metals, and Pewter Industries
www.ftc.gov/bcp/guides/jewel-gd.shtm

6. RESPONSIBLE MINING SECTOR

STANDARD GUIDANCE

(COP 29) Extractive Industries Transparency Initiative

A. Definitions and applicability

The **Extractive Industries Transparency Initiative (EITI)** sets a global standard, implemented by signatory countries and companies, for companies to publish what they pay for resource extraction rights and for governments to disclose what they receive from the extractives sector.

Source:

- *Extractive Industries Transparency Initiative*
eiti.org

The **Extractive Industries Transparency Initiative** provision of the COP is applicable to all Members in the Mining Sector.

The **Extractive Industries Transparency Initiative** provisions should be implemented in conjunction with the **Reporting** provisions.

B. Issue background

For resource-rich countries, the management of a country's natural resource revenues for the benefit of a country's citizens is the domain of sovereign governments. Revenues from mining companies in the form of taxes, royalties, signature bonuses and other payments should help drive economic growth and social development in developing and transition countries. However, if not managed well, these resource revenues can create negative economic and social impacts. A lack of accountability and transparency in these revenues can worsen poor governance and lead to corruption, conflict and poverty.

The Extractive Industries Transparency Initiative aims to strengthen governance by improving transparency and accountability in the extractives sector. It is a multi-stakeholder initiative comprised of governments, companies, civil society groups, investors and international organizations. The EITI sets a global standard for companies to publish what they pay and for governments to disclose what they receive. Although it is government-led, the private sector and civil society organisations both play significant roles in how the initiative is implemented.

The basic concept is straightforward: mining companies should declare in participating host countries the payments they make to the government – either individually or aggregated by an independent third party. Once audited to international standards, these figures are then available for comparison against the host government's own separate declaration of the revenues received. This two-pronged process of independent validation provides assurance for the reporting and reduces opportunities for revenue leakage.

While implementation is the responsibility of governments, mining companies can formally sign up to support EITI implementation. The benefits to companies centre on mitigating political and reputational risks. In extractive industries, investments are capital intensive and depend on long-term stability to generate returns. Political instability generated by opaque governance is a threat to these investments. Transparency of payments can help prevent conflict around mining activities and demonstrate the contribution that mining investment makes to a country.

Resource transparency is also addressed in the Global Reporting Initiative (GRI), a requirement under the COP provision on **Reporting** for Members in the Mining Sector. Under the GRI Mining and Metals Sector Supplement, including direct economic value generated and distributed, payments to governments and capital

Comment [M2]: This Standards Guidance chapter will be reviewed during the comment period against any new outcomes from the May 2013 EITI conference.

providers, significant financial assistance from governments, development and EITI implementation are disclosed under the GRI reporting framework.

Comment [FS3]: Review again after GRI review, also expected to be finalised in May.

C. Key regulations

International standards

The EITI was announced at the World Summit on Sustainable Development in Johannesburg, September 2002. The EITI Board and International Secretariat were established in 2006, and the EITI validation methodology agreed in 2008. EITI implementation is the responsibility of individual signatory countries.

The EITI is a process by which government revenues generated by extractive industries – such as tax, profit oil, and royalties – are published in independently verified reports. These reports are based on information about payments made by companies, and revenues received by governments. All EITI programmes must follow the internationally-agreed EITI principles and criteria.

To become an EITI supporter, an extractives company declares its support publicly and helps promote the initiative internationally and in countries where they operate. Being a supporter of the EITI does not require any additional reporting or disclosure requirements to those for all companies operating in the relevant sectors in countries implementing the EITI. Extractive companies are also asked to fill in an international-level self-assessment form within a year of becoming an EITI Supporting Company. All companies in EITI implementing countries will be asked to fill in a country-level self-assessment form when the country is undergoing Validation.

In summary, a company supporting the EITI:

- has made a statement where it endorses the EITI Principles and Criteria, and made the statement available on its website;
- contributes to implementation in EITI implementing countries;
- is asked to make an annual contribution to the international management of the EITI.

Note that a financial contribution is voluntary. The COP requirement to support the EITI does not mean that Members must make a financial contribution to the EITI.

National law

The EITI is a voluntary initiative that is implemented by countries whose governments sign up to do so. To date, approximately 37 countries are implementing the EITI via country workplans established under multi-stakeholder groups. To achieve EITI Compliance status, a country must complete an EITI Validation within 2 years of becoming an EITI Candidate country. Once a country is Compliant, the country must undergo Validation at least every 5 years.

D. Suggested implementation approach

- **COP 29.1: EITI:** Members in the Mining Sector shall commit to and support implementation of the Extractive Industries Transparency Initiative (EITI).

Points to consider:

- A senior manager should be nominated with strategic responsibility for supporting EITI through:
 - helping promote the EITI internationally and in countries where the company operates;
 - taking part in or supporting the multi-stakeholder process internationally or in EITI implementing countries;
 - alongside all other companies operating in EITI implementing countries, disclosing payments to governments and cooperating with EITI the validation process.
- The responsible senior manager should nominate a lead contact person and oversee implementation at a country level.
- EITI supporter companies must make a statement endorsing the EITI Principles and Criteria, in the form of a policy or similar, and make this available on the company website.
- All material payments made to participating governments in the form of taxes, royalties, signature bonuses and other forms of payments or benefits to governments must be

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disclosed, in accordance with applicable reporting templates and country workplans. The data submitted in the reporting templates should be based on company financial statements which have already been audited to international standards. The EITI Business Guide provides advice as to EITI reporting requirements. Note that EITI does not just apply to mining: any company that is actively exploring or conducting other pre-production operations must disclose all material payments it makes to the government in EITI Candidate or Compliant countries.

- Voluntary disclosure of payments to governments in non-EITI countries is also encouraged, where contract confidentiality provisions allow such disclosure. Note that the Global Reporting Initiative component of the RJC Code of Practices (COP 4 on Reporting) requires public reporting of payments to governments at the international, national and local levels, including a breakdown by country. A summary of the company's contribution to EITI should be included in the company's public reporting, as well as on their external website.
- Staff involved with external affairs, political risk analysis, public reporting and government revenues should understand and act on the business' commitment to the EITI. Tailor training to staff responsibility and provide regular communication as to EITI developments in country implementation.

Check:

- ✓ Have you made a public statement endorsing the EITI Principles and Criteria?
- ✓ Have you appointed a responsible senior manager with responsibility for supporting EITI and have lead contact persons been assigned at the country level?
- ✓ Are systems in place to ensure all payments made to participating governments are disclosed in accordance with applicable reporting templates and country workplans?

E. Further information

The following websites have further information on transparency in the extractive industries:

- Extractive Industries Transparency Initiative (EITI)
eiti.org/
- Extractive Industries Transparency Initiative (EITI) Fact Sheet – How to become a supporting company
eiti.org/files/page/How%20to%20Support%20-%20Extractive.pdf
- Extractive Industries Transparency Initiative (EITI) Business Guide – How companies can support implementation (2008)
eiti.org/files/document/EITI%20Business%20Guide.pdf
- Extractive Industries Transparency Initiative (EITI) – Advancing the EITI in the Mining Sector
www.eiti.org/document/mining
- International Council on Mining and Metals (ICMM) – Extractive Industries Transparency Initiative
www.icmm.com/page/84051/about-us/who-we-work-with/articles/extractive-industries-transparency-initiative
- International Monetary Fund (IMF)- Code of Good Practices on Fiscal Transparency (2007)
www.imf.org/external/np/pp/2007/eng/051507c.pdf
- Publish What You Pay
www.publishwhatyoupay.org
- Transparency International
www.transparency.org/

STANDARD GUIDANCE

(COP 30) Community Engagement

F. Definitions and applicability

Community is a term generally applied to the inhabitants of immediate and surrounding areas who are affected in some way by a company's activities; these effects may be economic and social as well as environmental in nature.

There is a diversity of values and interests held within a group of people who identify as a community. Communities are not homogenous or static.

Community engagement is a two way information sharing and decision making process covering community issues and priorities as well as the concerns and needs of the business. Beyond just listening, the aim is to ensure mutual understanding and responsiveness by all parties to enable them to manage decisions that have the potential to affect all concerned.

Source:

- *Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Community Engagement and Development (2006)*
www.minerals.org.au/file_upload/files/resources/enduring_value/CED.pdf
- *International Council on Mining and Metals (ICMM) - Community Development Toolkit (2012)*
www.icmm.com/news-and-events/news/articles/icmm-presents-updated-community-development-toolkit

The **Community Engagement** section of the COP is applicable to Members in the Mining Sector. While Provision 30.1 on early and ongoing engagement is applicable from the earliest stages of exploration, retrospective conformance is not expected where such practices were not applied prior to joining the RJC.

The **Community Engagement** provisions should be implemented in conjunction with the **Human Rights, Community Development** and, where applicable, **Indigenous Peoples and Free Prior and Informed Consent** provisions and **Artisanal and Small-Scale Mining**.

G. Issue background

Community Engagement

The time taken to plan, finance and regulate any mining operation has increased substantially in the past few decades, particularly in the case of large-scale mines. Communities now expect to be able to participate in a dialogue about risks, impacts and benefits of mining developments. As a result, community engagement approaches have become a critical ingredient in building a 'social licence to operate'.

Community engagement can take a range of forms, depending on what is appropriate for a given situation. The various approaches can be considered as part of a spectrum, where each step along represents increasing public impact and power in the process. Practical approaches to community engagement include:

- Information delivery: fact sheets, website information, open days
- Consultation: focus groups, surveys, public meetings
- Involvement: workshops, deliberative polling
- Collaboration: community advisory committees, consensus-building processes
- Empowerment: citizens juries, ballots, delegated decision-making

Key stakeholders representing broad issues or groups, such as civil society or non-government organisations (NGOs), employees, unions or worker organisations, and other interested parties, including women, should be identified and engaged. Members are also encouraged to engage beyond community representatives and

leaders to enable equitable engagement through a ‘whole-of-community’ approach. Approaches should be conflict-sensitive and seek to manage expectations of the process and outcomes.

Relationships between exploration and mining companies, local communities and other stakeholders begin long before construction of a mine commences, and companies should begin engagement at the earliest stages possible. The interests and development aspirations of communities affected by mining should continue to be a major consideration throughout the consultation process at successive stages of a mine’s life. Members should seek broad community support for new mining projects or activities.

Broad community support is a collection of expression by the affected communities, through individuals and/or their recognized representatives, in support of the project. Support may take a range of forms depending on the situation, such as a formal agreement between the company and community, or expressed during community participation in an ongoing dialogue about impacts and benefits of a project. There may be broad community support even if some individuals or groups object to the project; conversely, community participation in a dialogue with the company does not necessarily equate to support. The right to grant development consent usually rests with the sovereign state, and is a matter between the state and its citizens. Following consultation with local people and relevant authorities, a decision may sometimes be made by a company not to proceed with developments or exploration even if this is legally permitted.

Benefits of successful community engagement can include increased community awareness and trust, reduced time in negotiating agreements, an improved corporate risk profile, and potentially the ability to secure access to capital on more favourable terms. However community engagement and development can be challenging as well as rewarding and may need to take place in situations of conflicting perspectives and relationships. Communities are complex and dynamic and there are unfortunately no simple solutions for success. One of the keys to operating effectively is to have good systems and processes in place, including regular evaluations, and the capacity to learn and adapt when circumstances change.

Box X: Small mining companies and exploration

Community engagement may be a challenge for smaller mining companies, particularly those involved in exploration and development. However inaccurate and/or inappropriate statements, activities or commitments being made at an early stage in a project can lead to confusion and unrealistic expectations, and possible conflict. These circumstances can create unnecessary costs for all stakeholders.

Before filed activities commence, care should be taken to gather relevant information about local conditions and ensure the project team has the information, direction and capacity to engage effectively with local communities and other stakeholders. The PDAC’s e3 Plus – a Framework for Responsible Exploration (2013) provides guidance and strategies to address risks and challenges for community engagement by explorers.

Operational-level complaints and grievance mechanisms

Complaints and grievances can be expected to arise where a company’s activities have a complex set of impacts on stakeholders, however benign that company’s intentions. An effective complaints and grievance mechanism is thus an essential tool in a company’s community and stakeholder engagement approach.

The focus of the RJC requirement is on mechanisms that a company can credibly establish, ideally in cooperation with key stakeholders. This does not include adjudicative processes (judicial or non-judicial), which should be situated at least one step away from all parties, including the company. Instead, the emphasis here is on dialogue-based processes at the local or operational level. This does not mean that every complaint or grievance can be processed through a non-judicial mechanism, but many can.

Company complaints and grievance mechanisms should be situated within a wider understanding of society’s vehicles for raising, resolving and remedying disputes. Available avenues may include judicial systems (through the courts), public administrative systems (through government, quasi-governmental or independent statutory agencies), traditional or local dispute processes, and private non-judicial mechanisms. The operational level complaints and grievance mechanism should encourage early resolution of issues at the local-level wherever possible, without precluding access to other mechanisms. Companies should also

consider providing access to complaints mechanisms run by external services, which can enable complaints to be de-identified so they can be presented anonymously to the company. The intent is to encourage concerns to be raised by legitimate stakeholders who may otherwise remain silent in some circumstances.

Human rights are an important dimension of complaints and grievance mechanisms, both in terms of process of dealing with disputes, and in the potential scope of complaints. A rights-compatible mechanism is one that provides a vehicle for addressing complaints and grievances – whether or not they relate to substantive human rights issues – in a manner that respects and supports human rights. There is no one-size-fits-all approach for companies. Complaints and grievance mechanisms should be developed in consultation with stakeholders and tailored to suit the industry, country and culture for which they are designed. Gender may be an important consideration in some grievances and/or in the design of mechanisms. Impacted stakeholder groups may request access to independent information and/or expertise, or a facilitator/mediator to support the dialogue process for some grievances. Company funding for these resources should be transparent.

Effective, rights-compatible complaints and grievance mechanisms offer a channel for individuals and communities affected by a company's activities to raise concerns early, openly, on an informed basis, with due protection and in an atmosphere of respect. They have the potential to limit dispute escalation, facilitate dispute resolution and contribute to the prevention of future disputes by enabling learning and enhancing relationships. Wherever possible, a complaints and grievance mechanism should be in place before disputes arise, not in reaction to their occurrence. Where appropriate, mechanisms should be integrated with negotiated agreements with affected communities. Relationships between mine sites and stakeholders will continue after a mine has ceased operation, so the continuation of a complaints and grievance mechanism should be an integral part of closure planning.

H. Key initiatives and frameworks

Community engagement

Community engagement is in most cases a voluntary business activity. However it is increasingly a component of agreements with communities or governments, or a regulatory requirement as part of development approvals for new or expanding industrial projects. It is essential to be aware of applicable law in all jurisdictions of operation.

In 2012, the International Council on Mining and Metals (ICMM) launched an updated Community Development Toolkit. The Toolkit includes 20 tools aimed at fostering constructive relationships among communities, companies and governments. It features a number of new tools and draws upon work on sustainable development that has emerged since the 2005 version was published with the World Bank.

The Prospectors and Development Association of Canada (PDAC) have released e3-Plus: *A Framework for Responsible Exploration* in order to help exploration companies continuously improve their social, environmental and health and safety performance and to comprehensively integrate these three aspects into all their exploration programs. The Framework includes guidance on community engagement, and an accompanying toolkit that aims to reduce the risk of conflict at the community level (available in English, French and Spanish).

The International Finance Corporation (IFC) Performance Standard 1 (2012) on Environmental and Social Impact Assessments also includes Guidance on community and stakeholder engagement, including related to gender, disadvantaged and vulnerable groups, and disability, as well as considering workers as key stakeholders. IFC Performance Standard 7 - Indigenous Peoples (2012) includes Guidance on informed consultation and participation approaches for these affected communities.

Complaints and grievance mechanisms

The 2012 UN Guiding Principles on Business and Human Rights presents a framework that comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. (For more information, see the Guidance on [Human Rights](#)). The Guiding Principles include a list of effectiveness criteria for rights-compatible grievance mechanisms:

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- A. Legitimacy: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- B. Accessibility: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- C. Predictability: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- D. Equitability: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- E. Transparency: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- F. Rights-compatibility: ensuring that outcomes and remedies accord with internationally-recognized human rights;
- G. Dialogue and engagement: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances;
- H. Continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

The United Nations Human Rights Council published a 2011 report on a two-year pilot project that tested the practical applicability of these principles for rights-compatible grievance mechanisms, originally developed by Harvard University in a 2008 Guidance tool. The UN report provides a summary of key lessons learned for each of these principles in practice.

I. Suggested implementation approach

Community Engagement can be used to support COP provisions on **Community Development, Indigenous Peoples and Free Prior Informed Consent, Impact Assessment** and **Mine Rehabilitation and Closure** and where applicable **Resettlement and Artisanal and Small-Scale Mining**.

- **COP 30.1: Early and ongoing community engagement:** *Members in the Mining Sector shall have systems in place for early and ongoing engagement with affected communities and other relevant stakeholders.*

Points to consider:

 - Responsibility for community engagement should fall to a senior management function. Draw on experienced and expert assistance to develop policies, training, strategies, plans and actions.
 - Policy and procedures should include the business' approach to community engagement. Points to consider:
 - Outline the aims of community programs, the key principles to be followed, and the expectations of staff and other stakeholders. Consider how expectations and outcomes of community engagement approaches can be managed.
 - Where affected communities include Indigenous Peoples, consider how culturally appropriate engagement approaches can be put in place. Note effective approaches will vary between communities and across different social contexts – what works with one community may not be appropriate in another. (Also see **Indigenous Peoples and Free Prior Informed Consent** Guidance).
 - Monitor the progress of engagement approaches, complaints and grievance mechanisms, development-focused projects and participation in collaborative programs, and evaluate impacts in conjunction with key stakeholders, including women.
 - Seek to continually improve plans, policies and procedures based on evaluation outcomes.
- **30.1a: Apply appropriate skills and resources.**

Points to consider:

- Good community engagement and development depends on having people with suitable skills and understanding to run programs and on giving community development staff the training support they need to perform their jobs well.
- Consideration should be given to the need for cultural awareness and gender training, training in engagement processes and practices, dispute resolution training and understanding of community and regional development approaches.
- External expertise may also be required to deal with situations that involve Indigenous Peoples, resettlement, or artisanal mining communities, or at particular stages of the project eg impact assessment.
- Assess the resource requirements for a community engagement program to ensure staff and external experts can carry out their roles effectively.
- **30.1b:** *Apply throughout the project's lifecycle, from exploration activities, construction prior to commencement of mining, during mine operations, through to closure and post-closure monitoring;*
- **30.1c:** *Identify affected communities and other relevant stakeholders in relation to project Risks, impacts, and phase of development.*
Points to consider:
 - A stakeholder mapping exercise is useful to map stakeholders and review social and environmental impact assessments, assess current engagement and dispute resolution strategies as appropriate, and consider local development priorities and needs, existing programs, and strategies for partnership.
- **30.1d:** *Establish effective communication measures to disseminate relevant project information and receive feedback in an inclusive, equitable, culturally appropriate and rights-compatible manner.* The interests and development aspirations of communities affected by mining should be a major consideration throughout the consultation process at successive stages of a mine's life.
When planning community engagement approaches, consider how to make them:
 - Inclusive: engage beyond community representatives and leaders, making sure that women, minority, vulnerable and other marginalised groups have access;
 - Equitable: being aware of power imbalances and attempting to mitigate these, being sensitive to the potential for community conflicts to arise;
 - Culturally appropriate: considering issues such as authority structures, language and gender;
 - Rights-compatible: approaches that respect and support human rights.
- **30.1e:** *Through informed consultation, consider the interests and development aspirations of affected communities in major mining decisions in the project's lifecycle, and seeks broad community support for proposals.* Support may take a range of forms depending on the situation, such as a formal agreement between the company and community, or expressed during community participation in an ongoing dialogue about impacts and benefits of a project. Note that there may be broad community support even if some individuals or groups object to the project, and conversely, community participation in a dialogue with the company does not necessarily equate to support.
Consider the how the following could be supported when seeking broad-based community support:
 - Comprehensive information on proposed activities, including potential negative impacts and positive opportunities;
 - Access to reliable independent advice;
 - Community participation in social and environmental assessments, and in any elements of project design that may affect communities;
 - Respect for social values, with consultations carried out in good faith;
 - Mutually informed understanding of interests and activities;
 - Active support for local economic opportunity and development.
- **COP 30.2: Access to rights-compatible complaints and grievance mechanisms:** *Members in the Mining Sector shall ensure that affected communities have access to rights-compatible complaints and grievance mechanisms at the operational level for raising and resolving disputes and communicate their availability to the affected communities. Records of grievances raised, investigation processes and outcomes shall be maintained.*
Points to consider:

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- A senior manager should be given oversight and responsibility for the complaints and grievance mechanism.
- Make the name/s of company contacts for raising questions, complaints or grievances available to affected communities and other stakeholders as appropriate.
- When designing, revising or assessing a complaints and grievance mechanism, consider how it addresses the UN Guiding Principles on Business and Human Rights effectiveness criteria (see Section C above) to help ensure its effectiveness in practice.
- Maintain clear documentation on the company's or site's complaints and grievance mechanism and make this available to affected communities and stakeholders.
- Maintain records of complaints raised, investigation processes and outcomes.
- Regular analysis of the frequency, patterns and causes of complaints and grievances can enable the company to identify where their policies, procedures or practices could be improved to avoid future issues.

Check:

- ✓ Do you have a comprehensive system in place for early and ongoing community engagement, including clear lines for responsibility, appropriate skills and resources, and policies and procedures?
- ✓ Are your approaches for engagement inclusive, equitable and culturally appropriate?
- ✓ Have relevant stakeholders been identified in relation to project risks and impacts?
- ✓ Are effective communication measures in place to disseminate relevant project information and receive feedback?
- ✓ Do you consider, through informed consultation, the interests and development aspirations of affected communities in major mining decisions?
- ✓ Is a rights-compatible complaints and grievance mechanism in place for all operations, and are appropriate records kept?

J. Further information

The following websites have further information on community engagement and development issues:

- Anglo American – Community Engagement
www.angloamerican.com/development/social/community-engagement/engagement
- Anglo American – Speak Up program – independent grievance mechanism
www.anglospeakup.com
- Association for Mineral Exploration British Columbia – Mineral Exploration, Mining and Aboriginal Community Engagement: A Guidebook (Canada) (2005)
commdev.org/content/document/detail/843/
- Canadian Foundation for the Americas - Sustainable Communities: Mining and Indigenous Governance (Americas) (2008)
www.focal.ca/pdf/indigenous_FOCAL_sustainable%20communities%20mining%20indigenous%20governance_March%202008.pdf
- Centre for Social Responsibility in Mining (CSR) - Community Engagement and Development
<http://www.csr.uq.edu.au/Research/CommunityEngagementandDevelopment.aspx>
- Harvard Kennedy School: Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned (2011)
www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf
- Harvard University - Rights-Compatible Grievance Mechanisms – Guidance Tool (2008)
www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms,%20January%202008.pdf
- International Council on Mining and Metals (ICMM) - Community Development Toolkit (2012)
www.icmm.com/news-and-events/news/articles/icmm-presents-updated-community-development-toolkit
- International Council on Mining and Metals (ICMM) - Guidance Note on Mining and Human Rights (2009)
www.icmm.com/page/14855/icmm-presents-new-guidance-note-on-mining-and-human-rights
- International Council on Mining and Metals (ICMM) - Human Rights in the Metals and Mining Industry: Handling and Resolving Local Level Concerns and Grievances (2009)

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- www.icmm.com/document/691
- International Association of Public Participation (IAP2) – Participation Spectrum (2007)
www.iap2.org/associations/4748/files/spectrum.pdf
- International Finance Corporation (IFC) Performance Standard 5 – Land Acquisition and Involuntary Resettlement (2012)
www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 5 – Land Acquisition and Involuntary Resettlement (2012)
www1.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Office of the Compliance Advisor/Ombudsman – A Guide to Designing and Implementing Grievance Mechanisms for Development Projects (2008)
www.cao-ombudsman.org/howweework/advisor/documents/implemgrieveng.pdf
- ISO 26000 – Guidance on Social Responsibility (2010)
www.26k-estimation.com/html/user_guides_iso_26000.html#user-guides
- John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Community Engagement and Development (2006)
www.minerals.org.au/file_upload/files/resources/enduring_value/CED.pdf
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Working with Indigenous Communities (2007)
www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf
- Mining Association of Canada – Outreach and Dialogue - A Field Guide for Building Shared Understanding (2003)
www.mining.ca/www/media_lib/TSM_Documents/outreachguide.pdf
- Mining, Minerals and Sustainable Development (MMSD) Avoiding New Poverty: Mining-Induced Displacement and Resettlement (2002)
www.iiied.org/pubs/pdfs/G00549.pdf
- Prospectors and Developers Association of Canada (PDAC) – e3 Plus – a Framework for Responsible Exploration
www.pdac.ca/e3plus
- Rio Tinto – Why Gender Matters (2009)
www.riotinto.com/documents/ReportsPublications/Rio_Tinto_gender_guide.pdf
- United Nations Human Rights Office of the High Commissioner for Human Rights - Basic Principles and Guidelines on Development-Based Evictions and Displacement – Guidance for States
www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf
- World Bank - Community Driven Development (2011)
web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html
- World Resources Institute – Breaking Ground: Engaging Communities in Extractive and Infrastructure Project (2009)
www.wri.org/publication/breaking-ground-engaging-communities

STANDARD GUIDANCE

(COP 31) Indigenous Peoples and Free Prior Informed Consent

A. Definitions and applicability

There is no universally accepted definition of “**Indigenous Peoples**”. The term “Indigenous Peoples” is used here in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture;
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

Similarly, there is no universally accepted definition of Free, Prior and Informed Consent (FPIC). For the RJC Code of Practices, FPIC builds and expands on appropriate engagement processes and should be established through good faith negotiation between Members and affected Indigenous Peoples. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.

The ICMM Position Statement on Indigenous Peoples and Mining notes that FPIC comprises both a process and an outcome. Through this process Indigenous Peoples are: (i) able to freely make decisions without coercion, intimidation or manipulation; (ii) given sufficient time to be involved in project decision making before key decisions are made and impacts occur; and (iii) fully informed about the project and its potential impacts and benefits. The outcome is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognized human rights and is based on good faith negotiation.

Source:

- *International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012)*
<http://www.ifc.org/performancestandards>
- *ICMM Position Statement on Indigenous Peoples and Mining(2013)*
<http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining>

The **Indigenous Peoples and Free Prior Informed Consent** section of the COP is applicable to Members in the Mining Sector.

Provision 31.3 on Free Prior and Informed Consent (FPIC) is applicable to Members with new Mining Facilities, or significant changes to existing Facilities, that are associated with any of the circumstances identified below:

- Impacts on lands and natural resources subject to traditional ownership or under customary use;
- Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;
- Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives; or
- Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes.

While Provision 31.3 on FPIC is applicable in the above circumstances from the early stages of project development, retrospective conformance is not expected. The requirement is triggered at Mining Facilities

where these circumstances are present either during the period since joining the RJC or through changes since the last Verification Assessment, whichever is most recent.

See also the Guidance chapters for [Community Engagement](#), [Resettlement](#), [Impact Assessment](#), and [Mine Rehabilitation and Closure](#).

B. Issue background

Establishing which groups of people are considered Indigenous is not always straightforward. Indigenous Peoples may be referred to in different countries by such terms as “Indigenous ethnic minorities”, “aboriginals”, “hill tribes”, “minority nationalities”, “first nations” or “tribal groups.” Ascertaining whether a particular group is considered as Indigenous Peoples may require informed judgement, taking into account the characteristics outlined in Section A above.

In the context of the mining industry, Indigenous Peoples can be generally (but not universally) understood as communities whose people are the descendants of the original inhabitants of a country or region, with a distinct social or cultural identity that may be vulnerable or disadvantaged in the current social and economic context.

Many Indigenous Peoples’ cultures and identities are inextricably linked to the lands on which they live and the natural resources on which they depend. In many cases, their cultures, identities, traditional knowledge and oral histories are connected to these lands and natural resources. Project impacts on lands, forests, water, wildlife, and other natural resources may affect their institutions, livelihoods, economic development, and their ability to maintain and develop their identities and cultures. In many parts of the world, Indigenous Peoples suffer from a history of discrimination and exclusion that has left them on the margins of larger societies. Many often still experience discrimination, high levels of poverty, and other forms of political and social disadvantage.

The interests of Indigenous Peoples in mining projects can be one or more of the following:

- owners of formal title to land or recognised legal interests in land or resources;
- claimants for ownership of land or resources;
- customary owners of land or resources but without formal legal recognition of customary ownership;
- occupants or users of land either as customary owners or as people whose customary land are elsewhere;
- in material objects or resources of cultural significance;
- in landscapes which have special significance because of association, tradition or beliefs;
- members of host communities whose social, economic and physical environment may be affected by mining and associated activities.

The rights of Indigenous Peoples are being increasingly addressed under both national and international law. Under international law, key UN human rights conventions and declarations provide the core rights framework for the world’s Indigenous Peoples. In addition, some countries have passed legislation, or ratified other international or regional conventions for the protection of Indigenous Peoples such as ILO Convention 169. While such legal instruments establish responsibilities of states, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states’ obligations under these instruments.

Not all governments in the past, or today, have recognised Indigenous Peoples’ distinct identity, legitimate interests or their rights as articulated in relevant international conventions. In this context, agreement making between companies and affected communities has emerged as an important vehicle for dialogue on Indigenous Peoples’ development aspirations, negotiation of development benefits and mitigation of impacts. Formally documented support for development projects can take the form of written agreements or other types of records that are recognized by the appointed leaders, spokesperson or representatives of the community. A process of informed consultation and participation, which recognises broad-based or collective decision-making processes, should underpin development of relationships, agreement making, program delivery and regular reviews of progress with Indigenous Peoples.

Free, prior and informed consent (FPIC) for project-related decision making with Indigenous Peoples involves both a process and an outcome. FPIC has been incorporated into the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization's Indigenous and Tribal Peoples Convention 169. Both instruments relate to the relationship between Indigenous Peoples and nation-states. In 2012, the International Finance Corporation (IFC) brought FPIC into a private sector performance standard. The revised IFC Performance Standard 7 requires IFC clients to obtain the FPIC of indigenous communities under specific circumstances, including mineral resource development projects involving adverse impacts. As a result of this revision, FPIC will also become part of the policy of the more than 70 banks that are signatories to the Equator Principles (EP). The IFC move is the most recent indication of the growing acceptance among multilateral development agencies, NGOs and responsible investors that indigenous people have a right to participate in decisions affecting their land and resources. FPIC refers to the combination of a mutually accepted and documented process of culturally appropriate negotiation between the company and appropriate institutions representing Indigenous Peoples and evidence of agreement between the parties as the outcome of the negotiations. Where alternatives have been explored and adverse impacts are unavoidable, IFC Performance Standard 7 calls on developers to minimize, restore, and/or compensate for these impacts in a culturally appropriate manner commensurate with the nature and scale of such impacts and the vulnerability of the affected communities of indigenous peoples.

While specific definitions vary, and continue to evolve in different jurisdictions, FPIC envisages consent that is:

- obtained free of coercion or manipulation;
- secured prior to commencement of activities affecting Indigenous Peoples' lands, territories and resources;
- informed by meaningful participation and consultation, and based on the full disclosure of relevant aspects of the proposed project in a form that is understandable and accessible; and
- enabled by Indigenous Peoples participating through their own freely chosen representatives and customary or other institutions.

Implementation of FPIC by the private sector must take place within the context of state-based and traditional decision-making processes. The interaction of an FPIC process with state-based development consent processes is clearest where there is domestic legislation for companies to be able to put it into practice. Such legislation, and statutory authorities to oversee the process, exists in countries such as the Philippines and some parts of Australia. Where such legislation does not exist, the terms of the FPIC process itself must first be negotiated between the company and affected Indigenous Peoples.

Successful mining and metal projects require the broad support of the communities in which they operate, including of Indigenous Peoples, from exploration through to closure. Without the support of affected Indigenous Peoples, underpinned by informed consultation and participation, projects face significant social and financial risk. Interactions between mining companies and Indigenous Peoples should occur in the context

Box X: ICMM Good Practice Guide

This tool aims to assist mining companies to be aware and respectful of cultural, social, economic and political complexities associated with developing projects in close proximity to Indigenous communities. While there is no 'one-size-fits-all' approach, the Guide outlines practices that can be adapted by companies and communities to their own circumstances. The Guide includes case studies of both good and poor practice in areas such as participation, agreement making, managing impacts and sharing benefits, and dealing with grievances, with lessons that can be learned from each example.

Source: ICMM Good Practice Guide - Indigenous Peoples and Mining (2012).
<http://www.icmm.com/library/indigenouspeoplesguide>

Position Statement

In 2013, the ICMM issued a position statement on Indigenous Peoples and Mining which adopts a commitment to work to obtain the consent of Indigenous Peoples for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous Peoples and are likely to have significant adverse impacts on Indigenous Peoples. The position statement outlines ICMM's view of FPIC as a process based on good faith negotiation, through which Indigenous Peoples can give or withhold their consent to a project. These processes should strive to be consistent with Indigenous Peoples' traditional decision-making processes while respecting internationally recognized human rights.

Source: ICMM Position Statement on Indigenous Peoples and Mining
<http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining>

of broader community engagement but, at the same time, give special attention to the particular histories, capacities, priorities and interests of Indigenous Peoples. It is recognized that Indigenous Peoples play a vital role in sustainable development; that mineral development projects can help advance the economic development of Indigenous communities; and these communities in turn can play a vital role in the development of natural resources.

C. Key international instruments

International

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in September 2007 after 22 years of development and negotiation. The Declaration sets out the individual and collective rights of Indigenous Peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. Declarations are not subject to ratification by States and do not have legally binding status. A Declaration adopted by the General Assembly reflects the collective views of the United Nations which must be taken into account by all member States in good faith.

The International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples was adopted in 1989, and has been ratified by 22 countries as of 2013. Genuine and effective consultation with Indigenous Peoples about their priorities is fundamental to ILO 169. However the Convention does not grant the right of veto over projects that affect them. As with other ILO Conventions, 169 is aimed at governments and is binding only on states that have ratified it. Many states consider the Convention problematic because it clashes with their constitutional provisions that require that all ethnic groups are treated equally before the law. This is particularly the case in African states with diverse, ethnically heterogeneous national populations. While private companies do not have any direct obligations under the Convention, it has clear implications for their activities and operations. Further, there may be legal obligations for companies arising from national legislation implementing the Convention or similar frameworks.

Both UNDRIP and ILO169 are significant landmarks in the recognition and protection of the rights of Indigenous Peoples at the international level. They are aligned in spirit and many of the key provisions are mutually reinforcing. The Declaration's provisions deal with all the areas covered by the Convention and addresses a number of additional subjects that are not covered by the Convention.

Updated in 2012, the International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012) provides a detailed standard and associated guidance for the private sector. The objectives of the standard are to:

- Ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples.
- Anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.
- Promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.
- Establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) with the Indigenous Peoples affected by a project throughout the project's life cycle.
- Ensure the Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples when the circumstances described in the Performance Standard are present.
- Respect and preserve the culture, knowledge and practices of Indigenous Peoples.

National

National law is the vehicle for implementing international instruments such as ILO Convention 169 or similar state-based frameworks. The legal framework for Indigenous Peoples varies significantly from country to country, depending on the history of colonisation, migration and/or conflict, and continues to evolve. Some countries may not recognise indigeneity or ethnicity as an acceptable category for making distinctions in terms of relative entitlements. It is essential that Members maintain an understanding of, and act in accordance with, applicable law in all jurisdictions of operation.

D. Suggested implementation approach

COP 31 Indigenous Peoples and Free Prior Informed Consent should be implemented in conjunction with COP provisions on **Human Rights, Community Engagement**, and where applicable **Resettlement**. **Community Engagement** covers approaches to community development, engagement, and operational-level grievance mechanisms. Engagement, wherever possible, should be undertaken through traditional authorities within Indigenous communities and with respect for traditional decision-making structures and processes. COP provisions on **Impact Assessment** and **Mine Rehabilitation and Closure** are also relevant. Social impact assessments, or other social baseline analyses, and closure planning for projects which may impact on Indigenous Peoples must examine their interests and perspectives and be based on consultation with them.

- **COP 31.1: Respect for rights of Indigenous Peoples:** *Members in the Mining Sector shall respect the rights of Indigenous Peoples as articulated and defined in applicable provincial, national and international laws and their social, cultural, environmental and economic interests, including their connection with lands and waters.*

Points to consider:

- **Management responsibility:** Responsibility for relationships with Indigenous Peoples should fall to a senior management function, often the person responsible for community engagement and development programs. Draw on experienced and expert assistance to develop policies, training, strategies, plans and actions.
 - **Written policy and procedures:** Policy and procedures should include the business' approach to affected Indigenous Peoples and address:
 - Respect for the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples; Clearly identifying and fully understanding the interests and perspectives of Indigenous Peoples regarding a project and its potential impacts; Designing projects to avoid adverse impacts on Indigenous Peoples and minimizing, managing or compensating for residual impacts;
 - Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle to seek broad-based support for mining activities;
 - Arrangements to protect cultural property or sites of religious significance for Indigenous People;
 - The role of affirmative action and partnerships to build the participation of Indigenous people in the mine workforce or associated businesses;
 - Seeking to build long-term partnerships with Indigenous Peoples to support self-empowered regional and community development such as through education, training, healthcare, and business enterprise support;
 - Gender considerations and their intersections with the above;
 - Where appropriate, encouraging governments to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations;
 - Monitoring the progress of engagement approaches, agreements, and evaluating impacts in conjunction with key stakeholders.
 - **Training:** Ensure that all staff relating with Indigenous Peoples receive relevant training to ensure sufficient knowledge of key principles, local issues and appropriate conduct. To provide employment opportunities for Indigenous people, opportunities for training and education may need to be made available to qualify indigenous workers who might otherwise not meet usual employability criteria. Where Indigenous people are also mine workers, consideration should be given to the need for cultural awareness training for all staff. The objective should be building cross-cultural understanding: for company personnel to understand Indigenous Peoples' culture, values and aspirations, and for Indigenous Peoples to understand a company's principles, objectives, operations and practices.
- **COP 31.2: Broad-based support:** *Members in the Mining Sector shall seek to obtain broad-based support of affected Indigenous Peoples and to have this support formally documented, including partnerships and/or programs to provide benefits and mitigate impacts.* Note that this provision applies in all cases where there are affected Indigenous Peoples, while the FPIC provision applies under particular

circumstance as noted. For Mining Facilities with affected Indigenous Peoples, implementation of this provision will vary according to the context.

The following general guidance may or may not be relevant to the operating situation:

- **Assessment:** The potential impact of the business on Indigenous Peoples should be assessed. The business should utilise the services of qualified social scientists and other professionals to carry out:
 - ethnographic and archival research;
 - participatory approaches with the affected communities of Indigenous Peoples, including women;
 - assessment of the traditional institutions; and
 - investigation of the applicable national and regional laws and regulations, including customary laws, and laws reflecting host country obligations under international law.
 - **Engagement:** Undertake an engagement process with affected Indigenous Peoples as required in COP **Community Engagement** (see Standards Guidance for that chapter). The engagement process should be carried out in an inclusive, equitable, culturally appropriate and rights-compatible manner. In the case of new projects, companies should agree on the appropriate engagement process with potentially impacted Indigenous Peoples and relevant government authorities. Consider how best to:
 - Involve Indigenous Peoples' representative bodies and organizations (e.g., councils of elders or village councils), as well as members of the Affected Communities of Indigenous Peoples;
 - Provide sufficient time for Indigenous Peoples' decision-making processes;
 - Ensure the engagement process is consistent with Indigenous Peoples' decision-making processes, and be commensurate with the nature and scale of the potential impacts
 - Provide mechanisms to address differences of opinion that may arise during the engagement process; and
 - Where required, provide support to build community capacity for good faith negotiation
 - **Broad-based support:** Use the above engagement process, to build broad-based support of affected Indigenous Peoples for the mining operations, for example through partnerships and/or programs that provide benefits and mitigate impacts through the project lifecycle. These should be built on an understanding of the interests and development aspirations of the affected Indigenous Peoples.
- **COP 31.3: Free Prior and Informed Consent (FPIC):** For new Mining Facilities, or significant changes to existing Facilities, that are associated with any of the circumstances identified below:
 - Impacts on lands and natural resources subject to traditional ownership or under customary use;
 - Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;
 - Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives; or
 - Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes;

Members in the Mining Sector shall, as described in International Finance Corporation (IFC) Performance Standard 7:

- a. *Work to obtain the Free, Prior and Informed Consent of affected Indigenous Peoples, during the planning and approval stages; and*
- b. *Document the process and the outcomes of the negotiations.*

Points to consider:

- FPIC builds on the community engagement processes required under **Community Engagement** – see separate Guidance chapter for this provision. Principles of supporting communities to make decisions that are consistent with traditional decision-making processes, allowing sufficient time and providing full information are important components of this approach.
- The requirement for an FPIC process is triggered where **Resettlement** of Indigenous Peoples is envisaged – see separate Guidance chapter for this provision.
- The Guidance for IFC Performance Standard 7 (Indigenous Peoples) can provide additional information to support the following suggested approach to COP 31.3. Where Applicable Law

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does not define a FPIC process, the Member and affected communities of Indigenous Peoples will establish the terms of the FPIC process through good faith negotiation. The following should be documented:

- the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and
- evidence of agreement between the parties, as the outcome of the negotiations.
- o Under circumstances involving projects that are located on lands traditionally owned by or under the customary use of Indigenous Peoples and where adverse impacts can be expected, Members should, consistent with IFC Performance Standard 7:
 - Document efforts to avoid and otherwise minimise impacts;
 - Identify, assess and document resources uses and ensure affected Indigenous communities are informed of their land rights;
 - Offer compensation, preferably land-based or compensation-in-kind in lieu of cash compensation; and
 - Ensure continued access to natural resources, and ensure fair and equitable sharing of benefits associated with the use of resources that are central to the identity and livelihood of affected Indigenous communities.
- o Note: FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree. In IFC's view, it is not possible to achieve the outcome without the process, and it is not inevitable that a legitimate process will lead to an outcome of agreement. A review of existing global standards and practices on consent revealed that none of the institutions that have adopted FPIC have interpreted this to mean granting veto power to Indigenous Peoples over development projects, or requiring unanimity of opinion in favor of a project among affected groups. (See IFC's *Sustainability Framework: From Policy Update to Implementation*).
- o Note: Governments may sometimes be responsible for managing the interests of Indigenous Peoples in a way that limits companies involvement – and that in such situations, RJC Members should collaborate with the responsible authorities to achieve outcomes consistent with the principles of this provision. In situations where consent may not be forthcoming despite the best efforts of all parties, and in balancing the rights and interests of Indigenous Peoples with the wider population, a government might determine that a project should proceed and specify the conditions that should apply.

Check:

- ✓ Do you understand the legal rights of affected Indigenous Peoples under applicable law, and their social, cultural, environmental and economic interests?
- ✓ Do you have policies and procedures in place to ensure you respect the rights of Indigenous Peoples?
- ✓ Have you assessed the potential impact of the business on Indigenous Peoples?
- ✓ Do you have an engagement process in place that seeks to obtain broad-based support of affected Indigenous Peoples?
- ✓ Has this support been documented?
- ✓ Are programs in place to provide benefits to Indigenous Peoples and mitigate impacts?
- ✓ Do you understand the conditions under which you should seek to obtain FPIC and the process that should be followed?

Q&A - Indigenous Peoples and Free Prior Informed Consent

1. Does COP 31 apply if the communities affected by the mine are not Indigenous Peoples?

No. The requirement is specific to Indigenous Peoples, as defined by the COP. Input from competent professionals may be sought to determine whether a particular group is Indigenous.

2. Does the FPIC provision apply to mines that have already received development consent or have been operating for some time?

The FPIC provision applies to new Mining Facilities and significant changes to existing Facilities. Members must nevertheless maintain ongoing engagement with affected Indigenous communities throughout the project lifecycle, in accordance with COP 30 and 40, and respect their rights, and obtain their broad-based support, in accordance with COP 31.1 and 31.2.

3. Is agreement-making, such as an Impact-Benefit Agreement, a suitable FPIC process?

Yes, where agreement-making is carried out in good faith and with informed consultation and participation of Indigenous Peoples, it can be considered a suitable FPIC process under the IFC Performance Standard 7.

E. Further information

The following websites have further information on Indigenous Peoples and Free, Prior and Informed Consent:

- Association for Mineral Exploration British Columbia – Mineral Exploration, Mining and Aboriginal Community Engagement: A Guidebook (Canada) (2005)
http://commdev.org/userfiles/files/843_file_6E830BA41323EB5F.pdf
- Business for Social Responsibility - Engaging With Free, Prior, and Informed Consent (2012)
http://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf
- Canadian Foundation for the Americas - Sustainable Communities: Mining and Indigenous Governance (Americas) (2008)
www.focal.ca/pdf/indigenous_FOCAL_sustainable%20communities%20mining%20indigenous%20governance_March%202008.pdf
- Foley Hoag - Implementing a Corporate Free, Prior, and Informed Consent Policy (2010)
http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx
- ILO Convention 169, Concerning Indigenous and Tribal Peoples in Independent Countries (1989)
www.ilo.org/ilolex/english/convdisp1.htm
- International Council on Mining and Metals (ICMM) – Good Practice Guide - Indigenous People and Mining (2012)
<http://www.icmm.com/library/indigenouspeoplesguide>
- International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012)
http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 7 – Indigenous Peoples (2012)
http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES
- Indigenous Peoples Links (IPLinks), Ecumenical Council for Corporate Responsibility (ECCR), and the Middlesex University School of Law - Making Free Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector (2013)
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Working with Indigenous Communities (2007)
www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf
- Oxfam Australia - Guide to Free Prior and Informed Consent (2010)
<http://resources.oxfam.org.au/pages/view.php?ref=528>
- Sustainalytics - Licence to Operate. Indigenous Relations and Free Prior and Informed Consent in the Mining Industry (2011)
http://www.sustainalytics.com/sites/default/files/indigenouspeople_fpic_final.pdf
- United Nations Declaration on the Rights of Indigenous Peoples (2007)
www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- United Nations Expert Mechanism on the Rights of Indigenous Peoples, Advice No. 2: Indigenous peoples and the right to participate in decision-making. (2011)
http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Advice2_Oct2011.pdf
- World Resources Institute - Business without Conflict: the business case for community consent (2007)
http://pdf.wri.org/development_without_conflict_fpic.pdf

STANDARD GUIDANCE

(COP 32) Impact Assessment

A. Definition and applicability

Impact assessment is used to ensure that projects, programmes and policies are economically viable, socially equitable and environmentally sustainable. The “impact” is the difference between what would happen with the action and what would happen without it.

Impact Assessment is the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.

Source:

- *International Association for Impact Assessment (IAIA)*
www.iaia.org

The **Impact Assessment** provision of the COP is applicable to Members in the Mining Sector for proposed new Mining Facilities and/or significant changes to existing Mining Facilities that have the potential to affect local communities and the surrounding environment. The requirement is triggered at Mining Facilities where these circumstances are present either during the period since joining the RJC or through changes since the last Verification Assessment, whichever is most recent. Retrospective conformance is not expected.

The **Impact Assessment** provision of the COP should be read and implemented alongside the **Human Rights, Community Engagement, Indigenous Peoples and Free Prior Informed Consent, Artisanal and Small-Scale Mining, Resettlement, Biodiversity** and **Mine Rehabilitation and Closure** provisions.

B. Issue background

Impact assessment plays a critical role in a sustainable approach to developing and operating Mining Facilities. Considering impacts, benefits and mitigation strategies from a variety of perspectives, and from the beginning to the end of operations, these processes encourage a ‘whole-of-mine-life’ approach to the design, construction, operation and closure of a mine.

The purpose of an impact assessment is to identify, analyse and evaluate effects from a project and to identify measures to mitigate negative impacts and enhance positive impacts. The scale and detail of impact assessments should be proportional to the activities and their impacts, and the effects of indirect and cumulative impacts should be considered. Since mines have a finite life, the assessment process should include an analysis of options for and impacts of mine closure. Thus the timeframe for the assessment should cover during and beyond the lifetime of a mine, addressing local needs and priorities.

Impact assessments should take place at the earliest possible stage of a new mining project. It is a key input into project design and must be conducted sufficiently in advance to ensure that alternatives are considered and that mitigation measures can be accommodated in design decisions. Legislation requiring impact assessments may focus impact assessment on the biophysical environment, or may involve a more integrated approach that also includes social and economic impacts. At the exploration stage, an impact assessment may not be triggered under legislation but is nonetheless an important strategy for the business to identify and manage impacts.

A critical component of the impact assessment process is participation of and/or engagement with affected communities and key stakeholders. Their involvement in impact assessment should be sought at an early stage, and sufficient time should be allowed for communities, government, industry and other stakeholders to understand, evaluate and discuss concerns throughout the process. The process needs to be sensitive to the potential for conflict to arise, particularly in the context of development approvals.

Impact assessments usually start with baseline studies, which can begin during exploration. These studies should be designed to provide the necessary information on the site-specific environmental and social setting of the project to establish pre-project trends. Depending on the nature of the proposal, and the location, baseline studies may need to be carried out for at least a year, to capture the variable, seasonal and transient nature of the local environment or the social context.

Environmental impact assessment (EIA) is a process that identifies beneficial and adverse environmental impacts arising from a project. An EIA should be appropriate to the nature, scale and impact of a project. For mining projects seeking development approval, it is usually a full and formal impact assessment study involving detailed surveys of the existing environment, modelling of potential impacts and options, and extensive stakeholder consultation. Impacts on biodiversity, management of tailings and waste rock, and approaches to mine rehabilitation and closure are normally part of the assessment scope (see RJC Guidance for more information on each of these topics).

Social impact assessment (SIA) includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. The SIA should include human rights, labour and employment, gender, health and conflict in its terms of reference. The assessment should include input from affected parties and should incorporate land and customary rights, livelihoods (such as artisanal miners), employee/contractor issues, and demographic analyses. In particular, the SIA process should include a thorough assessment of how the community understands its historic and present rights to access the land and resource. The SIA should be development-oriented, identifying potential positive contributions to local and regional development and community livelihoods, as well as key risks, such as conflict or violence. The approach should be participatory and empower affected communities in the assessment of risks and the design and implementation of mitigation measures and potential benefits.

Human Rights Impact Assessment (HRIA) is a relatively new concept and is seen as emerging best practice. At present human rights impact is treated as an element of a SIA. A typical SIA, however, may not explore the issue in adequate detail and depth to identify the extent of the risk and its possible consequences. An HRIA measures the impact of policies, programs, projects and interventions on human rights. There are different types of impact - it can be positive when the human rights situation improves as a result of activities and interventions, or it can be negative when the human rights situation worsens. HRIAs connect with the human rights due diligence process promoted under the UN Guiding Principles on Business and Human Rights, and there are indications that they can significantly reduce risks for projects with human rights concerns.

C. Key frameworks and regulations

International

The International Finance Corporation (IFC) Performance Standard 1 (2012) on Social and Environmental Assessment and Management System underscores the importance of managing social and environmental performance during the life of a project. The IFC standard recommends a process of Social and Environmental Assessment that considers in an integrated manner the potential social and environmental risks and impacts of projects.

National and/or state law

Legislation relating to Environmental Impact Assessments and Social Impact Assessments has been introduced into most countries, either at a national, state and/or local level. It is essential that Members are aware of applicable law and regulation in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 32.1: Impact Assessment and Plans:** *Members in the Mining Sector shall complete an environmental and social Impact Assessment, and associated environmental and social management plans, during the planning and approval of new Mining Facilities or significant changes to existing Facilities.*

Points to consider:

- A process should be in place to screen expansions, acquisitions and other investments in Mining Facilities, and significant exploration activities, to determine if there are potential environmental and social risks and impacts that would require an impact assessment.
 - Initiation of impact assessment should begin at as early a stage as possible.
 - An integrated approach should be adopted where appropriate, combining social and environmental impact assessments with Human rights, gender, health and conflict issues.
 - The time required to complete an impact assessment is usually a function of the proposal's complexity, though is sometimes defined in the local regulatory regime.
 - Impact assessments should be conducted within the context of an overall system for managing environmental and social risks and impacts. The system should include:
 - An overarching policy defining the environmental and social objectives and principles that guide the project;
 - A process for identifying environmental and social risks and impacts;
 - Management programs that address risks and impacts;
 - Defined roles, responsibilities and authorities to implement the management system;
 - Processes for stakeholder engagement, monitoring and review, and for addressing grievances.
 - Documented action plans and procedures should be established to address the identified environmental and social risks and impacts and ensure compliance with applicable laws, regulations and licences.
- **COP 32.2: Baseline Conditions, Options and Prevailing Standards:** *Impact Assessments shall be integrated and comprehensive, including assessment of:*
 - *baseline conditions,*
 - *design options where applicable that mitigate negative impacts, and*
 - *environmental and social impacts, including impacts related to Human Rights, labour and employment, gender, health and Conflict.*

Points to consider:

 - Identification of risks and impacts should be based on recent environmental and social baseline data, at a level of detail that is appropriate to the nature, scale and risks of the project.
 - Impact assessment should consider all relevant environmental and social risks and impacts, including risks and impacts on human rights, labour and employment, gender health issues and conflict.
 - The assessment should include an analysis of alternative approaches to the design of the project, where appropriate. The mitigation hierarchy should be followed, favouring avoidance of impacts over mitigation.

- **COP 32.3: Engagement:** *Impact Assessments shall involve engagement with affected communities and stakeholders and appropriate subject matter experts.*

Points to consider:

- Stakeholder engagement is an ongoing process involving stakeholder analysis, external communications, consultation and reporting (see RJC Guidance for [Community Engagement](#));
- The nature and complexity of the engagement program may vary considerably, and should be commensurate with the project's status, risks and potential adverse impacts. The program should also reflect the characteristics and interests of the affected communities, and should provide for participation by those identified as disadvantaged or vulnerable.
- Appropriate expertise and experience should be included in the preparation of impact assessments. Often specialists need to be engaged to carry out the baseline studies, and to facilitate and document the outcomes of the impact assessment. An impact assessment may be (or be perceived as being) more credible if it is prepared or at least peer reviewed by an independent firm.

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Source: IFC Performance Standard 1 (2012) – Social and Environmental Assessment and Management System.

Check:

- ✓ Do you have an overall system in place for managing environmental and social risks and impacts that includes the conduct of environmental and social Impact Assessments?
- ✓ Does the system include the establishment of action plans and procedures to address the risks and impacts identified by your Impact Assessments?
- ✓ Do Impact Assessments begin at as early a stage as possible for all new mining projects or significant changes to existing operations under your control?
- ✓ Do you adopt, where appropriate, an integrated approach that combines social and environmental impact assessments with Human rights, gender, health and conflict issues?
- ✓ Do you follow the mitigation hierarchy, favouring avoidance of impacts over mitigation?
- ✓ How do you engage affected communities and stakeholders and appropriate subject matter experts in your Impact Assessments?

E. Further information

The following websites have further information relating to Impact Assessment:

- Anglo American – Socio-Economic Assessment Toolbox (SEAT)
www.angloamerican.com/development/social/seat
- BP's Human Rights Assessment at Tangguh, Indonesia (2002)
www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/l/hria_summary_Tangguh_HRIA_1736.pdf
- BHP Billiton – Social Impact Assessment
www.bhpbilliton.com/home/aboutus/regulatory/Documents/perSection11SocialImpactsAndManagement.pdf
- CommDev – The Oil, Gas and Mining Sustainable Community Development Fund
www.commdev.org/
- Daniel Franks - Social impact assessment of resource projects (2012)
www.csr.mq.edu.au/Portals/0/Publications/Social-impact-assessment-of-resource-projects1.pdf
- Environmental Law Alliance Worldwide – Guidebook for Evaluating Mining Project EIAs (2010)
www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf
- Guide to Human Rights Impact Assessment and Management (HRIAM) (2010)
http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management
- Human Rights Impact Resource Centre
www.humanrightsimpact.org/
- International Alert – Conflict Sensitive Business Practice – Guidance for Extractive Industries (2005)
www.international-alert.org/sites/default/files/publications/conflict_sensitive_business_practice_all.pdf
- International Association for Impact Assessment – Impact Assessment (2012)
www.iaia.org/publicdocuments/special-publications/fasttips/Fasttips_1%20Impact%20Assessment.pdf
- International Council on Mining and Metals (ICMM) - Community Development Toolkit (2012)
www.icmm.com/news-and-events/news/articles/icmm-presents-updated-community-development-toolkit
- International Council on Mining and Metals (ICMM) - Good Practice Guidance for Mining and Biodiversity (2006)
www.icmm.com/page/1182/good-practice-guidance-for-mining-and-biodiversity
- International Council on Mining and Metals (ICMM) - Human rights in the mining and metals industry. Integrating human rights due diligence into corporate risk management processes (2012)
www.icmm.com/page/75929/integrating-human-rights-due-diligence-into-corporate-risk-management-processes
- International Finance Corporation (IFC) Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts (2012)

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www1.ifc.org/wps/wcm/connect/3be1a68049a78dc8b7e4f7a8c6a8312a/PS1_English_2012.pdf?MOD=AJPERES

- International Finance Corporation (IFC) Guidance Note 1 – Assessment and Management of Environmental and Social Risks and Impacts (2012)
www1.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated_GN1-2012.pdf?MOD=AJPERES
- Rio Tinto – Why human rights matter (2013)
www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf

STANDARD GUIDANCE

(COP 33) Artisanal and Small-Scale Mining

A. Definitions and applicability

Artisanal and Small-Scale Mining (ASM) are formal or informal operations with predominantly simplified forms of exploration, extraction, processing and transportation. ASM is normally low capital intensive and uses high labour intensive technology. ASM can include men and women working on an individual basis as well as those working in family groups, in partnership or as members of cooperatives or other types of legal associations and enterprises involving hundreds or thousands of miners.

Source:

- *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Supplement on Gold, Second Edition (2012)*
www.oecd.org/fr/daf/inv/mne/mining.htm

The **Artisanal and Small-Scale Mining** section of the COP is applicable to those Mining Facilities which have ASM not under the Member's Control occurs on or near their operations. Where ASM occurs under the Member's Control, it is expected to conform with the Code of Practices. Where gold, diamond or platinum group metals are sourced by Members from ASM producers, the **Sourcing from Artisanal and Small-Scale Mining** provisions will also apply.

The **Artisanal and Small-Scale Mining** provisions of the COP should be read and implemented in conjunction with the **Community Engagement, Indigenous Peoples, Impact Assessment, Security** and **Mine Closure Planning** provisions, as well as **Sourcing from Artisanal and Small-Scale Mining**, as appropriate.

Note the RJC Chain-of-Custody (CoC) Standard (2012) requires implementation of this **Artisanal and Small-Scale Mining** section of the COP as part of the requirements for Eligible Material under the CoC Standard.

B. Issue background

Artisanal and small-scale mining (ASM) is the oldest form of mining. It is estimated that up to 20 million people in at least 30 countries are active in ASM and a further 100 million people depend on the sector for their livelihood. In various countries, small-scale miners are known by terms such as galamsey, orpailleurs, ubeshi or wabeshi, panners, diggers, garimperos, pirquineros and pocket miners.

ASM is a production system that allows local people to earn cash income, however small. It provides an accessible livelihood for poor and marginalized peoples, often complementing other livelihood activities, such as agriculture, animal husbandry and hunting, and serving as a support operation in times of environmental or economic stress. The extent of activity in any particular place will wax and wane, as will the size of the ASM population, to reflect changing local and national economic circumstances.

ASM is common in commodities which are high value, low bulk (easy to transport), and easily traded (fungible), such as diamonds, gold, coloured stones and silver. The Alliance for Responsible Mining (ARM), an advocacy and standards-setting organisation for social and environmentally responsible artisanal mining, estimates that up to 12% of the world's annual production of new gold and 20% of its diamonds are due to ASM. In some developing countries, ASM production can be upwards of 80% of the national production.

The RJC's aim is to encourage approaches which facilitate the co-existence of ASM and large-scale mining (LSM) operations and promote the development of legal, orderly, viable small-scale mining sectors in collaboration with host communities and governments. In some circumstances governments can take a lead role, in others NGOs or development agencies could be the facilitators, and in others LSM may need to play a driving role in encouraging reform. In each case, local communities and ASM workers should be at the core of a participatory approach.

Key issues for the ASM sector can include:

- Informal or illegal status;
- Difficulty in legally accessing land appropriate to ASM practice or economic displacement where large-scale mining is prioritised by governments;
- Lack of capital, which typically restricts production to rudimentary processes and often results in debt bondage and poverty traps;
- Unregulated, unfair and often illegal pricing and distribution systems, which in some cases facilitate associations with criminal groups;
- Poor environmental and health and safety practices in general;
- In the case of gold processing, unsafe use of mercury;
- Exploitation of mine labour including women and migrants, and use of child labour;
- Lack of appropriate legal frameworks, and where regulations exist, lack of enforcement.

There is a growing consensus among development agencies and organisations that if these issues could be addressed, ASM could become a more viable livelihood for those engaged in it and could contribute to the development of new economic opportunities both up- and downstream in the supply chain.

The relationships between LSM and ASM operators can be complex, fragile, and can descend into hostility and conflict. Conflict often occurs when both parties exert claims to the same resource, such as a near surface alluvial gold or diamond deposit and perceive one or the other to be illegitimate. The degree of risk that each operator poses to the other is a function of a number of factors, including:

- the perception of who has the right to mine the deposit and who was first on the ground;
- whether the artisanal mineworkers are from outside of the region or local and community-based;
- whether ASM in the area is seasonal or permanent or the result of a mineral rush;
- whether it is ad-hoc or organised;
- whether the government is active or passive on these matters and seen as a fair mediator of interests; and
- whether appropriate legal frameworks for both large and small miners are in place and working effectively.

Large-scale companies will increasingly interact with artisanal miners and will face the challenge of turning competition over resources or land into circumstances and relationships that are mutually beneficial. It is sometimes easier to find solutions if there is a multi-stakeholder commitment to working patiently and constructively together towards a set of common goals, but this is not always the case. Ultimately, the larger companies bear the consequences of the relationship if they are not able to work with local miners and affected communities. Experience has shown that it is not an easy task to transform ASM into a positive force for local and regional social and economic development that can also comfortably co-exist with LSM operations.

Formalisation and professionalisation of the sector is considered a prime need. The first step is to develop an appropriate and effective legislative framework. While this is the role of government, large mining companies can play a major role in supporting government reforms in this area where appropriate. Other important aspects of the formalisation process in the ASM sector include appropriate forms of workforce organisation, whether under a business-based or cooperative model; fair market access for sale of product and a fair return to labour; the progressive integration of improved health and safety and environmental practices; and participation in the formal economy (appropriate forms and levels of taxation).

Responsible LSM engagement with ASM generally involves the following:

- **Consultation with ASM stakeholders at every stage during the mine life cycle, from exploration to closure:** It is essential to keep the ASM community informed of the company's activities and intentions; to identify how LSM activities will affect existing artisanal operations and collectively plan to manage these impacts; establish baselines from which to measure socio-economic change; build trust and strengthen relationships between key stakeholders so that conflicts can be avoided. Responsible companies also understand the need to build the capacity of key parties to engage with the process.

- **Managing economic displacement:** This could involve developing alternative livelihoods programmes or creating zones on the concession where the ASM are permitted to mine, along with conditions negotiated between the parties, such as whether or not the ASM must sell to the concession-holder in the first instance and how the price will be established. It could also include doing capacity-building on important issues such as occupational health and safety and business management. See COP provision and Guidance on [Sourcing from Artisanal and Small-Scale Mining](#) where applicable.
- **Professionalization of ASM activities:** Fatalities are 90 times more common in ASM activities than in LSM². Programs to improve access to and use of personal protective equipment, assist in rescue efforts when rock failures occur, and promote change in the mining and refining methods to reduce environmental impacts and improve mineral recovery and incomes, are just some of the initiatives that LSM companies have undertaken to improve the performance of ASM mining. In both southern Venezuela and northern Tanzania, for example, formal, midsize mining companies have allowed pre-existing ASM on their properties, in designated areas, and have worked with the miners to improve their practices. This occurred in spite of liability issues (illegality, environment), and the resulting agreements and relationships between the companies and artisanal miners created a solid framework for the implementation of a legalization process and the provision of technical support for improved practices, incomes, health and security.³
- **ASM sensitive mine security approaches:** Ensuring a conflict avoidance and resolution approach to mine security, which is effective for the mine but sensitive to the community, is essential. For example, the presence of security forces installed to minimize theft can actually profit from it through corruption, resort to inappropriate use of force or firearms, or otherwise create conflict. Security issues should be managed in accordance with the COP provision on [Security](#) which references the Voluntary Principles on Security and Human Rights.
- **Optimising development opportunities:** Through its operations and strategic planning, LSM can contribute to the development of communities which are involved in ASM or related activities, and over time turn potential risks into opportunities for both the company and the ASM communities. Ways in which LSM can support local economic development include, for example:
 - sourcing food or other materials locally rather than importing it;
 - employing local people in camp construction and maintenance activities;
 - providing vocational training and apprenticeships which ultimately translate into skilled job opportunities, while building local human capital;
 - supporting the development of local entrepreneurs and businesses that can serve the needs of the local communities and/or the large-scale mine.

There are other ways in which LSM can contribute to local community development based on participatory and collaborative models of project and program design and implementation, whether it be in terms of improving local physical infrastructure (roads, access to potable water, sanitary systems, village electrification) or social infrastructure (school, clinic). Identifying, designing and carrying out these development programs in partnership with local communities, based on their own assessment of their needs to ensure their ownership of the program, is an empowering process, making them more able to design and direct their own projects in the future.

- **Planning for Closure:** In many precious metal deposits, in-migration of new artisanal miners, or expansion of existing ASM activities, may occur when a mine closes. LSM company-employed miners may become ASM miners post-closure. Miners may re-work tailings which have been left behind, work areas of lower grade which were deemed uneconomic for the LSM operation, or work river streams which contain alluvial mineralization downstream of the deposit. Through engaging with ASM prior to closure, and involving the miners in the closure planning process, it may be possible to identify innovative approaches to rehabilitation that benefit both the LSM company and its legacy and the livelihood base for local communities and miners.

² Hinton, J, (2007), *Communities and Small-Scale Mining: An Integrated Review for Development Planning*, CASM, Washington DC.

³ Davidson, J (1998), "Venezuela; building partnerships with artisanal miners," *Mining Environmental Management*, v 6 n 2.

C. Key regulations

International

Standards for responsible ASM practices in gold and diamonds are being developed by the Alliance for Responsible Mining (ARM) and the Diamond Development Initiative International (DDII).

ARM launched a fair trade certification system for ASM gold, in partnership with Fairtrade Labelling Organizations (FLO) International, in 2011. ARM believes that fair trade marketing can serve as a major incentive to improved practice and offers communities and miners new possibilities for improving their lives and for securing the restoration of ecosystems. While the initial scope of the Fairtrade-Fairmined Standard was Latin America, a standards review process is expanding to a global scope of implementation among other changes. The conclusion of the ARM-FLO partnership in 2013 will result in separate Fairtrade and Fairmined Standards, with both standards undergoing a standards review process.

DDII is focused on developing opportunities for transforming the legacy of violence and underdevelopment associated with artisanal diamond mining into a developmentally sound enterprise, where people can earn decent livelihoods in peace. In 2008, DDII released Standards & Guidelines for the Sierra Leone artisanal diamond mining sector, with individual sections aimed at governments, investors and donors/civil society, and later expanded this into a Development Diamond draft Standard and certification program. Since then, DDII has undertaken piloting and engagement work with a number of governments, including a successful miner registration program in Congo (DRC).

National

A variety of countries have developed legislative and/or regulatory frameworks for their domestic ASM sectors, while other countries have not as yet moved down that path. It is essential for Members with Mining Facilities to be aware of applicable laws and regulations affecting both large and small scale prospecting and mining operations in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 33.1.a: Engagement:** *Members in the Mining Sector shall, where artisanal and small-scale mining (ASM) not under the Control of the Member occurs within their areas of operation: a). Engage directly with the ASM as part of community engagement approaches (30) and social and environmental impact assessments (32);*

Points to consider:

- Responsibility for relationships with ASM should fall to a relevant manager, often the person responsible for community engagement and development programs. Experienced and expert assistance may be required to develop policies, training, strategies, plans and actions, as appropriate. See the [Community Engagement](#) and [Impact Assessment](#) Guidance for general information on these.
 - **COP 33.1.b: Professionalisation and formalisation:** *Participate in initiatives, including multi-stakeholder initiatives, that enable the professionalisation and formalisation of the ASM, as appropriate to the situation.*
- #### **Points to consider:**
- In cases where artisanal mining is not recognised as legitimate by host country legislation, then Members should seek to work with governments on approaches to formalising ASM. However it is recognised that in some situations this may not be possible.
 - Initiatives should be designed in consultation with key stakeholders including ASM producers themselves, and should aim to assist in the organisation, formalisation, professionalisation and legalisation of ASM.
 - Opportunities for LSM-ASM initiatives may include:
 - Establishing formal partnerships with the ASM sector;
 - Demarcating zones that are deemed inappropriate for large-scale extraction on mining leases (in conjunction with regulatory authorities);
 - Passing legal mining title over those areas (in conjunction with regulatory authorities) to legal and organised ASM;

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- Providing financing (loans) for technical and other improvements;
- Assisting and training miners on a range of issues (for example, occupational health, reclamation, mining and processing methods, value added processes, organizational and financial management, explosives management);
- Aiding miners in the determination of mineral reserves (combined with support for access to financing);
- Providing emergency response services;
- Availing processing services to miners or building their capacity to implement effective processing facilities themselves with improved technology;
- Liaising with government departments, NGOs, trade unions and international agencies to obtain additional support;
- Providing guidance on marketing and commercialization, including fair trade arrangements;
- Proactively supporting alternative livelihoods, economic development, and other improvements in ASM communities;
- Supporting the wider community by locally sourcing the provision of as many goods and services as possible;
- Eliminating child labor as a condition of engagement in the community;
- Improving women's conditions in ASM communities through gender awareness and empowerment programs;
- Supporting initiatives that address risks of supporting conflict, such as establishing secure pipelines of minerals from ASM producers, as set out in Appendix 1 of the Supplement on Gold to the *OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

Source: *CommDev/CASM/ICMM Working Together; How large-scale mining can engage with artisanal and small-scale miners (2008)*

Check:

- ✓ Do you know if any ASM occurs within your areas of operation?
- ✓ If ASM does occur, do you engage directly with the ASM producers, and are they included in any social and environmental impact assessments?
- ✓ How have you participated in initiatives that enable the professionalisation and formalisation of the ASM?

E. Further information

The following websites have further information on artisanal and small-scale mining:

- Alliance for Responsible Mining (ARM)
<http://www.communitymining.org/>
- Alliance for Responsible Mining (ARM) – Legalization Guide for Artisanal and Small-Scale Mining (ASM) – Draft for Discussion (2011)
www.communitymining.org/attachments/059_ARM_Series5_Legalisation_guide_ASM.pdf
- Alliance for Responsible Mining (ARM) – Rock-Solid Changes for Responsible Mining (2011)
www.communitymining.org/attachments/059_RSC_FINAL_web_low.pdf
- AngloGold Ashanti – Approach to artisanal and small scale mining (2006)
www.anglogoldashanti.com/subwebs/InformationForInvestors/ReportToSociety06/artisanal-mining.htm
- Artisanal and Small-Scale Mining in Protected Areas and Critical Ecosystems Programme (ASM-PACE): A Global Solutions Study (2012)
www.estellelevin.com/images/documents/publications/Global%20Solutions%20Study.pdf
- Artisanal Gold Council (AGC)
www.artisanalgold.org/home
- CommDev – Artisanal and Small-Scale Mining (ASM) (2012)

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- commdev.org/section/topics/artisanal_mining
- CommDev/CASM/ICMM - Working Together: How large-scale mining can engage with artisanal and small-scale miners (2008)
commdev.org/content/document/detail/2018/
- Communities and Small-Scale Mining (CASM) – hosted by World Bank Group
www.artisanalmining.org/index.cfm
- Diamond Development Initiative (DDI) – Artisanal Alluvial Diamond Mining (2009)
www.ddiglobal.org/pages/ddi_artisanaldiamond.php
- Diamond Development Initiative (DDI) – Mechanization of Artisanal Alluvial Diamond Mining: Barriers and Success Factors (2010)
www.ddiglobal.org/login/Upload/Mechanisation-Alluvial-Artisanal-Diamond-Mining.pdf
- Human Rights Watch - A Poisonous Mix. Child Labor, Mercury, and Artisanal Gold Mining in Mali (2011)
www.hrw.org/sites/default/files/reports/mali1211_forinsertWebUpload_0.pdf
- International Labour Organisation (ILO) – Facts on Small Scale Mining
www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067582.pdf
- International Institute for Environment and Development (IIED) - Responding to the challenge of artisanal and small-scale mining: How can knowledge networks help? (2013)
pubs.iied.org/16532IIED.html?c=energy/mining
- Global Mercury Project – Global Impacts of Mercury Supply and Demand in Small-Scale Mining (2007)
www.globalmercuryproject.org/documents/non_country%20specific/2006%20GMP%20Report%20to%20UNEP%20GC24.pdf
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- United Nations Environment Programme (UNEP) Global Mercury Partnership – A Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Techdoc/UNEP%20Tech%20Doc%20APRIL%202012_120608b_web.pdf
- United Nations Environment Programme (UNEP) Global Mercury Partnership - Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Formalization_ARM/Formalization%20Document%20Final%20June%202012.pdf
- The World Bank - Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit (2012)
commdev.org/userfiles/Gender_and_ASM_Toolkit.pdf

STANDARD GUIDANCE

(COP 34) Resettlement

A. Definitions and applicability

Resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood as a result of project-related land acquisition and/or restrictions on land use.

Involuntary Resettlement occurs when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

Source:

- *International Finance Corporation (IFC) Guidance Note 5: Land Acquisition and Involuntary Resettlement (2012)*
www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES

The **Resettlement** section of the COP is applicable to Members in the Mining Sector where resettlement is planned or occurring. The requirement is triggered at Mining Facilities where these circumstances are present either during the period since joining the RJC or through changes since the last Verification Assessment, whichever is most recent. Retrospective conformance is not expected.

Note: resettlement of Indigenous Peoples will trigger the requirement for a Free, Prior and Informed Consent (FPIC) process under the **Indigenous Peoples and Free Prior Informed Consent** provision of the COP.

See also the Guidance chapters for **Community Engagement, Indigenous Peoples and Free Prior Informed Consent**, and **Impact Assessment**.

B. Issue background

Mining projects are developed where commercially viable ore is found and this can sometimes lead to development-related displacement of local communities. However experience has shown that involuntary resettlement can result in long-term hardship for affected persons and communities. Unless properly managed, involuntary resettlement may result in long-term impoverishment, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided or at least minimized. Where it is unavoidable in exceptional circumstances, it is essential that appropriate measures to mitigate adverse impacts on displaced persons and host communities are carefully planned and implemented.

Negotiated settlements help avoid expropriation and eliminate the use of governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Members are encouraged to acquire land rights and/or access through negotiated settlements wherever possible. However consideration should be given to the rights of vulnerable people, such as those renting land from a landholder who is involved in negotiations.

On the issue of compensation for resettlement, land for land should be a starting point for agricultural based livelihood communities, rather than cash based compensation. Resettlement should ensure that re-settlers have improved livelihoods and economic well being and not undermine local food security. Resettlement

negotiations should take place with the participation of all affected persons and communities, including women, and be based on full impact assessments.

All resettlement decisions and plans should be informed by the views and needs of the affected communities, including any artisanal miners operating within the concession. Key issues to consider include compensation, livelihoods, housing and living conditions at new sites, as well as social and cultural continuity of the community. There may also be a need to develop agreed strategies for protection or safe movement of sites or objects of special historical, spiritual or cultural significance. Gender is a critical dimension of the above issues and women's interests, expectations and participation should be sought. Resettlement and mine closure planning should consider the possibility of individuals and/or communities returning to post-mining land.

C. Key International Instruments

The updated International Finance Corporation (IFC) Performance Standard 5 (January 2012) provides an international standard for Land Acquisition and Involuntary Resettlement that is referenced in the RJC standard. The objectives of IFC Performance Standard 5 are to:

- Avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- Avoid forced eviction.
- Anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by
 - (i) providing compensation for loss of assets at replacement cost and
 - (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- Improve, or restore, the livelihoods and standards of living of displaced persons.
- Improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites

IFC Guidance Note 5 (January 2012) corresponds to Performance Standard 5 and provides additional guidance on the requirements of the standard.

Note that IFC Performance Standard 5 does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail).

The right to adequate housing is the subject of a United Nations High Commission on Human Rights guidance directed to States, 'UN Basic Principles and Guidelines on Development-Based Evictions and Displacement'. The Guidelines focus on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards.

D. Suggested implementation approach

- **COP 34.1: Resettlement:** *Members in the Mining Sector shall avoid Involuntary Resettlement. Where resettlement is unavoidable, it should be minimised and appropriate measures to mitigate adverse impacts should be carefully planned and implemented, consistent with International Finance Corporation (IFC) Performance Standard 5.*
 - **Points to consider:**
 - Feasible alternative project designs should be considered that avoid or minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.
 - Resettlement activities should be implemented with appropriate disclosure of information, documentation, consultation, and the informed participation of those affected.

RJC Standards Guidance – Revisions for Comment May 2013

- Compensation standards should be transparent and applied consistently to all those affected.
- Opportunities should be provided to displaced communities and persons to derive development benefits from the project.
- A census should be undertaken to establish baseline information and determine those eligible for compensation and assistance.
- A grievance mechanism should be established as early as possible to address concerns in a timely fashion, including a recourse mechanism to resolve disputes in an impartial manner.
- Monitoring and evaluation procedures should be established, commensurate with the project's risks and impacts.
- Entitlements for the applicable classifications of affected persons, depending on the type of displacement and their formal legal rights, should be consistent with the IFC Performance Standard 5.

See IFC Performance Standard 5 and supporting Guidance for further information on implementing the COP requirements.

Check:

- ✓ Have you undertaken all appropriate measures to avoid any involuntary resettlement?
- ✓ If resettlement is unavoidable, have you undertaken measures to mitigate adverse impacts consistent with International Finance Corporation (IFC) Performance Standard 5, including appropriate disclosure, compensation standards, census data, monitoring procedures etc.?

E. Further information

The following websites have further information on Involuntary Resettlement:

- International Finance Corporation (IFC) Performance Standard 5 – Land Acquisition and Involuntary Resettlement (2012)
www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 5 – Land Acquisition and Involuntary Resettlement (2012)
www1.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES
- United Nations Office of the High Commissioner of Human Rights (OHCHR) - Basic Principles and Guidelines on Development-Based Evictions and Displacement
www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

STANDARD GUIDANCE

(COP 35) Emergency Response

A. Definitions and applicability

An **Emergency** is an abnormal occurrence that can pose a threat to the Safety or Health of Employees, Contractors, Visitors, customers, or local communities, or which can cause damage to assets or the Environment.

APELL - Awareness and Preparedness for Emergencies at Local Level - is a framework for the preparation of an emergency response plan, set out in a handbook published by the UNEP.

The **Emergency Response** section of the COP is applicable to Members in the Mining Sector.

B. Issue background

Emergency response is a key issue for Mining Facilities and local communities and one that requires a collaborative approach to planning. Potential types of emergencies may relate to:

- High volume materials management – including tailings and waste rock;
- Ground subsidence;
- Chemical emissions;
- Transportation of product, by-product, waste or supplies;
- Pipelines;
- Natural hazards such as weather and seismic events;
- Non-operational facilities such as closed mine sites;
- Long-term environmental or health impacts;
- Social unrest and other hazards.

C. Key Initiatives

The Awareness and Preparedness for Emergencies at the Local Level (APELL) for Mining program is an initiative of the United Nations Environment Programme (UNEP). Its primary purpose is to raise awareness of the need for local communities to be aware of the risks associated with mining operations and to provide guidance on how to effectively engage local communities in emergency preparedness. APELL for Mining was developed in collaboration with the International Council on Mining and the Environment (ICME) and released in 2001 with the aim of enhancing public involvement in emergency response planning. The APELL for Mining Handbook provides guidance to mine management and other stakeholders on how to approach the development of emergency plans.

The International Council on Mining and Metals (ICMM), the successor to the ICME, has also collaborated with UNEP to produce the Good Practice on Emergency Preparedness and Response (2005) publication. This publication acts as a companion to UNEP's APELL for Mining (2001) and provides a number of case studies that illustrate application of the APELL process.

While an APELL process can be initiated by any party, companies are expected to take the lead. Establishing a formal Co-ordinating Group is a key part of APELL implementation. The Co-ordinating Group provides a mechanism for interaction and cooperation between the many players involved in preventing or responding to emergencies – mine management, local authorities and emergency response agencies, community leaders and workers representatives. It provides a means to achieve a coordinated approach to emergency response planning and to communications within the community.

D. Suggested Implementation Approach

- **COP 35: Emergency Response:** *Members in the Mining Sector shall develop and maintain emergency response plans in collaboration with potentially affected communities, workers and their representatives, and relevant agencies, pursuant to guidance provided by UNEP on Awareness and Preparedness for Emergencies at the Local Level (APELL) for Mining.*

Points to consider:

- The following steps of APELL are outlined in the APELL for Mining Handbook (2001):
 - Identify the emergency response participants and establish their roles, resources and concerns.
 - Evaluate the risks and hazards that may result in emergency situations in the community and define options for risk reduction.
 - Have participants review their own emergency plan for adequacy relative to a coordinated response, including the adequacy of communication plans.
 - Identify the required response tasks not covered by the existing plans.
 - Match these tasks to the resources available from the identified participants.
 - Make the changes necessary to improve existing plans, integrate them into an overall emergency response and communication plan and gain agreement.
 - Commit the integrated plan to writing and obtain approvals from local governments.
 - Communicate the integrated plan to participating groups and ensure that all emergency responders are trained.
 - Establish procedures for periodic testing, review and updating of the plan.
 - Communicate the integrated plan to the general community.

Source: *APELL for Mining Handbook (2001)*.

Check:

- ✓ Have you established emergency response plans in collaboration with key stakeholders?
- ✓ Does the plan follow the guidance provided by the APELL for Mining?
- ✓ Has a formal Co-ordinating Group been established for APELL implementation?
- ✓ Are procedures in place for testing the plan?
- ✓ Has the plan been communicated to the general community?

E. Further Information

The following websites have further information on health and safety issues:

- APELL for Mining Handbook (available in English, Romanian, Spanish and Swedish) (2001)
www.unep.fr/shared/publications/pdf/WEBx0055xPA-APELLminingEN.pdf
- International Council on Mining and Metals (ICMM) - Good Practice in Emergency Preparedness and Response (2005)
www.icmm.com/page/1169/library/documents/good-practice-in-emergency-preparedness-and-response
- Mining Association of Canada (MAC) – Crisis Management Guide (2007)
www.mining.ca/www/media_lib/TSM_Documents/TSM_Publications/2007/Crisis_Man_03_2007.pdf
- United National Environment Programme – Resource Efficiency
<http://www.unep.org/resourceefficiency/>

STANDARD GUIDANCE

(COP 36) Biodiversity

A. Definitions and applicability

Biodiversity means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. Biodiversity encompasses all living things, from human beings to micro-organisms and the habitats in which they live, and it also includes the genetic material within individual species.

World Heritage Sites are sites established under the World Heritage Convention of 1972.

Protected area means a geographically defined area which is legally designated or regulated and managed to achieve specific conservation objectives.

Key Biodiversity Areas (KBAs) are nationally mapped sites of global significance for biodiversity conservation that have been selected using globally standard criteria and thresholds based on the framework of vulnerability and irreplaceability widely used in systematic conservation planning. KBA's include, for greater certainty, areas of Critical Habitat.

Mitigation hierarchy means a hierarchy of categories of biodiversity mitigation measures, as follows in descending order of priority:

- **Avoid** impacts by designing or modifying a proposed mine or existing operation in order to prevent a potential biodiversity impact;
- **Minimise** impacts by substituting existing decisions or activities with alternatives that are designed to reduce or limit the undesirable impacts of a proposed activity on biodiversity;
- **Rehabilitate** or restore the affected environment;
- **Offset** the biodiversity impact by implementing measures to compensate for affected biodiversity values. The compensatory measure may include a combination of direct offsets, such as actions or resources that provide a commensurate conservation value and other compensatory measures such as research grants or education scholarships.

Outstanding Universal Value is defined as cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.

Critical Habitats are areas with high biodiversity value, including (i) habitat of significant importance to Critically Endangered and/or Endangered species; (ii) habitat of significant importance to endemic and/or restricted-range species; (iii) habitat supporting globally significant concentrations of migratory species and/or congregatory species; (iv) highly threatened and/or unique ecosystems; and/or (v) areas associated with key evolutionary processes.

Source:

- *Convention on Biological Diversity*
www.cbd.int/
- *International Council on Mining and Metals (ICMM) - Good Practice Guidance for Mining and Biodiversity (2006)*
www.icmm.com/paqa/1182/good-practice-guidance-for-mining-and-biodiversity
- *International Finance Corporation (IFC) Performance Standard 6 – Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012)*
www1.ifc.org/wps/wcm/connect/bff0a28049a790d6b835faa8c6a8312a/PS6_English_2012.pdf?MOD=AJPERES

- *International Union for Conservation of Nature (IUCN)*
www.iucn.org/about/union/secretariat/offices/iucnmed/iucn_med_programme/species/key_biodiversity_areas/
- *World Heritage Committee - Operational Guidelines for Implementation of the World Heritage Convention (2012)*
<http://whc.unesco.org/en/guidelines/>

The **Biodiversity** section of the COP is applicable to all Members with Mining Facilities. Provisions 36.1 and 36.2 do not apply retrospectively to Mining Facilities in operation before World Heritage or protected area status is designated.

B. Issue background

Mining has the potential to affect biodiversity throughout the life cycle of a project, both directly and indirectly. The potential for significant impacts is greater when mining occurs in environmentally or socially sensitive areas. Mining is increasingly being proposed in remote areas that were previously unexplored and undeveloped for minerals, some of which are biodiversity-rich. The opening up of new prospective areas to mineral resources development provides an opportunity for the mining industry to demonstrate that practices have improved, including making 'no-go' decisions.

However, not all mining takes place in remote or highly sensitive areas. Some greenfield or expansion projects will be developed in relatively highly populated areas, industrial settings or regions that have been intensively farmed for many decades, where biodiversity is limited. In these situations, the focus should be on developing a sufficient understanding of local biodiversity and exploring opportunities for biodiversity enhancement with appropriate partners.

Despite the potential for negative impacts on biodiversity from mining operations, there is a great deal that companies can do to minimize or prevent such impacts in areas identified as being appropriate for mining. Being proactive in the assessment and management of biodiversity is important not only for new operations but also for those that have been operating for many years.

Opportunities for creating positive biodiversity outcomes and reducing negative impacts vary significantly from one operation to another. Mitigation is concerned with identifying and implementing measures to safeguard biodiversity and any affected stakeholders from potentially adverse impacts. Ideally, the aim is to prevent adverse impacts from occurring or, if this is not possible, to limit their significance to an acceptable level, following the mitigation hierarchy.

Protected areas

Protected areas remain the fundamental building blocks of virtually all national and international conservation strategies, supported by governments and international frameworks such as the Convention on Biological Diversity. Comprehensive and representative lists of various types of designated protected areas aim to ensure that ecosystems⁴, habitats and species are protected from damage and loss, particularly those which are remarkable in terms of richness, rarity, sensitivity and are relatively unmodified by human influence. In 2008, roughly a tenth of the world's land surface was under some form of protection.

The RJC biodiversity standard requires Members to not explore or mine within, or negatively impact adjacent, UNESCO World Heritage Sites. The RJC also requires Members to respect other areas legally designated for biodiversity protection, at the international, national, regional or local level. A clear understanding of the status of protected areas, and the implications for mining operations, is thus essential.

Mining is one of a small number of industries that has little or no control over where it can locate its operations, as mining can only occur where economically viable mineral deposits are located. In some cases, exploration and mining development may be incompatible with the objectives for which areas are designated for protection, even after all technically and economically feasible steps to reduce adverse impacts have been

⁴ An ecological community, together with its environment, functioning as a unit.

considered. However there are also situations where the development of a mine can benefit or enhance the conservation and protection of valuable ecosystems.

Key Biodiversity Areas

For existing protected areas and species, biodiversity importance is at least partially identified. However some areas of international importance for biodiversity lie outside of designated protected areas.

Key Biodiversity Areas (KBAs) are intended to represent the most important sites for biodiversity conservation worldwide. As the building blocks for maintaining effective ecological networks, KBAs are the starting point for conservation planning at a landscape level. Governments, intergovernmental organizations, NGOs, the private sector, and other stakeholders can use KBAs as a tool for identifying national networks of internationally important sites for conservation.

Many existing protected areas are directly equivalent to KBAs. Some protected areas (or parts of protected areas) do not meet the criteria for global biodiversity significance, although they may be important for other reasons such as local, natural or cultural significance. In other cases, the boundaries of protected areas were not created on the basis of the conservation needs of the species for which they are (or have subsequently been found to be) of global or national importance, in which case the KBA will include areas outside the protected area, or will lie wholly outside current protected areas.

According to the Integrated Biodiversity Assessment Tool (IBAT, see below), to meet the KBA criteria, a site must contain:

- One or more globally threatened species;
- One or more endemic species which are globally restricted to the site or surrounding region;
- Significant concentrations of a species (e.g. important migratory stops, nesting sites, nurseries or breeding areas); and/or
- Globally significant examples of unique habitat types and species assemblages.

Currently, KBAs have been identified and are being safeguarded in over 100 countries around the world through the efforts of many stakeholders, including the BirdLife International partnership, Plantlife International and the Alliance for Zero Extinction. According to the IFC's guidance for Standard 6, KBA's include, among others, Ramsar Sites, Important Bird Areas (IBA), Important Plant Areas (IPA) and Alliance for Zero Extinction Sites (AZE).

Establishing biodiversity importance involves looking at a range of criteria to determine whether the site is of local, regional, national or international importance. Although no universal standard exists, some of the common criteria include the following:

- Species/habitat richness
- Species endemism
- Keystone species
- Rarity
- Size of the habitat
- Population size
- Fragility
- Value of ecosystem services
- Importance of species in the local, social context.

The application of these criteria is a matter of professional judgement and requires the involvement of a trained ecologist. Evaluation can be very complex in some developing countries or in new areas such as deep seas, where there is little information to evaluate biodiversity comparatively. In such circumstances, extensive fieldwork may need to be undertaken to better understand the relative value of operational sites.

Biodiversity offsets are being increasingly used in the mining industry to compensate for biodiversity loss and are part of the legal framework in some countries (for example, in USA, Brazil, Europe, Switzerland and Canada). Some mining companies are participating in voluntary offsets, suggesting that there is a business case beyond legislative compliance. If a robust legal framework is in place, it will provide a starting point for

designing an appropriately managed biodiversity offset. In any case, understanding stakeholder needs and perspectives is the key to ensuring that offsets are credible and can deliver tangible conservation benefits.

Threatened species

Threatened species are any species (including plant, animal, or fungus, etc) which are vulnerable to extinction in the near future. Species threatened with extinction are high conservation priorities because there is limited time to take conservation action before they may become extinct. The International Union for the Conservation of Nature (IUCN) is the foremost authority on threatened species and groups them in categories of vulnerable, endangered and critically endangered.

Only a small number of the world's plant and animal species have been assessed. The species groups that have been comprehensively assessed include the amphibians, birds, mammals, freshwater crabs, warm-water reef-building corals, conifers and cycads. Environmental impact assessment processes for new mining developments, particularly in remote areas, have started to play a key role in the identification and assessment of new or threatened species.

Undersea biodiversity

Undersea mining is a relatively new area of activity that has the potential to develop mineral extraction processes for offshore ocean floor environments. While commercial feasibility is yet to be established, several exploration companies have been established to investigate potential ore deposits that include gold. Since these deep marine ecosystems may be rich in previously unknown biodiversity, existing regulatory structures may need to be further developed to govern development approvals and oversight of operations. The Code of Practices introduces some additional requirements for undersea exploration and mining activities that aim to address potential gaps in biodiversity management for areas where development approval falls outside of national government jurisdictions.

C. Key conventions, initiatives and regulations

National law

Nearly all jurisdictions have a legal and regulatory framework for environmental protection. Many of the signatory countries to the Convention on Biological Diversity have introduced specific national laws protecting the biodiversity values of their country. It is essential that Members are familiar with applicable law and understand the legislative and regulatory framework for biodiversity in all areas of operation.

International conventions

At the 1992 Earth Summit in Rio de Janeiro, the United Nations Convention on Biological Diversity (CBD) was signed by 157 governments; it has since been ratified by 193 countries. The objectives of the CBD are to encourage and enable all countries to:

- conserve biodiversity;
- sustainably use the various components of biodiversity; and
- share the benefits arising from the commercial and other use of biodiversity in a fair and equitable manner.

The CBD is an instrument for governments and is effected through national level legislation.

World Heritage Sites are established under the World Heritage Convention of 1972, which is administered by UNESCO. World Heritage status relates to cultural and/or natural heritage considered to be of Outstanding Universal Value. In 2013, there were more than 960 World Heritage listed sites in 157 countries. A World Heritage Site can be a forest, mountain, lake, desert, monument, building, complex, or city. Each World Heritage Site is the property of the state on whose territory the site is located, but it is considered to be in the interest of the international community to preserve each site. In situations where a mine operation pre-exists World Heritage designation, grandfathering legislation may come into effect for that operation.

The Convention on Wetlands of International Importance, called the Ramsar Convention, is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The Convention entered into force in

December 1975. The addition of a site to the Ramsar List confers international recognition and expresses the government's commitment to take all steps necessary to ensure the maintenance of the ecological character of the site.

International initiatives

The International Finance Corporation (IFC) Performance Standard 6 – Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012) provides a detailed standard and associated guidance for projects that may affect biodiversity. The objectives of the standard are:

- To protect and conserve biodiversity
- To maintain the benefits from ecosystem services
- To promote the sustainable management of living natural resources through the adoption of practices that integrate conservation needs and development priorities.

The standard sets out requirements according to the nature of the potentially affected habitat (modified, natural or critical), and the presence of legally protected and internationally recognized areas.

The International Council on Mining and Metals (ICMM) has published a Position Statement on Mining and Protected Areas. The Position Statement outlines five commitments of ICMM Members, the first two of which align with the RJC Biodiversity standard. The remaining commitments relate to ongoing work on mining and protected areas with key stakeholders. The ICMM has an ongoing dialogue with the International Union for the Conservation of Nature (IUCN), with a view to strengthen the IUCN system of protected area categorization and address application issues.

ICMM have also published a Good Practice Guidance for Mining and Biodiversity. The Guidance encompasses the steps required to improve biodiversity management throughout the mining life cycle, from exploration to closure. It offers a series of practical modules to enable mining companies to:

- Understand the interfaces between their activities and biodiversity;
- Assess the likelihood of their activities having negative impacts on biodiversity;
- Mitigate potential impacts on biodiversity;
- Explore the potential to contribute to biodiversity conservation.

Categorisation

The IUCN in 1994 published the Protected Area Categories system as an important global standard for the planning, establishment and management of protected areas. The IUCN Categories are as follows:

- Category Ia: Strict nature reserve
- Category Ib: Wilderness area
- Category II: National park
- Category III: National monument or feature
- Category IV: Habitat/species management area
- Category V: Protected landscape/seascape
- Category VI: Protected area with sustainable use of natural resources

The IUCN Red List of Threatened Species provides taxonomic, conservation status and distribution information on plants and animals that have been globally evaluated using the IUCN Red List Categories and Criteria. This system is designed to determine the relative risk of extinction, and the main purpose of the IUCN Red List is to catalogue and highlight those plants and animals that are facing a higher risk of global extinction (i.e. those listed as Critically Endangered, Endangered and Vulnerable).

A number of databases maintained by conservation organisations provide details on protected areas that are of international or national importance, Key Biodiversity Areas and on species that are threatened or endangered. These include:

- UNEP-WCMC World Database of Protected Areas
- Alliance for Zero Extinction sites
- Important Bird Areas – BirdLife International
- Important Plant Areas – PlantLife International
- Fauna and Flora International
- Conservation International

- Natura 2000 sites
- High Conservation Value areas

National and state legislation in many countries also maintains lists of locally, regionally or nationally threatened species and habitats.

Tools and other initiatives

There are a range of initiatives and tools being developed to assist companies understand and manage biodiversity issues.

The Business and Biodiversity Offsets Program (BBOP) is a partnership between companies, governments and conservation experts to explore biodiversity offsets. Its objectives are:

- Demonstrating conservation and livelihood outcomes in a portfolio of biodiversity offset pilot projects;
- Developing, testing, and disseminating best practice on biodiversity offsets; and
- Contributing to policy and corporate developments on biodiversity offsets so they meet conservation and business objectives.

The Integrated Biodiversity Assessment Tool (IBAT) is designed to facilitate access to up-to-date and accurate biodiversity information to support critical business decisions, using a central database for globally recognized biodiversity information including Key Biodiversity Areas and Legally Protected Areas. IBAT is the result of a partnership among BirdLife International, Conservation International and the United Nations Environment Programme (UNEP) World Conservation Monitoring Centre (WCMC).

D. Suggested implementation approach

Systems to support implementation of **COP 36 Biodiversity** should include:

- **Management responsibility:** Identify suitably qualified person(s) to be accountable for ensuring biodiversity management is incorporated into impact assessment, planning and work practices at the mining facility.
- **Written policy, plans and procedures:** Ensure biodiversity management is addressed in corporate/site sustainability (or equivalent) policy and documentation. Consider implementing a biodiversity action plan at the site level to provide detail on how the objectives and targets for biodiversity conservation can be achieved.
- **Record keeping and reporting:** Changes in biodiversity need to be monitored to evaluate the success of management plans, rehabilitation trials, research projects and the general changes in the biodiversity of the area around the site that may be influenced by non-mine factors.
- **Training and communication:** Provide training to ensure adequate competency and knowledge of biodiversity policies, plans and procedures among employees and those of contractors.

COP 36 Biodiversity should be implemented in conjunction with COP provisions on **Reporting, Wastes and Emissions, Impact Assessment, Tailings and Waste Rock**, and **Mine Rehabilitation and Closure**.

- **COP 36.1: World Heritage Sites:** *Members in the Mining Sector shall not explore or mine in World Heritage Sites and shall ensure that their activities do not negatively impact directly on adjacent World Heritage Sites.*
Points to consider:
 - Confirm whether any existing or planned activities are adjacent to World Heritage Sites listed on the UNESCO website. 'Adjacent' means that mining operations are connected geographically either by borders, mine transit roads, or waterways.
 - Ensure an impact assessment, as set out in COP 32, is conducted and measures are established to ensure activities will not negatively impact directly on World Heritage Sites.
 - Ensure that the Member's policy documentation prohibits exploration or development in World Heritage Sites.

- **COP 36.2: Protected Areas: Members in the Mining Sector shall respect legally designated protected areas by ensuring that:**
 - a). *Members have a process to identify nearby legally designated protected areas.*
 - b). *Members comply with any regulations, covenants or commitments attributed to these areas.*
 - c). *Decisions to proceed with exploration, development, operation and closure activities take into account the presence of, and impact on, legally designated protected areas.*

Points to consider:

 - As early as possible, undertake a mapping exercise to identify the occurrence or absence of protected areas. This exercise should be conducted by competent personnel.
 - Consider whether the site or surrounding area is not currently protected but has been identified by governments or other stakeholders as having a high biodiversity conservation priority.
 - Maintain a register of legal and other requirements applying to any relevant legally protected areas. The register should nominate personnel responsible for compliance with these requirements.
 - Ensure management is aware of these requirements and that any decisions to proceed with exploration, development, operation and closure activities take them into account

- **COP 36.3: Key Biodiversity Areas: Members in the Mining Sector shall identify Key Biodiversity Areas affected by their operations and:**
 - a). *Use the mitigation hierarchy to avoid, minimise, rehabilitate or offset impacts on biodiversity and ecosystem services;*
 - b). *Implement action plans to deliver measurable biodiversity benefits that are at least commensurate with the level of adverse impacts;*
 - c). *In areas of Critical Habitat, ensure there are no measurable adverse impacts on the criteria for which the habitat was designated or on the ecological processes supporting those criteria.*

Points to consider:

 - The Integrated Biodiversity Assessment Tool (IBAT) can be used as a first step to identify the location of relevant Key Biodiversity Areas.
 - **Impact Assessments** should provide more detailed research to identify and assess risks and impacts to relevant KBA's and any Critical Habitat. This may require extensive fieldwork in regions with limited biodiversity information.
 - Ensure policies, plans and procedures apply the mitigation hierarchy when addressing risks and impacts to KBA's.
 - Documented action plans to mitigate impacts should deliver biodiversity benefits, through on-site programs to enhance habitat and protect and conserve biodiversity, or, as a last resort, through biodiversity offsets. These benefits must be designed to be at least commensurate with the level of impact, and monitoring of criteria will help establish whether these targets are being met. Some companies have developed strategies that aim to have a net positive impact on biodiversity by minimising the negative impacts of our activities and by making appropriate contributions to conservation in the regions in which they operate. Biodiversity benefits may be demonstrated by:
 - improving existing or creating new habitats for species impacted by the mining activities
 - reducing threats to species and their habitat
 - averting the loss of a species or its habitat by securing its future use for conservation purposes
 - Special care should be taken to fully assess risks to areas of Critical Habitat and to design measures to protect them. Policies, programs and operating procedures must ensure that there are no measure adverse impacts on the biodiversity values for which the Critical Habitat was designated.

- **COP 36.4: Species Threatened with Extinction: Members in the Mining Sector shall implement controls to ensure that their operations will not lead to the significant decline of a species listed by**

the IUCN as threatened with extinction, or create adverse impacts on habitat critical to supporting their survival.

Points to consider:

- Databases maintained by conservation groups, such as IUCN, can be accessed to provide information about species that are threatened with extinction.
- The presence of species threatened by extinction, and any Critical Habitat for these species, should be identified through the **Impact Assessment**.
- Policies, plans and procedures must ensure that activities do not create adverse impacts on habitat critical to the survival of these species.

- **COP 36.5: Undersea Mining Activities Outside Of National Government Jurisdictions:** *For exploration or mining to be carried out in undersea areas where development approval falls outside national government jurisdiction, Members in the Mining Sector shall identify the biodiversity values of potentially affected marine ecosystems and develop and implement controls to mitigate any adverse impacts.*

Points to consider:

- Biodiversity values in these marine ecosystems should be identified and documented through the **Impact Assessment**. The identification should be carried out by competent personnel.
- The severity of any impacts to the marine ecosystem should be assessed and the results communicated to management prior to making decisions to proceed with undersea mining activities. Management decisions should be documented.
- Controls designed and implemented to mitigate residual biodiversity impacts should be selected in accordance with the mitigation hierarchy.
- Where the biodiversity values of potentially impacted undersea ecosystems involves circumstances of scientific uncertainty and there is a threat of serious and irreversible damage, the precautionary principle should apply.

Check:

- ✓ Do you have a policy in place that prohibits exploration or development in World Heritage Sites?
- ✓ Have you confirmed whether any existing or planned activities are adjacent to World Heritage Sites listed on the UNESCO website? If so, what measures are in place to ensure activities will not negatively impact directly on World Heritage Sites?
- ✓ Have you identified nearby legally designated protected areas?
- ✓ Are you aware of all legal and other requirements applying to any relevant legally protected areas?
- ✓ Do your decision-making processes for new mining activities take into account the presence of, and impact on, legally designated protected areas?
- ✓ Have you identified Key Biodiversity Areas affected by your operations?
- ✓ Do your policies and procedures apply the mitigation hierarchy to offset impacts on biodiversity and ecosystem services?
- ✓ Are plans in place to deliver biodiversity benefits at least commensurate with the level of adverse impacts?
- ✓ Have you identified areas of Critical Habitat, and do your policies and procedures ensure there are no measurable adverse impacts on the criteria for which the habitat was designated?
- ✓ Have your impact assessments identified any species threatened with extinction, and if so are controls in place to ensure your operations will not lead to the significant decline of those species?
- ✓ For any mining activities to be carried out in undersea areas outside national government jurisdictions, have your impact assessments identified biodiversity values and are controls in place to mitigate any adverse impacts?

E. Further information

The following websites have further information relating to Biodiversity:

- Artisanal and Small-Scale Mining in Protected Areas and Critical Ecosystems Programme (ASM-PACE): A Global Solutions Study (2012)
www.estellelevin.com/images/documents/publications/Global%20Solutions%20Study.pdf
- Business and Biodiversity Offsets Program
bbop.forest-trends.org/
- Commonwealth of Australian Environmental Offsets Policy (2012)
www.environment.gov.au/epbc/publications/pubs/offsets-policy.pdf
- Convention for Biological Diversity
www.cbd.int/
- Convention on Wetlands of International Importance - Ramsar Convention
www.ramsar.org
- Global Biodiversity Information Facility (GBIF)
www.gbif.org/
- High Conservation Value (HCV) Resource Network
www.hcvnetwork.org
- International Council on Mining and Metals (ICMM) - Position Statement: Mining and Protected Areas (2003)
www.icmm.com/document/43
- International Council on Mining and Metals (ICMM) - Biodiversity Offsets: A briefing paper for the mining industry (2005)
www.icmm.com/document/25
- International Council on Mining and Metals (ICMM) - Good Practice Guidance for Mining and Biodiversity (2006)
www.icmm.com/page/1182/good-practice-guidance-for-mining-and-biodiversity
- International Council on Mining and Metals (ICMM) - Planning for Integrated Mine Closure: Toolkit (2008)
www.icmm.com/page/9566/icmm-publishes-closure-toolkit
- International Council on Mining and Metals (ICMM) - Mining and Biodiversity: A collection of case studies (2010)
www.icmm.com/biodiversity-case-studies
- ICMM and IUCN - Independent report on biodiversity offsets (2012)
www.icmm.com/news/icmm-and-iucn-release-report-on-biodiversity-offsets
- International Finance Corporation (IFC) Performance Standard 6 – Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012)
www1.ifc.org/wps/wcm/connect/bff0a28049a790d6b835faa8c6a8312a/PS6_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 6 – Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012)
www1.ifc.org/wps/wcm/connect/a359a380498007e9a1b7f3336b93d75f/Updated_GN6-2012.pdf?MOD=AJPERES
- International Union for Conservation of Nature (IUCN) – Identification and Gap Analysis of Key Biodiversity Areas (2007)
data.iucn.org/dbtw-wpd/edocs/PAG-015.pdf
- International Union for Conservation of Nature (IUCN) – Guidelines for Applying Protected Area Categories (2008)
data.iucn.org/dbtw-wpd/edocs/PAPS-016.pdf
- IUCN Red List of Threatened Species (2012)
www.iucnredlist.org/
- IUCN – Rio Tinto Relationship
www.iucn.org/about/work/programmes/business/bbp_work/by_engagement/rio_tinto/
- IUCN – ICMM Dialogue
www.icmm.com/page/84049/about-us/who-we-work-with/articles/iucn-icmm-dialogue
- Mining Association of Canada (MAC) – Mining and Biodiversity Conservation (2007)

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- www.mining.ca/www/media_lib/TSM_Documents/Biodiversity_Framework_EF_0729207.pdf
- Prospectors and Developers Association of Canada (PDAC) - e3 Plus - a Framework for Responsible Exploration
www.pdac.ca/e3plus/toolkits
- Society for Ecological Restoration International (SER)
www.ser.org
- The Integrated Biodiversity Assessment Tool (IBAT) – For Business
www.ibatforbusiness.org/login
- United Nations Environment Programme (UNEP) World Conservation Monitoring Centre (WCMC)
www.unep-wcmc.org/
- UNESCO/World Heritage Convention - World Heritage List (2012)
whc.unesco.org/en/list
- United Nations Environment Programme (UNEP) World Conservation Monitoring Centre (WCMC) – World Database on Protected Areas
www.wdpa.org/
- University of Queensland (Australia) – Centre for Mined Land Rehabilitation
www.cmlr.uq.edu.au
- World Heritage Committee - Operational Guidelines for Implementation of the World Heritage Convention (2012)
<http://whc.unesco.org/en/guidelines/>

STANDARD GUIDANCE

(COP 37) Tailings and Waste Rock

A. Definitions and applicability

Mining wastes are those wastes generated during the extraction, beneficiation, and processing of ore. **Waste rock** and overburden are the materials that are removed to access the ore. **Tailings** consist of ground rock and effluents that are generated during processing of the ore.

Source:

- *What are Tailings?*
www.tailings.info/tailings.htm

The **Tailings and Waste Rock** section of the COP is applicable to all tailings and waste rock generated by Members in the Mining Sector. The **Tailings and Waste Rock** provisions should be implemented in conjunction with the COP provisions on **Hazardous Substances** and **Impact Assessment**.

B. Issue background

Tailings and waste rock facilities are an integral part of many mining operations and one of the mining industry's key challenges to achieving improvements in environmental performance. Diamond, gold and platinum group metal mining operations involve a range of different types of mining processes in very different environments, requiring site-specific approaches to management of these large volume mine wastes.

Tailings are created where mined ores are processed into a concentrate or a final product by physical operations such as screening, crushing, grinding, and concentrating or by methods involving chemicals, heat and pressure such as leaching. The basic requirement of tailings management is to provide safe, stable and economical storage of tailings so as to protect human health and the environment.

Waste rock is also a mine residue that typically consists of overburden and material displaced to access the ore body. Waste rock may even contain very low grades of ore but at levels which cannot be processed profitably. Waste rock management basically involves its removal and storage, which may be temporary or long-term.

Some mine tailings and waste rock do not pose exposure risks and so do not require special treatment, reuse restrictions or geochemical monitoring. Such wastes can be used for landform reconstruction, road and dam construction, and may be suitable substrates for vegetation covers and similar rehabilitation measures upon mine closure. However some types of mine tailings and waste rock contain, or may result in the generation of, hazardous substances and require monitoring, treatment and secure disposal.

There are three main types of impacts that can result from managing tailings and waste rock:

- Site choice can significantly alter the environmental and social impacts. Creation of the initial footprint has unavoidable impacts, and thus site selection is the design factor with the most profound influence on operational impacts, rehabilitation costs and post-closure liability.
- Tailings and waste rock may contain entrained liquors, acid-generating compounds and/or mobile metal contaminants, and these can seep into groundwater or emerge in surface streams, with ecological impacts.
- Geotechnical failure, which happens rarely, can have catastrophic impacts. Good design and construction, along with management and monitoring systems, will minimize the likelihood of accidents occurring.

Tailings and waste rock may be managed in a variety of ways, depending on their physical and chemical nature, the site topography, climatic conditions, national regulation and the socio-economic context in which the mine operations and processing plant are located.

Tailings storage and disposal methods used by the mining industry include the following:

- **Terrestrial storage** is the most common method used. The main types are:

- **Impoundment storage:** Tailings are discharged into an impounding structure as a slurry and the excess water is removed via decant ponds, toe drains and under-drains. Impounding structures can include engineered earthen dams, natural topographical depressions or valleys, or mine pits.
- **Dry stacking:** Tailings are dewatered using vacuum or pressure filters so the tailings can then be stacked into a dense and stable structure.
- **Storage in abandoned mines:** This approach involves thickening the tailings, sometimes with the addition of waste aggregate and cement, to create a paste-like product that can be used to backfill underground voids or open pits.
- **Creation of tailings dams:** The same paste-like product used to backfill underground mines or open pits, may be used to construct new, or extend the life of, tailings dams.
- **Permanent heap leach pads and heap leach spoils:** A constructed stockpile of agglomerated ore is prepared for the purpose of leaching by means of percolating a solvent through the ore. The stockpile is placed on a lined solution collection and containment pad.
- **Sub-aqueous storage:** In countries where precipitation exceeds evaporation, such as Canada and Norway, water-retaining dams and diversion structures can be created around existing water bodies to allow tailings to be placed below the water surface. This method can be used to prevent oxidation of sulphidic tailings and related acid drainage.
- **Submarine tailings disposal** is sometimes used in very site-specific conditions, for example where land based disposal would cover lands with very high biodiversity, economic or cultural value, for materials with high acid rock drainage risk, and/or in areas where rugged topography, high rainfall and high seismic risk would make conventional tailings dam failure a significant risk. **Deep submarine tailings disposal** typically involves treating tailings to achieve a specified discharge standard, de-aerating and mixing with seawater (to reduce buoyancy) and then pumping tailings through a submerged pipe prior to discharge onto the sea floor, below the surface thermocline and euphotic zone, so the tailings form a 'density current' that descends to the depths of the ocean. However, **shallow submarine tailings disposal** is not considered good practice for chemically reactive tailings which could pose exposure risks to human health or the shallow marine environment.
- **Dredged separation spoils disposal** is used for sea-based diamond mining. It involves discharging inert dredge spoils, composed of seawater and sorted dredge material from a ship directly overboard.
- **Riverine tailings disposal:** This involves using active rivers to disperse tailings. The practice is not common and is not considered good practice. It is currently used at only three sites in Papua New Guinea and Indonesia where high rainfall, mountainous terrain and seismic activity ruled out other storage or disposal options.

Tailings disposal is at the forefront of the debate concerning the trade-off between the benefits that mining activity can bring to society and the cost of impacts associated with those activities. Decisions on tailings management are most commonly reached through an Environmental and Social Impact Assessment carried out prior to development approval. An ESIA usually covers methods and key issues, the regulatory framework, the consultation process, the social and environmental baseline, consideration of alternatives, prediction and evaluation of significant social and environmental impacts, mitigation or offset measures, and environmental and social management and monitoring plans.

Waste rock is often managed by dumping it onto formed heaps or on hillsides. Depending on its physical characteristics, waste rock can be used for land forming including road base aggregate, footings or for landscape restoration.

A long-term approach to the planning of tailings and waste rock storage is essential and should take the following into account:

- Compliance with regulations.
- A cost-benefit analysis that accounts for environmental performance.
- A good understanding of the site location.
- The profound negative social, environmental and economic consequences of failure or poor performance of tailings and waste rock storage facilities.
- Cumulative and long term effects including bio-accumulation of metals in plants and animals, contamination of soil and groundwater, and human health impacts.

- The main causes of reported tailings and waste rock failure incidents are due to severe weather events, seismic activity, and/or a general lack of understanding of the features that control safe operations.
- Where the design and management of tailings and waste rock storage facilities involves circumstances of scientific uncertainty and threat of serious and irreversible damage, the precautionary principle should apply.
- Early and ongoing consultation, information sharing and dialogue with stakeholders are essential.

C. Key regulations and initiatives

International

The International Commission on Large Dams (ICOLD) is an international non-governmental organization which provides a forum for the exchange of knowledge and experience in dam engineering. ICOLD leads the profession in ensuring that dams are built safely, efficiently, economically, and without detrimental effects on the environment. Extensive guidance is provided to designers, owners and operators of large dams, including tailings dams.

The International Council on Mining and Metals (ICMM), in partnership with UNEP and UNCTAD, host a website of 'Good Practice Mining' resources. There is a specific section on tailings management.

National

Each jurisdiction has its own legislative and/or regulatory framework on tailings storage and management of other mine wastes that governs the design of storage facilities, licensing, monitoring, reporting and closure. It is essential for Members to comply with Applicable Law.

The Mining Association of Canada's (MAC) "Towards Sustainable Mining" initiative includes performance indicators for tailings management. A self assessment and verification protocol has been developed to evaluate conformance of management practices with the tailings management framework in the MAC "Guide to the Management of Tailings Facilities". While developed for the Canadian context, these resources can assist mines to plan for effective tailings management.

The Mine Environment Neutral Drainage (MEND) Program in Canada was implemented to develop and apply new technologies to prevent and control acid rock drainage. Canada has lead a focused research program to address acid rock drainage and metal leaching directed by a committee of industry, government and NGO representatives.

MEND is part of a global alliance for acid rock drainage research that also includes the International Network for Acid Prevention (INAP), the US Acid Drainage Technology Initiative, the South African Water Research Commission and the Partnership for Acid Drainage Remediation in Europe.

D. Suggested implementation approach

Members with Mining Facilities should ensure that a comprehensive plan or system is in place for tailings and waste rock management. A guiding principle should be continual improvement in operational, safety and environmental performance, supported by periodic review and evaluation, and early and ongoing consultation, information sharing and dialogue on tailings and waste rock management with stakeholders.

Documented processes should be established for:

- Materials handling, containment and control processes for tailings and waste rock;
- Location, design, construction, operation, maintenance and closure of tailings and waste rock storage facilities such that structures are stable, water quality is protected and the contents are managed and in compliance with regulatory requirements;
- Identification, assessment monitoring, management and/or remediation of contaminated sites.

In addition, records need to be maintained that identify:

- roles and responsibilities of personnel;
- the minimum knowledge and competency requirements for each position with defined responsibilities;
- characteristics and properties of the tailing and waste rock;
- records of inspections and geotechnical assessments regarding integrity and stability of tailings and waste rock storage facilities.
- the key components and location of the tailings and mine waste storage;
- procedures and processes for managing change;
- requirements for analysis and documentation of the performance of the tailings and mine waste storage;
- reporting requirements (statutory and stakeholder).

Appropriate training must be provided to all personnel working at the tailings facilities and waste rock facilities, including contractors and suppliers. All relevant personnel should have an understanding of the tailings and mine waste management plan, their respective roles and responsibilities – particularly in the role of visual indications of storage performance. Consult with affected communities and stakeholders in the identification, assessment and management of any significant economic, public health and safety, social, and environmental risks associated with the tailings and waste rock facilities. Consultation should extend to emergency resources and agencies for foreseeable emergency scenarios involving facilities for the management of tailings and waste rock facilities (also see guidance for [Emergency Response](#)).

- **COP 37.1: Tailings and waste rock characterisations:** *Members in the Mining Sector shall carry out physical and geochemical characterisations of mine tailings and waste rock.*
Points to consider:
 - When designing facilities for tailings and waste rock, the shear strength is often the most important characteristic to determine. This may involve conducting stability and strength tests. Other important stability-related characteristics should, at a minimum, consider:
 - Particle size and distribution.
 - Moisture content.
 - Density, consolidation and porosity.
 - Plasticity and permeability.
 - Records pertaining to these characterisations should be kept up to date for all tailings and waste rock sites at the Mining Facility, and should be carried out by competent personnel. This may involve the use of expertise external to the Mining Facility.
- **COP 37.2: Tailings and waste rock facilities:** *Members in the Mining Sector shall design, construct, maintain, monitor and close all tailings and waste rock facilities and supporting infrastructure to:*
 - a. *Ensure structural stability and, where applicable, controlled discharge;*
 - b. *Protect the surrounding environment and local communities from potential impacts of acidification, metal leaching, loss of containment or contamination, including contamination of groundwater.***Points to consider:**
 - Design of dams and storage facilities needs to take into account foreseeable extreme flood events, based on statistics such as the probable maximum flood or a ‘one in a thousand year’ event. See the Finnish “Dam Safety Code of Practice”, for example, for information pertaining to flood events.
 - Periodic inspections and assessments should be conducted to confirm structural stability of facilities and supporting structures for tailings and waste rock storage and management. At a minimum, inspections and assessments should consider:
 - Daily or weekly visual inspections for instability evidence including erosion, corrosion, cracks or loss of containment.
 - Geotechnical assessments which accounts for local geology, meteorological conditions as well as the current and planned mining activities.
 - Groundwater monitoring hydraulically located upstream and downstream of the tailings and waste rock facilities that detect potential for seepage and contamination.

- A risk assessment should be completed and periodically updated to help identify, prioritise and improve engineering design and/or management controls. The assessment should identify the potential site-specific impact pathways and risks associated with the location, construction, operation and closure of any tailings or waste rock storage facility or other tailing management technologies. The results of the assessment should be used to scope an alternatives analysis, and identify any impacts that may require mitigation through design of the facility/ies.
- The risk assessment should, at a minimum, consider:
 - Location and proximity of tailings and/or waste rock storage facilities to sensitive environments, including groundwater, and affected communities.
 - Volume of tailings to be managed, retained and stored, and the capacity of storage facilities for tailings and/or waste rock over the life of the mine.
 - Impact on storage facilities during major natural events such as earthquakes or severe rainfall events.
 - Effectiveness of containment integrity management controls, such as tailings wall inspections for leaks, cracks and subsidence.
 - Effectiveness of waste rock stockpiling methods to minimise effects of erosion including dust entrainment, sediment run-off and loss of topsoil.
 - Mitigation controls that minimise impacts to the wellbeing of personnel, the community and the surrounding environment resulting from a failure of a tailings or waste rock facility. This should be carried out in accordance with [Emergency Response](#).
- **COP 37.3: Riverine disposal:** *Members in the Mining Sector shall not use riverine disposal of tailings or waste rock at new Mining Facilities. Any Mining Facilities that currently use riverine tailings disposal shall be excluded from the Member's Certification Scope, but all other relevant COP provisions still apply to that Facility.*

Points to consider:

 - For the avoidance of doubt, this does not apply to the disposal of waste rock and tailings materials in conventional waste rock dumps or tailings dams, which may be constructed within the catchments of a river system, where such structures are designed to retain and bind the waste materials in a manner that prevents contamination of the river system.
 - Any Mining Facilities that currently use riverine tailings disposal should be documented as such and these shall be excluded from the Certification. However, it is expected that the Mining Facilities with riverine tailings disposal maintain practices will meet the requirements of all other relevant COP provisions. These other relevant provisions can be audited as part of the Verification Assessment.
- **COP 37.4: Marine disposal:** *Members in the Mining Sector shall not use marine tailings and waste rock disposal for land-based Mining Facilities, unless:*
 - a) *a thorough inventory has been conducted of existing marine resources that would be impacted by the marine waste disposal, and*
 - b) *a thorough environmental and social analysis of alternatives was conducted which showed that marine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility, and*
 - c) *it can be scientifically demonstrated that a significant adverse effect on coastal or marine resources or ecosystems does not result, and*
 - d) *submarine tailings disposal is released in seawater below the surface thermocline and euphotic zone.*

Points to consider:

 - The general requirements for tailings and waste rock disposal under 37.2 still apply.
 - The decision for marine disposal of tailings and waste rock may be driven by a lack of space on land and where the impacts to the marine environs can be shown to be less detrimental than tailings disposal on land. This may be demonstrated through a thorough risk assessment which involves:
 - Characteristics of the tailings and waste rock that is subject to marine disposal.

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- Identification of marine resources including marine life and habitat, fishing resources, corals, sea beds and coastal features that may be impacted.
- An analysis conducted by competent personnel which accounts for seasonal effects, socio-economic factors and cumulative impacts associated with the marine disposal;
- A benchmark assessment comparing the risks and impacts of marine disposal against land based disposal.
- Establishment of controls to prevent and mitigate any short and long term impacts associated with the marine disposal
- Mining Facilities with marine disposal need to demonstrate that the disposal occurs below the surface thermocline and euphotic zone. The surface thermocline is the layer in a large body of water, such as a lake, that sharply separates regions differing in temperature, so that the temperature gradient across the layer is abrupt. The euphotic zone is where there is sufficient penetration of sunlight that supports a net positive photosynthesis rate and biological production is regulated by nutrient input. Below this euphotic zone is the aphotic zone where there the sunlight levels are such that there is a net negative photosynthesis rate and biological production is limited by a lack of sunlight.

Check:

- ✓ Do you have a comprehensive plan or system in place for tailings and waste rock management; is it understood by all relevant personnel, and is it part of your ongoing consultation and information sharing with stakeholders?
- ✓ Do you have up to date records on physical and geochemical characterisations tailings and waste rock at your mining facilities?
- ✓ Can you provide the auditor with evidence to demonstrate that all tailings and waste rock facilities and supporting infrastructure are structurally stable, and protect the surrounding environment and local communities? Have you conducted a risk assessment?
- ✓ If your land-based mining facilities use marine tailings and waste rock disposal, can you demonstrate that it will result in fewer negative impacts and risks, and will not result in significant adverse effects on coastal or marine resources or ecosystems?

E. Further information

The following websites have further information on tailings and mine waste management:

- Acid Drainage Technology Initiative (ADTI) Metal Mining Initiative
ese.mines.edu/adi/
- Dam Safety Code of Practice, Finnish Ministry of Agriculture and Forestry (1988)
www.vyh.fi/eng/orginfo/publica/electro/damsafet/damsafe.htm
- Global Acid Rock Drainage (GARD) Guide (2012)
www.gardguide.com/index.php/Main_Page
- International Commission on Large Dams
www.icold-cigb.net/
- International Council on Mining and Metals (ICMM) - Good Practice Guidance for Mining and Biodiversity (2006)
www.icmm.com/page/1182/good-practice-guidance-for-mining-and-biodiversity
- International Finance Corporation (IFC) Environmental Health and Safety Guidelines – Mining (2007)
[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/\\$FILE/Final+-+Mining.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/$FILE/Final+-+Mining.pdf)
- International Network for Acid Prevention (INAP)
www.inap.com.au/
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Tailings Management (2007)
www.ret.gov.au/resources/Documents/LPSDP/LPSDP-TailingsHandbook.pdf
- Management of Tailings and Waste Rock In Mining (2009)
www.eippcb.jrc.es/reference/mmr.html

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- Mining Association of Canada (MAC) - A Guide to the Management of Tailings facilities (1998)
www.mining.ca/www/media_lib/TSM_Documents/TSM_Publications/tailingsguide.pdf
- Mining Association of Canada (MAC) - Developing an Operation, Maintenance and Surveillance Manual for Tailings and Water Management Facilities
www.mining.ca/www/media_lib/MAC_Documents/omsguideeng.pdf
- Mining Association of Canada (MAC) – Tailings Assessment Protocol (2007)
www.mining.ca/www/media_lib/TSM_Documents/2007_Protocols/TAILINGS_PROTOCOL_2007.pdf
- Minerals Council of Australia – Enduring Value Guidance document (2005)
www.minerals.org.au/file_upload/files/resources/enduring_value/EV_GuidanceForImplementation_July2005.pdf
- Mine Environment Neutral Drainage (MEND) Program – Canada
www.mend-nedem.org/Default-e.aspx
- Nevada Division of Environment Protection – Statutes and Regulations
ndep.nv.gov/ADMIN/NRS.HTM
- Partnership for Acid Drainage Remediation in Europe (PADRE)
www.padre.imwa.info
- South African Water Research Commission (WRC of South Africa)
www.wrc.org.za

STANDARD GUIDANCE

(COP 38) Cyanide

F. Definitions and applicability

The term “cyanide” for the purposes of the Code of Practices and with reference to the International Cyanide Management Code means the cyanide ion, hydrogen cyanide, as well as salts and complexes of cyanide with a variety of metals in solids and solutions.

The **Cyanide** section of the COP is applicable to Members in the Mining Sector using cyanide in the recovery of Gold.

G. Issue background

The International Cyanide Management Institute’s (ICMI) Code for the Manufacture, Transport and Use of Cyanide in Gold Mining (the “Cyanide Code”) is a voluntary industry program designed to assist the global gold mining industry and the producers and transporters of cyanide used in gold mining in improving cyanide management practices. The Cyanide Code is intended to reduce the potential exposure of workers and communities to harmful concentrations of cyanide, to limit releases of cyanide to the environment, and to enhance response actions in the event of an exposure or release.

Cyanide effectively and efficiently extracts gold from ore. While a number of other chemicals are available to extract gold, they form less stable complexes with gold and thus require more aggressive conditions and oxidants to dissolve the gold. The alternative chemicals are generally more expensive to use and also present risks to health and the environment that are similar to or greater than that presented by cyanide.

The Cyanide Code is intended to complement an operation’s existing regulatory requirements, and addresses those issues related to the management of cyanide at gold mines that have been identified as being of most immediate concern. These include the production of cyanide; its transport from the producer to the mine; its on-site storage and use in the recovery of gold; decommissioning of cyanide facilities; financial assurance; accident prevention; worker health and safety; emergency response and training; community dialogue; public reporting; and stakeholder involvement.

Signatories of the International Cyanide Management Code commit to follow the Cyanide Code's Principles and Standards in the use of cyanide. The Standards of Practice listed under each Principle in the Cyanide Code set performance goals and objectives that an operation must achieve in order to be certified as in compliance with the Cyanide Code.

Source: *International Cyanide Management Code*: <http://www.cyanidecode.org/>

H. Key regulations

The Cyanide Code is a voluntary program for the gold mining industry to promote responsible management of cyanide, with a focus on protecting human health and the environment. It includes a series of standards designed to ensure that mining operations manage cyanide process solutions and waste streams to protect human health and the environment. Compliance with the Cyanide Code does not replace or alter requirements under applicable law.

I. Suggested implementation approach

- **COP 38: Cyanide:** *Members in the Mining Sector using cyanide in the recovery of Gold shall ensure applicable sites are certified to the International Cyanide Management Code.*

Points to consider:

- Comprehensive information about the Cyanide Code is available from the ICMI's website. Operations are audited by an independent third-party auditor meeting the Cyanide Code's criteria and using its Verification Protocol.
- Companies agree to adoption of the Cyanide Code by becoming Signatories and committing to bring their designated gold mining operations into compliance with the Code within three years. The name of the Signatory company and its operations are identified on the ICMI website.
 - *Note:* While the ICMI provides a 3 year period from becoming a Signatory to bring mining operations into compliance with the Cyanide Code, the RJC Code of Practices requires bringing mining operations into compliance with the Cyanide Code as part of the Member's conformance to the Code of Practices, which must be audited within two years of joining the RJC.
- Cyanide Code Certification applies to the level of the certified operation, not the signatory company. Members must ensure that all of their Facilities and operations within their RJC Membership have been certified or become certified before the RJC Verification Assessment, in order to conform to the RJC Code of Practices.
 - *Note:* A Signatory's operations that are found in substantial but not full compliance with the Cyanide Code are "conditionally certified", and must develop and implement a Corrective Action Plan to achieve full certification. For the purposes of the RJC Verification Assessment, a situation of conditional certification under the Cyanide Code would normally result in a Minor Non-Conformance under the Code of Practices.

Check:

- ✓ Do any of your operations use cyanide in the recovery of gold?
- ✓ If so, are you a signatory to the International Cyanide Management Code, and are the relevant operations certified to the Code?

J. Further information

The following websites have further information on cyanide:

- Centers for Disease Control and Prevention, Cyanide Emergency Preparedness & Response emergency.cdc.gov/agent/cyanide/index.asp
- CyanideMine: Cyanide Use in Gold Extraction and its Environmental Impact technology.infomine.com/cyanidemine/
- International Cyanide Management Code for the gold mining industry (Cyanide Code) www.cyanidecode.org/
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Cyanide Management (2008) www.ret.gov.au/resources/documents/lpsdp/lpsdp-cyanidehandbook.pdf

STANDARD GUIDANCE

(COP 39) Mercury

K. Definitions and applicability

Mercury is a natural element that in its pure form is a shiny silver-white metal that is liquid at room temperature. Mercury and mercury-containing compounds are highly toxic and have a variety of significant adverse effects on human health, wildlife and the environment.

Source:

- *United Nations Environment Programme (UNEP) – The Mercury Issue (2008)*
www.chem.unep.ch/mercury/awareness_raising_package/B_01-20_BD.pdf

The COP provision on **Mercury** is applicable to Members in the Mining Sector where mercury is used in processing or contained in saleable products, by-products or wastes. Other Members will address mercury issues under **Hazardous Substances**. See also Guidance for **Sourcing from Artisanal and Small-Scale Mining**.

L. Issue background

Over the past 50 years, mercury's toxicity has been well documented and many countries have taken steps to reduce its uses and releases, and to protect their citizens from exposure to mercury. Once released, mercury can persist in the environment where it circulates between air, water, sediments, soil and biota in various forms. Atmospheric mercury can be transported long distances in the atmosphere, incorporated by microorganisms and can bio-accumulate as it progresses up the food chain. In the human body, mercury damages the central nervous system, thyroid, kidneys, lungs, immune system, eyes, gums and skin. Neurological damage to the brain caused by mercury cannot be reversed.

Mercury use and emissions can be found in the gold supply chain. Mercury is sometimes found in trace quantities in gold ores, usually in the form of mercury sulphides, a stable compound. In the artisanal and small-scale gold mining sector, pure mercury is commonly used for gold recovery, sometimes illegally. Given the socio-economic constraints of poverty and a lack of access to information about alternatives, from the viewpoint of the artisanal miners the mercury amalgamation process is seen by them as the best technology available. In most cases for ASM, amalgamation produces a higher gold recovery than without mercury-free techniques (eg gravimetric) or is the only gold recovery technology available to them.

The booming price of gold in recent years has triggered a significant growth in small-scale mining and consequently in mercury use in this sector. UNEP's 2013 Global Mercury Assessment estimates that artisanal and small-scale gold mining is now the largest source of mercury emissions and releases in the world. Workers and their families involved in small-scale gold mining are exposed to mercury pollution in several ways, including through inhalation during the smelting. Mercury can also be released into river systems from these small-scale operations where it can contaminate fish, the food chain and people downstream.

The Minamata Convention on Mercury, is a global legally binding instrument that has been in negotiation for a number of years, reaching fruition in 2013. The Alliance for Responsible Mining (ARM) believes the National Action Plans (Appendix E of the Convention) offer a great opportunity for formalization of Artisanal and Small-scale Gold Mining (ASGM), and commits to implementing the instrument in collaboration with miners, governments, civil society and the mining industry to ensure that the national mercury reduction programs will have the intended positive impact on the hundreds of mining communities that depend on this activity. ARM stresses that the implementation of Appendix E requires governments to invest in formalization processes through appropriate mechanisms and direct support to the miners that will guarantee their access to training, credit and cleaner technologies. These actions are urgent due to the planned rapid and drastic reduction in the mercury supply. Without leaving alternatives, the instrument could criminalize miners forcing them to buy mercury in illegal markets leaving them in the hands of criminal networks that control part of the mercury and gold trade.

M. Key international instruments

International

In January 2013, draft text of the Minamata Convention on Mercury was agreed by governments, with ratification to commence in October 2013, and implementation to commence within three to five years.

Aspects of the Minamata Convention for the mining and metals sector generally include:

- controls on the supply of and trade in mercury, notably mercury recovered as a by-product in non-ferrous metals production;
- the measures to be taken to reduce emissions from power plants and non-ferrous metals facilities producing copper, gold, lead and zinc;
- the measures to be taken to reduce emissions from artisanal and small-scale gold mining;
- the environmentally sound management of wastes containing mercury.

A diplomatic conference is scheduled for October 2013, in Minamata, Japan, for government representatives to formally approve the agreed upon text. Once the Minamata Convention is officially approved, it needs to be ratified by 50 countries to enter into force. The Convention will require Party countries to draw up strategies and national action plans with reduction targets and strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale mining. Actions are also required to eliminate:

- whole ore amalgamation;
- open burning of amalgam or processed amalgam;
- burning of amalgam in residential areas; and
- cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.

The Minamata Convention also calls for action plans that include:

- efforts to facilitate the formalization or regulation of artisanal and small-scale gold mining;
- conduct of baseline assessments to estimate the quantities and uses of mercury in ASM gold mining;
- support for mercury-free alternatives and strategies for the reduction of emissions and exposure to mercury; and
- development of public health strategies and a public awareness campaigns for affected communities, including strategies for involving stakeholders in the development of these national action plans.

Standards for artisanal gold mining

The Alliance for Responsible Mining (ARM) actively promotes mercury-free artisanal mining as the best available technology under its Fairmined Standard. At the same time, ARM acknowledges that mercury plays an important role in the current ASM processing methods and the reduction and elimination of its use must be accompanied by capacity building and technical support for the miners. This approach is implemented on the ground via ARM's producer support initiatives for certification against the Fairmined Standard.

ARM's support for responsible artisanal mining requires artisanal miners to use a concentration process (gravimetry, flotation, hand-sorting, etc.) prior to amalgamation, and makes the use of retorts or other mercury recovery devices during amalgam decomposition obligatory. Both requirements ensure that mercury emissions are drastically reduced and both can be implemented without jeopardizing the human right of artisanal miners and their families to satisfy their basic needs.

National law

Many jurisdictions will already have a legal and regulatory framework for mercury controls and management. The Minamata Convention is expected to come into force over the next three to five years and Parties to the convention may add new legislation and/or regulatory frameworks as a result. It is essential that Members are familiar with applicable law in all areas of operation. Under the auspices of the UNEP Governing Council, the UNEP Global Mercury Partnership was established to further long-term international action to address mercury release. The overall goal of the Partnership is to protect human health and the global environment from the release of mercury and its compounds by minimizing and, where feasible, ultimately eliminating

global, anthropogenic mercury releases to air, water and land. The Partnership will review and assess options for enhancing voluntary measures and new and existing international legal instruments. RJC strongly supports the goals of the UNEP Global Mercury Partnership, and has committed its participation in the work of the program.

Where Members produce mercury as a by-product of gold mining or refining, this should be managed in compliance with applicable law and regulations.

For example, the State of Nevada in the United States in 2006 issued regulations requiring best available control technologies to control mercury air emissions from industrial gold mines in that state. The program applies to mining facilities that process mercury-containing ore and use thermal treatment processes that have the potential to liberate mercury into the atmosphere.

N. Suggested implementation approach

- **COP 39.1: Mercury in products, by-products and emissions:** *Members in the Mining Sector where mercury is contained in saleable products, by-products or emissions shall adopt responsible management practices that are at minimum in accordance with Applicable Law to control and, where feasible, reduce mercury emissions using best available techniques or best environmental practices that take into account technical and economic considerations.*

Points to consider:

- Identify and quantify all sources and emissions of mercury and mercury compounds from operations, and put in place appropriate controls using cost effective best available technology using a risk-based approach.
 - A risk based approach can be used to assess and prioritise management options. These could include:
 - **Reduce or eliminate** sources and emission of mercury.
 - **Substitute** mercury and mercury compounds with less hazardous alternative, where available.
 - **Mitigate** any impacts associated with handling and discharges of mercury and its compounds with pollution abatement technologies. Waste streams such as air emissions, tailings and wastewater discharges should adopt appropriate pollution abatement technologies to minimise mercury emissions to the environment. Examples include mercury vapour recovery systems that can significantly reduce exposure to atmospheric mercury levels.
 - Stay aware of relevant legislation and regulation controlling mercury. These will evolve over coming years with national government implementation of the Minamata Convention, so it will be important to stay up to date with applicable changes and monitor legal compliance.
- **COP 39.2: Mercury in ASM and associated processing:** *Members in the Mining Sector using mercury amalgamation in artisanal and small-scale mining and processing activities shall take measures to control and, where feasible, reduce the mercury emissions of their activity. Members shall seek alternatives to mercury amalgamation wherever economically and technically viable. Members shall eliminate, by the end of the Certification Period, open burning of amalgam or processed amalgam, burning of amalgam in residential areas; and cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.*

Points to consider:

- The informal sector of artisanal and small-scale gold mining (ASM) is a relatively large global consumer of elemental mercury and may be the source of significant mercury released to the environment every year.
- While mercury alternatives are preferred, they may not always be available for use in certain contexts, or technically or economically viable for ASM. Notwithstanding, efforts should be made to eliminate the following activities:
 - whole ore amalgamation;
 - open burning of amalgam or processed amalgam;
 - burning of amalgam in residential areas; and

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- cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.
- Within the socio-economic and political complexities of ASM enterprises, there are opportunities for RJC Members to provide support for the transfer of technology that improves productivity and reduces reliance on mercury, particularly in the context of sourcing relationships (see guidance on [Sourcing from Artisanal and Small-Scale Mining](#)).
- Where mercury continues to be used in processing at operations under the ownership or control of RJC Members, controls that minimise mercury emissions should be put in place. See the *UNEP Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012)* – available in English and French – for further guidance.

Check:

- ✓ Do your operations produce mercury products, by-products or emissions?
- ✓ If so, do you have management practices in place to control, and where feasible, reduce mercury emissions?
- ✓ Are you aware of and in compliance with Applicable Law concerning the use and control of mercury?
If you are an ASM producer and use mercury amalgamation, have you sought alternatives, and have you taken steps to eliminate the activities specified in COP 39.2?

O. Further information

The following websites have further information related to mercury:

- Alliance for Responsible Mining (ARM) – Position Paper on Mercury (2010)
communitymining.org/attachments/086_ARM%20Mercury%20Position%20English%20Sep2010.pdf
- Global Mercury Project – Global Impacts of Mercury Supply and Demand in Small-Scale Mining (2007)
www.globalmercuryproject.org/documents/non_country%20specific/2006%20GMP%20Report%20to%20UNEP%20GC24.pdf
- International Council on Mining and Metals (ICMM) - Position Statement on Mercury Risk Management (2009)
www.icmm.com/document/556
- Draft Minamata Convention on Mercury
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/INC5/5_7_e_annex_advance.pdf
- Mercury Watch – Charting the Improvement of Artisanal small-scale gold mining
www.mercurywatch.org
- United Nations Environment Programme (UNEP) Global Mercury Partnership - Guide Pratique: Réduire l'utilisation du mercure dans le secteur de l'orpaillage et de l'exploitation minière artisanale (2012)
docs.google.com/a/artisanalgold.org/viewer?a=v&pid=sites&srcid=YXJ0aXNhbmFsZ29sZC5vcmd8YWw0jMXxneDozZDYzM2RiYWVhZjg4NWQw
- United Nations Environment Programme (UNEP) Global Mercury Partnership – Overview
www.unep.org/hazardoussubstances/Mercury/GlobalMercuryPartnership/tabid/1253/Default.aspx
- United Nations Environment Programme (UNEP) Global Mercury Partnership – Guidance, Training Material and Toolkits
www.unep.org/hazardoussubstances/Mercury/MercuryPublications/GuidanceTrainingMaterialToolkits/tabid/3609/Default.aspx
- United Nations Environment Programme (UNEP) Global Mercury Partnership – A Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Techdoc/UNEP%20Tech%20Doc%20APRIL%202012_120608b_web.pdf
- United Nations Environment Programme (UNEP) Global Mercury Partnership - Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda (2012)
www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/ASGM/Formalization_ARM/Formalization%20Document%20Final%20June%202012.pdf

STANDARD GUIDANCE

(COP 40) Mine Rehabilitation and Closure

A. Definition and applicability

Mine closure is a process undertaken when the operational stage of a mine is ending or has ended, and the final decommissioning and mine rehabilitation is being underway.

Mine rehabilitation is the restoration of the post-mined landscape to the intended post-mining land use.

Mine completion is the goal of mine closure. A completed mine has reached a state where mining lease ownership can be relinquished and responsibility accepted by the next land user.

Source:

- *Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Mine Closure and Completion (2006)*
www.ret.gov.au/resources/Documents/LPSDP/LPSDP-MineClosureCompletionHandbook.pdf

The **Mine Rehabilitation and Closure** section of the COP is applicable to Mining Facilities.

The **Mine Rehabilitation and Closure** provisions of the COP should be read and implemented alongside the **Community Engagement, Tailings and Waste Rock, Biodiversity** and **Impact Assessment** provisions.

B. Issue background

The closure of mine sites needs to be planned as carefully as their opening. What happens at a site after it is closed is what ultimately defines its long-term impact on, and contribution to, an area's social, economic and institutional development. An integrated approach to closure takes the environmental, economic and social considerations into account from an early stage and continues throughout a mine site's life. Fundamental to this approach is the need to consider closure as a core part of the business. New mine sites require a closure plan from start-up and existing facilities need to put in place a comprehensive plan to comply with RJC's Code of Practices.

The social and economic impacts of mine closure are usually significant and underline the importance of early preparation. Mines may also close prematurely, for example through low commodity prices, regulatory changes, technical challenges or social conflict – not just depletion of reserves. Workers, affected communities, including Indigenous Peoples and artisanal miners, and regulators are key stakeholders in dialogues about mine closure and should be involved early in the planning process. Mine sites should place a strong emphasis on community participation in the development and implementation of a mine closure plan.

Mine sites should provide adequate financial assurance for mine closure, taking into account considerations such as post-mining land use, stakeholder objectives and regulatory requirements. Closure costs are most often substantially incurred after the mine is no longer generating revenue. Consequently, financial provisions for closure must either be set aside by the company prior to or during active operations, provided by other revenue streams or made available through security of other assets. The choice of financial assurance option may depend on regulatory requirements. The closure planning process should prepare cost estimates suitable for the stage of closure planning and design, increasing in detail as the closure of the site approaches and more engineering detail becomes available.

In broad terms, rehabilitation refers to the measures undertaken to return land on which mining has taken place to the agreed post-closure uses. In some jurisdictions, the legal requirement is for restoration of the pre-mining land use, whereas in others the end uses of the land are open to a process of negotiation, either with the regulatory authorities or with a broader set of stakeholders. Since mining represents a transient land use,

in areas with significant biodiversity values, the aspiration should be to restore land used for mining to a future use that takes these values into account (See RJC Guidance on [Biodiversity](#)).

Achievable objectives and targets for biodiversity re-establishment are essential to give the operation a framework on which to base its rehabilitation program. These should be developed through a dynamic and iterative process involving mining stakeholders. The following aspects should be taken into account:

- Relevant regulatory requirements and other guidelines;
- Effective consultation with key stakeholders;
- Competing interests need to be understood and reconciled;
- All available information on biodiversity;
- Technical limitations;
- Pre-mining land uses and the extent of biodiversity degradation;
- Whether mitigation or enhancement is intended;
- Post-mining land tenure and land uses;
- Integration into whole-of-lease biodiversity management;
- Minimizing secondary impacts;
- Other opportunities for biodiversity improvement.

Closure planning can be complex as it usually deals with time horizons that can stretch over decades. Planners must try to deal with social, economic and environmental parameters that over the life of a mine and post-closure generations are bound to change. An integrated, iterative and disciplined approach is required to take account of various changing parameters. Done well, effective closure planning can lead to the following positive outcomes:

- Engagement with affected and interested parties will be more consistent and transparent;
- Communities will participate in planning and implementing actions that underpin successful closure;
- Closure decisions will be better supported by stakeholders;
- Planning for closure will become easier to manage;
- The accuracy of closure cost estimates will be improved;
- The risk of regulatory non-compliance will be minimized;
- Potential problems will be identified in a timely manner;
- Potential liabilities will be progressively reduced; and
- Opportunities for lasting benefits will be recognized and planned for adequately.

C. Key frameworks and regulations

International

The International Council on Mining and Metals (ICMM) has developed a Mine Closure Toolkit on integrated closure planning aimed at promoting a more disciplined approach and increasing uniformity of good practices across the sector. The toolkit covers the entire mine life cycle. It brings together existing tools (e.g. the ICMM Community Development Toolkit) and with tools for closure specific issues.

National and/or state law

Many jurisdictions regulate specific requirements for closure and associated financial assurance. It is essential that Members are aware of applicable law and regulation in all jurisdictions of operation.

D. Suggested implementation approach

- **COP 40.1: Closure Plan:** *Members in the Mining Sector shall prepare and regularly review a mine rehabilitation and closure plan in relation to each Mining Facility. New Facilities require a closure plan from start-up and existing Facilities need to put in place a comprehensive plan as early as possible.*

Points to consider:

- Closure planning should take place at the earliest possible stage of a mining project, enabling risks and unknowns to be identified and reduced over time.
- The plan should include closure targets and goals, and should be used and updated throughout the operational life of the mine.

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- Suitably qualified persons should be assigned with responsibility for maintaining the rehabilitation and closure plan throughout the mine lifecycle.
 - Rehabilitation and closure plans should consider maintenance and surveillance programs for temporary closure of operations that are expected to reopen in the future.
 - Planning should also consider residual impacts from infrastructure, subsidence, or acid-generating material.
 - Plans should be referenced in corporate/site sustainability (or equivalent) documentation.
- **COP 40.2: Engagement:** *Members in the Mining Sector shall engage regularly with local stakeholders in relation to each Mining Facility, including Indigenous Peoples, communities, ASM, employees and regulators, regarding mine closure and rehabilitation plans.*

Points to consider:

 - Stakeholder engagement on closure planning should be an integral component of the mine community engagement program (see RJC Guidance on [Community Engagement](#)).
 - Progress against closure plans should be regularly reviewed in conjunction with key stakeholders, including affected communities, workers and regulators.
 - Engagement should occur throughout the life of the mine, and should be up to date with changes in the mine development, and changes involving relevant stakeholders.
- **COP 40.3: Financial Provisions:** *Members in the Mining Sector shall estimate the cost for implementation of the mine rehabilitation and closure plan for each Mining Facility, and shall put in place financial provisions to ensure availability of adequate resources to meet closure requirements.*

Points to consider:

 - Cost estimates should be initiated as early as possible and updated regularly. Unless otherwise stipulated by applicable law, closure costs should be based on reasonable estimates of actual costs taking into account local conditions and cost structures.
 - Financial provisions should as a minimum be in accordance with applicable law. In the absence of such laws, provisions may be in the form of bonds, letters of credit or other financial instruments, or by self-insurance or self-guarantee.
- **COP 40.4: Good practice rehabilitation:** *Members in the Mining Sector shall adopt good practice techniques for the rehabilitation of environments disturbed or occupied by Mining Facilities, to establish a sustainable native ecosystem, or other post-mining use developed through engagement with key stakeholders in the mine closure planning process.*

Points to consider:

 - Rehabilitation and closure should wherever possible be implemented progressively, as individual sites within a Mining Facility are decommissioned or exhausted and are no longer operational.
 - Performance results for such sites should be monitored and incorporated into regular reviews of the mine rehabilitation and closure plan.

Source: ICMM Guidance Paper for Mine Closure and Reclamation and Mining Association of Canada – Towards Sustainable Mining (TSM).

Check:

- ✓ Is an up to date mine rehabilitation and closure plan in place for each Mining Facility?
- ✓ Do your stakeholder engagement activities include discussions about mine closure planning?
- ✓ Are rehabilitation and closure cost estimates up to date, and have adequate financial provisions been put in place?
- ✓ Are good practice techniques being followed for rehabilitation?
- ✓ Will rehabilitation establish a sustainable native ecosystem, or other post-mining use developed through engagement with key stakeholders?

E. Further information

The following websites have further information relating to Mine Closure Planning:

- Eden Project - Post-mining Alliance – Publications
www.postmining.org/index.php?page=19
- International Council on Mining and Metals (ICMM) – Guidance Paper: Financial Assurance for Mine Closure and Reclamation (2006)
www.icmm.com/page/1232/library/documents/guidance-paper-financial-assurance-for-mine-closure-and-reclamation
- International Council on Mining and Metals (ICMM) - Planning for Integrated Mine Closure: Toolkit (2008)
www.icmm.com/page/9566/icmm-publishes-closure-toolkit
- International Council on Mining and Metals (ICMM) – Report on survey: Financial Assurance for Mine Closure and Reclamation (2005)
www.icmm.com/page/1158/library/documents/financial-assurance-for-mine-closure-and-reclamation
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Mine Closure and Completion (2006)
www.ret.gov.au/resources/Documents/LPSDP/LPSDP-MineClosureCompletionHandbook.pdf
- Mining Association of Canada (MAC) – Towards Sustainable Mining, Tailings Management Protocol
www.mining.ca/site/index.php/en/towards-sustainable-mining/performance-measures-a-protocols.html