



RESPONSIBLE  
JEWELLERY  
COUNCIL

# CODE OF PRACTICES

Guidance

JUNE 2019

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CODE  
OF  
PRACTICES

# THE RESPONSIBLE JEWELLERY COUNCIL

The Responsible Jewellery Council (RJC) is a not-for-profit standard-setting and certification organisation founded in 2005.

Our vision is a responsible worldwide supply chain that promotes trust in the global fine jewellery and watch industry.

## About this guidance

The RJC Code of Practices (COP) defines the responsible ethical, human rights, social and environmental practices that all certified RJC members must adhere to. This guidance offers general information and suggestions on how to implement the COP; it is not a substitute for legal advice.

This is a living document and the RJC reserves the right to revise it based on implementation experience and emerging good practice. The official language of the COP is English, with translated versions available on the website. The English version posted on the RJC website supersedes all other versions; see [www.responsiblejewellery.com](http://www.responsiblejewellery.com).

## Disclaimer

No guarantee, warranty or representation is made as to the accuracy or completeness of this guidance or other documents or information sources referenced in it. Following the guidance is not intended to, nor does it, replace, contravene or otherwise alter the requirements of any applicable global, national, state or local governmental statutes, laws, regulations, ordinances or other requirements.

This document gives general guidance only and should not be regarded as a complete and authoritative statement on any of the topics covered by it. Following the guidance is entirely voluntary for non-members and is neither intended to, nor does it, create, establish or recognise any legally enforceable obligations or rights against the RJC and/or its members or signatories. Non-members shall have no legal cause of action against the RJC and/or its members or signatories for failing to comply with the COP.

## Enquiries, feedback or complaints

We welcome feedback on this guidance. Contact us through [www.responsiblejewellery.com/contact-us](http://www.responsiblejewellery.com/contact-us). Any complaints relating to non-conformance with the COP, RJC certification or the RJC's own policies, processes and procedures can be submitted through the RJC Complaints Mechanism at [www.responsiblejewellery.com/contact-us/rjc-complaints-mechanism](http://www.responsiblejewellery.com/contact-us/rjc-complaints-mechanism) or by telephone: +44 (0)20 7321 0992.

All our documentation is in the process of being rebranded. We appreciate your patience and understanding during this time.

Version 1.1 published 21 June 2019 - please see the RJC website to ensure this is the latest version

The Responsible Jewellery Council is a trading name of the Council for Responsible Jewellery Practices Ltd, which is registered in England and Wales with company number 05449042.

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# CONTENTS

The Responsible Jewellery Council	2
Introduction	5



## GENERAL REQUIREMENTS

11

(COP 1)	Legal compliance	12
(COP 2)	Policy and implementation	18
(COP 3)	Reporting	22
(COP 4)	Financial accounts	29



## RESPONSIBLE SUPPLY CHAINS AND HUMAN RIGHTS

31

(COP 5)	Business partners	32
(COP 6)	Human rights	37
(COP 7)	Due diligence for responsible sourcing from conflict-affected and high-risk areas	50
(COP 8)	Sourcing directly from artisanal and small-scale mining	91
(COP 9)	Sourcing post-consumer industrial precious metals directly from informal recyclers	98
(COP 10)	Community development	102
(COP 11)	Bribery and facilitation payments	105
(COP 12)	Know Your Counterparty (KYC): Money laundering and finance of terrorism	111
(COP 13)	Security	119
(COP 14)	Provenance claims	124



## LABOUR RIGHTS AND WORKING CONDITIONS

130

(COP 15)	General employment terms	131
(COP 16)	Working hours	136
(COP 17)	Remuneration	143
(COP 18)	Harassment, discipline, grievance procedures and non-retaliation	151
(COP 19)	Child labour	159
(COP 20)	Forced labour	166
(COP 21)	Freedom of association and collective bargaining	174
(COP 22)	Non-discrimination	180



## HEALTH, SAFETY AND ENVIRONMENT

183

(COP 23)	Health and safety	184
(COP 24)	Environmental management	200
(COP 25)	Hazardous substances	209
(COP 26)	Wastes and emissions	215
(COP 27)	Use of natural resources	224



## GOLD, SILVER, PGM, DIAMOND AND COLOURED GEMSTONE PRODUCTS

232

(COP 28)	Product disclosure	233
(COP 29)	Kimberley Process certification scheme and World Diamond Council system of warranties	245
(COP 30)	Grading, analysis and appraisal	249



## RESPONSIBLE MINING

254

(COP 31)	Extractive Industries Transparency Initiative	255
(COP 32)	Stakeholder engagement	259
(COP 33)	Indigenous peoples and free, prior and informed consent	268
(COP 34)	Impact assessment	278
(COP 35)	Artisanal and small-scale mining and large-scale mining	285
(COP 36)	Resettlement	292
(COP 37)	Emergency response	296
(COP 38)	Biodiversity	301
(COP 39)	Tailings and waste rock	310
(COP 40)	Cyanide	318
(COP 41)	Mercury	320
(COP 42)	Mine rehabilitation and closure	325

# INTRODUCTION

## A ABOUT THE RJC CODE OF PRACTICES (COP)

The RJC COP defines the requirements for establishing responsible business practices throughout the jewellery supply chain, from mine to retail.

The COP provides a common standard for ethical, social, human rights and environmental practices, and certification against it is mandatory for all RJC commercial members. COP certification provides a strong system for assuring stakeholders, shareholders, customers and business partners that a company conducts its business responsibly. This can add value to a company's products and help protect and enhance its brands.

More importantly, COP certification can reduce risks and vulnerabilities in a company's supply chain and improve management systems and operating procedures to strengthen the business and make it more sustainable. It simultaneously leads to better social and environmental conditions within the broader industry, bringing positive impacts for workers, communities and environments alike.

### COP at a glance

The RJC COP:

- Provides a common standard for responsible business practices from mine to retail.
- Builds on and supports international standards and development goals.
- Applies to gold, silver, PGM, diamond and coloured gemstone supply chains.
- Requires third-party auditing and is mandatory for all RJC members.
- Is designed to improve ethical, social, human rights and environmental conditions.

## B ABOUT THIS GUIDANCE

This guidance is designed to help RJC members implement the COP and to support RJC-accredited auditors carry out COP certification audits. It may also prove useful to non-member businesses in the jewellery supply chain and other stakeholders who want to learn more about establishing responsible business practices in the sector.

The RJC COP sets out requirements for what a business must do, but it does not prescribe how systems and procedures should be designed. All guidance in this document is not prescriptive; it is simply offered as a starting point for information and support. The RJC also offers web-based training and digital toolkits to help companies adhere to the COP and get through certification (see [www.responsiblejewellery.com/rjc-certification/code-of-practices-certification13-2](http://www.responsiblejewellery.com/rjc-certification/code-of-practices-certification13-2)).

## C CONTENT

The COP is structured into six broad sections and comprises 42 provisions, which make up the individual chapters of this guidance (see Table 1). These cover a wide range of sustainable development issues, and apply to any size of business, across all sectors of the gold, silver, PGM, diamond and coloured gemstone jewellery supply chain. The last 12 chapters focus specifically on the contribution that a responsible mining sector can make to promoting and protecting sustainable communities and environments.

Table 1. Individual provisions of the COP

 General requirements	 Responsible supply chains, human rights and due diligence	 Labour rights and working conditions	 Health, safety and environment	 Gold, silver, PGM, diamond and coloured gemstone products	 Responsible mining
<ul style="list-style-type: none"> <li>1. Legal compliance</li> <li>2. Policy and implementation</li> <li>3. Reporting</li> <li>4. Financial accounts</li> </ul>	<ul style="list-style-type: none"> <li>5. Business partners</li> <li>6. Human rights</li> <li>7. Due diligence for responsible sourcing from conflict-affected and high-risk areas</li> <li>8. Sourcing directly from artisanal and small-scale mining</li> <li>9. Sourcing post-consumer industrial precious metals directly from informal recyclers</li> <li>10. Community development</li> <li>11. Bribery and facilitation payments</li> <li>12. Know Your Counterparty: money laundering and finance of terrorism</li> <li>13. Security</li> <li>14. Provenance claims</li> </ul>	<ul style="list-style-type: none"> <li>15. General employment terms</li> <li>16. Working hours</li> <li>17. Remuneration</li> <li>18. Harassment, discipline, grievance procedures and non-retaliation</li> <li>19. Child labour</li> <li>20. Forced labour</li> <li>21. Freedom of association and collective bargaining</li> <li>22. Non-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>23. Health and safety</li> <li>24. Environmental management</li> <li>25. Hazardous substances</li> <li>26. Wastes and emissions</li> <li>27. Use of natural resources</li> </ul>	<ul style="list-style-type: none"> <li>28. Product disclosure</li> <li>29. Kimberley Process Certification Scheme and World Diamond Council System of Warranties</li> <li>30. Grading, analysis and appraisal</li> </ul>	<ul style="list-style-type: none"> <li>31. Extractive Industries Transparency Initiative</li> <li>32. Stakeholder engagement</li> <li>33. Indigenous peoples and free, prior and informed consent</li> <li>34. Impact assessment</li> <li>35. Artisanal and small-scale mining and large-scale mining</li> <li>36. Resettlement</li> <li>37. Emergency response</li> <li>38. Biodiversity</li> <li>39. Tailings and waste rock</li> <li>40. Cyanide</li> <li>41. Mercury</li> <li>42. Mine rehabilitation and closure</li> </ul>

Each chapter of this guidance offers a short background to the issue at hand; a selection of key regulations, standards and initiatives; a series of tips and guidance on how to implement the relevant COP provision; and a list of websites and publications where more information about the issue can be found.

Key terms are defined at the beginning of each chapter; a full list of definitions is given at the end of the COP Standard itself.

## D APPLYING THE COP–SCOPE

As a whole, the COP can be applied by any business, in any country, working at any stage of the gold, silver, PGM, diamond and coloured gemstone jewellery supply chain (see Figure 1). Note that the scope of coloured gemstones in the 2019 version of the COP Standard is all sectors of the rubies, sapphires and emeralds jewellery supply chain.<sup>1</sup>

 <p><b>Exploration and mining</b></p> <ul style="list-style-type: none"> <li>• Exploration or development</li> <li>• Mining</li> </ul>	 <p><b>Jewellery manufacturing</b></p> <ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Wholesaling</li> </ul>
 <p><b>Diamonds and coloured gemstones</b></p> <ul style="list-style-type: none"> <li>• Trading or wholesaling</li> <li>• Cutting or polishing</li> </ul>	 <p><b>Jewellery retailing</b></p> <ul style="list-style-type: none"> <li>• Retail and sales, including internet sales</li> </ul>
 <p><b>Gold, silver and PGM</b></p> <ul style="list-style-type: none"> <li>• Refining or alloying</li> <li>• Trading or hedging</li> </ul>	 <p><b>Service industries</b></p> <ul style="list-style-type: none"> <li>• Gemmological laboratories</li> <li>• Assayers</li> <li>• Transport providers</li> <li>• Private security</li> </ul>

Depending on your business type, individual provisions may or may not apply to you. For example, while COP 1 on legal compliance applies to all RJC members, COP 8 on artisanal and small-scale mining (ASM) only applies to those that source gold, silver, PGM, diamonds or coloured gemstones directly from ASM producers.

The applicability of each provision is clearly stated at the beginning of each chapter in this guidance.

## E MANAGEMENT SYSTEMS TO SUPPORT THE COP

RJC members are free to choose their own management approach to implementing the COP. The guidance in this document is necessarily generic, and as such is offered as a broad suggestion that may not always be appropriate to individual businesses. In many cases, companies will have their own tried and tested methods that have been developed to match their particular business and operating context; these can and should be used wherever appropriate.

In general terms, the RJC identifies eight common elements of, or mechanisms within, management systems that will help businesses implement the COP effectively. These are outlined below, followed by Table 2 identifying each COP provision that requires the mechanism to be established. Companies may consider it more effective to develop combined mechanisms for the various COP provisions and should do so wherever appropriate, for example developing a single training programme for legal compliance (COP 1), business partners (COP 5), security (COP 13) and the other COP provisions for which training is required.

### 1. Management responsibility.

Making a senior manager responsible for specific COP-related issues will help ensure that these are incorporated into the company's planning and operations. In many cases, the same person can be made responsible for multiple provisions. For example, you can make a single senior human resources manager responsible for all the requirements under the section on labour rights and working conditions.

### 2. Written policy.

A written policy clarifies a company's position on key issues and acts as a formal record of it. It can be used to give consistent information to employees and business partners. You do not have to have a policy on each and every provision in the COP. Rather, you may consider having a few key policies that group similar issues together, or even having a single general policy statement covering the COP as a whole.

<sup>1</sup> The option to expand to include all other coloured gemstones will be assessed within two years of the publication of the 2019 version of the COP Standard.

### **3. Risk assessment.**

Risk assessments are recommended throughout the COP as a tool to identify and characterise adverse impacts—both to a business and externally. Depending on the provision at hand, you may need to assess social risks (for example, risks to people’s human rights, health and safety, or security) or environmental risks (such as contamination or biodiversity loss) or both, as the two are very often interlinked.

### **4. Set procedures.**

Established procedures identify how to put policies into practice. Implemented well, they serve to ensure a robust and consistent approach to specific issues, and they are required or recommended in almost every COP provision. You may wish to integrate some (or all) aspects of these into a new or existing whole-of-business management system, or into specific frameworks for managing key issues, including due diligence, human resources, stakeholder engagement, communications and environmental management.

### **5. Records.**

Reliable record-keeping enhances accountability and allows businesses to manage data and measure progress over time. It provides an essential source of information for both internal reviews and external audits. Some COP provisions specifically require records to be kept, for example on your inventory or business transactions, or on your decisions and actions. In all cases, you will be asked to provide records from the past 12 months for your first RJC certification audit. Once certified, you are required to keep records for certification for at least three years (or longer if required by applicable law or as specified in particular COP provisions).

### **6. Report.**

Publicly reporting economic, environmental and social information strengthens a company’s credibility and reputation for responsible business among government, investors, business partners, employees, communities and customers alike. The COP requires companies to report publicly, at least once a year, on COP-relevant business practices and outlines reporting requirements for several specific topics, including efforts to prevent human rights impacts, water management initiatives, impact assessment findings, material payments to government and any information relevant to affected communities.

### **7. Training.**

Training is useful for building understanding of policy and practice, developing new skills, clarifying expectations and strengthening accountabilities. Depending on its purpose, training can be targeted at employees, business partners or other external stakeholders (such as artisanal and small-scale miners or local communities). In all cases where training is recommended or required by the COP, make sure you keep records of the training given (including what, when and to whom).

### **8. Grievance mechanism.**

Grievance mechanisms provide a channel for individuals and communities affected by a company’s activities to raise concerns for investigation and remediation as necessary. A rights-compatible mechanism that allows stakeholders to raise concerns early, openly, on an informed basis, and with due protection and respect for human rights, is required for several COP provisions. Some are targeted at employees, some are targeted at external stakeholders. Internal and external stakeholders require slightly different approaches, so you will likely need two separate mechanisms to comply fully with the COP.

Table 2. COP provisions where different mechanisms are required or recommended

COP provision	Manager	Policy	Risk assessment	Set procedures	Records	Report	Training	Grievance mechanism
1	Legal compliance							
2	Policy							
3	Reporting							
4	Finance							
5	Partners			DD				
6	Human rights			DD				IN/OUT
7	Due diligence			DD				OUT
8	Sourcing from ASM			DD				OUT
9	Sourcing from Informal recyclers			DD				OUT
10	Community devt			SM				
11	Bribery			HR				IN/OUT
12	KYC			DD				
13	Security			DD				
14	Provenance claims			CM				IN/OUT
15	Employment							
16	Working hours			HR				IN
17	Remuneration			HR				
18	Discipline and grievances			HR				IN
19	Child labour			HR				
20	Forced labour							
21	Freedom of association			HR				IN
22	Non-discrimination			HR				
23	Health and safety			HS				
24	Environmental mant			EM				
25	Hazardous substances			HS				
26	Waste and emissions			EM				
27	Natural resources			EM				
28	Product disclosure			CM				
29	KPCS and SoW			DD				
30	Grading and appraisal			CM				
31	EITI			EITI				
32	Stakeholders			SM				OUT
33	Indigenous peoples			SM				
34	Impact assessment			EM				
35	ASM and LSM							
36	Resettlement			SM				OUT
37	Emergencies			SM				
38	Biodiversity			EM				
39	Tailings and waste rock							
40	Cyanide							
41	Mercury			EM				
42	Mine rehabilitation and closure							

**Key:**

**Set procedures:** DD: Due diligence system; SM: Stakeholder management; HR: Human resources; CM: Communications management; EM: Environmental management; HS: Health and Safety

**Grievance mechanism:** IN: For internal stakeholders; OUT: For external stakeholders

## F SMALL BUSINESSES

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The COP is designed to be applied by businesses of any size. The jewellery supply chain is made up of big and small businesses alike. In many countries it is dominated by family-owned retail, design, cutting and polishing, and manufacturing businesses with 25 or fewer workers; at the mining end of the supply chain, small-scale producers are also common in many parts of the world.

COP certification is no less stringent for small businesses, but neither should it be disproportionately onerous or challenging. Auditors will take size into consideration when verifying conformance with the COP. They will look for objective evidence of effective management systems and good performance, rather than ask for copies of complex procedures and records.

This approach acknowledges that while the management systems of small businesses or production facilities may be less formal than those of larger companies, they can work just as well to uphold the COP. For example, a small business does not need to prepare a long, formal publication to conform with COP requirements on public annual reporting; in many cases, a simple electronic memorandum, which is available on request, or an email will do.

Regardless of business size, documentation should be fit for purpose and consistent. In auditing small businesses, auditors will often combine a review of relevant documents, policies and records with other tactics to assess how systems work in practice. Interviews are particularly valuable in this regard because they can reach a much greater proportion of the workforce in small businesses compared with larger workplaces, and so serve as a more accurate gauge of awareness and understanding among employees.

In reading the chapters that follow, the RJC encourages you to interpret its guidance in the context of your own business size. In many cases, the guidance includes specific suggestions for tweaking approaches to better suit small businesses.

# GENERAL REQUIREMENTS



# (COP 1) LEGAL COMPLIANCE

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Applicable law** includes all the supra-national, national, state and local laws in place where a business operates.

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

**Legal compliance** generally refers to behaviours and practices that are done in accordance with applicable law.

**Systems** are management processes and documented procedures that collectively provide a systematic framework for ensuring tasks are done correctly, consistently and effectively to achieve the desired outcomes and drive continual performance improvements.

COP 1 covers general legal compliance requirements. Additional requirements may also apply to individual issues; these are specified in other COP provisions, as and where applicable.

## B ISSUE BACKGROUND

Managing legal risk effectively through compliance helps a business maintain a good reputation and remain sustainable.

Legal and regulatory compliance demands that companies abide by applicable law, which 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.

Companies that do not comply with applicable law can face a range of consequences, including:

- financial penalties or fines;
- companies being civilly or criminally liable for employees' actions;
- directors and managers being civilly or criminally liable for the company's offences;
- disqualification of directors; and
- follow-on damages actions by affected parties.

In some cases, the state can hold businesses accountable for non-compliances in their operations or supply chain (for example, pollution or forced labour) without having to prove that the business is non-compliant with the law. It is up to the business to show it is compliant.

### Classifying non-conformances with COP 1

A **major** non-conformance will apply if you have not identified legislative or regulatory requirements relevant to the COP; or if you know about a non-compliance with legislative or regulatory requirements **and**:

- you have made **inadequate** attempts to rectify it; **and/or**
- this situation **has the potential** to pose an imminent risk to workers, the community or the environment.

A **minor** non-conformance will apply if you know about a non-compliance with legislative or regulatory requirements **and**:

- you are making **adequate** attempts to rectify it; **and**
- the non-compliance **does not** pose an imminent risk to workers, the community or the environment.

A **minor** non-conformance will also apply if you have not identified legislative or regulatory requirements relevant to the COP **and** the non-compliance does not pose an imminent significant risk to workers, the community or the environment.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

The RJC does not give its members specific advice on applicable law because laws vary depending on the type of business at hand, where it operates and what facilities it has.

Law typically consists of both legislation made by governments and rules set by courts. Legal obligations often extend beyond specific statutory laws and regulations. Many principles are established based on decisions of previous cases heard by the courts; these are called common law or case law.

The International Labour Organization (ILO) maintains **NATLEX** ([www.ilo.org/dyn/natlex](http://www.ilo.org/dyn/natlex)), a database of national labour, social security and related human rights legislation across 196 countries and more than 160 territories and subdivisions. NATLEX is a free resource all companies can use to help them identify their legal requirements.

### General Data Protection Regulation (GDPR)

From May 2018, all companies operating in the European Union (EU) must comply with new data protection rules (GDPR), wherever they are based. GDPR represents the biggest change in data processing legislation in 20 years and failure to comply can result in large financial penalties.

GDPR standardises data protection law across the EU and imposes strict new rules on controlling the personal data of identified or identifiable persons. Personal data includes any information that you store about someone that can be directly used to identify them. Different pieces of information, which collected together can be used to identify a particular person, also constitute personal data.

**If your business establishment is located in the EU, if your business involves the transfer of personal data into the EU or markets goods or services to individuals within the EU, then you must comply with requirements set out in GDPR.<sup>1</sup>** Here are some steps to consider in complying with GDPR:

1. Identify what personal data you collect and process, and confirm why you do it and on which legal basis. Personal data includes things like name, home address, IP address and location data (for example, on mobile phones). It does not include company registration number or anonymised data. Personal data can be collected through staff records, CCTV footage or IT systems.
2. Inform your customers, employees and other individuals when you collect their personal data.
3. Keep personal data for only as long as necessary.
4. Secure any personal data you process.
5. Document, and keep records of, your data processing activities.
6. Make sure your personal data subcontractors respect the rules.

Implementation requirements for GDPR differ depending on the size of your company and the type of data you process. For more information and guidance, contact your country-specific European Data Protection Board member ([https://edpb.europa.eu/edpb\\_en](https://edpb.europa.eu/edpb_en)) or see:

- European Commission information [https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en)
- Information Commissioner's Office self-assessment toolkit (within the UK) <https://ico.org.uk/for-organisations/resources-and-support/data-protection-self-assessment>

<sup>1</sup> Please note that this list is not exhaustive and you should seek legal advice in order to determine whether the personal data processing that your business undertakes falls within the scope of GDPR.

## D IMPLEMENTATION GUIDANCE

### COP 1.1: Legal compliance

Members shall have systems in place that maintain awareness of, and ensure compliance with, applicable law.

#### Points to consider:

- As an RJC member, you are expected to know the local laws and regulations across all your areas of operations, and to keep abreast of legal developments in legislation and associated case law.
  - COP certification does not aim to provide a full legal compliance audit. Rather, it aims to ensure you have the framework you need to be aware of applicable law and to abide by it over time. In practice, that means you need to show you have systems and procedures in place to access current information about applicable law and to maintain compliance.
  - Make sure you have systems, processes, procedures or methods that can adequately monitor legal developments and identify key areas of legal risk.
  - Identifying applicable laws or changes in them, interpreting them and determining their impacts on your operations can be time-consuming. But there are many external sources that can help, including:
    - 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.
  - If you are unsure of your legal compliance requirements, seek legal advice from a qualified professional. This includes seeking advice on things like import and export requirements and intellectual property rights, which are not explicitly covered in the COP.
  - Make a specific person, or group of people, responsible for compiling and maintaining a register for legal compliance that lists:
    - all relevant applicable laws and regulations, required licences and permits, and reporting and disclosure obligations;
    - any ongoing developments in these requirements;
    - your compliance status, and any future actions needed to remain compliant; and
    - any measures needed to correct potential non-compliances.
- See 'Legal compliance registers: example template' below for an example register.
- Communicate legal requirements to all your employees and contractors and give them training to ensure they understand what they need to do to ensure compliance.

## Q&A: Legal compliance

### 1. What do I do if legal requirements are different from the COP?

If there is a difference between applicable law and the COP, RJC expects you to conform with whichever is more stringent. So:

- If applicable law sets more stringent requirements than a COP provision, you are expected to comply with the legislative and regulatory requirements in question.
- If RJC requirements as defined in the COP set a more stringent standard than applicable law, you are expected to conform with the COP, even though this exceeds legal requirements.

Note that 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?

RJC understands that sometimes it may not be clear how to interpret the law (for example, if there is no guidance or if a law is under review in the courts). In these cases, you should submit any government-issued guidance that is available, as well as any legal opinions (drafted by a judicial officer, legal expert or court), as part of your self-assessment; your auditor will consider these in assessing COP conformance.

In cases of legal dispute:

- A minor non-conformance applies if your auditor believes there is a COP non-conformance but you can show that you understand the legal requirements and the matters under dispute.
- A major non-conformance may apply if your auditor finds that your approach creates an unsafe working environment or a threat to workers, communities or the environment.

### 3. What happens if I have applied for a permit or licence but it is still being processed by government authorities?

Pending approvals are common, as businesses and legislation frequently change and it can take time for relevant authorities to process applications. If the delay in having a valid permit is due to government procedures and you can show that you have submitted all required materials to request the permit or licence, auditors will classify the situation as conformance.

## Check:

- Can you name the person, or group of people, 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?
- Do you have all required permits and licences? If not, can you show you have correctly applied for any missing permits and licences and are waiting on approval?

### Legal compliance registers: example template

A legal compliance register usually contains the following information:

- **The name** of the act, regulation, standard, code, policy, permit, etc. Most governments and regulatory authorities publish legislation online, so include a link or description of its location where possible.
- **The jurisdiction** where the legal instrument applies, be that local, regional, national or international.
- **Information about the governing body** or authority that enforces or manages this legal instrument. Consider listing a relevant contact name and details (where known).
- **A description of the purpose and key requirements** specified in the legal instrument. This can be in plain language rather than legal jargon and should include upcoming changes (actual or proposed).
- **A description of the impact** of the legal requirements on your business, including how these requirements affect specific activities or processes. It is useful to relate this to specific management system documentation, such as:
  - procedures to manage its activities;
  - external statutory reporting expectations; and
  - timing and framework for paying licence or permit fees.

You can use this information to communicate with employees and train them in their legal obligations.

- **Nominate someone** within the business to be responsible for ensuring compliance and for accessing information about the legal instrument.
- **Specify how often and when compliance evaluations** will be carried out. Sometimes this is prescribed by law. In most cases, it will depend on your business; evaluations should be done at a frequency commensurate with the risk associated with the requirements.
- **List evidence and records** that show compliance.
- **Reference and track corrective actions** for any non-compliances.

Table 1.1 shows an example of what a legal compliance register might look like. You can use it if you want to, but you are also free to take your own approach to legal compliance to conform with COP 1.

Table 1.1. Example of a legal compliance register

Acts, regulations, standards, codes and policies	Jurisdiction	Regulatory body	Description of key regulatory or other requirements	Relevance to members' business	Responsible person	Compliance evaluation (date / frequency)	Permit	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	<p>China has two basic laws regarding waste transports:</p> <ul style="list-style-type: none"> <li>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</li> <li>the Interim Provision on the Administration of Environmental Protection in the Importation of Waste Materials.</li> </ul> <p>These also describe the import licensing system and requirement for pre-shipment inspections.</p>	This is a condition when exporting items containing certain categories of prohibited metals, minerals, animal products, laboratory waste, industrial residues, etc to China.	International dispatch manager	Quarterly	Received X date  Due for renewal Y date	Logistics Office	None required
Northwest Territories Waters Act 2014	Canada	Northwest Territories Water Board	A water licence, type A or B, is required for the use of water and/or the deposit of waste in connection with an undertaking such as mining and milling, advanced mineral exploration, oil and gas exploration, municipal water use, hydro development, bridge construction, flood control, camps or lodges.	Mining and mineral exploration	Compliance manager	Quarterly	Water licence		None required
Industrial Waste Management Policy (National Pollutant Inventory) 1998	Victoria, Australia	Environment Protection Authority <a href="http://www.epa.vic.gov.au">www.epa.vic.gov.au</a>	<p>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.</p> <p>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 publicly available.</p>	<p>The company triggers the reporting thresholds for emissions of carbon monoxide and sulphur dioxide based on the fuel consumption and electricity usage.</p> <p>The company must report by 30 September each year the annual emissions for the year 1 July to 30 June.</p> <p>This must be calculated in accordance with NPI Procedure No. 123.</p>	Operations manager	Annual by 30 September		NPI reports in Environment Department	None required

## E FURTHER INFORMATION

Seek legal advice from a qualified expert about your business's compliance with applicable law.

# (COP 2) POLICY AND IMPLEMENTATION

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Active communication** means using appropriate methods and frequency for relaying information that enable the receptor to effectively understand and act on the information.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

A **policy** is a statement of intentions and direction of an organisation as formally expressed by its top management.

Source:

- International Organization for Standardization (ISO), Terms and definition in ISO 14001:2015—Where Did They Originate From? (2015)  
[https://committee.iso.org/files/live/sites/tc207sc1/files/Terms%20and%20definitions%20in%20ISO%2014001\\_2015%20-%20where%20did%20they%20originate%20from.pdf](https://committee.iso.org/files/live/sites/tc207sc1/files/Terms%20and%20definitions%20in%20ISO%2014001_2015%20-%20where%20did%20they%20originate%20from.pdf)

## B ISSUE BACKGROUND

Policies help an organisation define accountability and expected conduct as it relates to the organisation's operations and business. Policies:

- demonstrate commitment from the top;
- establish corporate responsibility and governance for key risks and issues;
- create a platform for more detailed procedures and practices; and
- communicate company values, principles and intentions.

Policies also serve as a set of decision-making rules and guidelines to help drive consistent behaviour within an organisation. They also help make sure an organisation complies with applicable law.

For companies to realise the benefits of their internal policies, it is important they invest time in implementing policies within the organisation and communicating them to all stakeholders.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

Most standards require companies to develop a policy as a formal demonstration of their commitment to the issue at hand. Some demand an overarching policy committing to responsible business practices; some want specific policies relating to, for example, health and safety or forced labour.

The **Sustainable Development Goals** (SDGs <https://sustainabledevelopment.un.org/sdgs>) are a key driver in current policy development. These 17 goals, adopted by Heads of State at a special UN summit in September 2015, represent priority issues for governments across the world. The SDGs build on decades of work, including through the now expired Millennium Development Goals, and have a deadline of 2030.

The business and investor community will play a critical role in driving the SDGs' transformational changes in society, so it is important that companies act responsibly and consider how best to align their business operations with the SDGs. Understanding the SDGs and how they impact the wider regulatory environment (both now and in the future), will also help companies strengthen their licence to operate and enable them to respond to risks more effectively.

## D IMPLEMENTATION GUIDANCE

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### COP 2.1: Written policy

**Members shall adopt a policy/policies that documents their commitment to responsible business practices, is endorsed by senior management, is actively communicated to employees and is made publicly available.**

#### Points to consider:

- Policy statements should:
  - be endorsed at the highest level of your organisation;
  - set clear expectations of your employees and business partners; and
  - be reflected in your operational policies and procedures.
- In all cases, your policies should apply to all parts of your business covered by RJC's certification scope.
- You can choose to incorporate all RJC-required policies within a single overarching policy or have multiple, issue-specific policies to comply with different RJC provisions.
  - Note that if you have multiple entities that do not operate under a central management, each one will need to have all the RJC-required policies.
- Communicate all policies and procedures to managers, employees and any affected business partners, making sure they understand your expectations of them and are equipped to embed the policy and procedures into their ways of working. You should actively communicate your policies any time there are changes or incidents relating to them.
- Make sure your policies are publicly accessible, for example by posting them on your company website, or by making them available on request or visible to visitors.
- Consider appending relevant policies to company contracts, to raise awareness of your commitment with business partners, service providers and suppliers.
- Update your policies as soon as possible if the nature or activity of your business changes.
- See 'RJC policy: example template' below for an example of a policy statement expressing commitment to achieving the RJC COP.

## Embedding the SDGs into organisational goals and policies

The SDGs and the COP are already aligned in a number of areas. For example, SDG 1 (No Poverty) and SDG 8 (Decent Work and Economic Growth) are linked to COP provisions on human rights, general employment terms, working hours, remuneration, harassment, discipline and grievance procedures, child labour, forced labour, freedom of association and collective bargaining, non-discrimination, health and safety, use of natural resources and community development.

You should consider framing your activities and building your strategies in alignment with the SDGs. Some SDGs may be more obviously relevant to your business than others, but you should review them all to understand where your business may have a positive or potentially negative impact. For example:

- Addressing forced labour within your supply chain helps advance SDG 8 (Decent Work and Economic Growth).
- Reducing greenhouse gases within your operations helps advance SDG 13 (Climate Action).
- Providing a safe working environment by reducing risks associated with hazardous chemicals helps advance SDG 3 (Good Health and Well-being).

Take the following steps to start incorporating the SDGs into your strategic goals and company policies:

### Step 1. Understand the SDGs

Familiarise yourself with the SDGs to ensure you understand their objectives and the role that businesses have in achieving them. This includes understanding the business case for integrating the SDGs into your company strategy.

### Step 2. Map your activities

Map your company's existing actions and commitments against each of the 17 SDGs. This will allow you to identify areas where you are already helping to advance the goals, and where you can have the most impact.

### Step 3. Prioritise your opportunities

Define your priorities in terms of where positive impacts can be scaled up and where negative impacts can be reduced or avoided.

### Step 4. Set your goals

Set measurable goals. This may include developing key performance indicators linked to specific SDGs.

### Step 5. Integrate your commitment

Integrate your commitment to the SDGs into core business practices across the company. This includes ensuring that your company policies and mission/vision statements reflect your commitment to the SDGs. Broader policies related to responsible business practices could include reference to your high-level actions to support the SDGs. Topic-specific policies (for example, on human rights or use of natural resources) can also refer to specific SDGs where applicable.

### Step 6. Engage with others

Identify opportunities to engage with other stakeholders. This may include, for example, forging new partnerships or joining existing sector initiatives to drive improved performance against the SDGs.

### Step 7. Find useful business tools

Identify and use business tools (such as those listed by SDG Compass <https://sdgcompass.org/business-tools/>) to help you align your business with the SDGs more effectively.

## 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:

- Make sure your policies are reflected in operational procedures to embed the commitment throughout your business.
- Appoint a senior manager to monitor and manage potential non-conformances.
- Get senior management to review the policy at least once a year to assess gaps and document the results of their discussion as evidence of conformance with COP 2.2. Reviews should also be carried out whenever there is a change in the nature of business activity.
- Make sure you address any gaps identified during the annual assessment. That might mean amending the policy itself or simply updating your procedures to better embed the policy in business practices.

## Small business

If you are a small business, you can still benefit from regular discussions about your ongoing commitment to responsible business practices and RJC conformance. These can take place as part of the self-assessment process leading up to your certification audit, as well as after certification.

An annual discussion among senior management serves as an opportunity to review any non-conformance issues, and to check on progress against corrective action plans. If there are no non-conformances, or all these have already been addressed, use the annual discussion to explore opportunities for improvement, either within the business or in communicating the policy to stakeholders. Even brief minutes of these meetings offer objective evidence of your conformance with this provision.

### Check:

- Do you have a written policy or policies committing your company to responsible business practices?
- Can you show how the policy has been embedded into existing business practices?
- Has the policy been approved by senior management?
- Does the policy clearly define expectations and has it been communicated to all employees and individuals responsible for complying with the policy?
- Is it available on your company website or by other means?
- Do you review the policy and its implementation at least once a year? Can you show your auditor minutes of these 'review meetings'?

### RJC policy: example template

**Modify or adapt the draft policy below to suit your own business context or develop your own policy statement/s on responsible business practices.**

Responsible Jewellery Council Policy

[INSERT MEMBER NAME] is a [BRIEF DESCRIPTION OF THE COMPANY].

We have [X] sites located in [Y] and employ [Z] personnel.

[MEMBER NAME] is a member of the Responsible Jewellery Council (RJC).

The RJC is a standards-setting organisation established to advance responsible ethical, human rights, social and environmental practices throughout the gold, silver, platinum group metals, diamond and coloured gemstone jewellery supply chain.

The RJC has developed a benchmark standard for the jewellery supply chain and credible mechanisms for verifying responsible business practices through third-party auditing.

As an RJC member/certified member [*select as appropriate*], we commit to operating our business in accordance with the RJC Code of Practices. We commit to integrating ethical, human rights, social and environmental considerations into our day-to-day operations, business planning activities and decision-making processes.

[Add any additional business-specific commitments as appropriate]

Signed/endorsed:

Date of effect:

## E FURTHER INFORMATION

### Websites:

UN Development Programme (UNDP), Sustainable Development Goals  
[www.undp.org/content/undp/en/home/sustainable-development-goals.html](http://www.undp.org/content/undp/en/home/sustainable-development-goals.html)

UN Global Compact  
[www.unglobalcompact.org](http://www.unglobalcompact.org)

Responsible Jewellery Council (RJC), Recent Webinars  
<https://www.responsiblejewellery.com/recent-webinars>

SDG Compass  
<https://sdgcompass.org>

# (COP 3) REPORTING

## A DEFINITIONS AND APPLICABILITY

**Provision 3.1 applies to all RJC members; provision 3.2 only applies to RJC members in the mining sector.**

Note that conformance with COP 3.2 automatically ensures conformance with COP 3.1.

**Material issues** are issues that are relevant or significant. The Materiality principle of the GRI Standards defines materiality in the context of a sustainability report as aspects that reflect the organisation's significant economic, environmental and social impacts, or that substantively influence the assessments and decisions of stakeholders.

**Reporting** is a process for publicly communicating about an organisation's business practices to stakeholders, such as the government, investors, business partners, employees and consumers. It is sometimes called disclosure. Reporting and **disclosure** can be mandatory (if it is required by law) or voluntary (if it is undertaken by choice, for example to create additional transparency). Reporting requirements set out in individual COP provisions are mandatory for RJC certification.

A **sustainability report** is a report published by a company or organisation about the economic, environmental and social impacts caused by its everyday activities. A sustainability report also presents the organisation's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy.

Source:

- Global Reporting Initiative (GRI), About Sustainability Reporting  
[www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx](http://www.globalreporting.org/information/sustainability-reporting/Pages/default.aspx)

## B ISSUE BACKGROUND

Regulators, civil society, shareholders, communities, employees and customers alike increasingly want to understand how companies impact society. To respond to stakeholder expectations, more and more companies have begun to incorporate economic, environmental and social information into their public reporting in what are commonly called sustainability reports or corporate responsibility reports.

Many larger companies, particularly public companies, already issue non-financial sustainability reports as part of their normal reporting practice. The online directory Corporate Register ([www.corporateregister.com](http://www.corporateregister.com)) provides access to sustainability reports issued by more than 16,000 organisations.

Financial reporting has long had to follow a common reporting framework to ensure credibility, consistency and comparability (see COP 4 **Financial accounts**). Various initiatives have been developed to establish the equivalent for sustainability reporting (see Section C).

The ability of a company to communicate effectively with its stakeholders is important to its long-term success, viability and growth. Aligning reporting and stakeholder engagement processes can help identify stakeholders' priority issues for data collection and reporting. Some companies include third-party commentary in their reports, for example from stakeholder panels, community groups, unions, non-government organisations or subject-matter experts.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **Global Reporting Initiative (GRI)** ([www.globalreporting.org](http://www.globalreporting.org)) was established in 1997 to help companies report on their sustainability performance. GRI's core product is a set of sustainability reporting standards (the 'GRI Standards') that represent global best practice for reporting on economic, environmental and social issues. The GRI Standards, released in 2016, comprise three universal standards for sustainability reporting and a series of topic-specific standards for companies to report on their material impacts related to individual issues ranging from procurement practices to water and effluents to occupational health and safety.

To support sector-specific sustainability impacts not covered by the GRI Standards, the GRI also publishes sector-reporting guidance, called 'G4 Sector Disclosures' ([www.globalreporting.org/information/sector-guidance/sectorguidanceG4](http://www.globalreporting.org/information/sector-guidance/sectorguidanceG4)). The Mining and Metals Sector Disclosures, which was released in 2010, was originally developed for use with GRI's pre-standards advice (G3 Guidelines, then G4 Guidelines). Today, the mining and metals sector disclosures complement the GRI Standards and include a set of standard specific disclosures for use by companies in the mining and metals sector. The GRI also hosts a range of other guidance, tools, trainings and resources to help companies report with the GRI Standards.

Beyond GRI, relevant international reporting initiatives include:

- **AccountAbility** (<https://www.accountability.org/>) has developed a widely used, principles-based global stakeholder engagement standard under the AA1000 Series, which includes reporting.
- **The UN Global Compact** ([www.unglobalcompact.org](http://www.unglobalcompact.org)) sets out 10 principles for responsible business. All business signatories to the compact must submit an annual Communication on Progress, which is a public disclosure of its efforts to implement the UN Global Compact principles.
- The **Sustainability Accounting Standards Board (SASB)**, ([www.sasb.org](http://www.sasb.org)) is a not-for-profit organisation that provides standards for publicly listed corporations in the United States to use in disclosing material sustainability issues. SASB standards help companies comply with some mandatory filing requirements like those to the U.S. Securities and Exchange Commission (SEC), for example Form 10-K and Form 20-F.
- The **International Integrated Reporting Council (IIRC)**, (<http://integratedreporting.org>) is a global coalition of regulators, investors, companies, standard setters, accountants and non-government organisations working to promote 'integrated reporting' that presents material information about an organisation's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. In 2013, IIRC launched its International Integrated Reporting Framework to establish a set of guiding principles and content elements for creating an integrated report.
- The UN's **Guiding Principles on Business and Human Rights**<sup>1</sup> requires companies to communicate their efforts to prevent and address human rights risks as part of their human rights due diligence process. This communication can take various forms, from in-person meetings, online dialogues, stakeholder consultations and formal public reporting (see COP 6.1d [Human rights](#)).
- The Organisation for Economic Co-operation and Development's (OECD's) **OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**<sup>2</sup> includes, among its five due diligence steps, annual reporting of information on due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
- The **International Council on Mining and Metals (ICMM)**, ([www.icmm.com](http://www.icmm.com)) outlines its members' commitment to report annually on economic, social and environmental performance at the corporate level using the GRI Sustainability Reporting Standards. The ICMM Assurance Procedure<sup>3</sup> also helps guide ICMM member companies in developing their sustainability reports and in engaging with assurance providers.

Other voluntary environmental disclosure standards include the CEO Water Mandate (<https://ceowatermandate.org>) and CDP, formerly the Carbon Disclosure Project ([www.cdp.net](http://www.cdp.net)). Find out more information about these initiatives in COP 26 [Wastes and emissions](#) and COP 27 [Use of natural resources](#).

## National law

Some jurisdictions may require regular public reporting in 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.

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1 UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

2 OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016) [www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

3 ICMM, Sustainable Development Framework: Assurance Procedure (2008) [www.icmm.com/en-gb/publications/commitments/icmm-assurance-procedure](http://www.icmm.com/en-gb/publications/commitments/icmm-assurance-procedure)

## D IMPLEMENTATION GUIDANCE

### COP 3.1: Communication to stakeholders

Members shall communicate publicly and directly with stakeholders at least annually on their business practices relevant to the COP.

#### Points to consider:

- Reporting to stakeholders on business practices is an ongoing activity that can be useful to consider as a set of actions that are in three stages (see Figure 3.1).



Figure 3.1. Key actions in each stage of reporting

#### Stage 1. Prepare for the report

- Nominate a senior manager to oversee the preparation of your annual report or communication.
- Identify relevant issues, those that relate to the COP and are of interest to stakeholders, and those that are of concern to you. These might 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 raised as concerns by affected stakeholders.
- Review relevant issues throughout the year, integrating this process where possible with regular business reviews.
- Review the GRI Standards for a general introduction to sustainability reporting and consider how your company can apply and adopt the standard. The RJC encourages reporting in line with international standards such as the GRI or equivalent but does not require GRI reporting (except for mining companies) as smaller businesses may want to use their own approaches.
- Identify those stakeholders (employees, civil society, business partners, etc.) that can help you identify material issues to cover in your report. In the context of sustainability, the material issues are those that reflect the organisation's significant economic, environmental and social impacts.
- If you measure progress against the Sustainable Development Goals (SDGs), consider reporting on:
  - how and why you have identified specific SDGs as material to your business;
  - the significant impacts you have identified (positive and negative); and
  - the strategies and activities you have implemented to achieve your company goals with respect to the SDGs.

## Stage 2. Draft the report

- Adopt a flexible, practical approach to the form and content of your report or communication, considering the scale and impacts of your business. For example, a small business may simply want to issue an electronic memorandum or email. You may find it useful to time your report so that it aligns with your annual policy review (as required in COP 2 [Policy and Implementation](#)).
- In drafting your report, consider how best to communicate the following to your stakeholders:
  - your company’s policies or positions on the issues at hand;
  - the actions you have taken, or plan to take, related to these issues or any other issue relevant to the COP—note these actions may apply to your own operations, or may apply more broadly, for example through your involvement in community initiatives; and
  - the expected quantitative or qualitative outcomes of your actions.
- If affected stakeholders have raised a specific issue, such as an environment impact or labour rights abuse, your report should give enough information for these stakeholders to be able to properly assess your response.
  - Note that the communication requirements related to your human rights due diligence process are outlined in COP 6.1 [Human rights](#) and COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#).

## Stage 3. Publish the report

- When your report is ready to publish, disseminate it to all your stakeholders through appropriate channels of communication, such as email, social media, mail-outs, etc. Proactively communicating with stakeholders in this way can help engage them and show your efforts to uphold environmental and social commitments.
- As a minimum part of public reporting, if your company has a website, post the report online.
- Make sure you include contact information for readers to submit queries or ask for more information. This will enable you to disclose additional information based on the level of confidentiality and the situation.

### COP 3.2: [GRI mining and metals sector disclosure](#)

**Members with mining facilities shall publicly report annually on their sustainability performance using the Global Reporting Initiative (GRI) Sustainability Reporting Standards or comparable reporting guidelines. The reports shall have external assurance.**

## Points to consider:

- The GRI provides detailed guidance for preparing a sustainability report through its GRI Standards and the G4 Sector Disclosures for Mining and Metals. Together, these cover what a report should contain (see Figure 3.2), how to set report boundaries, what disclosures to make, how to gather data and how to enhance a report’s credibility. Use these resources as and when appropriate: see [www.globalreporting.org](http://www.globalreporting.org).

GENERAL STANDARD DISCLOSURES				
<ul style="list-style-type: none"> <li>• Strategy and Analysis</li> <li>• Organizational Profile</li> <li>• Identified Material Aspects and Boundaries</li> <li>• Stakeholder Engagement</li> </ul>		<ul style="list-style-type: none"> <li>• Report Profile</li> <li>• Governance</li> <li>• Ethics and Integrity</li> </ul>		
SPECIFIC STANDARD DISCLOSURES				
Category	Economic		Environmental	
Aspects <sup>1</sup>	<ul style="list-style-type: none"> <li>• <b>Economic Performance +</b></li> <li>• <b>Market Presence +</b></li> <li>• Indirect Economic Impacts</li> <li>• Procurement Practices</li> </ul>		<ul style="list-style-type: none"> <li>• <b>Materials +</b></li> <li>• Energy</li> <li>• Water</li> <li>• <b>Biodiversity +</b></li> <li>• <b>Emissions +</b></li> <li>• <b>Effluents and Waste +</b></li> <li>• Products and Services</li> <li>• Compliance</li> <li>• Transport</li> <li>• Overall</li> <li>• Supplier Environmental Assessment</li> <li>• Environmental Grievance Mechanisms</li> </ul>	
Category	Social			
Sub-Categories	Labor Practices and Decent Work	Human Rights	Society	Product Responsibility
Aspects <sup>1</sup>	<ul style="list-style-type: none"> <li>• <b>Employment +</b></li> <li>• <b>Labor/Management Relations +</b></li> <li>• <b>Occupational Health and Safety +</b></li> <li>• Training and Education</li> <li>• Diversity and Equal Opportunity</li> <li>• Equal Remuneration for Women and Men</li> <li>• Supplier Assessment for Labor Practices</li> <li>• Labor Practices Grievance Mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• Investment</li> <li>• Non-discrimination</li> <li>• <b>Freedom of Association and Collective Bargaining +</b></li> <li>• Child Labor</li> <li>• Forced or Compulsory Labor</li> <li>• Security Practices</li> <li>• <b>Indigenous Rights +</b></li> <li>• Assessment</li> <li>• Supplier Human Rights Assessment</li> <li>• Human Rights Grievance Mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Local Communities +</b></li> <li>• Anti-corruption</li> <li>• Public Policy</li> <li>• Anti-competitive Behavior</li> <li>• <b>Compliance +</b></li> <li>• Supplier Assessment for Impacts on Society</li> <li>• Grievance Mechanisms for Impacts on Society</li> <li>• <b>Emergency Preparedness ++</b></li> <li>• <b>Artisanal and Small-scale mining ++</b></li> <li>• <b>Resettlement ++</b></li> <li>• <b>Closure Planning ++</b></li> </ul>	<ul style="list-style-type: none"> <li>• Customer Health and Safety</li> <li>• Product and Service Labeling</li> <li>• Marketing Communications</li> <li>• Customer Privacy</li> <li>• Compliance</li> <li>• <b>Materials Stewardship ++</b></li> </ul>

1) The word **topic** is used in the Guidelines to refer to any possible sustainability subject. The word **Aspect** is used in the Guidelines to refer to the list of subjects covered by the Guidelines.

**+ G4 General Standard Disclosures and G4 Aspects where sector specific content has been added.**

**++ Sector specific Aspects.**

Figure 3.2. Overview of GRI-recommended content for a sustainability report in the mining and metals sector

Source: GRI, G4 Sector Disclosures: Mining and Metals (2013)

[www.globalreporting.org/Documents/ResourceArchives/GRI-G4-Mining-and-Metals-Sector-Disclosures.pdf](http://www.globalreporting.org/Documents/ResourceArchives/GRI-G4-Mining-and-Metals-Sector-Disclosures.pdf)

- Appoint a responsible senior manager to oversee the report’s production, including drafting content, and developing and implementing strategies for report quality, data collection and external assurance.
- Establish systems for data collection, integrity and verification and make sure these fit with, and where possible draw on, existing management systems.
- Look for any opportunity to harmonise processes across all your reporting requirements, including:
  - annual financial reporting;
  - UN Global Compact Communication on Progress;
  - revenue disclosures for the Extractive Industries Transparency Initiative;
  - business contributions to the SDGs;
  - human rights and due diligence reporting for COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**;
  - stakeholder engagement processes (including community and employee engagement);
  - regulatory reporting; and
  - information for ethical investment markets;
- Note that members in the mining sector automatically comply with COP 3.1 by complying with COP 3.2.

### Check:

- All members: Do you communicate your business practices to relevant stakeholders at least once a year?
- All members: If you have a website, is your annual report available there?
- Members in the mining sector: Do you prepare an annual sustainability report according to GRI Sustainability Reporting Standards or comparable reporting guidelines?

## E FURTHER INFORMATION

### Websites:

AccountAbility

[www.accountability.org](http://www.accountability.org)

CDP (formerly, the Carbon Disclosure Project)

[www.cdp.net](http://www.cdp.net)

Corporate Register

[www.corporateregister.com](http://www.corporateregister.com)

Global Reporting Initiative (GRI)

[www.globalreporting.org](http://www.globalreporting.org)

International Integrated Reporting Council (IIRC)

[www.theiirc.org](http://www.theiirc.org)

The portal for Sustainability Reporting

[www.sustainability-reports.com](http://www.sustainability-reports.com)

Sustainability Accounting Standards Board (SASB)

[www.sasb.org](http://www.sasb.org)

Sustainability Risk Advisors

<http://ratesustainability.org>

UN Global Compact, The Communication on Progress (CoP) in Brief

[www.unglobalcompact.org/COP/index.html](http://www.unglobalcompact.org/COP/index.html)

## **Publications:**

AA1000 AccountAbility Principles (AA1000AP) (2018)

[www.accountability.org/standards/](http://www.accountability.org/standards/)

AA1000 Assurance Standard (AA1000AS)(2008)

[www.accountability.org/standards/](http://www.accountability.org/standards/)

AA1000 Stakeholder Engagement Standard (AA1000SES) (2015)

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IIRC, The International <IR> Framework (2013)

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<https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/10/kpmg-survey-of-corporate-responsibility-reporting-2017.pdf>

OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016)

[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

# (COP 4) FINANCIAL ACCOUNTS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Audited financial statements** are financial statements that a financial auditor has reviewed and found to be presented fairly and, in all material respects, in line with the applicable financial reporting framework. The financial auditor of these financial statements is required to:

- get an understanding of the entity's internal control and assess fraud risk;
- corroborate the disclosures in the financial statements with evidence; and
- submit a written opinion on whether the statements are fairly presented and adhere to the applicable financial reporting framework.

**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—and notes to these.

**National and international standards** include the generally accepted accounting principles of the applicable jurisdiction, which are typically issued by a national standards-setting body (for example, the Financial Accounting Standards Board in the United States) or by the International Accounting Standards Board.

**Reviewed financial statements** are financial statements that an accountant has reviewed and found to require no material modifications to conform with the applicable financial reporting framework.

**A statutory audit** is an audit that is required under applicable law.

Source:

- American Institute of Certified Public Accountants (AICPA)  
[www.aicpa.org](http://www.aicpa.org)

## B ISSUE BACKGROUND

Financial accounts, prepared according to a recognised accounting standard, give outside parties financial information to help them make decisions. Financial accounting addresses potential problems that may occur when a company's management has information that its stakeholders do not, or when management's incentives do not necessarily align with those of stakeholders.

Outside parties, such as investors, creditors, regulators, suppliers and other stakeholders, often want a financial auditor's opinion on a company's financial statements. That is why many businesses get audited financial statements. Financial audits increase the credibility of any financial statement prepared by a company's management.

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

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

Applicable law sets the specific requirements for what a financial statement must contain. Independently audited financial statements may be legally required, depending on the nature and size of a business, its ownership structure (for example, if it is publicly listed) and where it is located. In some cases, companies can waive the requirement for an audit.

Financial auditors should follow generally accepted auditing standards, which set out requirements and guidance on conducting audits. Auditing standards can be set by national governments or by international organisations, such as the International Accounting Standards Board (IASB) or the International Auditing and Assurance Standards Board (IAASB), and then adopted by national regulatory bodies.

The **IASB** ([www.ifrs.org/groups/international-accounting-standards-board](http://www.ifrs.org/groups/international-accounting-standards-board)) develops and publishes the International Financial Reporting Standards (IFRS) that are required in three-quarters of all G20 countries.

National regulation continues to evolve. The **Sarbanes-Oxley Act** ([www.soxlaw.com](http://www.soxlaw.com)) in the United States, for example, has established significant reforms to improve the auditing and accounting procedures of public companies.

## D IMPLEMENTATION GUIDANCE

### 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:

- A company's management is responsible for preparing financial statements, which should be overseen by a qualified accountant.
- Make sure you are aware of the applicable law and of the generally accepted accounting principles for all jurisdictions in which you 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:

- Find out whether you need to carry out a statutory audit of your financial statements, and if so, what specific requirements apply.
- Make sure that any financial auditors or reviewers you use are suitably qualified and independent, in accordance with applicable regulations and professional standards.
- Use your audit or review process as 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 statutory requirements for your financial accounts? If so, can you show compliance with these?
- Are your financial accounts kept in accordance with national or international accounting standards?
- Has an independent and qualified accountant audited or reviewed your financial accounts? If so, can you show your COP auditor documentation of their credentials?

## E FURTHER INFORMATION

#### Websites:

American Institute of Certified Public Accountants (AICPA)

[www.aicpa.org](http://www.aicpa.org)

IASB, IAS 1: Presentation of Financial Statements

[www.iasplus.com/en/standards/standard5](http://www.iasplus.com/en/standards/standard5)

IFRS Foundation [and the International Accounting Standards Board (IASB)]

[www.ifrs.org/Pages/default.aspx](http://www.ifrs.org/Pages/default.aspx)

International Auditing and Assurance Standards Board (IAASB)

[www.iaasb.org](http://www.iaasb.org)

#### Publications:

Deloitte, Statutory Financial Statements: Preparing and Filing Financial Statements in Belgium (2018)

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[www.sec.gov/investor/pubs/begfinstmtguide.htm](http://www.sec.gov/investor/pubs/begfinstmtguide.htm)

# RESPONSIBLE SUPPLY CHAINS AND HUMAN RIGHTS



# (COP 5) BUSINESS PARTNERS

## A DEFINITIONS AND APPLICABILITY

**This provision applies to all RJC members.**

A company's **ability to influence** business partners will vary, depending on its economic and social context and the size and the nature of its relationship with the business at hand. For example, small businesses that represent just a small share of a supplier's customer base will have less influence over that supplier than other larger customers. But small businesses can sometimes have a large influence, for example when buying from small suppliers. COP auditors will take your ability to influence into account when assessing your best endeavours and your compliance with this provision.

Using **best endeavours** means acting honestly, reasonably and with a positive effort to perform the relevant obligation. Under this provision, it refers to an RJC member's efforts to influence, to the best of its ability, the adoption of responsible business practices among its business partners.

A **business partner** is an organisation, business or other type of entity with which an RJC member has a direct business relationship. This relationship can involve a contractual agreement to buy or sell any product or service related to the materials in scope of the COP. Business partners include all contractors, agents, customers, suppliers, local and international intermediaries or traders, and joint venture partners. They also include service providers such as security services and recruitment agencies, or any other third parties subject to your due diligence through COP requirements or applicable law. Business partners do not include end consumers buying products for personal use.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

A **significant business partner** is any business partner that is very important to the RJC member's business, including all major suppliers and large customers. Members should use their own judgement to determine whether a business partner is significant or not. For example, traders that sell you coloured gemstones would be considered significant business partners unless the volume or value of material you are buying is very small.

## B ISSUE BACKGROUND

Companies operating in a global economy are increasingly asked to assume more responsibility for business ethics, human rights, and social and environmental performance in their supply chains. For example, multinational corporations are being held to account by investors, consumers and civil society for promoting and protecting the rights of workers, even if these workers are off site, or are employed through subcontracts or other outsourcing arrangements. As a result, many larger companies are developing policies, codes of conduct, contractual obligations and monitoring systems 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, including associate companies, contractors, suppliers, local and international intermediaries or traders and customers. The RJC does not require your business partners to adhere to the COP, unless otherwise specified (see box 'Applying the COP to business partners' under COP 5.2). But you are expected to use best endeavours to promote and verify responsible business practices among your business partners and to influence their behaviour, according to your scale and leverage.

The level of effort made to promote responsible business practices should take into consideration the nature of the business partner's practices, and the significance of its impact on workers, communities and the environment. In all cases, promoting responsible business practices is about grasping the right opportunity to effect positive change. That means that no action is required if you know that business partners already use responsible business practices, are certified by a credible organisation, can be shown to be very low risk or are highly regulated.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

Organisations like the International Organization for Standardization (ISO) and Social Accountability International (SAI) offer a systematic approach to managing business partners through their standards, including:

- **ISO14001:2015** Environmental management systems ([www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html));
- **ISO 45001:2018** Occupational health and safety management systems ([www.iso.org/iso-45001-occupational-health-and-safety.html](http://www.iso.org/iso-45001-occupational-health-and-safety.html)); and
- **SA8000®Standard** ([www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1689](http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1689)).

Through these standards, companies must give the same level of protection to indirect employees working on-site as to all directly employed personnel. This means that companies must ensure business partners are:

- made aware of hazards and controls in the same way as employees;
- communicated with regularly, and given appropriate training based on the nature, scope and complexity of their work; and
- evaluated and chosen 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**<sup>1</sup> requires companies to avoid causing or contributing to adverse human rights impacts not only through their own activities, but also as a result of their relationships with business partners. See COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas** for related requirements related to business partners.

### National law

Most countries have legislation to protect the well being of business partners while working on another company's premises and to ensure they are given adequate controls and a reasonable level of supervision. This means that, in general, you are responsible for the lawful conduct of any business partners working on your site.

But laws vary from country to country. The RJC expects its members to be aware of the specific legislative and regulatory requirements in their operating jurisdictions.

## D IMPLEMENTATION GUIDANCE

### 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.**

#### Points to consider:

- You are expected to cascade the expectations of responsible business practices, including respect for human rights, throughout your business relationships. In doing so, make sure you are aware of any legal requirements or constraints on the extent to which you can require business partners to fulfil COP requirements.
- You are free to use whatever reasonable approach works for you to promote responsible business practices among your business partners. One option is to follow the three steps outlined in Table 5.1.
- Note to members and auditors: in assessing this provision, focus on what the company seeking COP certification has done to promote responsible practices (rather than what the business partner's practices actually are).

<sup>1</sup> UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

Table 5.1. Three steps for promoting responsible business practices among business partners

	STEP	NOTES
Prioritise	<b>1</b> Identify significant business relationships	Significant business partners are major customers or suppliers
		<p>Choose an appropriate approach to risk assessment. Use:</p> <ul style="list-style-type: none"> <li>• your own tried-and-tested method; or</li> <li>• a reputable template (for example, the RJC risk assessment toolkit, which is particularly useful for small and medium-sized businesses).</li> </ul> <p>Carry out risk assessments:</p> <ul style="list-style-type: none"> <li>• for new partners, before establishing commercial arrangements; and</li> <li>• for existing partners, when circumstances change.</li> </ul> <p>Include human rights and labour-related risks in your assessment:</p> <ul style="list-style-type: none"> <li>• You may have already done this through due diligence to fulfil other COP provisions (see COP 6 <b>Human rights</b>, COP 7 <b>Due diligence for responsible sourcing from conflict-affected and high-risk areas</b>, COP 8 <b>Sourcing directly from artisanal and small-scale mining</b>, COP 13 <b>Security</b>, COP 19 <b>Child labour</b>, COP 20 <b>Forced labour</b> and COP 23 <b>Health and safety</b>).</li> <li>• If so, use due diligence findings here. Alternatively, use an integrated approach to assess risks for each significant business partner.</li> </ul>
Assess	<b>2</b> Establish the level and nature of risks attributed to all your significant business relationships.	<p>Through your risk assessment, identify:</p> <ul style="list-style-type: none"> <li>• business partners whose activities pose risks of significant adverse impacts on workers, communities or environments and those that could impact on your reputation or performance</li> <li>• business partners that are already committed to responsible business practices, for example through RJC membership, or commitment to comparable initiatives, including the UN Global Compact, SA8000®, Occupational Health and Safety Assessment Series, ISO 14001, De Beers Best Practice Principles and the OECD Guidance; and</li> <li>• business partners that you have a reasonable ability to influence.</li> </ul>
		<p>Make sure your efforts are commensurate with the opportunity to effect positive change.</p> <p>Promote responsible business practices by, for example:</p> <ul style="list-style-type: none"> <li>• giving your business partners a copy of your policy commitment to responsible business practices (see COP 2 <b>Policy and implementation</b>);</li> <li>• appending your policy to company contracts, where relevant; and</li> <li>• offering training as and where appropriate.</li> </ul> <p>Keep records of communications that promote responsible business practices with business partners.</p>
Engage	<b>3</b> Engage with your significant business partners and raise awareness about responsible business practices.	

## Small business

Small and medium-sized enterprises (SMEs) are collectively significant in the jewellery supply chain, with family-owned retail, design and manufacturing businesses prevalent in many countries. At the mining end of the supply chain, small-scale producers are also common in some 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 influence over larger business partners, they can still take simple steps to assess risks, identify significant partners and communicate the importance of responsible practices and their own commitments.

### COP 5.2: Contractors, indirectly employed workers and visitors

**All employees and visitors to the member's facilities shall be required to comply with the member's policies, systems and procedures relevant to the COP.**

## Points to consider:

- Make sure that your business partners are aware of the activities done on your site, and that any person coming on-site complies with your business systems and risk control measures. This includes any materials that are brought to, or disposed of, on your site.
- Establish and document clear reporting relationships, accountabilities and lines of communications with all employees (see box 'Applying the COP to business partners').
- Give visitors a brief orientation or induction training if there is risk related to your COP compliance, for example on health and safety or security.
- Note to members and auditors: in assessing this provision, the focus is on the actions of the RJC member company in ensuring compliance of on-site contractors and third-party employers.

## Applying the COP to business partners

As an RJC member, your responsibility to protect the rights of workers and communities includes anyone working regularly on your sites. The COP therefore applies to **employees**, which is defined as including both directly employed workers and indirectly employed workers who regularly work at members' sites. This means that COP requirements extend to your business partners who are responsible for these indirectly employed workers, including:

- contractors/subcontractors (for example, for construction projects); and
- any third party (such as a labour agent) that has subcontracted workers to regularly work on your site (for example, security guards, canteen staff or seasonal workers).

You must ensure these business partners comply with all your policies and procedures on relevant COP provisions (for example, COP 13 **Security**, COP 15–22 **Labour rights and working conditions** and COP 23–27 **Health, safety and environment**) by first establishing a set of robust management systems and verifying compliance, as outlined below.

### Establishing management systems

- Establish procedures to:
  - identify which business partners must comply with the COP;
  - communicate expectations to these business partners;
  - verify compliance; and
  - address non-conformances.
- Build on existing systems where possible. If, for example, you already have a management system for reviewing suppliers, update this to also include your requirements of business partners.
- Communicate your expectations to all relevant business partners. The RJC encourages its members to build these expectations into contracts, for example by including them in any new business agreement or incorporating them into existing supplier onboarding processes.
- Include on-site contractors and workers in your training as appropriate.
- Document your procedures for assessing and communicating expectations to business partners.

### Verifying compliance

- Ask relevant business partners to give you copies of their own policies to show their commitment to complying with relevant COP provisions.
- Check business partners' compliance regularly through:
  - monitoring;
  - desktop reviews of relevant materials, such as employee contracts or hours worked;
  - interviews of indirectly employed workers; or
  - audits against COP provisions.

## Check:

- Have you identified your significant business partners?
- Have you assessed the level and nature of risks of working with your business partners?
- Can you show how you have promoted responsible business practices to significant business partners?
- Can you show how you ensure business partners responsible for indirectly employed workers comply with relevant COP provisions?

## E FURTHER INFORMATION

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### Websites:

International Organization for Standardization (ISO), ISO 14000 Family—Environmental Management  
[www.iso.org/iso-14001-environmental-management.html](http://www.iso.org/iso-14001-environmental-management.html)

ISO, ISO 45001—Occupational Health and Safety  
[www.iso.org/iso-45001-occupational-health-and-safety.html](http://www.iso.org/iso-45001-occupational-health-and-safety.html)

### Publications:

De Beers, Best Practice Principles (2018)  
[www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/library/2018/disclosure-practice-note-2018.pdf](http://www.debeersgroup.com/~media/Files/D/De-Beers-Group/documents/reports/library/2018/disclosure-practice-note-2018.pdf)

National Standards Authority of Ireland, OHSAS 18001: Occupational Health and Safety Management (2007)  
[www.nsai.ie/download/certification/MD-19-02-Rev-4--OHSAS-18001-Occupational-Health-and-Safety.pdf](http://www.nsai.ie/download/certification/MD-19-02-Rev-4--OHSAS-18001-Occupational-Health-and-Safety.pdf)

Social Accountability International (SAI), Guidance Document for Social Accountability 8000 (SA8000®:2014) (2016)  
[www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

UN Human Rights, Guiding Principles on Business and Human Rights (2011)  
[www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

# (COP 6) HUMAN RIGHTS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Adverse human rights impacts** are any harmful effects on the human rights of workers, communities, consumers or other rights-holders. Adverse potential impacts (also called **human rights risks**) need to be addressed through prevention or mitigation; actual impacts are those that have already occurred and require remediation.

A company's **business relationships** are defined broadly to encompass relationships with business partners, entities in its value chain and any other state or non-state entity directly linked to its business operations, products or services. This includes entities in its supply chains beyond the first tier and both direct and indirect business relationships.

**Human rights** are the universal rights and freedoms that belong to all people without discrimination. As a minimum, the RJC understands human rights to mean those rights articulated in the International Bill of Human Rights, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and applicable law.

**Human rights due diligence** is the reasonable investigation undertaken by a business to identify, assess, prevent and mitigate human rights impacts in its supply chain.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Sources:

- UN Guiding Principles Reporting Framework, Human Rights Due Diligence [www.ungpreporting.org/glossary/human-rights-due-diligence/](http://www.ungpreporting.org/glossary/human-rights-due-diligence/)
- UN Human Rights, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012) [www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)
- UN Human Rights, Frequently Asked Questions About the Guiding Principles on Business and Human Rights (2014) [www.ohchr.org/documents/publications/faq\\_principlesbusinessshr.pdf](http://www.ohchr.org/documents/publications/faq_principlesbusinessshr.pdf)
- UN Human Rights, What Are Human Rights? [www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx](http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx)

### Human rights due diligence and the OECD Guidance

- This provision and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas** work in tandem to define the RJC's expectations for how members conduct human rights due diligence of their supply chains.
- COP 6 addresses general expectations, and is designed to help members integrate the UN Guiding Principles on Business and Human Rights (the 'UN Guiding Principles') into their operations and supply chain practices.
- COP 7 addresses the specific human rights issues related to sourcing materials from conflict-affected and high-risk areas, and is designed to help members address these by using the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the 'OECD Guidance').
- Both sets of international guidelines (the OECD Guidance and the UN Guiding Principles) are aligned and complementary; all RJC members are required to comply with COP 6 and COP 7.

## B ISSUE BACKGROUND

Human rights are relevant to all businesses, regardless of size, sector or country of operation. They include social, cultural and economic rights, labour rights, and civil and political rights (see Figure 6.1).

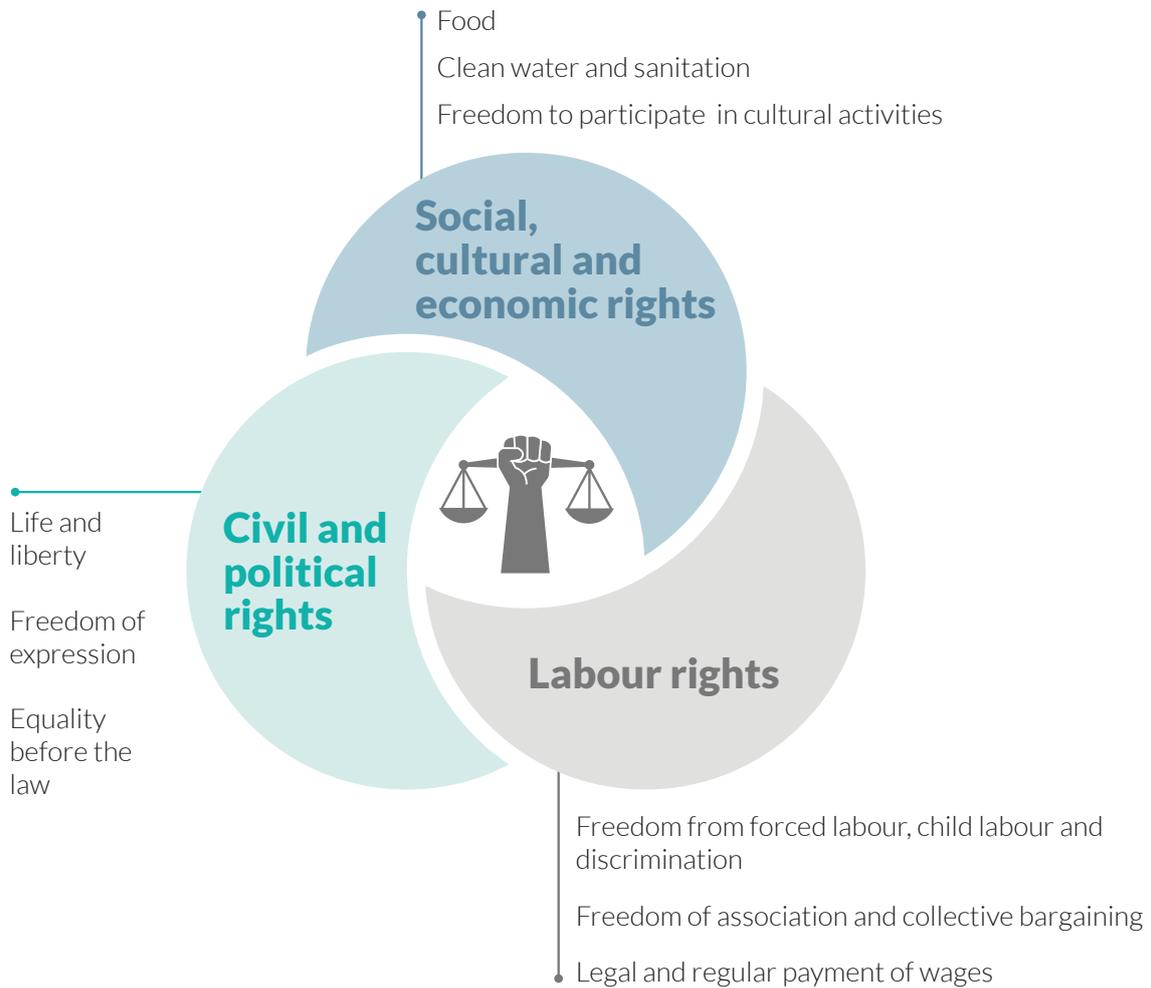


Figure 6.1. Three main types of human rights with a limited number of examples of each

While some human rights might sound abstract from a business perspective, they often constitute the underlying rationale for company policies and procedures. For example, a company's health and safety procedures may not use human rights language per se, but they effectively serve to respect employees' right to life, their right to just and favourable conditions of work and their right to health. Similarly, a company policy on working hours respects employees' right to just and favourable work conditions.

Under international standards, all businesses are expected to use due diligence to assess their actual and potential human rights impacts and to act upon their findings, tracking and communicating what they do to address any negative impacts.

Companies that source from artisanal and small-scale miners, or from conflict-affected and high-risk areas, run a greater risk of contributing (inadvertently or not) to human rights abuses, including the use of forced and/or child labour, sexual violence and poor health and safety of workers and communities. This makes it especially important for these companies to assess their operations and ensure robust policies and practices that protect human rights (see COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#) and COP 8 [Sourcing directly from artisanal and small-scale mining](#)).

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

Universal human rights are often expressed and guaranteed by international treaties, customary international law, general principles and other instruments of international law. The most well known is the **Universal Declaration of Human Rights (UDHR)**,<sup>1</sup> adopted by the UN General Assembly in 1948. Although the UDHR is a non-binding resolution, it is now considered a central component of international customary law, along with the International Covenant on Civil and Political Rights<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>3</sup>

In addition to these UN instruments and the UDHR, the ILO's **Declaration on Fundamental Principles and Rights at Work**,<sup>4</sup> adopted in 1998, commits Member States to respect and promote principles and rights in four categories:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of forced or compulsory labour;
- the abolition of child labour; and
- the elimination of discrimination in respect to employment and occupation.

These ILO principles and rights are directly addressed in the COP through provisions 19–22 (**Child labour, Forced labour, Freedom of association and collective bargaining** and **Non-discrimination**). They are universal and apply to all people, but especially those with special needs, including the unemployed and migrant workers.

While none of these UN and ILO instruments are specifically directed at companies, there is a global expectation that all enterprises respect human rights no matter where they operate, or how big their operations are (see box 'Small business'). In 2011, the international community adopted the UN Guiding Principles on Business and Human Rights<sup>5</sup> (the 'UN Guiding Principles', also called the 'Ruggie Principles'), which have since become the primary reference for the private sector's responsibility to respect human rights.

The UN Guiding Principles was designed as an operational guide to implement the UN's three-pillared 'Protect, Respect and Remedy Framework' for business and human rights (see Table 6.1).

Table 6.1. The three concepts underpinning the UN 'Protect, Respect and Remedy Framework' on business and human rights

<b>Protect</b>	The state has a duty to protect against human rights abuses by third parties including business through appropriate policies, regulation, and adjudication.
<b>Respect</b>	Businesses have a 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 linked to their activities.
<b>Remedy</b>	Victims of human rights abuses have a right to effective remedy, through judicial, administrative, legislative or other appropriate means.

In full, the UN Guiding Principles does not create new international obligations; rather, they elaborate the implications for businesses (and states) of existing standards and practices within a single, comprehensive template. They have been welcomed by all stakeholder groups and been incorporated into the OECD Guidelines for Multinational Enterprises,<sup>6</sup> the International Organization for Standardization's ISO 26000 standard<sup>7</sup> and the Performance Standards of the International Finance Corporation (IFC).<sup>8</sup> The European Union has also recognised the UN Guiding Principles as one of the cornerstones of an evolving global framework for corporate social responsibility.

Beyond the UN Guiding Principles, the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>9</sup> (the 'OECD Guidance') is an important source of practical advice to help companies respect human rights, specifically those associated with sourcing from conflict-affected and high-risk areas. Applicable to all minerals, the OECD Guidance outlines a five-step risk-based process for due diligence that companies can use to avoid contributing to conflict through their mineral sourcing practices. The OECD Guidance forms the basis of a COP provision in its

1 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/)

2 UN, International Covenant on Civil and Political Rights (1966) [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)

3 UN, International Covenant on Economic, Social and Cultural Rights (1966) [www.ohchr.org/en/professionalinterest/pages/cescr.aspx](http://www.ohchr.org/en/professionalinterest/pages/cescr.aspx)

4 ILO, Declaration on Fundamental Principles and Rights at Work and Its Follow-up (1998) [www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm)

5 UN Human Rights, UN Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

6 OECD, OECD Guidelines for Multinational Enterprises (2011) [www.oecd.org/daf/inv/mne/48004323.pdf](http://www.oecd.org/daf/inv/mne/48004323.pdf)

7 ISO, ISO 26000—Social Responsibility [www.iso.org/iso-26000-social-responsibility.html](http://www.iso.org/iso-26000-social-responsibility.html)

8 IFC, Performance Standards [www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards)

9 OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016) [www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

own right (see COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#)) but, given the strong links with the UN Guiding Principles, is also referenced in the sections below.

## Small business

The UN Guiding Principles makes it clear that small businesses also have a responsibility to respect human rights. Small and medium-sized enterprises (SMEs) often have less capacity and more informal structures than larger companies, but a more informal approach to respecting human rights can still be effective, as long as there is a policy, a fit-for-purpose due diligence process and a process to enable remedy.

Source:

- UN Human Rights, Guiding Principles on Business and Human Rights (2011)  
[www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## National law

Human rights principles are enshrined in the national laws of most countries, and businesses face an increasingly regulated operating environment when it comes to respecting human rights (see box 'Recent regulations').

Most national jurisdictions prohibit complicity in committing a crime, and several allow for businesses to be criminally liable in such cases. Other laws including those on labour rights, occupational health and safety, non-discrimination, privacy and the environment also include protection for human rights. Some national courts have accepted or instigated lawsuits alleging that multinational companies based in their country have knowingly contributed to human rights violations in other countries. Government sanctions and restrictions may apply to commercial transactions with certain regions or countries.

RJC members are expected to comply with all applicable laws and to respect internationally recognised human rights wherever they operate. In situations where national law is not strongly enforced, or does not go as far as, or conflicts with, internationally recognised rights, respecting human rights can be difficult. In these situations, companies should try to meet the intent of international standards while complying with national law. Companies should also be aware of the broader legal and other risks outside their country of operation.

## Recent regulations

The global regulatory environment is changing as more countries adopt modern slavery, due diligence and transparency laws. Each law defines different expectations of what is required of businesses based on their size, scale, industry and geographic footprint. Some of the most recent key legislation to come into force is summarised below.

### 2015 UK Modern Slavery Act and 2018 Australian Modern Slavery Act

The UK and Australian legislation both aim to combat human trafficking and slavery. They both include a transparency clause, which requires any company with operations in the UK or Australia above a certain size threshold to publish an annual statement laying out steps to manage and mitigate the risk of forced labour in supply chains. In the UK, the threshold is annual turnover of more than £36 million and in Australia it is consolidated revenue above A\$100 million. Failure to comply with the UK act can lead to an injunction and an unlimited fine.

### 2010 California Transparency in Supply Chains Act

The California Transparency in Supply Chains Act applies to retail sellers or manufacturers that operate in California and have an annual turnover of more than US\$100 million. The Act requires all relevant companies to disclose information about their efforts to eradicate slavery and human trafficking from their supply chains, including how they are doing: verification, auditing, certification, accountability and training. Companies failing to comply with the Act are subject to an injunction by the California attorney general.

### The 2017 French Duty of Vigilance Law

The French Duty of Vigilance Law covers large limited liability companies with more than 5,000 employees in France (or 10,000 worldwide). Under the new law, these companies must establish and implement mechanisms to prevent human rights violations, health and safety hazards and environmental impacts throughout all their chains of production. These mechanisms are expected to ensure the company can effectively identify, mitigate, remediate and report on these potential and actual risks each year as part of a 'vigilance plan'. While there are no financial penalties for failing to comply with the new law, a company can be held liable for any harm caused through its negligence to an individual or a group.

## D IMPLEMENTATION GUIDANCE

### COP 6.1: UN guiding principles

Members shall respect human rights by considering all potential and actual impacts in their operations and business relationships. They shall also commit to, and implement, the UN Guiding Principles on Business and Human Rights as appropriate to their size and circumstances.

#### Points to consider:

- The UN Guiding Principles provides the basis for you to know and show that your business respects human rights. In practice, this means implementing an approach that includes at the very minimum four key components:
  - a written policy;
  - a process for due diligence;
  - a remedy mechanism; and
  - a communication plan (see Figure 6.2).

These are considered in turn in the provisions that follow.

- Your approach needs to apply to all your own operations as well as all your business relationships, including your contractors and suppliers. See Table 6.2 on ways companies can be involved with adverse human rights impacts.
- Note that in implementing your approach to respect human rights, you are expected to adhere to both the UN Guiding Principles (COP 6) and the OECD Guidance (COP 7). The implementation framework across both sets of guidelines is aligned, and you can fulfil both related COP provisions using an integrated approach (see Figure 6.2).



Figure 6.2. An integrated approach to addressing human rights for both the UN Guiding Principles (COP 6) and OECD Guidance (COP 7)

\*S = Step in the OECD Guidance framework for due diligence

## COP 6.1A: Written policy

### As a minimum, members shall:

- a. Have a policy commitment, endorsed at the highest level of their organisation, to respect human rights within their operations and business relationships and procedures for implementing the policy in alignment with COP 2 (Policy and implementation).

### Points to consider:

- At a minimum, a human rights policy is a public statement committing an organisation to respect human rights.
- Your policy statement can be a stand-alone one (incorporated within COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**) or part of an overarching company policy (as part of COP 2 **Policy and implementation**). Either way, your statement should be:
  - endorsed at the highest level of your organisation;
  - clear on expectations of employees, business units, suppliers and subcontractors (this will help ensure everyone understands their role in delivering the policy);
  - publicly available; and
  - proactively communicated to your relevant stakeholders.
- To develop an effective policy, you should make a senior manager responsible for leading the process and establish a cross-functional team to help draft it. Once you have a draft you should review it against internally recognised human rights and consult with external stakeholders before finalising it. Several websites and publications exist on developing a human rights policy that can help you (see 'Further information' below).
- Once you have a final human rights policy, review your internal processes and procedures to ensure it is reflected in operational practices. Assign responsibility to someone in each business area to review and, where necessary, update all relevant processes and procedures. This should be done periodically to make sure operations reflect the human rights policy.

## COP 6.1B: Human rights due diligence

### As a minimum, members shall:

- b. Have a human rights due diligence process to identify, prevent, mitigate and account for adverse human rights impacts that are connected to their business.

### Points to consider:

- The UN Guiding Principles (and the OECD Guidance) stipulate not only **what** businesses should do in relation to human rights, but also suggest **how** they should do it.
  - The **what** is to avoid causing or contributing adverse human rights impacts and to remedy any impacts identified.
  - The **how** is the human rights due diligence process you carry out to identify, prevent, mitigate and account for how you address adverse human rights impacts.

- There are three ways your company can be involved with adverse human rights impacts: cause, contribution and linkage (see Table 6.2).

Table 6.2. Three ways companies can be involved with adverse human rights impacts

Type of involvement		Examples
<b>Cause</b>	A company is a necessary and sufficient actor for the harm to occur.	<ul style="list-style-type: none"> <li>• Failing to pay wages to employees.</li> <li>• Discriminating in treatment of workers.</li> <li>• Exposing factory workers to hazardous working conditions without adequate safety equipment.</li> <li>• Dumping chemical effluents from production processes into waterways, directly polluting local communities' drinking water.</li> </ul>
<b>Contribution</b>	A company exacerbates the harm, but is not a sufficient actor for it to occur.	<ul style="list-style-type: none"> <li>• Changing production requirements for suppliers at the last minute without adjusting production deadlines and prices, thereby pushing suppliers to breach labour standards to deliver.</li> <li>• Working with a subcontractor that is using non-voluntary prison labour to work in factories.</li> <li>• Relying on on-site labour agents using deceptive tactics to recruit migrant workers, who are then forced into debt to pay recruitment-related fees.</li> </ul>
<b>Linkage</b>	A company is linked to harm, but the harm would have been just as severe without it.	<ul style="list-style-type: none"> <li>• Migrant labour abuse at a supplier's manufacturing site, despite explicit policies against such activities and confirmation from suppliers that such policies are implemented.</li> <li>• A supplier subcontracting parts of production to child workers in homes, in contradiction to contractual obligations and without any specific procurement pressures from the company.</li> <li>• Suppliers using raw stones sourced through an agent originating from mines that allow child workers to perform hazardous work endangering their health.</li> </ul>

- Your human rights due diligence will need to be able to address all three ways that your company can be involved with adverse human rights impacts. It is important to know how you are involved with the impact, because that will determine how you are required to remedy it. The most challenging type of involvement to assess is 'linkage'. Your company is 'linked' to a human rights impact if it is connected to your operations, products or services but you are not causing or contributing to the human rights impact through your own activities.
- Put someone in charge of overseeing your human rights due diligence. Make sure it is someone senior and able to convene staff from across the company; this person will be accountable for all steps in the due diligence process.
- Assemble a core 'due diligence' team. If you have a small business, your team doesn't have to be big, but it should include the staff who are in charge of all relevant areas of business such as human resources, finance, legal, procurement, compliance, audit, risk, product or materials management, and other functions.
- If you have the budget available, consider hiring external topic experts to help with your due diligence.
- Your human rights due diligence will necessarily vary in complexity, depending on your company's size, the risk of severe human rights impacts and the nature and context of your operations. But in all cases, it will need to include four steps:
  1. Assessing actual and potential human rights impacts.
  2. Integrating and acting upon the findings.
  3. Tracking responses.
  4. Communicating how impacts are addressed.
- This four-step process, articulated in the UN Guiding Principles, is rooted in a risk management approach that is largely familiar to companies in the jewellery supply chain. But its application to human rights and business relationships can take time to implement. Members and auditors should consider the need for systems to be put in place over successive years as part of a continual improvement process.
- Specific guidance for each of these steps is included below. Note that for human rights due diligence you can:
  - implement a stand-alone process (in alignment with COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#));
  - integrate it into an existing risk and impact assessment; or
  - use the RJC risk assessment toolkit.

- Risks can change over time; your due diligence should be ongoing and regularly reviewed. The frequency of your review should be risk-based and triggered by changes in your business, for example:
  - every time you start a significant new activity or business relationship;
  - if you receive a grievance or allegation;
  - if you start sourcing new products or from a new country; or
  - if the country you are operating in, or sourcing from, undergoes a change that affects the risk of human rights (for example, political change).

### Step 1. Assess impacts

- You must first develop an understanding within your company of how human rights relate to what your company does, and not just in terms of frequently discussed issues such as working conditions.<sup>10</sup>
- You can assess human rights impacts as a separate exercise in due diligence, or as part of a broader risk management system. Either way, you must be able to show that your assessment goes beyond material risks to your own company to focus on assessing the impacts to rights-holders such as customers, employees, suppliers, communities and other stakeholders (see box 'Salient human rights risks').
- Your assessment, however approached, should include a review of potential and actual risks and impacts:
  - from your own business's operations; and
  - arising through your business relationships. Use the OECD Guidance to map key human rights risks related to your suppliers (see COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#)).
- When reviewing your risks and impacts, ask yourself who is at risk, where and why. Consider the following questions:<sup>11</sup>
  - Who might be adversely affected by our operations? Is anyone particularly vulnerable?
  - Are there circumstances in which we need a stand-alone human rights impact assessment because human rights risks are particularly high?
  - What other internal and external sources of information can we draw on to help us: media, expert reports, feedback from staff and stakeholders, grievance mechanism?
  - Can we engage potentially affected groups directly? If not, what other credible sources can help us understand their views and concerns?
  - What written resources or experts can help us test our assumptions?
- It might not be feasible or practical for you to assess every single supply chain risk. Indeed, the UN Guiding Principles is not intended to make you scrutinise the human rights record of every company you do business with. If you have to prioritise your efforts, you should focus on the most salient human rights risks (see box 'Salient human rights risks').

### Salient human rights risks

Salient human rights risks are the human rights at risk of the most severe negative impact through a company's activities and business relationships. They impact people (rather than businesses) and have the potential to actually occur. They include (but are not restricted to) security, child labour, forced labour and human trafficking, health and safety, freedom of association and the right to collective bargaining, discrimination and gender equality, disciplinary practices, working hours, remuneration, indigenous peoples and sourcing from artisanal and small-scale mining or conflict-affected areas.

#### Source:

- UN Guiding Principles Reporting Framework, Salient Human Rights Issues [www.ungpreporting.org/resources/salient-human-rights-issues](http://www.ungpreporting.org/resources/salient-human-rights-issues)

10 Assessing Human Rights Risks and Impacts: Perspectives from Corporate Practice (2016) <https://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/Assessing-Human-Rights-Risks-and-Impacts.pdf>

11 UN Human Rights, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012) [www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

## Assessing impacts as an SME

If you are a small company with few staff and limited resources available to assess your human rights impacts:

- Use publicly available resources to create a list of human rights risks to assess, both in your own operations and in your supply chain.
- Prioritise from that list based on salience in your particular context. For example:
  - If you rely on contracted labour, prioritise a review of recruitment practices (to verify that they are ethical and that your workers aren't at risk of forced labour).
  - If you use hazardous chemicals, prioritise a review of on-site procedures (to confirm there's no risk of environmental pollution, which could harm nearby communities).
  - If you are an office-based business, prioritise a review of historical employee feedback (to identify risks such as excessive working hours or unequal pay).

### Step 2. Integrate and act on findings

- Once you have assessed your human rights risks and impacts, you need to act on your findings. Actual risks or impacts need to be addressed as soon as possible to make sure they don't materialise or happen again. Appropriate action will depend on whether you have caused or contributed to the impact or been linked to it. For the former, you will need to cease and prevent whatever is causing or contributing to the impact. For the latter, you will need to use your leverage to prevent the impact from happening.
- If actual human rights impacts have occurred, you will need to provide for or support legitimate efforts to remedy them as outlined in COP 6.1c below.
- Assign identified risks and impacts to key staff in relevant areas of business and make them responsible for reviewing existing practices to identify the root cause of the risk and how to prevent reoccurrence. For example, if you find that your staff are not getting paid accurately, ask human resources to update their processes to stop this from happening again.

### Step 3. Track responses

- All companies are expected to track their performance.
- Make sure everyone responsible for reviewing and updating practices reports to the core due diligence team regularly.
- Your tracking activities should relate to actual impacts, and what is being done to manage or remedy them, rather than simply tracking processes or procedures.
- If you are a small business, consolidate all your tracking activities and make someone specifically responsible for reviewing them; this will help you when it comes to communicating your findings later.

### Step 4. Communicate efforts

- Communication is the last step in human rights due diligence; it is also the subject of COP 6.1d. See below for specific guidance on this topic.

## COP 6.1C: Remedy mechanism

### As a minimum, members shall:

- c. Provide for, or support legitimate processes to enable, the remedy of any adverse human rights impacts that they have caused, contributed to or been linked with.

### Points to consider:

- If your company has caused or contributed to an adverse human rights impact, you must provide for, or support, legitimate processes to remedy it. In situations where you may be **linked** to a negative human rights impact, you do not have direct responsibility to provide remedy, although you are still expected to support the actions of others, such as a government agency or court, to do so.
- At its core, the concept of remedy aims to restore those that have been harmed by a company's activities to the situation they would have been in had the impact not occurred. This is not always possible, so in practice, remedy can take many forms: acknowledgement and apology, compensation (financial or other) for the harm, or other (see box 'Remedy in practice').
- Prioritise the remedy process based on the severity of the impact at hand. In all cases, consider how to communicate progress and outcomes in situations of remedy.

- You must co-operate with, and not impede access to, any legitimate state-based judicial and non-judicial grievance mechanisms, as well as any other relevant non-state mechanism, to support those seeking remedy through these channels. That includes not undermining the rights of legitimate trade unions.
- You must also have your own operational grievance mechanism that allows you to receive, process and provide adequate response or remedy for grievances. Make sure your mechanism allows grievances to be raised by:
  - employees or other on-site workers;
  - stakeholders within the communities where you operate; and
  - affected groups or individuals (see also COP 32 [Stakeholder engagement](#)).
- You can establish a stand-alone mechanism to deal with human rights impacts, or use an integrated mechanism that covers other areas of your business too (see COP 18.3 [Harassment, discipline, grievance procedures and non-retaliation](#)).
- Where complaints are raised via the RJC complaints mechanism that can be resolved through engagement and dialogue at the operational level, they will be first directed to the RJC member.

## Remedy in practice

There is no single recipe for remedying human rights impacts. A good general resource for exploring remedy options is the Human Rights and Business Dilemmas Forum (<https://hrbdf.org/>), which hosts a broad range of case studies showing how different businesses have addressed human rights dilemmas. Similarly, the Human Rights Translated 2.0: A Business Reference Guide ([www.ohchr.org/Documents/Publications/HRT\\_2\\_0\\_EN.pdf](http://www.ohchr.org/Documents/Publications/HRT_2_0_EN.pdf)) uses real-life situations companies encounter as case studies.

Providing remedy can be complex and fraught with tension depending upon the scale and types of human rights impacts to be remedied. The process of seeking remedy can be more successful when a third party is involved in developing it. For example, in 2017, Barrick Gold Corp commissioned an independent report to help improve access to remedy for people harmed at or around its Porgera Gold Mine in Papua New Guinea. In this case, they worked with the non-governmental organisation (NGO) Business for Social Responsibility (BSR), who engaged in a year-long process of research and engagement with local, national and international stakeholders. The resulting report lays out a road map for how Barrick can determine remedy.<sup>12</sup>

In other cases, providing remedy can be more straightforward, such as Apple's efforts against bonded labour. To protect vulnerable migrant workers, Apple has a policy that prevents suppliers from charging workers excessive recruitment fees. Under this policy, suppliers must reimburse any fee greater than one month's net wages. The policy is enforced as part of Apple's regular bonded labour audits and to date, Apple suppliers have reimbursed nearly US\$17 million in recruitment fees since 2008.

Regardless of the impact caused, businesses are encouraged to consult stakeholders, including affected individuals, local NGOs and subject-matter experts, to help create an action plan to provide the appropriate remedy based on the situation, and put in place controls to mitigate future risks and prevent any unintended consequences that could further harm the individuals whose human rights were impacted.

### COP 6.1D: Communication plan

#### As a minimum, members shall:

- d. Communicate annually with stakeholders about their human rights due diligence efforts and remedy activities annually in accordance with COP 3 (Reporting).

#### Points to consider:

- Under both the UN Guiding Principles and the OECD Guidance, companies are expected to communicate about their efforts to prevent and address human rights risks as part of their due diligence process. That means communicating internally (for example, between business units) and externally (including with affected groups, civil society organisations, local communities, topic experts, investors and any other interested party).
- There are lots of different ways you can communicate with these stakeholders, for example by:
  - issuing a regular sustainability report;
  - writing a letter or email;
  - publishing information on your website; or
  - having a meeting or other face-to-face engagement.

<sup>12</sup> BSR, In Search of Justice: Pathways to Remedy at the Porgera Gold Mine (2018) [www.bsr.org/en/our-insights/report-view/porgera-gold-mine-barrick-pathways-to-remedy](http://www.bsr.org/en/our-insights/report-view/porgera-gold-mine-barrick-pathways-to-remedy).

- Members that belong to larger groups can choose to report annually either on an individual basis or on a consolidated group basis if it is clear which individual companies are part of the group and any company-specific information related to the human rights is disclosed.
- Wherever and whenever you identify a human rights risk, communicate with potentially affected stakeholders to explain how you are addressing the risk; consider literacy, language and cultural communication barriers.
- Similarly, if you identify a human rights impact, do not wait for someone to ask for more information. Get in touch with those affected as quickly and directly as possible and give them all the safety and welfare information they may need; at the same time, share your plans for managing the impact and providing remedy.

## Check:

- Can you show the auditor a written policy commitment to respect human rights (either as a stand-alone policy or as part of another one)?
- Do your operational procedures and the expectations you make of business partners match your company's human rights policy?
- Can you show the auditor how you have carried out your human rights due diligence? Have you done a risk assessment to assess and identify human rights risks and impacts?
- Have you made efforts to integrate the results of your risk assessment into business operations?
- Can you show the auditor how you communicated with stakeholders about identified human rights risks (for example, by providing copies of reports, letters or meeting minutes)?
- Do you know if you caused, contributed to or are linked to any human rights impact?
- Can you show how you have provided for, or co-operated in, remedy processes as and where appropriate?
- Can you show how you are tracking and communicating your efforts to address impacts (for example, through your grievance mechanism protocol, investigations and outcome records)?

## Q&A: Human rights

### 1. Do I have to use the term 'human rights' in my policy statement?

Yes. For some businesses, particularly SMEs, it might be relevant to frame a human rights statement around specific issues that have tangible meaning to employees, such as worker health and safety, labour rights, responsible business practices or responsible sourcing efforts.

### 2. If I have a contractual relationship with another company, am I 'contributing' to all the adverse impacts that they may cause?

Not necessarily: the key issue is the actual impact itself and how it has happened, not that you have a business relationship with them. If your business partner causes an adverse impact as an unintended consequence of an action of yours, then you have 'contributed' to that impact. For example, if your supplier is forced to breach labour standards to fulfil an order that you changed at last minute without adjusting production deadlines and prices, you may be considered to have 'contributed' to the breach. In situations where your business, products or services may be linked to a negative human rights impact, you do not have direct responsibility to provide remedy. You do, however, have the opportunity to use your leverage to work with others to ensure remedy is provided. You also have an opportunity to use leverage to prevent and 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?

If you find that your supplier is causing adverse human rights impacts, you can try to influence their practice by offering capacity building or other incentives. Alternatively, you can consider ending your relationship; but in making this decision you should also assess the potential adverse human rights impacts of doing so. Ending the relationship might also be difficult if the supplier provides an essential product or service for which there is no reasonable alternative source. 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. 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?

The UN Guiding Principles is not intended to require you to assess the human rights record of every company you do business with, and the COP does not require this. In cases where human rights risks are high, you may choose to audit or visit your business partners as part of your due diligence process. Due diligence is an ongoing process: you may want to consider mechanisms such as capacity building or contractual provisions to help prevent or mitigate impacts over time.

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

The RJC Human Rights Due Diligence Toolkit offers a template for due diligence specifically designed for small business use.

## E FURTHER INFORMATION

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### Websites:

Business & Human Rights Resource Centre, Jewellery

[www.business-humanrights.org/Categories/Sectors/Consumerproductsretail/Jewellery](http://www.business-humanrights.org/Categories/Sectors/Consumerproductsretail/Jewellery)

Business & Human Rights Resource Centre, UN Guiding Principles on Business and Human Rights (six languages)

[www.business-humanrights.org/UNGuidingPrinciplesPortal/Home](http://www.business-humanrights.org/UNGuidingPrinciplesPortal/Home)

UN Global Compact, Human Rights: Tools and Guidance

<https://www.business-humanrights.org/en/documents/un-global-compact-human-rights-tools-guidance-local-network-activities>

UN Human Rights, What Are Human Rights?

[www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx](http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx)

### Publications:

Alliance for Responsible Mining (ARM), Approaching Artisanal and Small-Scale Mining Through the Lens of Human Rights: A Call for International Action (2013)

[http://www.responsiblemines.org/wp-content/uploads/2018/05/059\\_Human\\_Rights\\_and\\_ASM\\_full-version.pdf](http://www.responsiblemines.org/wp-content/uploads/2018/05/059_Human_Rights_and_ASM_full-version.pdf)

Business & Human Rights Initiative/Global Compact Network Netherlands, How to Do Business with Respect for Human Rights: A Guidance Tool for Companies (2010)

[https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/how\\_to\\_business\\_with\\_respect\\_for\\_human\\_rights\\_gcn\\_netherlands\\_june2010.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/how_to_business_with_respect_for_human_rights_gcn_netherlands_june2010.pdf)

Ethical Trade Initiative, Human Rights Due Diligence Framework

[www.ethicaltrade.org/sites/default/files/shared\\_resources/eti\\_human\\_rights\\_due\\_diligence\\_framework.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/eti_human_rights_due_diligence_framework.pdf)

European Commission, My Business and Human Rights. A Guide to Human Rights for Small and Medium-Sized Enterprises (2012)

<https://www.business-humanrights.org/sites/default/files/documents/SME-BHR-guide-EU.pdf>

Global Compact Network Germany, Five Steps Towards Managing the Human Rights Impacts of Your Business (2015)

[www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/5\\_steps\\_towards\\_managing\\_the\\_human\\_rights\\_impacts\\_of\\_your\\_business.pdf](http://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/5_steps_towards_managing_the_human_rights_impacts_of_your_business.pdf)

Harvard Kennedy School, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders (2008)

<https://www.unglobalcompact.org/library/57>

Institute for Human Rights and Business, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012)

[www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf](http://www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf)

International Council on Mining and Metals, Integrating Human Rights Due Diligence into Corporate Risk Management Processes (2012)

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# (COP 7) DUE DILIGENCE FOR RESPONSIBLE SOURCING FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members that take legal ownership over materials within the scope of the COP

**Conflict-affected and high-risk areas (CAHRAs)** are identified by the presence of armed conflict, widespread violence (including violence generated by criminal networks) or other risks of serious and widespread harm to people. Armed conflict may take a variety of forms, such as conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law. A CAHRA can be a region, a country, an area within a country or an area that crosses one or more national boundaries. Operations are not necessarily complicit in conflict if they are located in a CAHRA.

**Conflict diamonds** are rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described by the UN Security Council (UNSC) and as recognised by the UN General Assembly (through resolution A/RES/55/56).<sup>1</sup>

The **origin** of mined material is the mine, company, region or geographical location where the mine is located, whether an artisanal and small-scale mine or a medium or large-scale one. The origin of recycled material is the point at which it re-enters the jewellery supply chain. For recycled gold, silver or PGM, this is the point at which it is returned to the refiner or other downstream intermediate processor or recycler.

A **red flag** is a warning or indicator of a potential risk. In the context of due diligence, a red flag can be a location, supplier or circumstance that triggers a need for enhanced due diligence (that is, further investigation).

In the context of due diligence, **risk** (or supply chain risk) is the potential for adverse impacts which result from a company's own activities or its relationships with suppliers and other entities in the supply chain. **High-risk supply chains** are those, as defined in the Annex II risks' list of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, with the potential for serious human rights abuses, direct or indirect support to non-state armed groups or public or private security forces, bribery and fraudulent misrepresentation of the origin of minerals, money laundering and non-payment of taxes and royalties due to governments.

**Risk-based due diligence** is the reasonable investigation undertaken by a business to identify, assess, prevent and mitigate risks in its supply chain where the level of supply chain scrutiny is commensurate with the identification of risks.

The **source** of material is the geographical place, person or company from which the material is obtained. The source of mined material is:

- For gold, silver or PGM: the mine or country of mining origin.
- For diamonds or coloured gemstones: for upstream companies and Tier 1 midstream companies, this is the mine or country of mining origin, company and/or region. For Tier 2 midstream and downstream companies, the source will be the rough exporter (first export from country of mining origin), or Tier 1 midstream company suppliers if possible, and if not, the furthest known point in the upstream supply chain.

The source of recycled material is the same as its origin.

Sources:

- The Kimberley Process Certification Scheme  
[www.kimberleyprocess.com](http://www.kimberleyprocess.com)
- OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016)  
[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

<sup>1</sup> UN General Assembly, The Role of Diamonds in Fuelling Conflict: Breaking the Link Between the Illicit Transaction of Rough Diamonds and Armed Conflict as a Contribution to Prevention and Settlement of Conflicts (2001) <https://undocs.org/en/A/RES/55/56>

## B ISSUE BACKGROUND

All kinds of companies use due diligence to inform their decision-making in risk management. In the context of this provision, due diligence refers specifically to the reasonable investigation undertaken by a business to identify and assess risks related to conflict-affected and high-risk areas (CAHRAs). These are outlined in Annex II of the Organisation for Economic Co-operation and Development’s (OECD’s) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the ‘OECD Guidance’)<sup>2</sup> and include gross human rights violations, torture, forced or compulsory labour, war crimes, support to non-state armed groups or public or private security forces, bribery and fraudulent misrepresentation of the origin of minerals, money laundering and non-payment of taxes (see box ‘CAHRAs and Annex II risks’).

Due diligence provides companies with the information they need to identify risks in order to prevent or mitigate adverse impacts associated with their sourcing practices. Companies that source or use minerals from CAHRAs can also play an effective role in supporting livelihoods, economic growth and prosperity, and due diligence enables this. Due diligence is an active process, which results in a responsible sourcing programme that is:

- **Ongoing:** seamlessly integrated into a company’s management systems and daily processes.
- **Proactive:** designed and implemented to identify and mitigate risks to prevent negative outcomes.
- **Reactive:** able to respond promptly to risks (both actual and potential).
- **Risk based:** with a level of detail and effort that matches the potential risk in a company’s supply chains.
- **Allowing for continuous improvement:** companies may be starting with very little understanding of risks in their supply chains and work to improve their systems and understanding over time.

The OECD Guidance offers specific recommendations through a five-step framework which is global in scope and can be applied to all mineral types (see Figure 7.1).

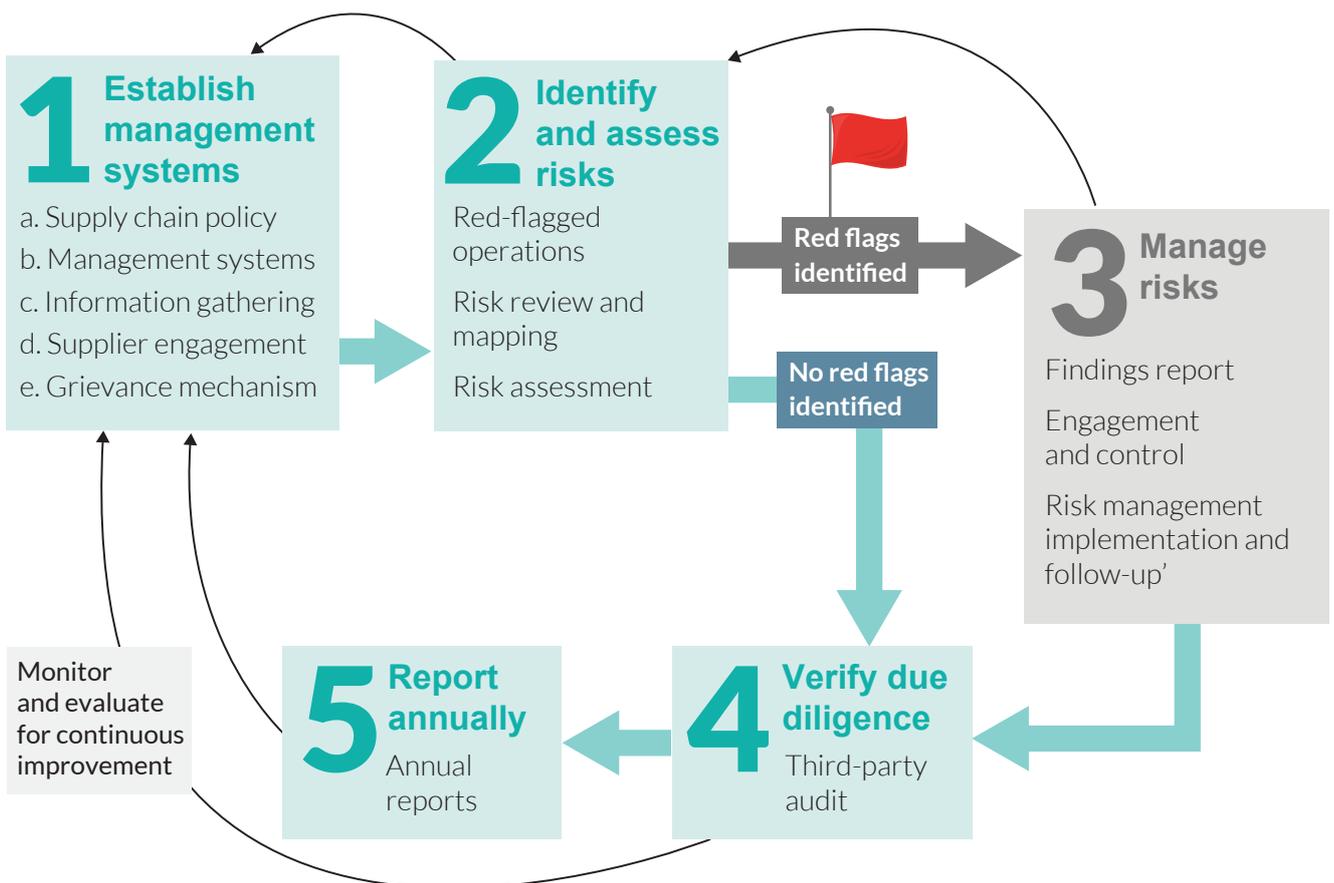


Figure 7.1. The key elements of OECD’s five-step framework for due diligence

<sup>2</sup> OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016) [www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf](http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf)

## CAHRAs and Annex II risks

Annex II of the OECD Guidance identifies five major risks associated with sourcing from CAHRAs. Your supply chain policy should address each one:

1. Serious abuses associated with the extraction, transport or trade of minerals (aligned with COP 6 [Human rights](#), and for diamonds with Annex 2 of the World Diamond Council (WDC) System of Warranties (SoW) Guidelines).<sup>3</sup>  
This includes but is not limited to:
  - any forms of torture, cruel, inhuman and degrading treatment;
  - any forms of forced or compulsory labour;
  - the worst forms of child labour;
  - other gross human rights violations and abuses such as widespread sexual violence; and
  - war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.
2. Direct or indirect support to non-state armed groups (aligned with COP 29 [Kimberley Process Certification Scheme and World Diamond Council System of Warranties](#)).
3. Direct or indirect support to public or private security forces who illegally control, tax or extort money from mine sites, transportation routes and upstream actors.
4. Bribery and fraudulent misrepresentation of the origin of minerals (for diamonds, aligned with Annex 2 of the WDC SoW Guidelines).
5. Money laundering and non-payment of taxes and royalties due to governments (aligned with COP 12 [Know Your Counterparty: money laundering and finance of terrorism](#), and for diamonds with Annex 2 of the WDC SoW Guidelines).

If you are in the diamond supply chain, your policy should also confirm that your diamonds are only ever sourced in compliance with the Kimberley Process Certification Scheme (KPCS), WDC SoW and national law (see COP 29 [Kimberley Process Certification Scheme and World Diamond Council System of Warranties](#)).

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **OECD Guidance** is a detailed framework for due diligence for a company's responsible supply chain management of minerals. The third edition of the OECD Guidance was published in April 2016 and contains the OECD Council Recommendation, the text of the OECD Guidance, the 3Ts Supplement (for tin, tungsten and tantalum) and the Gold Supplement.

A number of initiatives have been developed to embed the OECD Guidance into practice for the gold supply chain, for example the **London Bullion Market Association (LBMA) Responsible Sourcing Guidance** and **Responsible Minerals Initiative (RMI) Responsible Minerals Assurance Process (RMAP) Gold Refiner Standard**. These are listed under Section E. The Code of Risk-Mitigation for ASM Engaging in Formal Trade (CRAFT) has been developed for responsible sourcing from artisanal and small-scale mining (ASM) in alignment with the OECD Guidance. Other initiatives on ASM and due diligence are listed under COP 8 [Sourcing directly from artisanal and small-scale mining](#), including the Coloured Gemstones Working Group (CGWG) due diligence tools and the Maendeleo Diamond Standards.

Also see the guidance chapter for COP 6 [Human rights](#) for information on the UN Guiding Principles on Business and Human Rights.

### National law

Some countries have laws to protect against risks related to minerals from CAHRAs. For example, Section 1502 of the **US Dodd-Frank Act** requires all US publicly listed companies to check their supply chains for tin, tantalum, tungsten and gold (3TG), and, if they have reason to believe these originated in the Democratic Republic of the Congo or an adjoining country, to produce a 'conflict minerals report' that describes their due diligence efforts and shows these conform to the OECD Guidance or equivalent framework.

<sup>3</sup> World Diamond Council, System of Warranties Guidelines (2018)  
[www.worlddiamondcouncil.org/download/WDC%20SoW%20Guidelines\\_draft\\_for%20public%20consultation.pdf](http://www.worlddiamondcouncil.org/download/WDC%20SoW%20Guidelines_draft_for%20public%20consultation.pdf)

Similarly, Regulation (EU) 2017/821<sup>4</sup> (**EU Conflict Minerals Regulation**) sets out due diligence requirements for EU importers of tin, tantalum, tungsten and gold, which will apply from 1 January 2021. The regulation is aimed at the supply practices of European Union importers of mineral ores and metals sourcing from CAHRAs. In 2016, as part of the implementation of the OECD Guidance, the OECD launched a project to develop and pilot test an assessment methodology for evaluating the extent to which industry schemes align with the detailed recommendations of the OECD Guidance (**the Alignment Assessment of Industry Programmes with the OECD Minerals Guidance**).<sup>5</sup> The methodology developed during this pilot study (in which the RJC participated) will be used by the EU Commission to recognise relevant industry schemes that meet the regulation's objectives. The EU Commission has also published details on the formal process and criteria that will be used for recognising industry schemes.<sup>6</sup>

National frameworks for applying the OECD Guidance are also being developed:

- **The Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains** (<http://mneguidelines.oecd.org/chinese-due-diligence-guidelines-for-responsible-mineral-supply-chains.htm>) have been designed to align Chinese company due diligence with international standards (including the UN Guiding Principles on Business and Human Rights and the OECD Guidance).
- In November 2017, the Indian Government announced plans to develop similarly aligned **Indian Guidelines for Responsible Sourcing of Gold**.

## D IMPLEMENTATION GUIDANCE

### COP 7.1 and 7.2: Exercise due diligence

**7.1 Members in the gold, silver, PGM, diamonds and coloured gemstones supply chain shall exercise due diligence over their supply chains in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the 'OECD Guidance') or other auditable due diligence frameworks recognised by the RJC to be aligned with the OECD Guidance ('RJC-recognised due diligence frameworks'), in ways appropriate to their size and circumstances. In addition:**

- a. Members in the gold value chain shall implement the OECD Guidance Supplement on Gold as applicable to their operations and supply chains.
- b. Members in the diamond supply chain shall implement the OECD Guidance while complying with COP 29 (Kimberley Process Certification Scheme and World Diamond Council System of Warranties).

**7.2 Members shall adopt and communicate publicly and to their suppliers a supply chain policy with respect to sourcing from conflict-affected and high-risk areas. The policy shall be consistent at a minimum with Annex II of the OECD Guidance or with other RJC-recognised due diligence frameworks.**

### Note on RJC-recognised due diligence frameworks

The RJC will, where applicable, recognise national due diligence frameworks through review using the OECD Alignment Assessment methodology. Frameworks that are found to fully align with the OECD Guidance in this way will be listed on the RJC website and can then be used by members to comply with this provision.

This provision is mandatory for all members in the gold, silver, PGM, diamonds and coloured gemstones supply chain. This implementation guidance does not replace the OECD Guidance, but offers an approach to help RJC members implement it. It is divided into two sections, which can be read independently:

- **Diamond and coloured gemstones** for RJC members in the diamond and coloured gemstones supply chain including miners, traders, cutters and polishers, manufacturers and jewellers.
- **Gold, silver and PGM** for RJC members in the gold, silver and PGM supply chain including miners, refiners, traders, manufacturers and jewellers.

4 European Union, Regulation (EU) 2017/821  
<https://publications.europa.eu/en/publication-detail/-/publication/8b0e378b-3c59-11e7-a08e-01aa75ed71a1/language-en>

5 OECD, Methodology for the Alignment Assessment of Industry Programmes with the OECD Minerals Guidance (2018)  
<http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>

6 European Commission, Commission Delegated Regulation (EU) .../...of 11.1.2019 (2019)  
<https://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-9-F1-EN-MAIN-PART-1.PDF>

# D1 DIAMONDS AND COLOURED GEMSTONES IMPLEMENTATION GUIDANCE

This section is for companies in the diamonds and the coloured gemstones supply chain as illustrated in Figure 7.2. The supply chain is divided into:

- Upstream: exploration, mining companies, ASM and rough exporters (first export from country of mining origin).
- Midstream: rough and polished traders, cutters and polishers, who can be either Tier 1 (sourcing rough stones directly from exploration, mining and/or ASM through long-term or one-off contracts) or Tier 2 (sourcing from 'upstream rough exporters' (first export from country of mining origin), Tier 1 or other Tier 2).
- Downstream: traders (only polished), jewellery manufacturing, wholesaler or retail.

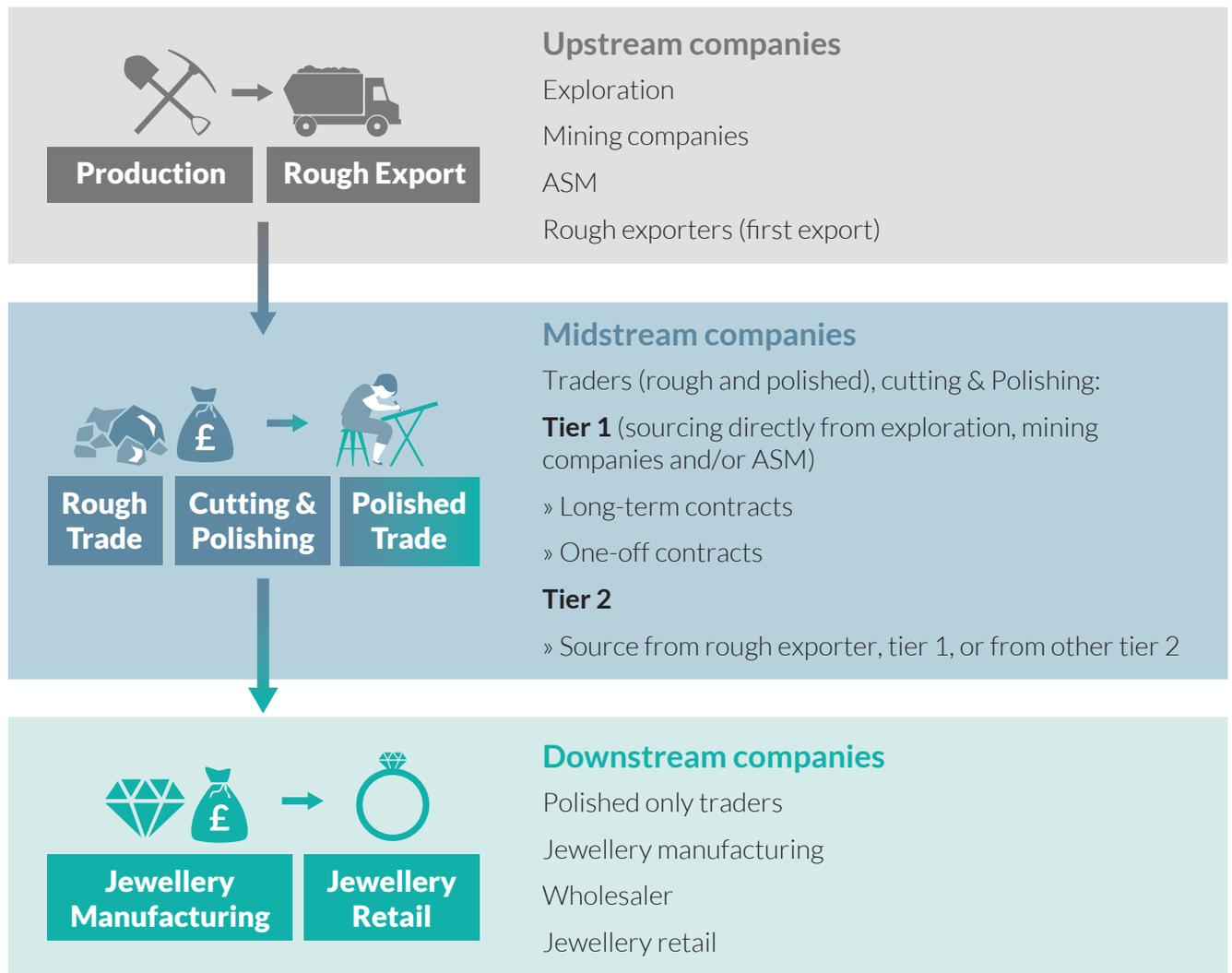


Figure 7.2. The diamond and coloured gemstones supply chain

The expectations of companies differ across the supply chain and this is highlighted throughout the document. Midstream companies will often be both Tier 1 and Tier 2 at the same time and will have to implement the requirements for both accordingly. A summary of the steps for each type of company is included at the end of Section D in Table 7.6 Application of the five-step framework to the diamond and coloured gemstones supply chain.

Note that a stand-alone **RJC Due Diligence Toolkit** is being developed for companies in the diamond and coloured gemstones supply chain to offer practical guidance on how to apply due diligence. The toolkit will be piloted between 2019 and 2021, after which the COP, guidance and toolkit will be reviewed to reflect findings. During this pilot period, audits will be phased in for members in the diamond and coloured gemstones supply chain as outlined in the box 'Diamonds and coloured gemstones: a phased approach to assessing COP conformance' under Step 4 of the implementation guidance in Section D below.

## Following the OECD five-step framework

This guidance presents information on applying the OECD framework in the order that the steps are described in the OECD Guidance, but companies should carry out the various parts of Steps 1 and 2 in the order that works best for them. For example, some may find it more useful to start with initial information gathering (Step 1C) and preliminary identification of red flags (Step 2) before finalising the structure of their internal management systems (Step 1B), supplier engagement (Step 1D) and grievance mechanism (Step 1E).

## OECD Step 1 Establish strong company management systems

### 1A. Supply chain policy

- Establish a supply chain policy clearly stating your position on responsible sourcing from CAHRAs. Your policy should cover all the risks that are relevant to your business and, at a minimum, each of the major risks associated with CAHRAs, and, in the case of diamonds, KPCS and WDC SoW requirements too. See Annex D1 for a template policy.
- Your policy and associated management system can be stand-alone or part of a broader policy. If it is separate, make sure it is aligned with and linked to your policies and procedures on human rights (COP 6 [Human rights](#)), Know Your Counterparty (KYC) (COP 12 [Know Your Counterparty: money laundering and finance of terrorism](#)) and other relevant policies.
- Try to involve all staff affected by the policy in its development, to help ensure it can be practically implemented. For example, consult staff responsible for diamonds and coloured gemstones procurement, production and communications, etc. It may also be worth consulting key external stakeholders.
- Use the policy to clarify your position and expectations to suppliers and other stakeholders by:
  - making it publicly available (for example, on your website, or as a paper or electronic copy available on request);
  - sending it directly to immediate suppliers via contracts or other notifications; and
  - subject to available resources, training suppliers and building their capacity to better understand and adhere to your requirements.

### Note on due diligence for diamonds and the KPCS and WDC SoW

The KPCS and WDC SoW are a fundamental part of due diligence in the diamond supply chain. The KPCS provides evidence that risks of rebel financing are addressed in the trade of rough diamonds. The 2018 revised WDC SoW Guidelines encourages companies in the diamond supply chain to respect human rights as well as implement anti-corruption and anti-money laundering measures. Compliance with the RJC COP will help you to demonstrate adherence to the voluntary parts of Annex 2 of the WDC SoW Guidelines.

It's important to note that the COP requires RJC members involved in the diamond supply chain to comply with the KPCS minimum requirements and recommendations in line with applicable national legislation, and to adopt the WDC SoW **in all cases** (see COP 29 [Kimberley Process Certification Scheme and World Diamond Council System of Warranties](#)).

## 1B. Structure management systems that support due diligence

- A due diligence management system is a framework for co-ordinating activities, documents and outputs across multiple, interrelated functions. It may consist of procedures, checklists, guidance documents, trainings and electronic databases, or only some of these. Remember to align your due diligence systems with those you already have in place related to other COP requirements, particularly COP 6 [Human rights](#), COP 8 [Sourcing directly from artisanal and small-scale mining](#), COP 12 [Know Your Counterparty: money laundering and finance of terrorism](#) and COP 29 [Kimberley Process Certification Scheme and World Diamond Council System of Warranties](#).
- To be effective, your due diligence management system should allow you to identify suppliers, and to assess any associated risks relevant to your supply chain policy. In practice, this means:
  - integrating the system across the different units in your company that implement and support the supply chain policy; and
  - allocating enough resources to run and monitor the system effectively.
- Assign a senior staff member to lead your due diligence management system. This person should be suitably qualified and should:
  - lead the supply chain policy's development and implementation;
  - co-ordinate and communicate the policy's implementation across your organisation;
  - work to ensure all relevant suppliers respect the policy, and review business relationships with suppliers based on risk levels;
  - carry out internal and (if relevant) external training;
  - respond to identified supply chain risks;
  - publicly report on due diligence every year (see Step 5); and
  - review and propose improvements to the due diligence system.
- Depending on your available resources, you may decide to delegate some of the above tasks to different people, but ultimate responsibility should remain with one senior member of staff.
- Record any decisions made about the due diligence system through, for example, meeting minutes or internal memos: these may also be used as evidence during audits.
- To ensure your due diligence remains effective over time, review your management system regularly and look for opportunities to improve it. Be sure to do this at least once a year.

## 1C. Establishing a system for transparency and controls over the supply chain

- Before you can identify and assess risk, you must understand your supply chain and identify your suppliers. That means collecting different types of information and documents, depending on your position in the supply chain (see Tables 7.1a, 7.1b and 7.2).
- Upstream and Tier 1 midstream companies are required to share information with buyers. Note that there is a difference in the information you need to collect as part of your internal system and the information you should share with your buyers for their due diligence.
- Whatever your company type, you are expected to keep, as a minimum, internal inventory and transaction documents to be able to retrospectively identify material inputs and outputs (diamonds or coloured stones). That means collecting:
  - information on the product classification, type and weight of material inputs; and
  - supplier details, including KYC information (see COP 12 [Know Your Counterparty: money laundering and finance of terrorism](#)) and information on their due diligence systems (policy and management systems and due diligence findings).
- When you gather information on inputs, if there are inconsistencies between your inspection of shipments and the information provided by the supplier, you should temporarily suspend the transaction until the inconsistency is resolved.

Table 7.1a. The information that upstream and Tier 1 midstream companies are expected to gather and share

<b>Upstream companies:</b> exploration, mining, rough exporter (first export from country of mining origin) and <b>Tier 1 midstream companies:</b> sourcing directly from exploration, mining companies, and/or ASM.		
<ul style="list-style-type: none"> <li>• Gather information for your own operations for each of your suppliers.</li> <li>• You can gather or share information on a, b and c once and then just update it when there are changes; review the information at least once a year. You may need to gather or share information on d and e for every shipment, parcel or consignment if these vary.</li> <li>• This information may not always be available (for example if you are sourcing from ASM); use your best endeavours to gather what information is available.</li> </ul>		
	<b>Information to gather for your internal systems (and/or from suppliers if applicable)</b>	<b>Information to share with buyers</b>
<b>All supply chains</b>	a. The <b>origin</b> of stones, with the greatest possible specificity. This information can be provided in aggregated form (for example, a list of all mines, companies, regions or geographical locations that material come from).	Same as information to gather, with due regard for commercial confidentiality.
	b. All <b>locations</b> where stones are consolidated before export.	Same as information to gather, with due regard for commercial confidentiality.
	c. The <b>method of extraction</b> (ASM or large-scale mining).	Same as information to gather, with due regard for commercial confidentiality.
	d. The <b>weight</b> and, if relevant, other characteristics of the stones (for example, product classification, type and physical description).	Same as information to gather, with due regard for commercial confidentiality.
	e. The <b>transportation routes</b> of stones (information shared with due regard to security).	Same as information to gather, with due regard for commercial confidentiality.
<b>Red-flag supply chains only</b>	f. The <b>identity of all suppliers and relevant service providers</b> (for example, transport companies) from the origin through to export/import—in particular, their ownership (including beneficial ownership); corporate structure (including names of corporate officers and directors); and business, government, political or military affiliations. These checks are already covered under COP 12 <b>Know Your Counterparty: money laundering and finance of terrorism</b> for immediate suppliers of diamonds and coloured gemstones, but for red-flag supply chains should be extended to all upstream suppliers and relevant service providers.	Assurance that you are gathering this information; and evidence of your participation in RJC certification (if applicable).
	g. All <b>taxes, fees or royalties</b> paid to government related to the material's extraction, trade, transport and export.	
	h. All <b>payments or compensation made to government agencies and officials</b> related to the material's extraction, trade, transport and export (including facilitation payments).	
	i. All <b>payments made to public or private security forces or other armed groups</b> at all points in the supply chain from extraction onwards (unless prohibited under applicable law).	

Table 7.1b. The information that Tier 2 midstream and downstream companies are expected to gather

<p><b>Tier 2 midstream companies:</b> sourcing from upstream rough exporters (first export from country of mining origin), Tier 1 or other Tier 2 midstream companies; and</p> <p><b>Downstream companies:</b> traders, cutters and polishers, polished stone traders, jewellery manufacturers, wholesalers and retail.</p> <ul style="list-style-type: none"> <li>• Gather information for your own operations and for each of your suppliers, and /or check with your government diamond office if they can give you this information.</li> <li>• You can gather information on a, b and c once and then just update it when there are changes; review the information at least once a year.</li> <li>• This information may not always be available and in all cases, you should use your best endeavours to obtain it.</li> </ul>	
All supply chains	a. The <b>identity of immediate suppliers</b> .
	b. The <b>sources</b> of stones. This information can be provided in aggregated form (for example, a list of all countries, areas and/or companies where material comes from). Try to identify the rough exporter (first export from country of mining origin) or Tier 1 midstream company if possible, and if not, then try to identify the furthest upstream point in the known supply chain.
	c. Where available, evidence that immediate suppliers have carried out <b>due diligence</b> based on an approach that is aligned with the OECD Guidance.
	d. Where available, evidence that your immediate suppliers have done the same with their immediate suppliers, and encouraged the same further up the supply chain (for example, through inclusion in contractual agreements).
Red-flag supplier	e. Evidence of audits carried out in conformance with the OECD Guidance, covering the sourcing practices of red-flag suppliers.

- See Annex D1 for template information forms that you can use to provide or request information.

Table 7.2. Information needed to determine the source of different types of material

Material type	Definition	Information needed in determining source
<b>Mined material</b>	Rough and polished diamonds and coloured gemstones that come from mines.	Seek information on the origin and/or source as outlined in Table 7.1 a and Table 7.1 b according to your position in the supply chain.
<b>Recycled material</b>	Polished diamonds and coloured gemstones that had a prior use by a consumer and have re-entered the supply chain to be recut and polished and/or resold.	Confirm that the material received is recycled material and obtain sufficient information to reasonably confirm that the stones are not falsely represented as recycled to hide their origin.
<b>Grandfathered material</b>	Existing stock of diamonds/coloured gemstones purchased before 23 April 2019. <sup>7</sup>	Origin determination is not required unless there is reasonable evidence to suspect the authenticity of the grandfathered status of the material (see OECD Step 2). Appropriate invoices, purchase orders, and inventory lists to verify the purchase date must be available and kept on record for all grandfathered stones.

### The ‘comply or explain’ approach

In practice, the information you want simply may not be available. This is acceptable under a due diligence approach as long as you can explain the steps you’ve taken to seek information and your plans to improve your data over time.

- In practice you can gather information in several ways:
  - Use checklists, forms and invoices that clearly state what information you need.
  - Collect information directly in meetings (smaller companies may find this approach easier).
  - Depending on resources available, consider using electronic data management software to help streamline your supply chain mapping and information gathering.

<sup>7</sup> If you purchased a stone before the effective date, then you do not need to carry out due diligence on it.

- In all cases, be sensitive to commercial confidentiality concerns. See the OECD Due Diligence Guidance for Responsible Business Conduct for tips on how to do this, which include, for example, limiting access to a supplier’s sensitive information or asking for aggregate information rather than specific business relationships.<sup>8</sup>
- Regardless of where you are in the supply chain, and what material you handle, make sure you keep all information for at least five years, and make it available to buyers further downstream and auditors.
- If information is not forthcoming, adopt a road map with your suppliers to obtain it over an agreed time frame and then document discussions and agreements with suppliers as evidence of your due diligence activities. Your suppliers should demonstrate some level of improvement. If they make no effort at all to provide you with information, then at some point a decision to disengage from that supplier may be appropriate.

## Q&A: Information gathering

### How can I help my suppliers understand my expectations?

Adopt some or all of the following approaches:

- Clearly reference your supply chain policy in all commercial contracts and written agreements, invoices, consignment notes or other relevant documents.
- Contact all your suppliers to discuss the policy and requirements and let them ask questions. This will also give you an opportunity to assess any training or capacity-building needs. Your suppliers may already have relevant systems and policies in place that meet some or all of your needs.
- If possible, help your suppliers develop their own risk management strategy, consistent with your supply chain policy.

### What can I do if my suppliers are unable or unwilling to provide the information I need?

There may be several reasons why a supplier cannot or will not give you the information you need. Some of these will be easy to resolve; others may require more complex solutions. You should explore your options before deciding whether to suspend or terminate the relationship should your best efforts to engage the supplier fail. Example issues and potential solutions include:

- **The supplier does not understand the request:** talk to the supplier again and tell them what information you need and why. Offer training where applicable.
- **The supplier can’t get the information from its own upstream suppliers:** offer to help by setting up joint meetings with upstream suppliers or by supporting them to organise their management system to better map the supply chain.
- **The supplier does not want to provide the information because it is confidential:** discuss the possibility of a non-disclosure agreement to manage information sharing and reassure the supplier about the precise use of their information.

If you are starting with very little or no information on upstream sources, you can still demonstrate compliance with this provision by explaining and documenting the steps you’ve taken to seek information and your plans to improve your data over time.

## 1D. Strong engagement with suppliers

- Try to establish long-term relationships with suppliers (rather than short-term or one-off contracts).
- Communicate to suppliers your expectations that they will undertake supply chain due diligence and risk management in ways that are consistent with your supply chain policy. If any problems arise, work with them to try and resolve the issue before you consider suspending or terminating the relationship. This may include training or building capacity to help suppliers provide the assurances you need.
- In your commercial contracts with suppliers, include provisions for sharing due diligence information.
- Where practical, encourage suppliers to include provisions in their own contracts with their suppliers.

8 OECD, OECD Due Diligence Guidance for Responsible Business Conduct (2018) p. 87  
<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

## ● 1E. An effective grievance mechanism

- An effective supply chain grievance mechanism:
  - offers all parties (affected stakeholders or whistle-blowers) a way to raise concerns about the businesses, organisations, individuals or activities in your supply chain; and
  - serves as a tool for identifying and reacting to issues in your supply chain that may otherwise go unnoticed.
- Your grievance mechanism can be the same one as (or aligned with) that required under COP 6 [Human rights](#).
- When developing and implementing a grievance mechanism, make sure you:
  - Make the mechanism easily accessible to all who may wish to use it: this means allowing for grievances to be submitted in multiple ways—by email, letter, telephone and in person.
  - Protect whistle-blowers by allowing them to remain anonymous.
  - Keep an accurate and updated log of all grievances and follow-up actions.
  - Develop a transparent process and procedure for responding to grievances, and respond to all grievances in a timely and efficient manner.
  - Follow up each grievance with a verifiable corrective action that can be monitored and assessed. If a grievance is dismissed without any follow-up, accurately log and record full justifications and details of any investigation.

## OECD Step 2 Identify and assess risks in the supply chain

### Red flags

- Step 2 begins with using the information you have gathered in Step 1 on your supply chain to identify ‘red flags’, as defined by the OECD Guidance (see Table 7.3). These red flags are an indicator of a potential risk that requires further investigation through a subsequent risk assessment.

Table 7.3. List of red flags, as defined by OECD

Type of red flag	Description of red flag
<b>Red-flag locations (locations of origin and transport)</b>	The material originates from or has been transported through a CAHRA.
	The material is claimed to originate from a country with limited known supplies (that is, the declared volumes of diamonds or coloured gemstones from that country are out of keeping with its known reserves or expected production levels).
	The material is claimed to originate from a country through which material from CAHRAs is known or reasonably suspected to pass through.
	The material is claimed to be recycled in a country where diamonds or coloured gemstones from CAHRAs are known or reasonably suspected to pass through.
<b>Red-flag supplier</b>	Suppliers or other known upstream companies that operate in one of the above-mentioned red-flag locations, or have shareholder or other commercial interests in suppliers from these red-flag locations.
	Suppliers or other known upstream companies are known to have sourced material from a red-flag location in the last 12 months.
<b>Red-flag circumstances</b>	Anomalies or unusual circumstances are identified through the information collected, which give rise to a reasonable suspicion that the extraction, transport or trade of the material may contribute to conflict or be associated with serious abuses.

- The process for identifying location or supplier red flags varies depending on where you are in the supply chain:
  - If you are an **upstream company or a Tier 1 midstream company**, you need to look at all countries, regions and areas that you operate in, source from, plan to source from or transport material through, and establish whether or not they are CAHRAs (see Figure 7.3 and box ‘Resources for identifying a CAHRA’).
  - If you are a **Tier 2 midstream or downstream company**, you need to ask your immediate suppliers for their due diligence information. They, in turn, should be seeking this information from their suppliers and providing you with the names and due diligence information, in aggregate, of the rough exporters (first export from country of mining origin) or Tier 1 midstream companies if possible, and if not, then the furthest upstream companies in the known supply chain (the source). You should review this to see if your suppliers have, or reasonably should have, recorded any red flags.

- You should review this at a frequency that is aligned with your information gathering in Step 1C—that is, collected once for each supplier, updated when there are changes and, at a minimum, reviewed every year (see Tables 7.1a and 7b).
- Note that the presence of ASM does not automatically imply a red flag; see Figure 7.3 for the characteristics of CAHRAs for which you should be looking.
- If you have been able to reasonably determine that these red flags are not present in your supply chain, then the sources can be considered low risk, requiring minimal further action other than ensuring that:
  - your company management system (described in Step 1) continues to work effectively; and that
  - you report publicly on your due diligence practices as per Step 5.

## Resources for identifying a CAHRA

You can review a range of documents and resources from credible sources to check for CAHRAs. This includes:

- research reports from governments, international organisations, non-governmental organisations (NGOs) and media;
- maps, UN reports and UN Security Council sanction lists; and
- relevant industry literature on the material's extraction, and its impacts on conflict and human rights.

The EU Commission has published a list of publicly accessible resources that can be used to identify CAHRAs.<sup>9</sup> The OECD is developing the 'Portal for Supply Chain Risk Information', which is designed to help companies understand and prioritise risks in their supply chains.<sup>10</sup>

For COP certification, you must be able to show that you have adequately reviewed and considered credible sources of information; auditors will only flag inconsistencies in your approach that are clearly linked to a weak due diligence management system as a non-conformance.

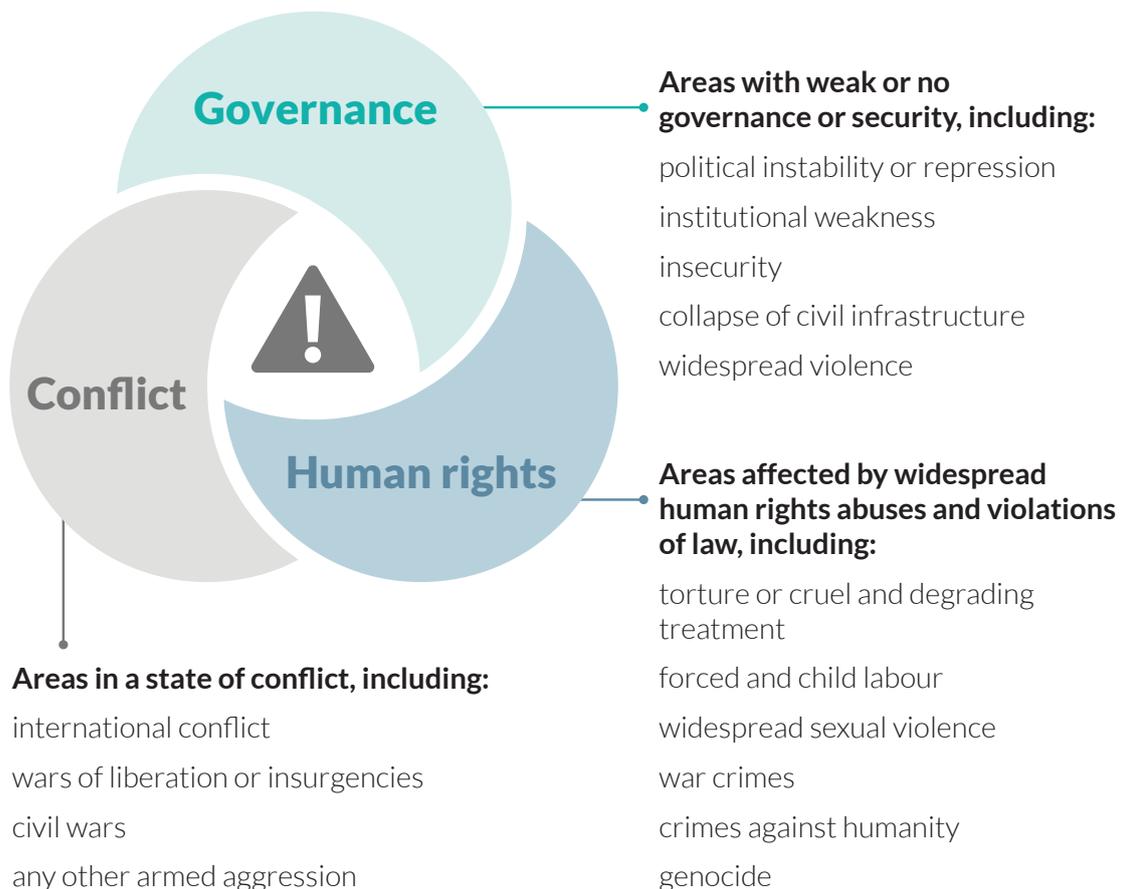


Figure 7.3. CAHRA characteristics

9 Commission Recommendation (EU) 2018/1149 (2018) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018H1149>

10 OECD, Portal for Supply Chain Risk Information [www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm](http://www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm)

## Risk assessment

- The presence of a red flag does not mean that adverse impacts have occurred in your supply chains. Your risk assessment is meant to look for the presence of adverse impacts related to CAHRAs, as highlighted in Annex II of the OECD Guidance (see box 'What are adverse impacts related to CAHRAs?').

### What are adverse impacts related to CAHRAs?

Adverse impacts specifically related to mineral supply chains are:

- Serious abuses associated with the extraction, transport or trade of minerals.
- Any forms of torture, cruel, inhuman and degrading treatment.
- Any forms of forced or compulsory labour.
- The worst forms of child labour.
- Other gross human rights violations and abuses such as widespread sexual violence.
- War crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.
- Direct or indirect support to non-state armed groups (covered by the KPCS for diamonds).
- Direct or indirect support to public or private security forces.
- Bribery and fraudulent misrepresentation of the origin of minerals.
- Money laundering and non-payment of taxes and royalties due to governments.

Source:

- OECD Guidance: Annex II Model Supply Chain Policy

- Where red flags are identified for mined material, you need to assess the risk that adverse impacts are occurring as follows:
  - If you are an **upstream or Tier 1 midstream company**, map the factual circumstances of all red-flag territories for current and future operations. See box 'Mapping factual circumstances of red-flag supply chains (for upstream and Tier 1 midstream companies)'.
    - If you are a **Tier 2 midstream or downstream company**, further evaluate the due diligence and risk mitigation practices of rough exporters (first export from country of mining origin) or Tier 1 midstream companies if possible, and if not, then the due diligence and risk mitigation practices of suppliers furthest upstream in the known supply chain. Consider any information that is available from upstream companies in the red-flag supply chain. If the due diligence practices of any upstream companies in that supply chain have been independently audited against a relevant standard, try to get the results and review them. Alternatively, Tier 2 midstream or downstream companies may identify through industry co-operation and schemes the rough exporters or Tier 1 midstream companies that meet the requirements of this guidance in order to source there from.

### Mapping factual circumstances of red-flag supply chains (for upstream and Tier 1 midstream companies)

Map the factual circumstances of red-flag territories for current and future operations by gathering available information, for example through:

- **An in-depth review of the context** of all red-flag locations:
  - Generate or review reports, maps and relevant literature on extraction, transport and trade in the red-flag location.
  - Engage with stakeholders by consulting, for example, with local and central governments, local civil society organisations, community networks, etc.
  - If you are sourcing from other upstream suppliers, review their working policies and systems (for example, through desktop research).
- **On-the-ground assessments** to generate and maintain information on how rough diamonds and coloured gemstones are extracted, traded, handled and exported. Whether you are a mining company only dealing with your own production or a mining company, rough trader, exporter or importer sourcing from other miners, carry out your assessment ensuring that:
  - Your assessors are independent from the activity being assessed and free from conflicts of interest.
  - The appropriate level of competence and expertise is deployed, whether this is with internal or external experts.

In situations where many companies are operating in a similar area (for example, sourcing from an ASM area), consider establishing a joint assessment team with other companies or through an industry or multi-stakeholder mechanism or initiative.

- If you identify a red flag for a supplier of recycled diamonds or coloured gemstones, review things like the value of transaction, place of transaction, type of material, unusual circumstances and type of supplier. Consider carrying out on-site visits to the supplier to confirm the legitimacy of the recycled source.
- In all cases, keep a record of the information and evidence you used to determine high- and low-risk sources in your red-flag supply chain.
- Do not automatically disengage a source if it is deemed high risk: engage with your suppliers first and adopt a risk mitigation strategy (see Step 3) where possible and appropriate before considering suspending or terminating your business relationship.
- Note that under the OECD Guidance, you are responsible for identifying the red flags and carrying out a risk assessment for your suppliers whether or not they belong to any external supply chain initiatives and programmes. That means you should not rely only on external parties, including the RJC, to undertake any aspect of due diligence on your behalf.

## OECD Step 3 Design and implement a strategy to respond to identified risks

- If you identified a high risk of an adverse impact occurring in Step 2, you will need to design and implement a risk management strategy.
- Start by sharing the result of the risk assessment carried out in Step 2 with senior management. Include:
  - an outline of the information gathered from the risk assessment; and
  - details of the risks and whether adverse impacts have been identified in the supply chain.
- Outline your response to risks in a risk management plan. The response you decide upon depends on the type of risk identified (see Table 7.4).

Table 7.4. Appropriate response if you identify a reasonable risks of adverse impacts (based on the OECD Guidance Annex II Model Supply Chain Policy)

Identified risk of adverse impact	Appropriate response
<b>Serious abuses associated with the extraction, trade and transport of minerals</b>	Immediately suspend or disengage from suppliers. Mitigate where possible.
<b>Direct or indirect support to non-state armed groups</b>	Immediately suspend or disengage from suppliers. Mitigate where possible.
<b>Direct or indirect support to public or private security forces who illegally control mine sites, transport routes and upstream actors (including illegal taxation)</b>	Continue, or temporarily suspend, trade with suppliers, but implement measurable mitigative actions. Suspend or disengage if mitigation measures are ineffective.
<b>Bribery and fraudulent misrepresentation of the origin of minerals</b>	Continue, or temporarily suspend, trade with suppliers, but implement measurable mitigative actions. Suspend or disengage if mitigation measures are ineffective.

- Factors such as severity and probability of an adverse impact are important in determining the scale and complexity of the due diligence response.
- In all cases, make sure that your risk management plan is appropriate to your size and realistic ability to implement it. In devising mitigation measures:
  - consult the recommendations included in Annex II and III of the OECD Guidance;
  - reach out to companies and individuals in your supply chains that can most effectively and most directly mitigate the identified risks; and
  - where possible, consult affected stakeholder groups before agreeing a risk mitigation plan.
- For upstream and Tier 1 companies your mitigation management plan for red flags should:
  - Establish a traceability system that collects and maintains information that is specific to red-flag supply . This means that parcels can be tracked from extraction through to export and each actor involved in the trade and transport can be identified.
  - Enhance physical security practices over the supply chain.
  - Consider monitoring and tracking performance of risk mitigation in co-operation or consultation with local and central authorities and other relevant stakeholders. Consider establishing or supporting worker or community-based networks to monitor risk mitigation.

- In some cases, material may have been purchased with adequate due diligence and in good faith before becoming aware of a reasonable risk of serious abuses or support to non-state armed groups (and therefore before suspending or disengaging trade as outlined in Table 7.4). In these cases, you should temporarily physically segregate supplies you have already purchased until the risk is resolved. If the risk is not resolved, seek legal advice on selling the material and be transparent with potential clients about your good faith due diligence efforts and mitigation actions.

### Note on traceability

Traceability is **only required when red flags are identified (see Table 7.3) and only for upstream and Tier 1 midstream companies**. Traceability can be per mixed parcel or batch.

- If you are a Tier 2 midstream or downstream company, base your risk management plan on enhanced engagement with suppliers and strengthening systems of information collection. This includes ensuring that the information you receive from suppliers on the source with the identified risk is regularly updated.
- Define a timeframe for achieving significant measurable improvement (maximum six months) and continue monitoring the supply chain to assess your plan's effectiveness.
- If, after reasonable efforts at mitigation, you still fail to achieve your desired outcomes, you should disengage from the supplier.
- Consider your communication approach with your buyers, sharing information in a timely way about red flags you've identified, your risk assessment and your mitigation strategy, doing so at least annually in line with Step 5.

## OECD Step 4 Carry out independent third-party audit of due diligence practices

- Regardless of your position within the supply chain, your due diligence practices will be audited as part of the normal COP certification process. RJC auditors will look to verify that you have made reasonable and good faith efforts to implement the requirements of COP 7 based on a continual improvement approach. In practice this means that compliance can be achieved even if you are starting with very little information on sources, as long as you can show you have effective management system processes and plans for improvement and can demonstrate that improvement over time.

### Diamonds and coloured gemstones: a phased approach to assessing COP conformance

All companies must implement this mandatory requirement of the COP. The RJC will be piloting the **Due Diligence Toolkit** for three years for companies in the **diamond and/or coloured gemstones value chain** and during this period **conformance assessment with the COP shall be phased in**. Members scheduled for COP certification or recertification shall:

- **Between 23 April 2019 and 22 April 2020:** have the option to use the 2013 or new version of the COP for auditing.<sup>11</sup> If choosing to certify against the new version of the COP, members shall be assessed for conformance with the following elements of Step 1 of the OECD Guidance:
  - having a supply chain policy; and
  - assigning responsibility to someone who will lead the development of relevant management systems.
- **Between 23 April 2020 and 22 April 2021:** be assessed for conformance with the following elements of Step 1, Step 2 and Step 5 of the OECD Guidance:
  - having a supply chain policy and responsible person (as above);
  - preliminary supply chain mapping and scoping efforts (for example, identifying and starting to engage with key suppliers); and
  - publicly reporting progress on due diligence efforts covering all elements covered above.
- **Between 23 April 2021 and 22 April 2022:** the findings of the pilot projects will be used to evaluate the COP, guidance, audit approach and any related RJC tools as necessary. At the conclusion of the review and release of updated RJC documents, members undergoing certification and recertification audits shall be assessed for conformance with Steps 1–5 of the OECD Guidance. The findings of the pilot projects are essential and will support the RJC in evaluating this guidance and supporting tools as necessary.

<sup>11</sup> This is the RJC's normal approach for transitioning to new or updated standards.

## OECD Step 5 Report annually on supply chain due diligence

- Regular public reports promote transparency and generate public confidence. Make sure you report publicly on your due diligence systems and practices at least once a year, for example through your company website or through applicable company reports and publications aligned with your other reporting (COP 3 **Reporting**) and any human rights due diligence reports (COP 6 **Human rights**).
- The information you need to include varies according to your business type (see Table 7.5).
- Match the level of detail in your report with the level of risk in your supply chain. For example, if you did not identify any red flags, you don't need to include information related to OECD Step 3.
- Be practical in how you format your report, taking into account the scale and impacts of your business. For example, if you are a small business, you do not need a printed publication—a simple memorandum that is available upon request will do.

Table 7.5. Annual reporting requirements under OECD Step 5 (and RJC COP certification)

Category	Reporting information to include:
<b>Upstream companies and Tier 1 midstream companies</b>	
<b>1. Management systems</b>	Supply chain policy.
	Management structure and responsibilities for due diligence programme.
	Internal control systems, processes for information collection and record-keeping.
<b>2. Risk assessment</b>	Systems for identifying red-flag locations.
	Description of any red flags in supply chains and steps taken to map them.
	Methods, practices and information yielded by on-the-ground assessment teams.
<b>3. Response</b>	A summary of high risks identified (within your existing supply chain only).
	Steps taken to strengthen internal control systems to collect reliable information from red-flag supply chains.
	Steps taken to manage risks, including involvement of affected stakeholders.
	Efforts made to monitor and track performance for risk mitigation.
	Number of instances where you decided to disengage from suppliers.
	All instances of risk mitigation and results of follow up after six months.
<b>Tier 2 midstream and downstream companies</b>	
<b>1. Management systems</b>	Supply chain policy.
	Management structure and responsibilities for due diligence programme.
	Record-keeping systems and processes for information collection.
<b>2. Risk assessment</b>	Steps taken to engage with suppliers and seek supply chain information.
	Actual or potential risks identified.
<b>3. Response</b>	Steps taken to manage risks, including involvement of affected stakeholders.
	Efforts made to monitor and track performance for risk mitigation.
	All instances of risk mitigation and results of follow-up after six months.

OECD step	Check list	
	Upstream and Tier 1 midstream	Tier 2 midstream and downstream
<b>Step 1: Management system</b>	<ul style="list-style-type: none"> <li>✓ Have you developed a supply chain policy and made it publicly available?</li> <li>✓ Have you communicated the policy internally?</li> <li>✓ Have you assigned a senior staff member to lead your due diligence system?</li> <li>✓ Have you made the necessary resources available to support your due diligence system?</li> <li>✓ Have you developed systems and procedures for collecting information from suppliers and sharing information with buyers?</li> <li>✓ Do you have a grievance mechanism in place?</li> </ul>	
<b>Step 2: Identify and assess risks</b>	<ul style="list-style-type: none"> <li>✓ Have you identified any 'red flags' in your upstream supply chain?</li> <li>✓ If yes, have you mapped the factual circumstances of the red-flag supply chain and have you identified the presence of any adverse impacts as part of this exercise?</li> <li>✓ If you have not identified red flags, proceed to Step 4.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Have you asked your rough exporter or Tier 1 midstream company for their due diligence information? If you are unable to identify them, have you asked for the due diligence information of the furthest upstream known company in your supply chain?</li> <li>✓ Are you satisfied that your rough exporter, Tier 1 midstream company or known suppliers furthest upstream in your supply chain have carried out due diligence in a way that is consistent with the OECD Guidance?</li> <li>✓ Have your immediate suppliers recorded any red flags in the upstream supply chain?</li> <li>✓ Where there are red flags, does the due diligence information provide adequate detail on the circumstances of upstream production and trade?</li> <li>✓ If you have not identified red flags, proceed to Step 4.</li> </ul>
<b>Step 3: Manage risks</b>	<ul style="list-style-type: none"> <li>✓ Have you shared the results of your risk assessment with senior management?</li> <li>✓ Have you outlined your response to risks in a risk management plan?</li> <li>✓ Are you monitoring the performance of your risk mitigation efforts?</li> </ul>	
<b>Only for red flags</b>	<ul style="list-style-type: none"> <li>✓ Have you established a traceability system to collect and maintain segregated information for all inputs and outputs from extraction through to import?</li> </ul>	<ul style="list-style-type: none"> <li>✓ Have you enhanced your engagement with red-flag suppliers and strengthened systems of information collection?</li> </ul>
<b>Step 4: Verify</b>	<ul style="list-style-type: none"> <li>✓ Have you reviewed the phased audit approach for this provision to determine which of the OECD Guidance steps apply at your next RJC audit?</li> </ul>	
<b>Step 5: Report annually</b>	<ul style="list-style-type: none"> <li>✓ Do you, or are you planning to, annually report publicly on your implementation of the OECD Guidance?</li> </ul>	

Table 7.6. Application of the five-step framework to the diamond and coloured gemstones supply chain

OECD step	Upstream		Midstream		Downstream	
	Rough stones			Polished stones		Diamond jewellery
	Exploration, mining, ASM, rough exporters	Tier 1 (sourcing directly from exploration, mining and/or ASM)	Tier 2 (sourcing from rough exporter, Tier 1 or other Tier 2)	Polished trade	Jewellery manufacturing and retail	
<b>Step 1: Establish a company management system</b>	<ul style="list-style-type: none"> <li>• Implement Step 1 A–E.</li> <li>• Gather information from <a href="#">Table 7.1a</a> from your own operations and/or from your sources (if applicable).</li> <li>• Share information from <a href="#">Table 7.1a</a> with your buyers.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement Step 1 A–E.</li> <li>• Gather information from <a href="#">Table 7.1a</a> from your sources.</li> <li>• Share information from <a href="#">Table 7.1a</a> with your buyers.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement Step 1 A–E.</li> <li>• Establish identity of suppliers and gather information from <a href="#">Table 7.1b</a>.</li> <li>• Ask about the due diligence of your suppliers.</li> <li>• Compile aggregated information on source.</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	
<b>Step 2: Identify and assess risk in the supply chain</b>	<ul style="list-style-type: none"> <li>• Identify red flags in your own operations and, if applicable, from sources.</li> </ul> <p><b>If red flags:</b></p> <ul style="list-style-type: none"> <li>• Map factual circumstances of red-flag locations.</li> <li>• Assess risk of adverse impacts.</li> </ul>	<ul style="list-style-type: none"> <li>• Identify red flags in supply chain of sources.</li> </ul> <p><b>If red flags:</b></p> <ul style="list-style-type: none"> <li>• Map factual circumstances of red-flag locations.</li> <li>• Assess risk in the supply chain of adverse impacts.</li> </ul>	<ul style="list-style-type: none"> <li>• Review evidence of due diligence by suppliers.</li> <li>• Identify red flags in supply chain from that information as well as other data sources.</li> </ul> <p><b>If red flags:</b></p> <ul style="list-style-type: none"> <li>• Use the information to assess risk in the supply chain of adverse impacts.</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	
<b>Step 3: Design and implement a strategy to respond to identified risks</b> <b>These actions are only for red-flagged portions of your supply chain</b>	<ul style="list-style-type: none"> <li>• Establish traceability on red-flag supply chains through to your last point of involvement pre-export/import.</li> <li>• Gather information from <a href="#">Table 7.1a</a> for red-flag supply chains.</li> <li>• Share findings of risk assessment with senior management.</li> <li>• Devise, adopt and monitor risk management plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for upstream (see left box).</li> </ul>	<ul style="list-style-type: none"> <li>• Gather information from <a href="#">Table 7.1b</a> and seek available audit reports covering the sourcing practices of suppliers and, if available, further upstream companies.</li> <li>• Share findings of risk assessment with senior management.</li> <li>• Enhance engagement with suppliers.</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	<ul style="list-style-type: none"> <li>• Same steps as for Tier 2 (see left box).</li> </ul>	
<b>Step 4: Third-party audit</b>	Accredited RJC auditor carries out independent third-party audit of due diligence.					
<b>Step 5: Report annually</b>	Report annually on implementation of OECD five-step framework.					

## Annex D1.1. Supply chain policy template

1. [COMPANY NAME] is a [BRIEF DESCRIPTION OF THE COMPANY]. This policy confirms [COMPANY NAME]'s commitment to respect human rights, avoid contributing to the finance of conflict and comply with all relevant UN sanctions, resolutions and laws.
2. [COMPANY NAME] is a certified member of the Responsible Jewellery Council (RJC). As such, we commit to proving, through independent third-party verification, that we:
  - a. respect human rights according to the Universal Declaration of Human Rights and International Labour Organization Declaration on Fundamental Principles and Rights at Work;
  - b. do not engage in or tolerate bribery, corruption, money laundering or finance of terrorism;
  - c. support transparency of government payments and rights-compatible security forces in the extractives industry;
  - d. do not provide direct or indirect support to illegal armed groups;
  - e. enable stakeholders to voice concerns about the jewellery supply chain; and
  - f. are implementing the OECD five-step framework as a management process for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
3. We also commit to using our influence to prevent abuses by others. [HERE YOU CAN CHOOSE TO INCLUDE A BRIEF DESCRIPTION OF HOW YOU WILL CONSIDER AND ADDRESS THE RISKS OF NON-COMPLIANCE BY YOUR SUPPLIERS. ALSO CONSIDER INCLUDING INFORMATION ABOUT YOUR COMPLAINTS MECHANISM FOR INTERESTED PARTIES TO VOICE CONCERNS ABOUT MATERIALS FROM CAHRAS.]
4. **Regarding serious abuses associated with the extraction, transport or trade of minerals:**  
We will neither tolerate nor profit from, contribute to, assist or facilitate the commission of:
  - a. torture, cruel, inhuman and degrading treatment;
  - b. forced or compulsory labour;
  - c. the worst forms of child labour;
  - d. human rights violations and abuses; or
  - e. war crimes, violations of international humanitarian law, crimes against humanity or genocide.
5. We will immediately stop engaging with upstream suppliers if we find a reasonable risk that they are committing abuses described in paragraph 4 or are sourcing from, or linked to, any party committing these abuses.
6. **Regarding direct or indirect support to non-state armed groups:**  
We only buy or sell diamonds that are fully compliant with the Kimberley Process Certification Scheme and, as such, will not tolerate direct or indirect support to non-state armed groups, including, but not limited to, procuring diamonds from, making payments to, or otherwise helping or equipping non-state armed groups or their affiliates who illegally:
  - a. control mine sites, transportation routes, points where diamonds are traded and upstream actors in the supply chain; or
  - b. tax or extort money or diamonds at mine sites, along transportation routes or at points where diamonds are traded, or from intermediaries, export companies or international traders.
7. We will immediately stop engaging with upstream suppliers if we find a reasonable risk that they are sourcing from, or are linked to, any party providing direct or indirect support to non-state armed groups as described in paragraph 6.
8. **Regarding public or private security forces:**  
We affirm that the role of public or private security forces is to provide security to workers, facilities, equipment and property in accordance with the rule of law, including law that guarantees human rights. We will not provide direct or indirect support to public or private security forces that commit abuses described in paragraph 4 or that act illegally as described in paragraph 6.
9. **Regarding bribery and fraudulent misrepresentation of the origin of minerals:**  
We will not offer, promise, give or demand bribes, and will resist the solicitation of bribes, to conceal or disguise the origin of minerals, or to misrepresent taxes, fees and royalties paid to governments for the purposes of extraction, trade, handling, transport and export of minerals.
10. **Regarding money laundering:**  
We will support and contribute to efforts to eliminate money laundering where we identify a reasonable risk resulting from, or connected to, the extraction, trade, handling, transport or export of minerals.

Signed/endorsed:

Date of effect:

## Annex D1.2. Upstream / Tier 1 midstream information form

Part 1 – to be completed per delivery	
Company information	
Date	Document number
Name of company	
Address	
Company type	Large-scale mining <input type="checkbox"/> Artisanal and small-scale mining <input type="checkbox"/> Rough stone exporter and/or Tier 1 midstream <input type="checkbox"/>
RJC COP certified	Yes <input type="checkbox"/> No <input type="checkbox"/>
COP certified date	
COP expiry date	
Responsible person	
Product information	
Product description	
Product origin ( <i>mine, company or geographical location where mine is located; list if more than one</i> )	
Locations where stones were consolidated prior to export	
Method of extraction (ASM/SSM/LSM)	
Total weight	
Transport route to receiver	
Part 2 – to be completed per contract*	
Policies and due diligence management systems	
Do you have a supply chain policy consistent with Annex II of the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please attach policy with this document
Do you have a due diligence management system in place that is consistent with the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Risk assessment	
Have you carried out a risk assessment on the product origin/source (and its transport) based on an approach that is aligned with the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please attach details/evidence with this document (e.g. a copy of your risk assessment report)
If yes, did you identify any 'red flags' as part of that risk assessment?	Yes <input type="checkbox"/> No <input type="checkbox"/>
For red flags only	
What type of red flags have you identified? (tick all that apply)	Red-lag location <input type="checkbox"/> Red-flag supplier <input type="checkbox"/> Red-flag circumstances <input type="checkbox"/>
Provide a description/summary of the red flags identified ( <i>for example, you have determined based on your risk assessment that the source or origin of the material is a CAHRA</i> )	

<p>During your risk assessment, did you identify the presence of any of the following adverse impacts in the red-flag supply chain? (tick all that apply)</p>	<ul style="list-style-type: none"> <li>• Serious abuses associated with the extraction, transport or trade of minerals (requires immediate disengagement) <input type="checkbox"/></li> <li>• Direct or indirect support to non-state armed groups (requires immediate disengagement) <input type="checkbox"/></li> <li>• Direct or indirect support to public or private security forces who illegally control, tax or extort money from mine sites, transportation routes and upstream actors <input type="checkbox"/></li> <li>• Bribery and fraudulent misrepresentation of the origin of minerals <input type="checkbox"/></li> <li>• Money laundering and non-payment of taxes and royalties due to governments <input type="checkbox"/></li> <li>• None of the above risks have been identified <input type="checkbox"/></li> </ul>
<p>Have you implemented a risk management plan to prevent or mitigate potential or actual adverse impacts?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>If yes, provide a description/summary of your risk management plan</p>	
<p>Have you established, or are you participating in, a traceability system that collects and maintains segregated information for all material inputs and outputs from red flagged supply chains (from extraction through to export)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Confirm you have carried out the following (you do not need to disclose commercially sensitive evidence/documentation related to these actions with buyers, but you should keep records on file as part of your internal management system)</p>	
<p>Have you recorded details of all taxes, fees or royalties you have paid to the government related to the material's extraction, transport and/or export? (this only applies to payments you have made)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you recorded details of all payments or compensation (including facilitation payments) made to government agencies and officials related to the material's extraction, transport and/or export (this only applies to payments you have made)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you recorded details of all payments made to public or private security forces or other armed groups (this only applies to payments you have made)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>For miners: Have you carried out KYC checks of all third-party service providers handling the material (e.g. transportation companies) or providing security at mine sites and along transportation routes?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>For exporters: Have you carried out KYC checks to identify all suppliers and relevant service providers (e.g. transportation companies) from the point of origin through to export?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

**\*You do not need to complete PART 2 of the form for every delivery, unless the circumstances of production and export have changed since you last completed this section.**

## Annex D1.3. Tier 2 Midstream/downstream information form

To be completed per supplier	
<b>Company information</b>	
Date	Document number
Name of company	
Address	
RJC member	Yes <input type="checkbox"/> No <input type="checkbox"/>
COP certified date	
COP expiry date	
Responsible person	
<b>Policies and due diligence management systems</b>	
Do you have a supply chain policy consistent with Annex II of the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please attach policy with this document
Do you have a due diligence management system in place that is consistent with the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Product source and origin</b>	
What are your product sources? <i>(this information can be provided in aggregate form, e.g. a list of all countries, areas and/or companies where you have sourced from)</i>	
List the percentage of product you supply to us that falls into the following categories:	<p>1. Mined rough/polished stones with known origin (mine, company or geographical location where the mine is located) ____%</p> <p>2. Mined rough/polished stones where there is no information available on origin ____%</p> <p>3. Recycled stones ____%</p> <p>4. Grandfathered stones ____%</p>
<b>Risk assessment</b>	
Have you carried out a risk assessment on your suppliers based on an approach that is aligned with the OECD Guidance?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please attach details/evidence with this document (e.g. a copy of your risk assessment report)
If yes, did you identify any 'red flags' as part of that risk assessment?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>For red flags only</b>	
What type of red flags have you identified? (tick all that apply)	<p>Red-flag location <input type="checkbox"/></p> <p>Red-flag supplier <input type="checkbox"/></p> <p>Red-flag circumstances <input type="checkbox"/></p>
Provide a description/summary of the red flags identified <i>(for example, you have determined based on your risk assessment that the source or origin of the material is a CAHRA)</i>	

<p>During your risk assessment, did you identify the presence of any of the following adverse impacts in the red-flag supply chain? (tick all that apply)</p>	<ul style="list-style-type: none"> <li>• Serious abuses associated with the extraction, transport or trade of minerals (requires immediate disengagement) <input type="checkbox"/></li> <li>• Direct or indirect support to non-state armed groups (requires immediate disengagement) <input type="checkbox"/></li> <li>• Direct or indirect support to public or private security forces who illegally control, tax or extort money from mine sites, transportation routes and upstream actors <input type="checkbox"/></li> <li>• Bribery and fraudulent misrepresentation of the origin of minerals <input type="checkbox"/></li> <li>• Money laundering and non-payment of taxes and royalties due to governments <input type="checkbox"/></li> <li>• None of the above risks have been identified <input type="checkbox"/></li> </ul> <p>Note: See Annex II of the OECD Guidance for further information on relevant adverse impacts</p>
<p>Have you implemented a risk management plan to prevent or mitigate potential or actual adverse impacts?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>If yes, provide a description/summary of your risk management plan</p>	
<p>Have you had your due diligence practices independently audited?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note: If yes, please attach a copy of the audit report with this form</p>

## D.2 GOLD, SILVER AND PGM IMPLEMENTATION GUIDANCE

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This section is for companies in the gold, silver and PGM supply chain.

### OECD Step 1 Establish strong company management systems

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#### 1A. Supply chain policy

- Establish a supply chain policy clearly stating your position on responsible sourcing from CAHRAs. Your policy should cover all the risks that are relevant to your business, but make sure that, at a minimum, it addresses each of the risks associated with CAHRAs (see box 'CAHRAs and Annex II risks' in Section B above).
- Refiners that are already, or plan to be, certified against the LBMA Responsible Gold Guidance should note that Version 8 of the LBMA guidance extends the scope of risks to include environmental and sustainability considerations, in addition to OECD Guidance Annex II risks.<sup>12</sup> All companies should consider incorporating this into the supply chain policy and wider due diligence management systems.
- Within your supply chain policy, set out your commitment to the due diligence steps as described in the OECD Guidance Supplement on Gold.
- Your policy and associated management system can be stand-alone or part of a broader policy. Either way, make sure it is aligned with and linked to your policies and procedures on KYC (COP 12 **Know Your Counterparty: money laundering and finance of terrorism**), human rights (COP 6 **Human rights**) and other relevant policies.
- See Annex D2.1 below for a supply chain policy template that you can use and adapt to meet the circumstances of your business.
- Try to involve all staff affected by the policy in its development, to help ensure it can be practically implemented. For example, consult staff responsible for material procurement, production and communications, etc. It may also be worth consulting key external stakeholders.
- Use the policy to clarify your position and expectations to suppliers and other stakeholders by:
  - making it publicly available (for example, on your website or in institutional literature);
  - sending it directly to immediate suppliers via contracts or other notifications; and
  - subject to available resources, training suppliers and building their capacity to better understand and adhere to your requirements.

#### 1B. Structure management systems that support due diligence

- A due diligence management system is a framework for co-ordinating activities, documents and outputs across multiple, interrelated functions. It may consist of procedures, checklists, guidance documents, trainings and electronic databases, or only some of these.
- To be effective, your due diligence management system should allow you to identify suppliers, and to assess any associated risks relevant to your supply chain policy. In practice, this means:
  - integrating the system across the different units that implement and support the supply chain policy; and
  - allocating enough resources to run and monitor the system effectively.
- Assign a senior staff member to lead your due diligence management system. This person should be suitably qualified or experienced, and should:
  - lead the supply chain policy's development and implementation;
  - co-ordinate and communicate the policy's implementation across your organisation;
  - work to ensure all relevant suppliers respect the policy, and review business relationships with suppliers based on risk levels;
  - carry out internal and (if relevant) external training;
  - respond to identified supply chain risks;
  - publicly report on due diligence every year (see Step 5); and
  - review and propose improvements to the due diligence system.

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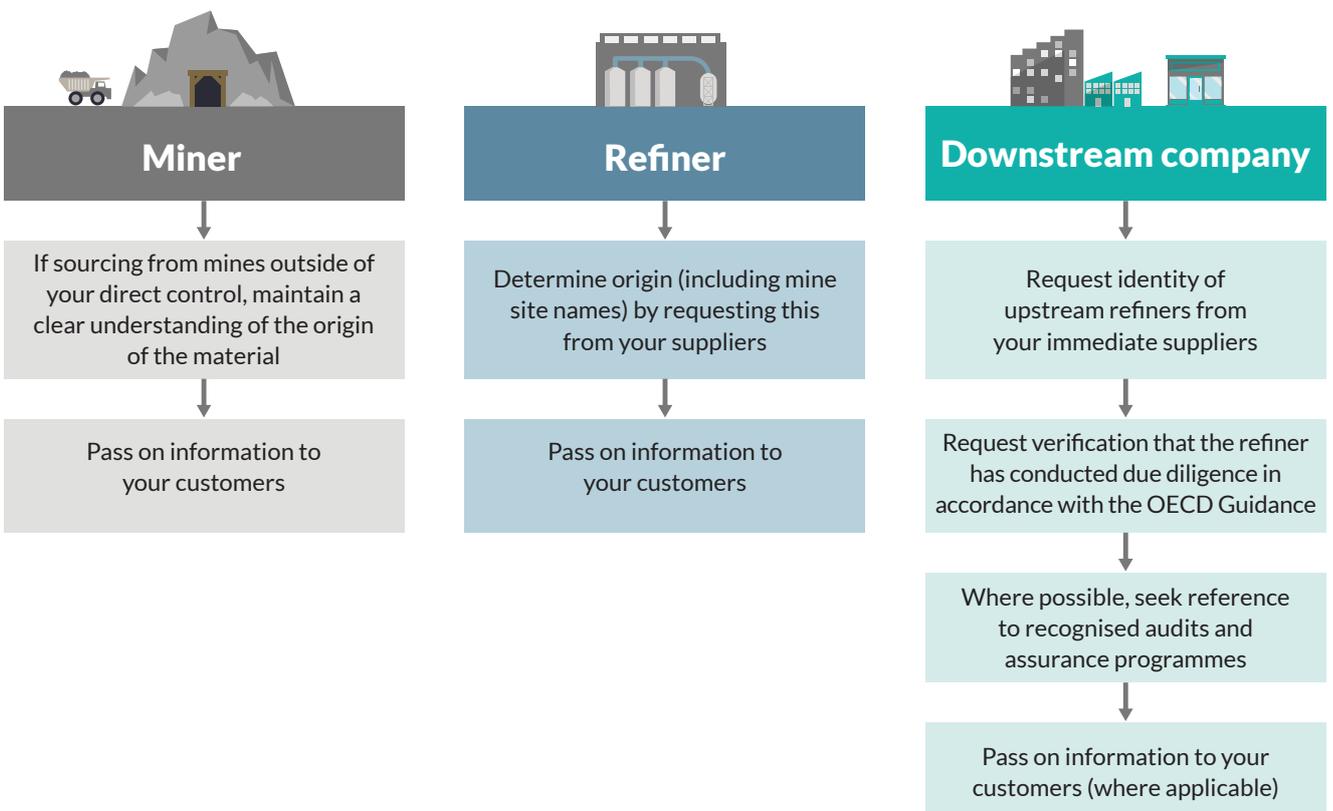
12 LBMA, Responsible Gold Guidance Version 8 <http://www.lbma.org.uk/assets/downloads/responsible%20sourcing/RGGV820181211.pdf>

- Depending on your available resources, you may decide to delegate some of the above tasks to different people, but ultimate responsibility should remain with one senior member of staff.
- Record any decisions made about the due diligence system through, for example, meeting minutes or internal memos or records: these may also be used as evidence during audits.

### 1C. Establishing a system for transparency and controls over the supply chain

- Before you can identify and assess risk, you must understand your supply chain and identify your suppliers. That means collecting different types of information and documents, depending on your position in the supply chain (see Figure 7.4):
  - **Downstream companies** (any company after the refiner up to and including the retailer) should ask their immediate suppliers for the identity of upstream refiners and obtain proof that the refiner has conducted due diligence in accordance with the recommendations of the OECD Guidance.
  - **Miners and refiners** or others sourcing from mines should have a clear understanding of the mines of origin.

Figure 7.4. How to identify the origin of gold, silver and PGM depending on the business type



- The type of information you will need as proof of origin varies depending on the type of material at hand (see Table 7.7).

Table 7.7. Information needed for determining the origin of different types of material

Material type	Definition	Information needed in determining origin
<b>Mined gold/silver/PGM</b>	Gold/silver/PGM that comes from mines and has never been refined.	Miners and refiners shall identify the country and mine of origin.
<b>Recycled gold/silver/PGM</b>	Gold/silver/PGM that has been previously refined, such as end-user, post-consumer gold-bearing products, and scrap and waste metals and materials arising during refining and product manufacturing, which are returned to a refiner or other downstream intermediate processor to begin a new life cycle as recycled gold/silver/PGM.	Refiner members shall confirm that the gold/silver/PGM received is recycled material and shall obtain sufficient information to reasonably exclude false representations made to hide the origin of newly mined material in recycled gold/silver/PGM supply chains.
<b>Grandfathered gold/silver/PGM</b>	Refined gold/PGM with a verifiable date of production prior to 1 January 2012. Refined silver with a verifiable date of production prior to 1 January 2018	Origin determination is not required unless there is reasonable evidence to suspect the authenticity of the grandfathered status of the material (see OECD Step 2).

## Control points

Control points (also sometimes called choke points) are stages in the supply chain with generally higher visibility and control over upstream stages. Where identified, they become a key focus area for the collection and sharing of information on the circumstances of upstream production and trade. The OECD Supplement on Gold identifies the refiner as the logical control point in the gold supply chain, and for the purpose of the COP, this also extends to silver and PGM.

- Whatever your company type, you are expected to keep, as a minimum, internal inventory and transaction documents to retrospectively identify material inputs and outputs for all gold, silver and PGM. That means collecting:
  - information on the form, type and weight of material inputs; and
  - supplier details, including KYC information (see COP 12 [Know Your Counterparty: money laundering and finance of terrorism](#)).
- For examples of the types of documents and evidence to collect, see Annex D2.2 below.
- In practice, you can gather this information in several different ways:
  - Use checklists and forms, where applicable, to collect information from suppliers.
  - Collect information directly in meetings (smaller companies may find this approach easier).
  - Depending on resources available, consider using electronic data management software to help streamline your supply chain mapping and information gathering.
- In all cases, be sensitive to commercial confidentiality concerns. See the OECD Due Diligence Guidance for Responsible Business Conduct for tips on how to do this, which include, for example, limiting access to a supplier's sensitive information or asking for aggregate information rather than specific business relationships.<sup>13</sup>
- Your suppliers will already be gathering some information on their sourcing through existing policies and procedures (for example, to comply with legal requirements) which may serve as a useful starting point.
- Regardless of where you are in the supply chain, and what material you handle, make sure you keep all information for at least five years, and make it available to buyers and auditors further downstream.

## Q&A: Information gathering

### How can I help my suppliers understand my expectations?

Adopt some or all of the following approaches:

- Clearly reference your supply chain policy in all commercial contracts and written agreements, invoices, consignment notes or other relevant documents.
- Contact all your suppliers to discuss the policy and requirements and let them ask questions. This will also give you an opportunity to assess any training or capacity-building needs. Your suppliers may already have relevant systems and policies in place that meet some or all of your needs.
- Help your suppliers develop their own risk management strategy, consistent with your supply chain policy.

### What can I do if my suppliers are unable or unwilling to provide the information I need?

There may be several reasons why a supplier cannot or will not give you the information you need. Some of these will be easy to resolve; others may require more complex solutions. You should explore your options before deciding whether to suspend or terminate your relationship. Example issues and potential solutions include:

- The supplier does not understand the request: talk to the supplier again and tell them what information you need and why. Offer training where applicable.
- The supplier can't get the information from its own upstream suppliers: offer to help by setting up joint meetings with upstream suppliers or by supporting them to organise their management system to better map the supply chain.
- The supplier does not want to provide the information because it is confidential: discuss the possibility of a non-disclosure agreement to manage information sharing and reassure the supplier about the precise use of their information.

If you are starting with very little or no information on upstream sources, you can still demonstrate compliance with this provision by explaining and documenting the steps you've taken to seek information and your plans to improve your data over time.

13 OECD, OECD Due Diligence Guidance for Responsible Business Conduct (2018) p. 87  
<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

## 1D. Strong engagement with suppliers

- Try to establish long-term relationships with suppliers (rather than short-term or one-off contracts).
- Communicate to suppliers your expectations that they will undertake supply chain due diligence and risk management in ways that are consistent with your supply chain policy. If any problems arise, work with them to try and resolve the issue before you consider suspending or terminating the relationship. This may include training or building capacity to help suppliers provide the assurances you need.
- Include provisions for sharing due diligence information in your commercial contracts with suppliers. Contracts may also include your right to conduct unannounced spot checks and to have access to relevant documentation.
- Where practical, encourage suppliers to source from refiners that have been third-party audited against a standard that conforms with the OECD Guidance.

## 1E. An effective grievance mechanism

- An effective supply chain grievance mechanism:
  - offers all parties (affected stakeholders or whistle-blowers) a way to raise concerns about the businesses, organisations, individuals or activities in your supply chain; and
  - serves as a tool for identifying and reacting to issues in your supply chain that may otherwise go unnoticed.
- Your grievance mechanism can be the same one as (or aligned with) that required under COP 6 **Human rights**.
- When developing and implementing a grievance mechanism, make sure you:
  - Make the mechanism easily accessible to all who may wish to use it: this means allowing for grievances to be submitted in multiple ways—by email, letter, telephone and in person.
  - Protect whistle-blowers by allowing them to remain anonymous.
  - Keep an accurate and updated log of all grievances and follow-up actions.
  - Develop a transparent process and procedure for responding to grievances, and respond to all grievances in a timely and efficient manner.
  - Follow up each grievance with a verifiable corrective action that can be monitored and assessed. If a grievance is dismissed without any follow-up, accurately log and record full justifications and details of any investigation.

# OECD Step 2 Identify and assess risks in the supply chain

## 2A and B. Red-flag supply chains

- Step 2 begins with using the information you have gathered in Step 1 on your supply chain to identify red flags, as defined by the OECD Guidance (see Table 7.8). These red flags are an indicator of a potential risk that requires further investigation through a subsequent risk assessment, and, where necessary, mitigation measures.

Table 7.8. List of OECD red flags (republished from the OECD Guidance: Gold Supplement)

Type of red flag	Description of red flag
<b>Red-flag locations (location of gold/silver/PGM origin and transit)</b>	The gold/silver/PGM originates from or has been transported through a CAHRA.
	The gold/silver/PGM is claimed to originate from a country that has limited known reserves or stocks, likely resources or expected production levels of gold/PGM/silver (that is, the declared volumes of gold/silver/PGM from that country are out of keeping with its known reserves or expected production levels).
	The gold/silver/PGM is claimed to originate from a country through which gold/silver/PGM from CAHRAs is known or reasonably suspected to transit.
	The gold/silver/PGM is claimed to originate from recyclable, scrap or mixed sources and has been refined in a country where gold/silver/PGM from CAHRAs is known or reasonably suspected to transit.
<b>Red-flag supplier</b>	Suppliers or other known upstream companies operate in one of the above-mentioned red-flag locations of gold/silver/PGM origin and transit, or have shareholder or other interests in suppliers of gold/silver/PGM from one of the above-mentioned red-flag locations of gold/silver/PGM origin and transit.
	Suppliers or other known upstream companies are known to have sourced gold/silver/PGM from a red-flag location of gold/silver/PGM origin and transit in the last 12 months.
<b>Red-flag circumstances</b>	Anomalies or unusual circumstances are identified through the information collected in OECD Step 1, which give rise to a reasonable suspicion that the gold/silver/PGM may contribute to conflict or serious abuses associated with the extraction, transport or trade of gold/silver/PGM.

- Regularly review and evaluate your exposure to risk, especially when forming relationships with new suppliers, or when existing suppliers change their sourcing practices:
  - **For miners and refiners**, that means identifying any red flags in your supply chain and investigating them. Miners that purchase material from other sources should also determine whether that material has red flags.
  - **For downstream companies**, it means first identifying the refiners in your supply chain and then making reasonable and good faith efforts to get evidence from them of their due diligence to see whether they have identified, or reasonably should have identified, red flags in their supply chains. You can rely on evidence generated in OECD Step 1 as well as any other information you collect by engaging directly with your suppliers.
- To identify a red flag, you need to review the context of each location of gold, silver and PGM origin and transport, relying on evidence from credible sources, and use your best endeavours to make reasonable determinations based on the definition of CAHRA.
- In practice, that means looking at all countries, regions and areas that you source, or plan to source, gold, silver or PGM from and determining whether they are a CAHRA or not (see Figure 7.6 and box 'Resources for identifying a CAHRA').
- If you have been able to reasonably determine that these red flags are not present in your supply chain, then the sources can be considered low risk, requiring minimal further action other than ensuring that:
  - Your company management system (described in Step 1) continues to work effectively.
  - You report publicly on your due diligence practices as per Step 5.

## Resources for identifying a CAHRA

You can review a range of documents and resources from credible sources to check for CAHRAs. This includes:

- research reports from governments, international organisations, NGOs and media;
- maps, UN reports and UN Security Council sanction lists; and
- relevant industry literature on the material's extraction, and its impacts on conflict and human rights.

The EU Commission has published a list of publicly accessible resources that can be used for the identification of CAHRAs.<sup>14</sup> The OECD is developing the 'Portal for Supply Chain Risk Information', which is designed to help companies understand and prioritise risks in their supply chains.<sup>15</sup>

For COP certification, you must be able to show that you have adequately reviewed and considered credible sources of information, and auditors will only flag inconsistencies in your approach that are clearly linked to a weak due diligence management system as a non-conformance.

14 Commission Recommendation (EU) 2018/1149 (2018) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018H1149>

15 OECD, Portal for Supply Chain Risk Information [www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm](http://www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm)

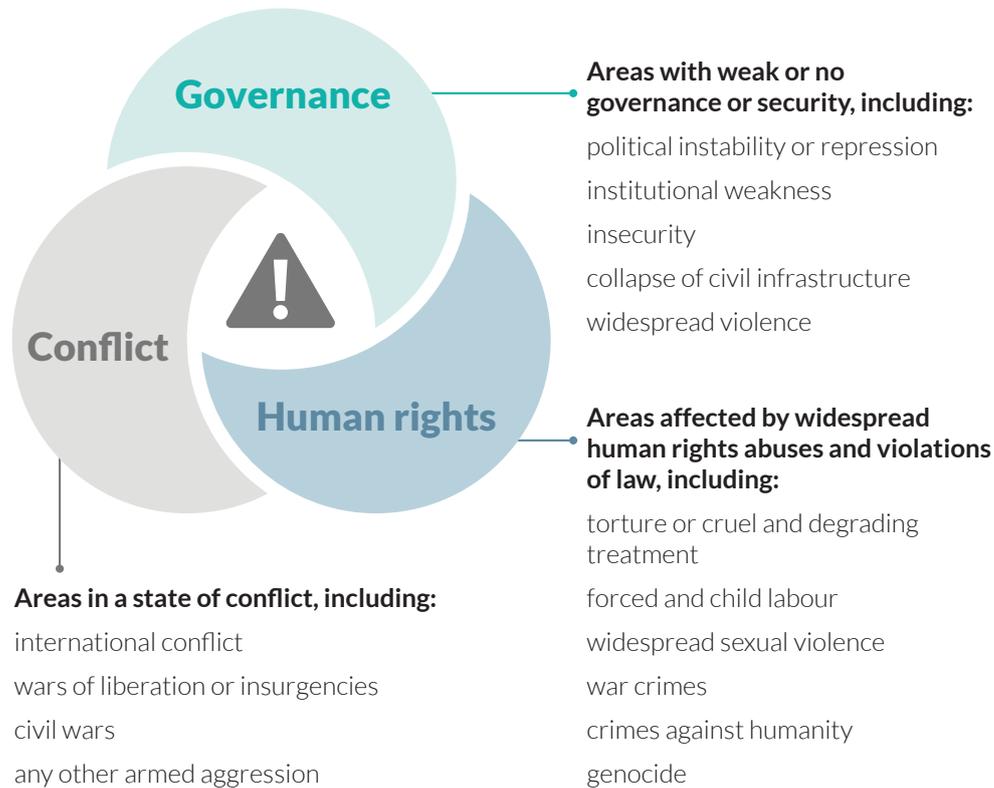


Figure 7.5. CAHRA characteristics

- Make sure you have, or can access, the necessary skills, resources and systems to undertake the task effectively. Consider whether an assessment by a qualified person should also be undertaken to determine if conflict is prevalent in the areas through which material in your supply chain is extracted and/or transported.

## 2C and D. Risk review, mapping and risk assessment

- The presence of a red flag does not mean that adverse impacts have occurred in your supply chains. Your risk assessment is meant to look for the presence of adverse impacts related to CAHRAs, as highlighted in Annex II of the OECD Guidance (see box 'What are adverse impacts related to CAHRAs?').

### What are adverse impacts related to CAHRAs?

Adverse impacts related to mineral supply chains are outlined in the OECD Guidance Annex II Model Supply Chain Policy as:

- Serious abuses associated with the extraction, transport or trade of minerals.
- Any forms of torture, cruel, inhuman and degrading treatment.
- Any forms of forced or compulsory labour.
- The worst forms of child labour.
- Other gross human rights violations and abuses such as widespread sexual violence.
- War crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.
- Direct or indirect support to non-state armed groups.
- Direct or indirect support to public or private security forces.
- Bribery and fraudulent misrepresentation of the origin of minerals.
- Money laundering and non-payment of taxes and royalties due to governments.

- Wherever you identify a red flag, assess the risk that adverse impacts are occurring as follows (see also Figure 7.6):
  - If you are a **miner or refiner**, map the factual circumstances of all red-flag supply chains, under way and planned (see box 'Mapping the factual circumstances of red-flag supply chains (for upstream companies)').
  - If you are a **downstream company**, further evaluate the due diligence and risk mitigation practices of the refiners in your supply chain, including information generated from on-the-ground assessments, and review this against the due diligence processes of the OECD Guidance. Collect information that can identify all countries of origin, transport and transit for the minerals in the supply chains of each refiner. Also determine whether the refiners in your supply chain with red flags have had their due diligence practices independently audited against a standard that is consistent with the OECD Guidance and, where available, get the results and review them.

### Mapping factual circumstances of red-flag supply chains (for upstream companies)

Mapping the factual circumstances of red-flag supply chains involves four main sets of activities. If you are a mining company not sourcing from anyone else, only Steps I (review of context) and II (on-the-ground assessments) apply and should be part of your operational risk assessment process.

**i. An in-depth review of the context** of all red-flag locations and the due diligence practices of any red-flagged suppliers:

- Review reports, maps and relevant literature on extraction, transport and trade in the red-flag location, particularly whether these give rise to any of the major CAHRA risks.
- Engage stakeholders, consulting for example with local and central governments, local civil society organisations, community networks, etc.
- Use methods that are consistent with the OECD Guidance to determine whether upstream suppliers (if you have any) have working policies and systems (for example, desktop research, site visits, random verification of purchase records, process reviews for purchase, and anti-money laundering and counter-terrorist financing mechanisms).

**ii. On-the-ground assessments for mined material** to generate and maintain information on how suppliers extract, trade, handle and export their mined material:

- Ensure that assessors are independent from the activity being assessed and without conflict of interests.
- Ensure the appropriate level of competence, by employing experts with appropriate knowledge and skill.
- Establish a joint assessment team with other companies working in similar areas or through an industry or multi-stakeholder mechanism or initiative, or carry out independent assessments on the ground.

**iii. Determination of source type**, that is finding out whether the mined material originates from artisanal and small-scale mining or large-scale mining:

- Depending on the answer, collect extra evidence on factual circumstances of extraction, trade, handling and export as specified in the OECD Guidance.

**iv. On-site visits to suppliers of recycled gold, silver and PGM** using a risk-based approach, with priority given to people, places and transactions that present higher risk:

- Risk factors here may include value of transaction, place of transaction, type of material, unusual circumstances and type of supplier.

- Look for evidence of inconsistencies between your supply chain policy and the factual circumstances of extraction, transportation and trade of material.
- In all cases, keep a record of the information and evidence you used for your risk assessment.
- Do not automatically disengage a source if it is deemed high risk: engage with your suppliers first and adopt risk mitigation strategies (see Step 3) where possible and appropriate before considering suspending or terminating your business relationship.
- Note that under the OECD Guidance, you are responsible for identifying the red flags and carrying out a risk assessment for your suppliers whether or not they belong to any external supply chain initiatives and programmes. That means you should not rely on external parties, including the RJC, to undertake any aspect of due diligence on your behalf (other than the third-party audit).

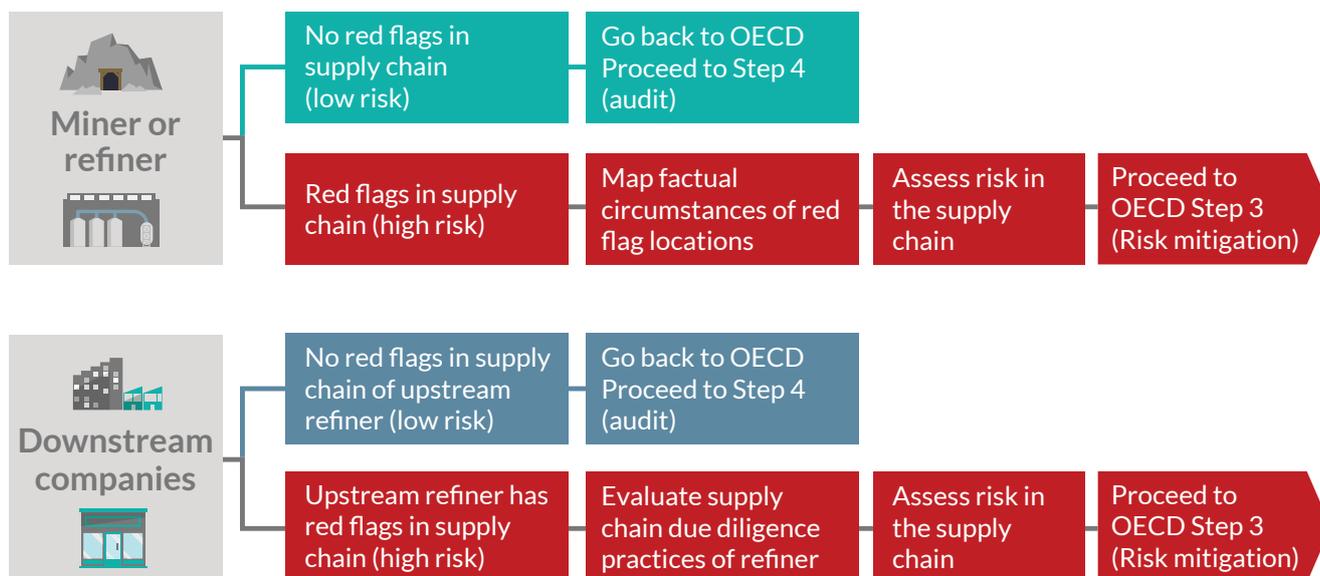


Figure 7.6. What to do if you identify red flags in the supply chain for different business types

## OECD Step 3 Design and implement a strategy to respond to identified risks

- If you identified a risk in Step 2, you will need to design and implement a risk management strategy that enables you to prevent or mitigate risks that already exist in your supply chain and react promptly and appropriately to any changes that arise.
  - This is true even if there is no direct evidence to suggest that the risk is currently associated with an actual adverse impact.

### 3A. Findings report

- Share the following information with the designated senior management:
  - An outline of the information gathered from the risk assessment carried out in Step 2.
  - Details of the risks identified.

### 3B. Enhanced engagement with suppliers

- Strengthen your engagement with high-risk suppliers and enhance internal systems of transparency, information collection and control over your gold/silver/PGM supply chain.
- For **miners and refiners**, stronger engagement includes:
  - establishing a traceability system that collects and maintains disaggregated information from the red-flagged supply chain;
  - enhancing physical security practices over the supply chain;
  - physically segregating any material that has an identified risk of association with conflict and serious abuses of human rights; and
  - incorporating the right to unannounced spot checks in commercial contracts and written agreements with suppliers.
- For **downstream companies**, this means regularly reviewing and updating information on the identity of refiners and associated due diligence findings from OECD Step 2.

### 3C. A risk management plan

- Outline your response to potential and/or actual adverse impacts in a risk management plan (in line with Annex II of the OECD Guidance).
  - If you have identified an actual adverse impact in your supply chain, you will need to take steps to resolve the issue and mitigate the impact.
  - The action you decide to take will depend on the type of impact identified (see Table 7.9).
  - Serious impacts will require immediate action, including disengaging the supplier or temporarily suspending trade until the impact has been mitigated.
  - If you haven't identified an actual impact but can see that there is potential for an adverse impact, you will need to take preventive measures.
- In deciding how to respond to risk, consult the recommendations included in Annex II and Annex III of the OECD Guidance (which include advice on when to disengage, suspend or continue a business relationship).

Table 7.9. Adverse impacts and the appropriate response (based on the OECD Guidance Annex II recommendations)

Adverse impact	Appropriate response
<b>Serious abuses associated with the extraction, trade and transport of minerals</b>	Immediately suspend or disengage from suppliers. Mitigate where possible.
<b>Direct or indirect support to non-state armed groups</b>	Immediately suspend or disengage from suppliers. Mitigate where possible.
<b>Direct or indirect support to public or private security forces who illegally control mine sites, transport routes and upstream actors (including illegal taxation)</b>	Continue, or temporarily suspend, trade with suppliers, but implement measurable mitigative actions. Suspend or disengage if mitigation measures are ineffective.
<b>Bribery and fraudulent misrepresentation of the origin of gold/silver/PGM</b>	Continue, or temporarily suspend, trade with suppliers, but implement measurable mitigative actions. Suspend or disengage if mitigation measures are ineffective.

- In devising appropriate mitigation measures, reach out to companies and individuals in your supply chains that can most effectively and most directly mitigate the identified risks.
- Adapt your plan based on the level of identified risks and impacts, recognising that factors such as severity and probability of an adverse impact are important in determining the scale and complexity of the due diligence response.
- Where possible, consult all affected stakeholder groups before agreeing a risk mitigation strategy.

### 3D and E. Implementation and follow-up

- Implement your risk management plan by carrying out all the actions (for both mitigation and prevention) you have decided on.
- Continue to monitor the situation in your supply chain to assess your plan's performance and effectiveness.
- Keep your risk management strategy flexible so that you can adapt to any changes in your supply chain, and remember that such changes may require you to repeat some of the steps already taken to identify, prevent or mitigate adverse impacts.
- For adverse impacts that do not require immediate suspension or disengagement, define a timeframe for achieving significant measurable improvement (maximum six months) and continue monitoring the supply chain to assess your plan's effectiveness.
- If, after reasonable efforts at mitigation, you still fail to achieve your desired outcomes, you may need to disengage from the supplier.

## OECD Step 4 Carry out independent third-party audit of due diligence practices

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- Regardless of your position within the gold, silver or PGM supply chain, you will be audited as part of the normal COP certification process.
- The OECD Supplement on Gold additionally recommends that **downstream companies** in the **gold supply chain** participate in and support the independent third-party audit of the refiner's due diligence practices and are encouraged to do so through industry programmes to increase efficiency in implementing the OECD Guidance.
- Where possible, seek to source your gold from refiners that are certified under a scheme that is consistent with the OECD Guidance. This includes one or more of the standards below:
  - The Responsible Jewellery Council Code of Practices (this standard).
  - RMI (previously known as the Conflict-Free Sourcing Initiative) Gold Refiner Standard.
  - LBMA Responsible Gold Guidance.
  - Dubai Multi Commodities Centre (DMCC) Practical Guidance and Review Protocol.
- If none of the above applies, you should engage with and support the refiner to get independently third-party audited for its due diligence practices. This may include defining a new audit standard consistent with the recommendations set out in the OECD Guidance and ensuring that audits are implemented in accordance with the scope, criteria, principles and activities described in Step 4 of the OECD Guidance framework.
- Downstream companies in the silver and PGM supply chain should, where feasible, encourage silver and PGM refiners to carry out an independent third-party audit against a standard that is consistent with the recommendations of the OECD Guidance.

## OECD Step 5 Report annually on supply chain due diligence

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- Regular public reports promote transparency and generate public confidence. Make sure you report publicly on your due diligence systems and practices at least once a year, for example through your company website or through applicable company reports and publications. The information you need to include varies according to your business type (see Table 7.10).
- Match the level of detail in your report with the level of risk in your supply chain. For example, if you don't source from a CAHRA, you don't need to report on Step 3.
- Be practical in how you format your report, taking into account the scale and impacts of your business. For example, if you are a small business, you do not need a printed publication—a simple memorandum will do.

Table 7.10. Annual reporting requirements under OECD Step 5 (and RJC COP certification)

Category	Reporting information to include:
<b>Miners and refiners</b>	
<b>Step 1: Establish strong company management systems</b>	Supply chain policy.
	Management structure and responsibilities for due diligence programme.
	Internal control systems and processes for information collection.
	Record-keeping system and processes for identifying material origin.
<b>Step 2: Identify and assess risk in the supply chain</b>	Systems for identifying red-flag locations.
	Description of red flags in supply chain.
	Steps taken to map red-flag supply chains.
	Methods, practices and information yielded by on-the-ground assessment teams.
	Actual and potential risks identified (not for potential suppliers).
<b>Step 3: Design and implement a strategy to respond to identified risks (if applicable)</b>	How internal control systems have been strengthened to collect reliable information from red-flag supply chains.
	Steps taken to manage risks, including involvement of affected stakeholders.
	Efforts made to monitor and track performance for risk mitigation.
	Number of instances where member has decided to disengage from suppliers.
	All instances of risk mitigation and results of follow up after six months.
<b>Additional reporting requirements for refiners</b>	
<b>Step 4: Carry out independent third-party audit of refiner's due diligence practices</b>	Summary audit report with due regard taken of business confidentiality and other competitive security concerns, including details of audit dates, activities, methodology and conclusions (either directly or through co-operation with an industry programme or institutionalised mechanism).
<b>Downstream companies</b>	
<b>Step 1: Establish strong company management systems</b>	Supply chain policy.
	Management structure and responsibilities for due diligence programme.
	Record-keeping systems.
<b>Step 2: Identify and assess risk in the supply chain</b>	Steps taken to identify refiners in supply chain.
	Assessment of supplying refiner's due diligence practices.
	Methodology of company supply chain risk assessments.
	Actual or potential risks identified.
<b>Step 3: Design and implement a strategy to respond to identified risks (if applicable)</b>	Steps taken to manage risks, including involvement of affected stakeholders.
	Efforts made to monitor and track performance for risk mitigation.
	All instances of risk mitigation and results of follow up after six months.

## COP 7.1 and 7.2: For refiners

### Refiner members shall:

- a. Maintain internal material control systems that can reconcile movement of inventory in and out over a given time.
- b. Gold refiners shall additionally collect and, with due regard to business confidentiality, share annually information with the RJC on the mine of origin of mined gold received.

### Points to consider:

- Establish and implement systems for internal material control.
- **For all your inputs** (gold, silver or PGM received), record:
  - the date you physically receive the material, or the date it enters your control system;
  - the material's form, type and physical description of the material;
  - the material's weight and assay (assay determinations may be provided by the counterparty, refiner or a third party); and
  - a unique internal reference number assigned by bar, ingot or batch of material accepted—make sure the number is the same as that used on any other information collected on that material.
- **For all your outputs** (gold, silver or PGM sent out), record and make the product identifiable with:
  - your name and/or stamp or logo;
  - the year of refining or production; and
  - a unique reference (for example, serial number, electronic identification or other practicable means).
- Make sure that the total weight of material received and in inventory during the audit period can be reconciled with movements in and out of inventory for the same period.
- Adopt tamper-proof physical security measures for all outputs.
- If you are a gold refiner, remember to share your data on mine of origin with the RJC (see box 'Sharing data with the RJC').

### Sharing data with the RJC

All gold refiners seeking COP certification must share their data on mine of origin with the RJC each year, including:

- A list of mines of origin for all gold received. At the time of COP certification, this list should cover the audit period; afterwards it should be provided on an annual basis.
- The identity of any mines of origin in CAHRAs.
- A summary of the criteria used to determine CAHRAs.

This data will be used to inform the RJC's training and to maintain the integrity of harmonisation with the RMI Gold Refiner Standard and the LBMA's Responsible Sourcing programme.

OECD step	Check list	
	Miners and refiners	Downstream companies
<b>Step 1: Management system</b>	<ul style="list-style-type: none"> <li>✓ Have you developed a supply chain policy and made it publicly available?</li> <li>✓ Have you communicated the policy internally?</li> <li>✓ Have you assigned a senior staff member to lead your due diligence system?</li> <li>✓ Have you made the necessary resources available to support your due diligence system?</li> <li>✓ Do you have a grievance mechanism in place?</li> <li>✓ Have you developed systems and procedures for collecting information from suppliers (where applicable) and sharing information with buyers?</li> </ul>	
<b>Step 2: Identify and assess risks</b>	<ul style="list-style-type: none"> <li>✓ Have you identified any 'red flags' in your upstream supply chain?</li> <li>✓ If yes, have you mapped the factual circumstances of the red flag supply chain (i.e. a risk assessment) and have you identified the presence of any adverse impacts as part of this exercise?</li> <li>✓ If you have not identified red flags, proceed to step 4.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Have you made reasonable and good faith efforts to obtain evidence that the refiners in your supply chain have conducted due diligence and to see whether they have identified, or reasonably should have identified, red flags in their supply chains?</li> <li>✓ Are you satisfied that the refiners in your supply chain have carried out due diligence in a way that is consistent with the OECD Guidance?</li> <li>✓ Where there are 'red flags', does the due diligence information provide adequate detail on the circumstances of upstream production and trade?</li> <li>✓ If you have not identified red flags, proceed to step 4.</li> </ul>
<b>Step 3: Manage risks</b>	<ul style="list-style-type: none"> <li>✓ Have you shared the results of your risk assessment with senior management?</li> <li>✓ Have you outlined your response to risks in a risk management plan?</li> <li>✓ Are you monitoring the performance of your risk mitigation efforts?</li> </ul>	
<b>Only for red flags</b>	<ul style="list-style-type: none"> <li>✓ Have you established a traceability system to collect and maintain segregated information for all inputs and outputs from extraction through to the refiner?</li> </ul>	<ul style="list-style-type: none"> <li>✓ Are you regularly reviewing and updating information on the identify of refiners and associated due diligence findings from OECD Step 2?</li> </ul>
<b>Step 4: Verify</b>	<ul style="list-style-type: none"> <li>✓ Have the refiners in your supply had an independent third-party audit against a standard that is consistent with the OECD Guidance?</li> </ul>	
<b>Step 5: Report annually</b>	<ul style="list-style-type: none"> <li>✓ Do you, or are you planning to, annually report publicly on your implementation of the OECD Guidance?</li> </ul>	

## ANNEX D2. GOLD, SILVER AND PGM

### Annex D2.1. Example supply chain policy

The following draft can be modified or adapted to suit individual businesses.

1. [COMPANY NAME] is a [BRIEF DESCRIPTION OF THE COMPANY]. This policy confirms [COMPANY NAME]'s commitment to respect human rights, avoid contributing to the finance of conflict and comply with all relevant UN sanctions, resolutions and laws.

2. [COMPANY NAME] is a certified member of the Responsible Jewellery Council (RJC). As such, we commit to proving, through independent third-party verification, that we:
  - a. respect human rights according to the Universal Declaration of Human Rights and International Labour Organization Declaration on Fundamental Principles and Rights at Work;
  - b. do not engage in or tolerate bribery, corruption, money laundering or finance of terrorism;
  - c. support transparency of government payments and rights-compatible security forces in the extractives industry;
  - d. do not provide direct or indirect support to illegal armed groups;
  - e. enable stakeholders to voice concerns about the jewellery supply chain; and
  - f. are implementing the OECD five-step framework as a management process (and Supplement on Gold if applicable) for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
  
3. We also commit to using our influence to prevent abuses by others. [HERE YOU CAN CHOOSE TO INCLUDE A BRIEF DESCRIPTION OF HOW YOU WILL CONSIDER AND ADDRESS THE RISKS OF NON-COMPLIANCE BY YOUR SUPPLIERS THROUGH YOUR SUPPLY CHAIN POLICY. ALSO CONSIDER INCLUDING INFORMATION ABOUT YOUR COMPLAINTS MECHANISM FOR INTERESTED PARTIES TO VOICE CONCERNS ABOUT MATERIALS FROM CONFLICT-AFFECTED AREAS. YOU CAN USE THE OECD DUE DILIGENCE GUIDANCE MODEL SUPPLY CHAIN POLICY AS A REFERENCE IN DEVELOPING YOUR POLICY.]
  
4. **Regarding serious abuses associated with the extraction, transport or trade of gold:**  
 We will neither tolerate nor profit from, contribute to, assist or facilitate the commission of:
  - a. torture, cruel, inhuman and degrading treatment;
  - b. forced or compulsory labour;
  - c. the worst forms of child labour;
  - d. human rights violations and abuses; or
  - e. war crimes, violations of international humanitarian law, crimes against humanity or genocide.
  
5. We will immediately stop engaging with upstream suppliers if we find a reasonable risk that they are committing abuses described in paragraph 4 or are sourcing from, or linked to, any party committing these abuses.
  
6. **Regarding direct or indirect support to non-state armed groups:**  
 We will not tolerate direct or indirect support to non-state armed groups, including, but not limited to, procuring gold from, making payments to, or otherwise helping or equipping non-state armed groups or their affiliates who illegally:
  - a. control mine sites, transportation routes, points where gold is traded and upstream actors in the supply chain; or
  - b. tax or extort money, or gold at mine sites, along transportation routes or at points where gold is traded, or from intermediaries, export companies or international traders.
  
7. We will immediately stop engaging with upstream suppliers if we find a reasonable risk that they are sourcing from, or are linked to, any party providing direct or indirect support to non-state armed groups as described in paragraph 6.
  
8. **Regarding public or private security forces:**  
 We affirm that the role of public or private security forces is to provide security to workers, facilities, equipment and property in accordance with the rule of law, including law that guarantees human rights. We will not provide direct or indirect support to public or private security forces that commit abuses described in paragraph 4, or that act illegally as described in paragraph 6.
  
9. **Regarding bribery and fraudulent misrepresentation of the origin of gold:**  
 We will not offer, promise, give or demand bribes, and will resist the solicitation of bribes, to conceal or disguise the origin of gold, or to misrepresent taxes, fees and royalties paid to governments for the purposes of extraction, trade, handling, transport and export of gold.
  
10. **Regarding money laundering:**  
 We will support and contribute to efforts to eliminate money laundering where we identify a reasonable risk resulting from, or connected to, the extraction, trade, handling, transport or export of gold.

Signed/endorsed:

Date of effect:

## Annex D2.2. Examples of documents and evidence to gather to implement the OECD Guidance (examples shown are for gold but also apply to silver and PGM)

Requirement	Material type(s)	Entity type	Risk level	Relevant OECD step	Purpose	Document/evidence examples (not all required)
1. Information regarding the form, type and physical description of gold and gold-bearing materials. 2. Information provided by the supplier regarding the weight and assay of gold and gold-bearing materials of input, and determinations of the weight and assay of gold inputs and outputs. Dates of input and/or output, purchases and sales and a system to reconcile all inputs and outputs.	All	All	All	Step 1, Section I (C)	To establish a system of transparency, information collection and control over the gold supply chain.	<ul style="list-style-type: none"> <li>CoC transfer document (if applicable)</li> <li>Customs export records</li> <li>Assay results</li> <li>Documentation confirming source/certification under a recognised mining standard</li> <li>Immediate supplier identification documents</li> <li>Immediate supplier contract and/or purchase agreement containing description of secondary material (recycled)</li> <li>Inventory records and documentation</li> <li>Invoices and sales documentation</li> <li>Transport/shipping documentation</li> <li>Electronic or paper-based reconciliation records</li> </ul>
3. Supplier details, including KYC and due diligence information consistent with the 40 Recommendations of the Financial Action Task Force (FATF).	All	All	All	Step 1, Section I (C)	To establish a system of transparency, information collection and control over the gold supply chain.	<ul style="list-style-type: none"> <li>Business licences</li> <li>Business structure and registration</li> <li>Individual identification records</li> <li>KYC questionnaires</li> <li>Records of checks against relevant government lists</li> </ul>
<b>4. Verifiable documentation for any cash purchases.</b>	All	All	All	Step 1, Section I (C)	To avoid cash purchases where possible, and ensure that all unavoidable cash purchases are supported by verifiable documentation.	<ul style="list-style-type: none"> <li>Receipts</li> </ul>
5. Identify origin of material (for mined material this means identifying the exact mine of origin).	All	Miner, refiner	All	Step 1, Section I (C)	To establish a system of transparency, information collection and control over the gold supply chain.	<ul style="list-style-type: none"> <li>Official country of origin certificate</li> <li>Official mine licences</li> <li>Contract showing mine name</li> <li>Other documentation showing mine name</li> <li>Images of items with stamp date (for recycled material)</li> <li>Records matched to a serial number or mark (for grandfathered material)</li> </ul>
6. Evidence of engagement with suppliers to encourage application of due diligence and capacity building.	All	All	All	Step 1, Section I (D)	To strengthen company engagement with suppliers.	<ul style="list-style-type: none"> <li>Meeting records</li> <li>Correspondence with suppliers</li> <li>Written agreements and plans</li> </ul>
7. Unique internal reference numbers assigned to all inputs and outputs, by bar, ingot and/or batch of gold accepted and produced, and affix and/or imprint that reference number on all output.	All	Miner, refiner	All	Step 1, Section II (A-C)	Specific recommendations for miners, recyclers and refiners.	<ul style="list-style-type: none"> <li>Paper or electronic records of unique number assigned to each sale or receipt of material</li> <li>CoC transfer document (if applicable)</li> </ul>
8. Preliminarily inspect all shipments for conformity to the information provided by the supplier on the types of gold. Verify weight and quality information provided by the gold producer and/or shipper, and make a business record of such verification.	All	Refiner	All	Step 1, Section II (C)	Specific recommendations for refiners.	<ul style="list-style-type: none"> <li>Internal assay results</li> <li>Internal weight verification records</li> </ul>
9. Identify upstream gold refiners.	All (refined)	Downstream	All	Step 1, Section II (E)	Specific recommendations for downstream companies.	<ul style="list-style-type: none"> <li>Supplier identification documents</li> <li>CoC transfer document (if applicable)</li> <li>Refiner marks imprinted on gold material</li> </ul>
10. Verify that the refiners have conducted due diligence in line with Gold Supplement.	All (refined)	Downstream	All	Step 1, Section II (E)	Specific recommendations for downstream companies.	<ul style="list-style-type: none"> <li>Reference to recognised audits</li> <li>Supplier supply chain policies and risk assessment documentation</li> </ul>
11. Review context of each location.	Mined	Miner	All	Step 2, Section I (A)	To determine whether the gold producer mines or transports any gold in a CAHRA.	<ul style="list-style-type: none"> <li>Step 1 documentation</li> <li>Research reports from governments, international organisations, NGOs, media</li> <li>Maps</li> <li>UN reports</li> <li>UN security sanctions</li> <li>Industry literature</li> </ul>

Requirement	Material type(s)	Entity type	Risk level	Relevant OECD step	Purpose	Document/evidence examples (not all required)
12. Identify all mines and/or mine smelt houses where the gold producer purchases mined gold from other sources, which may include ASM.	Mined	Miner	All	Step 2, Section I (B)	To determine whether the gold producer purchases any gold potentially from a CAHRA.	<ul style="list-style-type: none"> <li>Traceability reports</li> <li>Contracts with suppliers and/or transport documentation</li> <li>Mine site declarations or visit reports</li> <li>KYC documentation (including beneficial ownership)</li> <li>Supplier policies (conformant with the OECD Guidance)</li> </ul>
13. Undertake an in-depth review of the context of all red-flag locations and the due diligence practices of any red-flag suppliers.	Mined	Miner	High	Step 2, Section I (C)	To map the factual circumstances of the gold producer's red-flag operations and other sources of gold, under way and planned.	<ul style="list-style-type: none"> <li>Mine site declarations or visit reports</li> <li>Incident monitoring reports</li> <li>Transport documentation/logs</li> <li>Operating licences</li> <li>Maps</li> <li>Mine production records</li> <li>Geological surveys</li> <li>Traceability reports</li> <li>Incident monitoring records</li> <li>Evidence of official tax and royalty payments, or payments to government officials</li> <li>Research reports from governments, international organisations, NGOs, media</li> <li>Evidence of payments to public or private security forces</li> </ul>
14. Identify red flags in the gold supply chain.	All	Refiner	All	Step 2, Section II (B)	To determine level of risk in the supply chain.	<ul style="list-style-type: none"> <li>Step 1 documentation</li> <li>Research reports from governments, international organisations, NGOs, media</li> <li>Maps</li> <li>UN reports</li> <li>UN security sanctions</li> <li>Industry literature</li> </ul>
15. Undertake an in-depth review of the context of all red-flag locations and the due diligence practices of any red-flag suppliers.	All	Refiner	High	Step 2, Section II (C)	To map the factual circumstances of the company's red-flag supply chains, under way and planned.	<ul style="list-style-type: none"> <li>Mine site declarations or visit reports</li> <li>Incident monitoring reports</li> <li>Transport documentation/logs</li> <li>Operating licences</li> <li>Maps</li> <li>Mine production records</li> <li>Geological surveys</li> <li>Traceability reports</li> <li>Evidence of official tax and royalty payments or payments to government officials</li> <li>Research reports from governments, international organisations, NGOs, media</li> <li>Evidence of payments to public or private security forces</li> <li>KYC documentation (including beneficial ownership where applicable)</li> </ul>
16. Get preliminary evidence of the refiner's due diligence to see whether they have identified, or reasonably should have identified, red flags in their supply chain.	All	Downstream	All	Step 2	Specific recommendations for downstream companies.	<ul style="list-style-type: none"> <li>Supplier risk assessment reports</li> <li>Supplier audit reports</li> </ul>
17. Report findings to designated senior management.	All	All	High	Step 3	To devise and adopt a strategy to respond to identified risks.	<ul style="list-style-type: none"> <li>Internal meeting records or minutes</li> <li>Internal reports</li> <li>Internal correspondence</li> </ul>
18. Devise and adopt risk management plan.	All	All	High	Step 3	To devise and adopt a strategy to respond to identified risks.	<ul style="list-style-type: none"> <li>Documented risk management plan</li> <li>Evidence that risk management plan adopted at senior management level</li> </ul>
19. Monitor and track performance of risk mitigation.	All	All	High	Step 3	To devise and adopt a strategy to respond to identified risks.	<ul style="list-style-type: none"> <li>Meeting records, correspondence with supply chain actors relating to risk mitigation</li> <li>Performance reports</li> <li>Grievance mechanism records</li> <li>Supply chain incident reports including evidence of response to these reports</li> <li>Records of suspension or discontinuation of contracts with suppliers</li> </ul>

## E FURTHER INFORMATION

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The following international initiatives help embed the OECD Guidance into practice for the gold and silver supply chain:

- The World Gold Council's **Conflict-Free Gold Standard** ([www.gold.org/who-we-are/our-members/responsible-gold/conflict-free-gold-standard](http://www.gold.org/who-we-are/our-members/responsible-gold/conflict-free-gold-standard)) aims to 'operationalise' the OECD Guidance and help gold producers provide assurance that their material does not contribute to conflict.
- The **LBMA Responsible Sourcing Guidance** ([www.lbma.org.uk/guidance-documents](http://www.lbma.org.uk/guidance-documents)) follows the OECD's five-step framework to promote due diligence among gold and silver refiners.
- The **RMI Responsible Minerals Assurance Process (RMAP) Gold Refiner Standard** ([www.responsiblemineralsinitiative.org/smelter-introduction/](http://www.responsiblemineralsinitiative.org/smelter-introduction/)) provides a specific, practical framework to consistently audit the supply chain practices and underlying due diligence management systems of gold refiners that is aligned with the OECD Guidance.
- The Dubai Multi Commodities Centre (DMCC) Rules for Risk Based Due Diligence in the Gold and Precious Metals Supply Chain, or **DMCC Rules for RBD-GPM** ([www.dmcc.ae/gateway-to-trade/commodities/gold/responsible-sourcing](http://www.dmcc.ae/gateway-to-trade/commodities/gold/responsible-sourcing)), ensure that all accredited members implement the OECD Guidance; they promote voluntary implementation among other market participants.

The websites and publications listed below have further information on conflict-affected areas.

### Websites:

Geneva Academy

[www.geneva-academy.ch](http://www.geneva-academy.ch)

Heidelberg Institute for International Conflict Research

<https://hiik.de/?lang=en>

International Alert

[www.international-alert.org](http://www.international-alert.org)

International Crisis Group, Crisis Watch Global Conflict Tracker

[www.crisisgroup.org/crisiswatch](http://www.crisisgroup.org/crisiswatch)

OECD, Portal for Supply Chain Risk Information

[www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm](http://www.oecd.org/daf/inv/mne/oecd-portal-for-supply-chain-risk-information.htm)

Ropes & Gray, Conflict Minerals Resource Center

<https://conflictmineralsresources.com/>

UN Peacekeeping, Current Peacekeeping Operations

<https://peacekeeping.un.org/en/current-peacekeeping-operationshttp://www.un.org/en/peacekeeping/operations/current.shtml>

UN Security Council, Resolutions

[www.un.org/securitycouncil/content/resolutions](http://www.un.org/securitycouncil/content/resolutions)

Uppsala University, Uppsala Conflict Data Program

[www.pcr.uu.se/research/UCDP/](http://www.pcr.uu.se/research/UCDP/)

U.S. Department of State, Human Rights Reports

[www.state.gov/j/drl/rls/hrrpt/](http://www.state.gov/j/drl/rls/hrrpt/)

U.S. Securities and Exchange Commission (SEC)

[www.sec.gov](http://www.sec.gov)

World Gold Council, Conflict-Free Gold Standard

[www.gold.org/about\\_gold/sustainability/conflict\\_free\\_standard](http://www.gold.org/about_gold/sustainability/conflict_free_standard)

## **Publications:**

International Alert, Human Rights Due Diligence in Conflict-Affected Settings: Guidance for Extractive Industries (2018)

[www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings](http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings)

OECD, OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016)

[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

UN Human Rights, Guiding Principles on Business and Human Rights (2011)

[www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## **Other references:**

The Code of Risk-Mitigation for ASM Engaging in Formal Trade (CRAFT)

[www.responsiblemines.org/en/our-work/standards-and-certification/craft](http://www.responsiblemines.org/en/our-work/standards-and-certification/craft)

The Coloured Gemstones Working Group (CGWG)

<https://coloured-gems.org>

European Union, Study on the Support System for SME Supply Chain Due Diligence

<https://publications.europa.eu/en/publication-detail/-/publication/67a2c448-fb38-11e7-b8f5-01aa75ed71a1/language-en/format-PDF/source-67264534>

The Impact Facility

<http://impactfacility.com>

# (COP 8) SOURCING DIRECTLY FROM ARTISANAL AND SMALL-SCALE MINING

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members and RJC-certified mines that source gold, silver, PGM, diamonds or coloured gemstones directly from artisanal and small-scale mining (ASM) producers. As part of your audit process, you must explicitly state whether this provision does, or does not, apply to you. Note that indirect sourcing from ASM producers is captured more broadly under COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**.

A company's **ability to influence** ASM will vary, depending on its economic and social context and the extent and nature of its commercial relations with ASM producers. COP auditors will take your ability to influence into account when assessing your best endeavours.

**Artisanal and small-scale mining (ASM)** refers to formal or informal operations by individuals, groups, families or co-operatives that can involve up to hundreds of thousands of miners. ASM usually uses little capital and a lot of labour and is carried out with minimal or no mechanisation (although it can involve small and fully mechanised operations). The exact definition of 'artisanal' and 'small' mining may be stated by national legislation and categorised according to, for instance, a mining organisation's volume of production of ore or mineral, the size of its concession or the level of mechanisation.

Using **best endeavours** means acting honestly, reasonably and with a positive effort to perform the relevant obligation. Under this provision, it means a company's efforts to reduce or avoid the risks of harmful practices in ASM (including human rights abuses, unsafe work and environmental harm).

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Source:

- OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas—Supplement on Gold, Third Edition (2016)  
[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

## B ISSUE BACKGROUND

ASM is the oldest form of mining; it is found all over the world and its producers are colloquially known by many different names, including 'galamsey', 'orpailleurs', 'ubeshi', 'wabeshi', 'panners', 'diggers', 'garimpeiros', 'barequeros', 'pirquineros' and 'pocket miners'. In 2017, a report by the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) and partners estimated that there were 40.5 million people directly engaged in ASM, up from 30 million in 2014 and 6 million in 1993.<sup>1</sup> These people account for a fifth of the world's gold supply, and more than three-quarters of the world's sapphires (see Figure 8.1). The report's authors attributed the rapid growth to the rising value of mineral prices and the fact that it is increasingly difficult to earn a living from other rural activities.

The extent of ASM activity in any particular location tends to wax and wane with changing local and national economic circumstances and international market conditions (for example, the international gold price), as well as economic circumstances in bordering countries, including differences in export tariffs, which can drive ASM trade from one country to another. It is most common in commodities that have a high value, are small and easy to transport, and can be easily traded, such as gold, diamonds and coloured gemstones. It is often found in the same area where professional, formal mining companies operate, with ASM miners sometimes constituting a major part of the local economy (see COP 35 **Artisanal and small-scale mining and large-scale mining**).

1 IGF, Global Trends in Artisanal and Small-Scale Mining (ASM): A Review of Key Numbers and Issues (2017) Winnipeg: IISD  
[www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf](http://www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf)

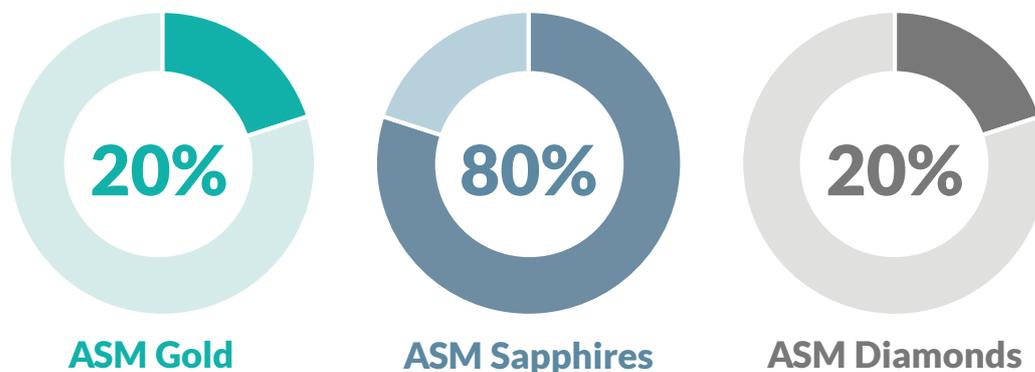


Figure 8.1. Proportion of global supply of gold, sapphires and diamonds produced by ASM

Source: IGF, Global Trends in Artisanal and Small-Scale Mining (ASM): A Review of Key Numbers and Issues (2017)

ASM is increasingly recognised as a potential route out of poverty for disadvantaged families and communities, and features in a growing number of international development agendas. As a production system, ASM enables people to earn a cash income (usually in local currencies), however small, and provides an accessible livelihood for poor and marginalised communities across the globe. It often complements other livelihood activities, such as agriculture, animal husbandry and hunting, and provides extra support in times of economic stress.

At the same time, ASM is renowned for harbouring harmful practices, including the use of forced and child labour, sexual violence, poor health and safety, and major environmental harm, for example from the uncontrolled and irresponsible use of mercury. It is also known to be exploited by transnational organised crime, local criminals, and corrupt politicians and public servants, who take advantage of the poverty, marginalisation and lack of protection of the rights of ASM miners to launder money or extort income for themselves.<sup>2</sup>

All companies working in a global economy have a responsibility to consider social and environmental performance in their supply chains and to respect human rights and apply due diligence.<sup>3</sup> This provision focuses on those companies that source directly from ASM producers, because they are in the best position to assess risks and, as customers, to work directly with their suppliers to help prevent or remediate harmful practices wherever possible (see Table 8.1 for a summary of key ASM issues).

Those that source directly from ASM are also in the best position to help address one of the pervasive issues that many ASM producers struggle with: access to fair commercial terms and stable access to market. Companies have a responsibility to try and understand what fair commercial terms are, communicate them transparently and offer them to ASM producers. Engaging with ASM in this way can also empower the miners to operate more professionally, so better equipping the sector to seek and receive fair commercial terms more consistently from others.

Finally, companies sourcing directly from ASM are also uniquely placed to support the development of ASM communities. As outlined in COP 10 **Community development**, successful approaches are built on community consultation, regional co-operation and partnering with others. In situations where a company is not located near the ASM community, the best opportunities will be through partnerships with local groups, non-governmental organisations (NGOs), governments and others. As with all community development approaches, those focused on ASM communities need to take into account the needs and development aspirations of disadvantaged and vulnerable groups in the communities.

2 Global Initiative Against Transnational Organized Crime and Levin Sources, Follow the Money: Financial Flows Linked to Artisanal and Small-Scale Gold Mining (2017) <https://globalinitiative.net/follow-the-money-financial-flows-linked-to-artisanal-and-small-scale-gold-mining/>

3 The OECD outlines the importance of sourcing from ASM and how this fits with a responsible sourcing approach. See: OECD, Responsible Supply Chains in Artisanal and Small-Scale Gold Mining: FAQ (2016) [https://mneguidelines.oecd.org/FAQ\\_Sourcing-Gold-from-ASM-Miners.pdf](https://mneguidelines.oecd.org/FAQ_Sourcing-Gold-from-ASM-Miners.pdf)

Table 8.1. Some of the key issues affecting ASM producers

Issue	Description
<b>Informal or illegal status</b>	Most countries lack the legal frameworks and enforcement to regulate ASM effectively, which is why ASM is largely informal, and sometimes described as 'illegal'. It is important to distinguish between this type of informality or illegality and criminality. Criminal groups or individuals involved in armed theft, organised crime or money laundering can associate themselves with ASM but they are not the same as informal ASM producers. The OECD Guidance refers to 'legitimate ASM' which specifies that when ASM contributes to conflict and serious abuses it cannot be considered legitimate. <sup>4</sup>
<b>Migration</b>	ASM often involves migration: some people are pulled into ASM by a 'mineral rush'; some are pushed into it by seasonality or economic shocks. A large, uncontrolled influx of migrant ASM producers can disturb the social fabric of a community, as well as the operations of a mine.
<b>Access</b>	Governments, whether intentionally or not, often give land to large-scale miners without regard to local active ASM producers. Even where artisanal miners are given legal access to land, it can be inappropriate for ASM practice.
<b>Lack of capital</b>	Little or no access to formal, legitimate capital means that ASM producers are typically restricted to using rudimentary tools and processes provided by middlemen. This can result in debt bondage and poverty traps and association with illicit financial flows.
<b>Pricing and distribution</b>	ASM is characterised by unregulated, and often unfair pricing and can be linked to illegal commercialisation routes in which ASM miners do not receive the full price of the mineral. For example, when selling gold they may not be paid on any silver content within the mineral.
<b>Inefficiency</b>	Inefficient mining and processing practices in ASM often lead to suboptimal exploitation of mineral resources and greater environmental impact as ASM communities are disincentivised from rehabilitating worked out areas for fear that they will be re-mined.
<b>Environment</b>	ASM is notorious for harbouring poor environmental and health and safety practices, which often result in environmental damage.
<b>Mercury and cyanide</b>	In gold processing, the irresponsible and unsafe use of mercury and cyanide in ASM poses a significant public health threat as well as an environmental one.
<b>Labour</b>	Casual labourers make up the bulk of ASM and can include women, children, the elderly and migrants. These people tend to be the most vulnerable to exploitation.
<b>Large-scale mining conflict</b>	Where ASM takes place on a large-scale mining concession or permit area, with or without permission, there is potential for corporate community conflict.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The obligation to assess and reduce or avoid risks associated with ASM suppliers aligns with many international human rights instruments, including the UN Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights, the International Labour Organization (ILO) conventions on labour rights (see COP 6 **Human rights**) and the OECD Guidance (see COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**).

Organisations such as the Alliance for Responsible Mining (ARM), Fairtrade International (FLO) and the Diamond Development Initiative International (DDII) set the global standards for responsible ASM practices in gold and diamonds:

- ARM runs the **Fairmined Standard for Gold from Artisanal and Small-scale Mining, Including Associated Precious Metals**,<sup>5</sup> which includes requirements for organisational and traceability control, environmental protection, labour conditions and socio-economic development in ASM (through the Fairmined Premium). It also outlines requirements for brands seeking to make claims using the Fairmined label as a Fairmined licensee. ARM also has the Fairmined Ecological Gold standard, which includes additional requirements to not use any mercury and cyanide in extraction processes and to adhere to other environmental management best practices such as having a remediation plan.
- Fairtrade runs the **Fairtrade Standard for Gold and Associated Precious Metals for Artisanal and Small-Scale Mining**,<sup>6</sup> which includes a series of requirements aimed at changing the conventional trading system to benefit disadvantaged ASM producers in developing countries.
- The Diamond Development Initiative has the **Maendeleo Diamond Standards**,<sup>7</sup> which address the mode of production and the socio-economic context of the diamond ASM sector in Kimberley Process-approved zones.

4 OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016) [www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

5 ARM, Fairmined Standard for Gold from Artisanal and Small-scale Mining, Including Associated Precious Metals (2014) [www.responsiblemines.org/images/sampled/EstandarFairmined/Fairmined%20Stnd%20%200\\_2014\\_.pdf](http://www.responsiblemines.org/images/sampled/EstandarFairmined/Fairmined%20Stnd%20%200_2014_.pdf)

6 Fairtrade International, Fairtrade Standard for Gold and Associated Precious Metals for Artisanal and Small-Scale Mining (2013) [www.fairgold.org/wp-content/uploads/2014/01/Gold-and-Precious\\_Metals-Standard.pdf](http://www.fairgold.org/wp-content/uploads/2014/01/Gold-and-Precious_Metals-Standard.pdf)

7 Diamond Development Initiative, Maendeleo Diamond Standards [www.ddiglobal.org/mds](http://www.ddiglobal.org/mds)

## CRAFT

In July 2018, ARM and RESOLVE launched the Code of Risk-mitigation for ASM engaging in Formal Trade (CRAFT),<sup>8</sup> which is an open-source market entry code designed to enable ASM gold producers that conform with the OECD Guidance to sell their product into formal supply chains, and to help downstream actors engage with legitimate ASM producers.

CRAFT is not a certification scheme like Fairmined or Fairtrade, but rather a code of progressive compliance for ASM producers. It is expected to serve as a tool for empowering these ASM producers in understanding and complying with market expectations and due diligence needs. It is up to ASM producers themselves (or a related party) to make a CRAFT claim that can be verified by other parties such as the first buyer. Downstream companies that want to buy from these ASM producers can use the CRAFT Code for third-party verification if they want to, for example through an RJC-certified provenance claim (see COP 14 [Provenance claims](#)).

Source:

- ARM, CRAFT Code (2018) [www.craftmines.org](http://www.craftmines.org)

## International initiatives

Beyond these efforts to provide global standards for ASM, a growing number of international initiatives focus on promoting responsible ASM through multi-stakeholder dialogue, knowledge exchange, research and market-driven mechanisms. Please see the links for more information.

The **Artisanal Gold Council (AGC)** ([www.artisanalgold.org](http://www.artisanalgold.org)) facilitates the supply of Responsible Artisanal Gold™ to markets.

The World Bank and the OECD are developing an **ASM Centre of Excellence** that aims to develop a global community of practice on ASM and establish a donor-supported ASM information hub.

The **Coloured Gemstones Working Group (CGWG)** (<https://coloured-gems.org>) is an alliance between eight luxury jewellery brands and mining companies that has developed, and is implementing, a set of practical responsible sourcing and due diligence tools. The tools apply to all tiers of the coloured gemstone supply chain and are customised to the type, size and capacity of the business.

The **DELVE database** ([www.delvedatabase.org](http://www.delvedatabase.org)) is an initiative led by the World Bank and the NGO Pact to create an online platform for the growing body of work and implementation experience in supporting and developing responsible ASM.

A five-year programme by the International Institute for Environment and Development (IIED), **Dialogues for a sustainable and productive artisanal and small-scale mining (ASM) sector** ([www.iied.org/dialogues-for-sustainable-productive-artisanal-small-scale-mining-asm-sector](http://www.iied.org/dialogues-for-sustainable-productive-artisanal-small-scale-mining-asm-sector)), provides a forum for multi-stakeholder collaboration and knowledge sharing through locally owned dialogues to promote better governance, greater voice for ASM, and secure and productive employment across the mining sector.

The **IGF** ([www.igfmining.org](http://www.igfmining.org)) brings together 60 governments to consider how to leverage mining, including ASM, for sustainable development. In 2017, it published guidance to help governments develop, implement and monitor an effective ASM management strategy.<sup>9</sup>

The **Impact Facility for Sustainable Mining Communities** (<http://impactfacility.com>) is a grant and impact investment vehicle established to enable downstream businesses, social-development foundations and impact investors to support the economic empowerment of ASM mining communities.

The **Just Gold** project (<https://impacttransform.org/en/work/project/just-gold/>), run by the NGO IMPACT, was piloted in the north-eastern Democratic Republic of Congo, developing a successful chain of custody from mine site to exporter in May 2017.

The **Mercury Free Mining Challenge** ([www.mercuryfreemining.org](http://www.mercuryfreemining.org)) has been established to replace the use of mercury in ASM mining and is offering a million-dollar prize to the team or individual that discovers an environmentally friendly, affordable replacement.

The **Responsible Artisanal Gold Solutions Forum** (RAGS Forum, <http://solutions-network.org/site-ragsforum>) is a multi-stakeholder coalition working on the critical barriers to trade for responsible ASM gold from conflict-affected and high-risk areas. Through the forum, pilot studies have been established to assess, design and implement gold supply chains from the Democratic Republic of Congo all the way through to retailers. The forum is hosted and supported by Solutions for Hope; RESOLVE is the formal facilitator.

The **Solidaridad Gold Programme** ([www.solidaridadnetwork.org](http://www.solidaridadnetwork.org)) partners with private sector companies from mine to market to test innovative approaches for supporting ASM miners to adopt better core mining practices, to meet and exceed environmental and social standards, and to do business with international buyers and credit providers.

8 ARM, CRAFT Code (2018) [www.responsiblemines.org/en/our-work/standards-and-certification/craft/](http://www.responsiblemines.org/en/our-work/standards-and-certification/craft/)

9 IGF, IGF Guidance for Governments: Managing Artisanal and Small-Scale Mining (2017) [www.iisd.org/sites/default/files/publications/igf-guidance-for-governments-asm\\_0.pdf](http://www.iisd.org/sites/default/files/publications/igf-guidance-for-governments-asm_0.pdf)

The **Swiss Better Gold Association** (SBGA, [www.swissbettergold.ch](http://www.swissbettergold.ch)) is a not-for-profit association made up of Swiss gold supply chain players with the purpose of creating an integrated market-driven mechanism facilitating flow of gold from responsible ASM operations. The SBGA works with the Swiss State Secretariat for Economic Affairs (SECO) through a public-private partnership called Better Gold Initiative (BGI), which supports ASM communities to continuously improve their social and environmental practices.

## National law

Some countries with ASM are working to develop regulatory frameworks that are appropriate to the sector, though many do not yet have ASM-tailored mineral codes or systems. The situation needs to be considered in each country.

## D IMPLEMENTATION GUIDANCE

### COP 8.1A: ASM risk assessment

**Members that source gold, silver, PGM, diamonds and/or coloured gemstones directly from artisanal and small-scale mining (ASM) producers that are not under their control shall:**

- a. Regularly assess risks outlined in COP 7 (**Due diligence for responsible sourcing from conflict-affected and high-risk areas**) and also risks of unsafe working conditions, uncontrolled mercury use and significant environmental impacts (including impacts to biodiversity), and seek opportunities for ASM community development in line with COP 10 (**Community development**).

### Points to consider:

- Any company buying directly from ASM suppliers must carry out a risk assessment and due diligence in line with COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**. This must also include an assessment of significant environmental risks, including those from uncontrolled mercury use and threats to biodiversity (see COP 24 **Environmental management** and COP 38 **Biodiversity**).
- Use due diligence appropriate to the circumstances to identify potential risks. You can choose to:
  - do the due diligence yourself, using in-house expertise;
  - do it externally, by hiring a suitably qualified professional with local experience; or
  - partner with an on-the-ground NGO to better understand the risks and opportunities for improvement.
- In all cases, seek to understand the ASM miners' risk profiles and vulnerabilities, and their priorities for improvements. For example, use an ASM-specific impact assessment and risk management plan (see COP 34 **Impact assessment**).
- Include regular site visits to the ASM mine(s) as part of your risk assessment. Look out for telltale signs of potential risks including, for example, the exclusive use of cash transactions and close proximity to World Heritage Sites, protected areas or key biodiversity areas.

### COP 8.1B: Towards better ASM

- b. Use best endeavours to positively influence practices by working to:
  - i. Reduce or avoid risks and provide for, or co-operate in, remedying adverse human rights and environmental impacts. Measurable risk mitigation should aim to promote significant improvement within a defined period from the adoption of the risk management plan.
  - ii. Support development opportunities for ASM communities.
  - iii. Actively participating in initiatives, including multi-stakeholder ones, that enable the professionalisation, formalisation and/or certification of ASM, as appropriate to the situation.
  - iv. Seek to understand fair commercial terms and offer these to all ASM suppliers.

### Points to consider:

- If you are a mining company buying from ASM suppliers within your area of operation, follow COP 35 **Artisanal and small-scale mining and large-scale mining** guidance on how to engage and positively influence ASM practices.
- In all cases, if you identify a risk of harmful practices, you need to monitor and remediate these:
  - In line with COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**, that includes disengaging from the ASM supplier if you find evidence of any serious abuses, such as forced labour, worst forms of child labour, gross human rights violations, war crimes and direct or indirect support to non-state armed groups.

- To uphold the Minamata Convention on Mercury, it also means making strong efforts to help phase out the worst practices in mercury use. These include 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 but not removed (see COP 41 [Mercury](#) for more information).
- Options for remediation may include (by you or by partnering with experts):
- training, technical assistance and advice, for example on how to improve workers' health and safety or how to reduce the environmental impacts of using mercury; and
- local capacity building to leverage the positive socio-economic impact of ASM activity on communities by, for example, supporting community health and educational projects to improve awareness and understanding of forced and child labour issues.
  - Whatever action you take to remediate risks, continue to monitor site conditions and practices regularly, including through site visits.
  - Note that sourcing from ASM producers that adhere to recognised standards (such as Fairmined or Fairtrade) or working with other initiatives (for example, using the CRAFT Code) will make it significantly easier and cheaper to assess and, where applicable, remediate identified risks.

## Beyond remediation

- ASM offers an important potential route out of poverty for disadvantaged families and communities; and beyond remediation, you should also assess opportunities to support the development of ASM communities, aligning with any national or international development agendas where possible.
- Use your best endeavours to maximise benefits as part of your community development programme, and in any impact assessment or risk mitigation planning (see COP 10 [Community development](#) and COP 34 [Impact assessment](#)).
- As part of your risk assessment, you should have already confirmed whether your direct ASM suppliers are operating legally. If they are not, use your best endeavours to help them access legal mining rights through formalisation, for example by:
  - helping ASM producers to register independently, assuming they meet the requirements of local law and that law is appropriate to the ASM sector; and
  - engaging an independent third party, for instance a non-profit organisation, expert or lawyer, to help the ASM producers understand the formalisation process. This can build credibility, increase buy-in and reduce misunderstandings in the future.
- See box 'Inclusive initiatives' under COP 35 [Artisanal and small-scale mining and large-scale mining](#) for more examples of how to help formalise ASM producers.
- In all cases, make sure you provide fair commercial terms for ASM (see box 'Fair commercial terms').
- Where appropriate, support capacity building that empowers ASM miners to seek and receive fair commercial terms in all their transactions with all their counterparties. If you engage with multiple ASM sources in different countries, you can promote knowledge exchange across ASM communities to help share and spread best practices.

## Fair commercial terms

The importance of fair commercial terms for ASM suppliers cannot be underestimated. You must seek to understand what these are, using practical and available market tools (for example, the international price of gold). For diamonds and coloured gemstones this can be challenging given the variable characteristics (and therefore price) of every stone, and the existence of multiple grading and appraisal systems.

Providing fair commercial terms for ASM suppliers includes due consideration of options to support cash flow and reduce market uncertainty, for example:

- guarantee a certain volume of purchase (or offtake);
- provide upfront financing (prepayment); or
- guarantee an agreed frequency of payments.

## Check:

- Can you show the auditor how you have assessed the risks associated with your direct ASM suppliers of gold, silver, PGM, diamonds and/or coloured gemstones?
- Can you show the auditor the approaches you have taken to reduce or avoid these risks and to support development opportunities?
- Can you show the auditor how you have developed, implemented and assessed the effectiveness of your remediation plans (where applicable)?

## E FURTHER INFORMATION

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### Websites

Alliance for Responsible Mining (ARM)  
[www.responsiblemines.org](http://www.responsiblemines.org)

ARM, CRAFT Code  
[www.craftmines.org](http://www.craftmines.org)

Artisanal Gold Council (AGC)  
[www.artisanalgold.org/home](http://www.artisanalgold.org/home)

The Artisanal and Small-Scale Mining Knowledge Sharing Archive (this includes the online resources previously available through the Communities and Small-Scale Mining (CASM) initiative)  
[www.artisanalmining.org](http://www.artisanalmining.org)

Coloured Gemstones Working Group (CGWG)  
<https://coloured-gems.org>

DELVE database  
[www.delvedatabase.org](http://www.delvedatabase.org)

Diamond Development Initiative (DDI)  
[www.ddiglobal.org/artisanal-mining/issues](http://www.ddiglobal.org/artisanal-mining/issues)

IIED, Dialogues for a Sustainable and Productive Artisanal and Small-Scale Mining (ASM) Sector  
[www.iied.org/dialogues-for-sustainable-productive-artisanal-small-scale-mining-asm-sector](http://www.iied.org/dialogues-for-sustainable-productive-artisanal-small-scale-mining-asm-sector)

The Impact Facility  
<http://impactfacility.com>

Mercury Free Mining Challenge  
[www.mercuryfreemining.org](http://www.mercuryfreemining.org)

Responsible Artisanal Gold Solutions Forum (RAGS Forum)  
<http://solutions-network.org/site-ragsforum>

Solidaridad Gold Programme  
[www.solidaridadnetwork.org/supply-chains/gold](http://www.solidaridadnetwork.org/supply-chains/gold)

Swiss Better Gold Association (SBGA)  
[www.swissbettergold.ch](http://www.swissbettergold.ch)

### Publications

IGF, Global Trends in Artisanal And Small-Scale Mining (ASM): A Review of Key Numbers and Issues (2017)  
[www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf](http://www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf)

IIED, ASM–LSM–Government Relations (2015)  
<http://pubs.iied.org/pdfs/G03938.pdf>

Levin Sources and GITOC, Follow the Money: A Handbook for Identifying Financial Flows Linked to Artisanal and Small-Scale Mining (2017)  
[www.levinsources.com/publications/giff-mapping-iffs-in-asgm](http://www.levinsources.com/publications/giff-mapping-iffs-in-asgm)

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[www.oecd.org/daf/inv/investment-policy/FAQ\\_Sourcing-Gold-from-ASM-Miners.pdf](http://www.oecd.org/daf/inv/investment-policy/FAQ_Sourcing-Gold-from-ASM-Miners.pdf)

Solidaridad and ARM, Addressing Forced Labor: A Practitioner’s Toolkit (2014)  
<https://www.solidaridadnetwork.org/publications/addressing-forced-labor-a-practitioners-toolkit>

World Bank, Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit (2012)  
[https://commdev.org/userfiles/Gender\\_and\\_ASM\\_Toolkit.pdf](https://commdev.org/userfiles/Gender_and_ASM_Toolkit.pdf)

# (COP 9) SOURCING POST-CONSUMER INDUSTRIAL PRECIOUS METALS DIRECTLY FROM INFORMAL RECYCLERS

## A DEFINITIONS AND APPLICABILITY

**This provision applies to RJC members that source gold, silver or PGM directly from informal recyclers outside their control.**

As part of your audit process, you must explicitly state whether this provision does, or does not, apply to you. Note that indirect sourcing from informal recyclers is captured more broadly under COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**.

A company's **ability to influence** informal recyclers will vary, depending on its economic and social context and the extent and nature of its commercial relations with recyclers. RJC auditors will take your ability to influence into account when assessing your best endeavours.

Using **best endeavours** means acting honestly, reasonably and with a positive effort to perform the relevant obligation. Under this provision, it means a company's efforts to reduce or avoid risks of harmful practices among informal recyclers (including human rights abuses, unsafe work and environmental harm).

**Informal recycling** refers to the collection, aggregation and manual processing of end-of-life scrap to extract recyclable materials. Unlike the formal recycling sector, informal recycling is largely unmechanised and instead relies on manual, labour-intensive techniques.

**Waste electrical and electronic equipment (WEEE)**, also known as **e-waste**, is end-of-life electronic and electrical equipment. It includes household appliances, IT and telecommunications equipment, and a range of other electronic and electrical consumer goods.

## B ISSUE BACKGROUND

Across the world in low- and middle-income countries, the urban poor are increasingly turning to informal recycling to earn a living. This includes a broad spectrum of activities, from collecting, aggregating and dismantling scrap to recovering specific valuable materials such as gold, silver, platinum and palladium. The practice is closely linked to the huge growth in waste electrical and electronic equipment (WEEE), also known as e-waste. Every year, large volumes of e-waste are exported to low- and middle-income countries such as China, Ghana and India, where weaker waste management practices have led to a thriving informal recycling economy. Exporting e-waste in this way is illegal under the UN Basel Convention; but it happens anyway, largely because scrap recycling and disposal is so much more expensive in high-income countries.

Much like artisanal and small-scale mining (ASM), informal recycling offers an essential livelihood option for many people that would otherwise struggle to make ends meet. But, like ASM, it has also been linked to a range of social, environmental and public health threats.

E-waste can contain many hazardous substances (such as lead, mercury, biphenyls, diphenyl ethers, brominated flame retardants and other coolants). Informal recyclers often operate outside of environmental and labour regulations; and they rarely have access to the tools or safety equipment they need to safely recycle e-waste. That means they are much more likely to expose themselves, others and the environment to hazardous chemicals and other potential toxins compared with their counterparts in the formal sector. For example, recovering gold from printed circuit boards (PCBs) often involves bathing the PCBs in open acid baths to release the gold; the spent acid is then disposed of, often onto open land where it is eventually absorbed by ground and surface water.

Most work in the informal recycling sector is labour intensive, marked by long working hours and low earnings. Individuals at the bottom of the value chain are particularly vulnerable to exploitative labour practices, including forced and child labour.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International regulations

The **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal**<sup>1</sup> was adopted in 1989, in response to a public outcry following the discovery of large deposits of imported toxic wastes in low- and middle-income countries. The convention, which has been ratified by 186 countries, is designed to reduce the movements of hazardous waste between nations, particularly transfers of waste from high-income countries to low- and middle-income countries. Since 2002, the Basel Convention has developed projects, provisions and technical guidelines to specifically address e-waste, for example preventing illegal traffic to low- and middle-income countries, adopting the Nairobi Declaration on environmentally sound management of e-waste and building capacity in these countries to better monitor and manage e-waste through initiatives like E-Waste Africa.<sup>2</sup>

The **European WEEE Directive**<sup>3</sup> makes the manufacturers or distributors of electrical and electronic equipment responsible for its disposal. This piece of EU legislation, which first came into force in 2003, aims to prevent or reduce the negative environmental effects that come from generating and managing e-waste, and to promote safe reuse and recycling.

### International initiatives

The **Basel Action Network** ([BAN www.ban.org](http://www.ban.org)) is a US-based non-governmental organisation (NGO) whose mission is to champion global environmental health and justice. With a focus on e-waste, BAN uses a mix of advocacy, stewardship and public engagement to create systemic change in policy and practice. In accordance with the Basel Convention, the network aims to ensure that e-waste is recycled responsibly, rather than exported to low- and middle-income countries.

**Silicon Valley Toxics Coalition** (<http://svtc.org/>) uses a combination of research, advocacy and grassroots organising to promote human health and environmental justice in response to the rapid growth of the high-tech industry. The organisation undertakes various activities to tackle e-waste, including a joint project with Chintan Environmental Research and Action Group to help improve the working conditions of informal sector electronics dismantlers in India.

**Toxics Link** ([www.toxicslink.org](http://www.toxicslink.org)) is an environmental NGO based in India dedicated to improving understanding at all levels about the sources and dangers of environmental contamination. The organisation works with other national and international groups to help bring practical experience on the ground to the fore, and lead to a more meaningful articulation of issues. It actively campaigns for the safe management of e-waste in India through research and awareness-building exercises. It played a key part in pushing the national government to create a separate rule on e-waste, which came into force in May 2012.

Through its Children's Environmental Health Unit, the World Health Organization (WHO) is working with partners to identify the main sources and potential health risks of e-waste exposures and define successful interventions.<sup>4</sup> WHO has also recently launched the **E-Waste and Child Health Initiative** aimed at protecting children and their families from detrimental health consequences associated with e-waste.

### National law

Enforcing and monitoring safe e-waste disposal principally relies on national legislation, which varies widely across countries. RJC members are expected to identify, understand and comply with applicable law in all countries where they operate.

1 The Basel Convention [www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx](http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx)

2 The Basel Convention, E-Waste Africa [www.basel.int/Implementation/Ewaste/eWasteactivitiesinAfrica/EwasteinAfrica/Overview/tabid/2546/Default.aspx](http://www.basel.int/Implementation/Ewaste/eWasteactivitiesinAfrica/EwasteinAfrica/Overview/tabid/2546/Default.aspx)

3 European Commission, Waste Electrical and Electronic Equipment (WEEE) [http://ec.europa.eu/environment/waste/weee/index\\_en.htm](http://ec.europa.eu/environment/waste/weee/index_en.htm)

4 WHO, Children's Environmental Health: E-Waste [www.who.int/ceh/risks/ewaste/en/](http://www.who.int/ceh/risks/ewaste/en/)

## D IMPLEMENTATION GUIDANCE

### COP 9.1: Sourcing from informal recyclers

**Members that source gold, silver and/or PGM directly from informal recyclers that are not under their control shall:**

- a. Regularly assess risks outlined in COP 7 (**Due diligence for responsible sourcing from conflict-affected and high-risk areas**) and risks of unsafe working conditions, exposure to toxic chemicals and metals, and other significant environmental impacts; and seek opportunities for the development of informal recycling communities in line with COP 10 (**Community development**).
- b. Use best endeavours to positively influence practices by working to:
  - i. Reduce or avoid risks and provide for or co-operate in remedying adverse human rights and environmental impacts. Measurable risk mitigation should aim to promote significant improvement within a defined period from the adoption of the risk management plan.
  - ii. Support development opportunities for informal recycling communities.

#### Points to consider:

- This provision focuses on industrial precious metals recycled from e-waste, since this type of post-consumer scrap is most closely associated with the social, environmental and public health risks described above.
- As a first step, confirm that the informal recyclers you source from are operating legally. If they are not, use your best endeavours to help legalise them. The difference between a formal and an informal recycling operation is often simply that the former has the right licences and permits while the latter does not. In some cases, informal recycling operators may already be working in an environmentally and socially responsible way but obtaining the necessary permits may pose significant challenges (because of, for example, financial and literacy barriers). Work with your direct suppliers, and where necessary provide support, to help them meet the necessary legal requirements.
- Use due diligence appropriate to your circumstances to identify potential risks of harmful practices among your informal recycling suppliers.
  - Note that you can choose to do the due diligence yourself, using in-house expertise; or do it externally, by hiring a suitably qualified professional with local experience. Either way, make sure you include a site visit to the recycling facility/area.
- If you identify a risk of harmful practices, you need to monitor and mitigate these, in line with COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**. That includes disengaging from the informal recycling supplier in cases where you find the most severe harmful practices, such as forced labour or worst forms of child labour.
- Your options for mitigation include:
  - providing training, technical assistance and advice, for example on how to improve working conditions or how to use more environmentally friendly recycling processes and techniques;
  - building local capacity by, for example, supporting community health and educational projects to improve awareness and understanding of forced and child labour issues; and
  - offering financial incentives, where appropriate, to encourage and facilitate improvements to site conditions and practices.
- Whatever action you take to mitigate risks and impacts, continue to monitor site/facility conditions and practices regularly.
- If it is not possible to effectively mitigate negative impacts from informal recycling operations, think about how you could help integrate your informal suppliers into the formal recycling sector. This might include categorising processes by risk and ensuring that high-risk end processes (for example, those that use toxic chemicals and incineration) are only done by formal suppliers while lower-risk activities (for example, collecting, aggregating and basic dismantling) are done by informal recyclers. Such approaches to formal–informal integration should be carried out in ways that do not undermine or disadvantage workers in the informal recycling sector.
- The informal recycling sector plays an important potential route out of poverty for disadvantaged families and communities. You should also assess opportunities to support the development of those involved in the sector, aligning with any national or international development agendas where possible.
- Look for, and get involved with, local or national initiatives working to tackle issues within the informal recycling sector in your supply chain.

## Integrating informal–formal e-waste recycling in India: some examples

**Indo-German-Swiss e-waste initiative (Bangalore).** Launched in 2004, the aims of this project were to establish a separate e-waste channel for the city, from collection through to processing and disposal. It set up an e-waste disposal code of conduct for Bangalore's IT companies designed to exclude informal practices, and created a process to register, train and relocate informal workers to industrial zones.

**Toxics Link (Kolkata).** This Indian research NGO developed a range of largely theoretical models that promote formal–informal linkages based on good practice elsewhere. It advocates for and pilots training and capacity building to protect livelihoods, aiming to include existing operational networks of informal collectors in the 'clean channels'.

**HRA E-waste Pvt Ltd (Delhi).** This company collects, segregates and stores e-waste from some 250 informal collectors and dismantlers, who source directly from households and businesses. It auctions the e-waste to formal recyclers, giving profits back to the informal collectors, less a percentage for overhead costs.

### Source:

- International Institute for Environment and Development (IIED), Innovations for Inclusivity in India's Informal E-waste Markets (2014) <http://pubs.iied.org/pdfs/17266IIED.pdf>

## Check:

- Can you show the auditor how you have assessed the risks associated with your direct informal suppliers of recycled gold, silver and/or PGM?
- Can you show the auditor the approaches you have taken to reduce or avoid these risks and to support development opportunities?
- Can you show the auditor how you have developed, implemented and assessed the effectiveness of your remediation plans (where applicable)?

## E FURTHER INFORMATION

### Websites:

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Environmentally Sound Disposal and Recycling of E-waste in Ghana (E-Waste project)

[www.giz.de/en/worldwide/63039.html](http://www.giz.de/en/worldwide/63039.html)

WHO, Children's Environmental Health: Electronic Waste

[www.who.int/ceh/risks/ewaste/en/](http://www.who.int/ceh/risks/ewaste/en/)

### Publications:

IIED, Clean and Inclusive? Recycling E-Waste in China and India (2016)

<http://pubs.iied.org/pdfs/16611IIED.pdf>

IIED, Innovations for Inclusivity in India's Informal E-Waste Markets (2014)

<http://pubs.iied.org/pdfs/17266IIED.pdf>

United Nations University, Global E-Waste Monitor 2017 (2017)

[https://collections.unu.edu/eserv/UNU:6341/Global-E-waste\\_Monitor\\_2017\\_electronic\\_single\\_pages.pdf](https://collections.unu.edu/eserv/UNU:6341/Global-E-waste_Monitor_2017_electronic_single_pages.pdf)

# (COP 10) COMMUNITY DEVELOPMENT

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members.

A **community** is a group of people that share the same geographical space or have a common interest that brings them together. Community members generally share some beliefs and values. For the purposes of this guidance, a community is any group of people that may experience positive or negative effects from an RJC member's operations.

**Community development** is a way of working, underpinned by a commitment to equity, social justice, participation and empowerment, that enables people to identify common concerns and that supports them in taking action related to them.

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

**Stakeholder and community engagement** is a two-way process of information sharing and decision-making that aims to simultaneously address community issues and priorities (including the needs of disadvantaged and vulnerable groups), as well as the concerns and needs of the business. It is carried out in a manner that is inclusive and culturally sensitive: beyond listening, the aim of engagement is to ensure mutual understanding and responsiveness by all parties to enable them to discuss and manage matters with the potential to affect all concerned. Successful engagement requires a robust framework for regular discussion, consultation and interaction.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Sources:

- Harvard University Graduate School of Design, Zofnass Program for Sustainable Infrastructure: Glossary (2016) <https://research.gsd.harvard.edu/zofnass/glossary/>
- International Council on Mining and Metals (ICMM), Community Development Toolkit (2012) [www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf](http://www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf)

## B ISSUE BACKGROUND

Community development is a process designed to create conditions of economic and social progress for the whole community, with its active participation and fullest possible reliance upon its own initiative. Done well, a company's initiatives to support community development can also be good for business by improving workforce recruitment and retention, enhancing brand reputation and boosting employee loyalty.

The way companies contribute to community development varies markedly across different settings (for example, across low- or high-income settings, rural or urban ones) and also depends on the type, size and corporate culture of a company. All companies have a duty to support community development as part of their corporate social responsibility, but mining companies in particular can make a significant contribution to local, regional and even national development (see box 'Mining for community development'). Every company's approach should be determined by local conditions, available resources, partners (particularly government and civil society organisations) and, most importantly, the community's self-determined needs and priorities.

Successful approaches to community development are based on community consultation, regional co-operation and partnership, and they are framed by local community priorities, national development goals and existing programmes of work. They might include, for example, working with government agencies, non-governmental organisations (NGOs) or local groups to strengthen existing long-term programmes for education, health, gender equality, environment, health and safety, economic development and cultural activities. Companies should always keep an eye on the long term and work to ensure the sustainability of any community development they support. They should also avoid filling roles that are the responsibility of governments or other local institutions, but instead focus on leveraging opportunities related to their own core business.

In practice, this may include:

- creating local employment opportunities through training, employment and staff retention;
- supporting local procurement by investing in local financial institutions and enterprise development programmes);
- promoting educational opportunities by liaising with local and regional educational centres; and
- training local community members in environmental monitoring and natural resource management.

In all cases, meaningful community development takes an inclusive approach, considering the priorities of all parts of a community and paying particular attention to the needs and participation of disadvantaged and vulnerable groups—for example, creating opportunities for women to participate more meaningfully in decision-making, or investing in children’s safety, education and health.

### Mining for community development

The existence of a mine and its associated community development programmes can play a significant, perhaps dominant, part in local, regional or even national development.

Mining companies have been known to support community development in diverse ways, including through procurement, capacity building, skills development and infrastructure development. There are also examples of mining projects setting up community development funds governed through multi-stakeholder processes to support development projects over the full mining lifecycle.

To realise the full potential of mining for community development, companies need a rigorous approach to stakeholder engagement and community development planning and design that includes, among other things:

- baseline data collection, monitoring and regular evaluation of socio-economic impacts, and working with development partners and local community members as appropriate;
- skills and capacity building for community participation and ability to take up programme opportunities during the life of an operation; and
- multi-stakeholder planning and capacity development for post-mining livelihoods

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **2030 Sustainable Development Goals** (SDGs, <https://sustainabledevelopment.un.org/sdgs>) are a key driver of ongoing national development planning. They also provide an important framework for community development planning. It may be governments that have committed to the SDGs, but the private sector has a critical role in driving the transformational changes needed to achieve them, so it is important that companies consider how best to align their community development priorities with the SDGs and monitor progress (see COP 2 **Policy and implementation** for more information on embedding the SDGs into organisational goals and policies).

### National law

Voluntary community development is increasingly included in agreements between mining companies and communities and/or governments. In some cases, governments are incorporating community development requirements into law. South Africa, for example, requires companies to submit a social and labour plan as part of their application for mining rights. RJC members are expected to be aware of applicable law related to community development, both for new and expanding projects.

## D IMPLEMENTATION GUIDANCE

### COP 10.1: Community development

Members shall seek to support the social, economic and institutional development of the communities in which they operate and support community initiatives.

#### Points to consider:

- Look to community development as an opportunity to work in partnership with others. A strategic approach can serve to align company objectives with existing and future local or regional development plans and the SDGs.
- Your first step should be to do a stakeholder mapping exercise to identify those parts of the community that are interested in and affected by company activities. Be sure to include disadvantaged and vulnerable groups and those that may be under-represented in the main community groups.

- Outline and document the aims of your community initiatives, the key principles to be followed and the expectations of staff and other stakeholders.
- Mining companies need to make sure to support the social, economic and institutional development of communities over the full mining lifecycle.
- Involve communities as much as possible. All community members, including disadvantaged and vulnerable groups, should be enabled to participate in decisions about what projects will do and how they will work.
- Be responsive to community priorities, needs and interests in identifying self-sustaining programmes. Make sure you have sufficient resources and the right kind of expertise to develop and support initiatives that can endure over the long term. This includes drawing on appropriate community development expertise to understand and address local, regional and national contexts.
- Note that community development initiatives are not the same as livelihood replacement schemes, which are implemented to address physical or economic displacement or other direct project impact mitigation measures. The two should, however, be aligned so that they can be mutually reinforcing.
- Working in formal or informal partnerships can reduce duplication, costs and dependency on your mining operation. Private, government, non-government and community organisations all bring different skills and resources to collaborative efforts.
- Monitor your community development initiatives and periodically evaluate them against selected indicators, including the SDGs. Regular monitoring and evaluation will allow you to adjust your programmes to ensure continuous improvement and sustainability.
- 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 programmes.

### Check:

- Have you identified priority stakeholders in the affected community?
- Are community members involved in the design and delivery of your community initiatives?
- What initiatives have you done to support the development of affected communities?
- How will they have a beneficial impact and how will this be evaluated?
- Is your company compliant with community development mandated by national law?

## E FURTHER INFORMATION

### Websites:

International Finance Corporation (IFC), CommDevProgram  
[www.commdev.org](http://www.commdev.org)

Sustainable Development Goals  
<https://sustainabledevelopment.un.org/sdgs>

World Bank, Community Driven Development  
[www.worldbank.org/en/topic/communitydrivendevelopment](http://www.worldbank.org/en/topic/communitydrivendevelopment)

### Publications:

Australian Government, Community Engagement and Development (2006)  
[www.csr.uq.edu.au/Research/CommunityEngagementandDevelopment.aspx](http://www.csr.uq.edu.au/Research/CommunityEngagementandDevelopment.aspx)

ICMM, Community Development Toolkit (2012)  
[www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf](http://www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf)

ICMM, Mining Partnerships for Development Toolkit (2011)  
[www.icmm.com/mpd](http://www.icmm.com/mpd)

UNICEF, Child Rights and Mining Toolkit (2017)  
[https://www.unicef.org/csr/files/FINAL\\_Child\\_Rights\\_and\\_Mining\\_Toolkit\\_060217.pdf](https://www.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217.pdf)

World Bank, Mining Community Development Agreements Source Book (2012)  
[http://siteresources.worldbank.org/INTOGMC/Resources/mining\\_community.pdf](http://siteresources.worldbank.org/INTOGMC/Resources/mining_community.pdf)

# (COP 11) BRIBERY AND FACILITATION PAYMENTS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Bribery** means giving or offering (as well as demanding or receiving) any undue advantage 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, or their agents or representatives.

**Corruption** is any unlawful or improper behaviour that seeks to gain a private advantage through illegitimate means. Any kind of bribery is a form of corruption; but corruption also includes abuse of power, extortion, fraud, deception, collusion, cartels, embezzlement and money laundering.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Facilitation payments** are sums of money paid to get preferential treatment for something the receiver is otherwise still required to do—for example, paying an official to speed up, or 'facilitate', an authorisation process.

Source:

- UK Bribery Act (2010) [www.thebriberyact2010.co.uk/what-is-a-bribe.asp](http://www.thebriberyact2010.co.uk/what-is-a-bribe.asp)

## B ISSUE BACKGROUND

A few decades ago, bribes were a tax-deductible business expense in many countries. Today, bribery is a criminal offence in nearly all nations, regardless of whether the bribery took place at home or overseas. The change comes from a growing recognition of the detrimental effects of bribery and corruption. In the early 1990s, the first international initiatives started raising awareness of the prevalence of corruption and of the many ways in which it hinders economic development, corrodes the fabric of society and distorts national and international trade. Since then, the discourse on bribery and corruption has expanded to acknowledge their role in undermining environmental and labour standards, access to human rights and the rule of law.

Bribes come in all shapes and sizes, including money, gifts in kind, hospitality, expenses, advantage or even just a verbal commitment to influence the outcome of an action or vote. They can be given or received, promised or expected. Bribes that are given are known as 'active bribery' and bribes received are 'passive bribery': in most situations both can lead to a criminal charge. Another crime related to (and often confused with) bribery is extortion. The difference is that bribery offers a positive reward ('do this for me and I'll do something for you'), while extortion threatens violence or some other negative outcome ('do this for me or I'll hurt you in some way').

While bribery is widely condemned by people all over the world, facilitation payments have a more mixed response. In countries where wages are low, or where gift giving is intrinsic to relationships, the use of small, unofficial payments to 'speed' up action are widely accepted as part of daily life. In some countries, they are even legal. But the line between facilitation payments and bribes is blurry and it is often difficult to distinguish between the two. That is why in most countries they are treated as the same thing and why they are banned by most anti-corruption initiatives and laws.

Bribery and corruption can be a big problem for business. For a start, they make business more expensive: the UN Global Compact estimates that they add 10 per cent or more to the costs of doing business in some parts of the world.<sup>1</sup> And in some sectors, they have eroded reputations and investor confidence through repeated ethics scandals. A general consensus is emerging that corruption and bribery damage company integrity, degrade the business environment and do not create competitive advantage. Businesses are increasingly taking a strong stand against corruption.

<sup>1</sup> UN Global Compact, Engaging on Anti-Bribery and Corruption [www.unpri.org/download?ac=1826](http://www.unpri.org/download?ac=1826)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The **OECD Anti-Bribery Convention**<sup>2</sup> ([www.oecd.org/corruption/oecdantibriberyconvention.htm](http://www.oecd.org/corruption/oecdantibriberyconvention.htm)), signed in 1997, was the first international mechanism to tackle corruption in cross-border business deals. It has since been ratified by all 36 OECD countries and 8 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.

In 2003, the **UN Convention against Corruption** (UN CAC, [www.unodc.org/unodc/en/corruption/uncac.html](http://www.unodc.org/unodc/en/corruption/uncac.html)) became the first legally binding international anti-corruption instrument. More than 185 countries have signed the convention, which covers many different types of corruption (including bribery) and sets out requirements for anti-corruption measures in five key areas: prevention, law enforcement, international co-operation, asset recovery, and technical assistance and information exchange.

The UN CAC also paved the way for the 10th principle of the UN Global Compact ([www.unglobalcompact.org](http://www.unglobalcompact.org)) on anti-corruption, which commits its members not only to avoid bribery and corruption, but also to proactively develop policies and programmes to address corruption within their operations and supply chains.

**Transparency International** ([www.transparency.org](http://www.transparency.org)) is a non-governmental organisation working against corruption, with a presence in more than 100 countries. In 2003, it published Business Principles for Countering Bribery<sup>3</sup> as a framework for companies to develop and implement comprehensive anti-bribery programmes. Last updated in 2013, the principles set out best practice for countering bribery and cover a range of topics, from what to include in internal anti-bribery policies and practices to how to deal with business partners and the supply chain. The principles describe elements required to implement an anti-bribery programme, and are intended for use by companies of all sizes (see Figure 11.1).



Figure 11.1. Ten elements required to implement an effective anti-bribery programme

Source: Transparency International, Business Principles for Countering Bribery (2013) [www.transparency.org/whatwedo/tools/business\\_principles\\_for\\_countering\\_bribery/1](http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery/1)

2 OECD, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) [www.oecd.org/corruption/oecdantibriberyconvention.htm](http://www.oecd.org/corruption/oecdantibriberyconvention.htm)

3 Transparency International, Business Principles for Countering Bribery (2013) [www.transparency.org/whatwedo/tools/business\\_principles\\_for\\_countering\\_bribery/1](http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery/1)

## National law

In most jurisdictions, any form of bribery is illegal, including facilitation payments. There are, however, some countries where facilitation payments are customary and may even be legal. All RJC members are expected to be fully informed of all relevant legislation and regulations in every jurisdiction where they operate.

### Anti-bribery laws old and new

Some countries have had anti-bribery laws in place for decades. Others have only recently developed legislation against bribery. Different laws define different expectations of companies, and they all vary in scope. A few key examples are summarised below.

#### UK Bribery Act 2010

In 2010, the United Kingdom enacted its UK Bribery Act to enhance existing legislation and better address requirements of the 1997 OECD Anti-Bribery Convention. It is now among the strictest legislation on bribery anywhere in the world. The Act, which entered into force in 2011, has important implications for companies registered, or doing business, in the United Kingdom. It creates four prime offences:

- two general offences for giving or receiving a bribe;
- a separate offence for bribing a foreign public official; and
- a new offence for corporate failure to prevent a bribe. In this case, an organisation will have a complete defence if it can show that it has 'adequate procedures' in place to prevent bribery (where adequate procedures are understood to mean procedures based on six principles set out in the UK Bribery Act 2010 official guidance).

#### US Foreign Corrupt Practices Act (FCPA) of 1977

The FCPA, amended in 1998, is the most widely enforced anti-corruption law. It was the first to introduce corporate liability, responsibility for third parties and extraterritoriality for corruption offences, meaning that companies and individuals can be held criminally and civilly responsible for corruption committed abroad. The FCPA was specifically enacted to make it unlawful for certain types of people and entities to pay foreign government officials for help in getting or retaining business. It makes a narrow exception for facilitation payments that are specifically made to foreign officials to 'expedite or secure ... routine governmental action'.

#### India's Prevention of Corruption Act (PCA)

The PCA was enacted in 1988 to prevent corruption in public offices, with limited success. Two decades later, after years of deliberations, an amendment to the Act hopes to further improve on this. The PCA (Amendment) Act came into force on 26 July 2018 and seeks to bring the Indian anti-corruption legal framework in line with the UN CAC and international best practice. The amended Act includes new provisions for companies doing business in India and makes the bribery of public servants by companies an offence (although, like the UK Bribery Act 2010, it provides for a defence based on having 'adequate procedures' in place).

## D IMPLEMENTATION GUIDANCE

### COP 11.1: Policy and procedures

#### Members shall establish policy/policies and procedures that:

- a. Prohibit bribery in all business practices and transactions carried out by themselves and by agents acting on their behalf.
- b. Protect employees from any penalty or adverse consequences for identifying in good faith concerns related to suspected bribery, refusing to participate in bribery or refusing to 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 for employees to follow when offering and/or accepting gifts to or from third parties.

## Points to consider:

- Put a senior manager in charge of running your anti-corruption programme. This includes being aware of applicable law, including the extraterritorial reach of legislation if relevant. If uncertain, seek advice from qualified legal advisors.
- Make sure your anti-corruption programme is built on formal policies and procedures that are written down and endorsed at the highest level of your business. These policies and procedures should:
  - explicitly meet provisions 11.1a–c above;
  - also cover political donations, charitable (and similar or equivalent) contributions and sponsorships;
  - include clear, practical criteria and instructions for recording, approving and accepting third-party gifts, including hospitality and entertainment (use your judgement to set acceptable thresholds for these gifts, in the context of local customary practice versus risk of corruption);
  - be communicated to all employees, agents, contractors and anybody else who may act on your behalf; and
  - be referenced in appropriate contract documents.
- Use these policies and procedures as a foundation for establishing awareness of corruption issues and risks and embedding an anti-corruption culture in the organisation.
- Make sure there is a named contact person or office to provide advice and receive complaints or concerns about compliance with your anti-corruption policies and procedures.
- Review your anti-corruption policies and procedures at least once a year to make sure they are up to date and still reflect the latest applicable law.

## COP 11.2: Risk management

**Members shall have systems in place to manage bribery risk in their organisation. The systems shall include:**

- a. identification and monitoring of those parts of their business that pose high risks of participation in bribery.
- b. Training of relevant managers and employees on policies and procedures.
- c. Recording of relevant gifts to and from third parties in a gift register, as per the member's policy.
- d. A whistleblowing or other mechanism for employees or stakeholders to raise concerns.
- e. Investigation of any incidences of suspected bribery within their organisation.
- f. Sanctions for bribery and attempted bribery.

## Points to consider:

- Bribery risk varies across different business types and geographical locations, but they often involve people with the power to influence transactions or business relationships with third parties, including government entities (and entities in which public officials have interests).
- Do a risk assessment to identify those parts of your business that are exposed to bribery risk:
  - Consider getting expert help, especially if you have a complex business operating in multiple locations.
  - The RJC hosts a risk assessment toolkit that includes a general risk assessment template you might find useful, particularly if you are a small business. Alternatively, use your own tried and tested risk assessment process.
- Your risk assessment should cover all types of bribery risk relevant to your business and local context; it should also distinguish between different parts of the business according to their level of risk so that anti-corruption programmes, controls, training and monitoring can concentrate on areas of greatest risk.
- Establish a documented anti-corruption programme based on the policies and procedures developed under COP 11.1 and, starting with the areas of greatest risk, work to mitigate all identified bribery risks. Use a range of tactics, appropriate to your business's circumstances, including:
  - training for all employees, agents and contractors;
  - formal approval procedures that avoid concentration of authority with individuals;
  - enhanced oversight of higher-risk transactions;
  - documented selection criteria supported by due diligence for hiring new agents and contractors;
  - appropriate anti-corruption compliance provisions embedded in contract documents; and
  - the recording of any instances of attempted bribery and their investigation.

- Create a third-party gift register, either as a stand-alone system or as part of a broader payment system. Record all gifts given, received and accepted using the criteria set under COP 11.1:
  - Gifts include major charitable contributions, sponsorships, community payments and any significant hospitality expenses that are offered in commercial circumstances with bribery risks.
- To help you spot incidents of bribery when they occur and ensure compliance with your anti-corruption policies and procedures:
  - Establish a whistle-blowing or other suitable mechanism for employees and others to anonymously report bribery and corruption concerns.
  - Monitor the risk of bribery using methods appropriate to your business's circumstances. These may include, for example, financial analyses, interviews and approval 'tests'.
  - Get competent personnel who are free of conflict of interest to periodically review compliance with your anti-corruption policies and procedures.
  - Establish sanctions for non-compliance, communicate these to all employees, agents and contractors, and implement them for all confirmed cases of bribery or attempted bribery.

### COP 11.3: Facilitation payments

#### Where facilitation payments are allowed by applicable law, members shall:

- Act to eliminate all facilitation payments or to reduce the size and frequency of facilitation payments over time.
- Ensure that any facilitation payments are of limited nature and scope.
- Implement controls to monitor, oversee and fully account for any facilitation payments made by them or made on their behalf.

#### Points to consider:

- Make sure you know the applicable law on facilitation payments.
- If these payments are not permitted under applicable law, make sure they are addressed by provisions COP 11.1 and COP 11.2.
- If they are permitted by law, make sure that:
  - your anti-corruption policy and procedures provide clear and practical guidance on acceptable and unacceptable facilitation payments;
  - all facilitation payments are approved by a responsible manager; and
  - all facilitation payments are fully accounted for and recorded, for example in a register.
- Consider informing external parties who receive facilitation payments about your policies limiting their nature and scope.
- Monitor the implications and consequences of facilitation payments, with a view to identifying those 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 systems for managing bribery risk, such as a risk assessment, training, a gift register, a whistle-blowing mechanism, and procedures for investigation and sanctions?
- Do you have appropriate controls over facilitation payments, where permitted by law, and if you make them, with the intent to reduce and eliminate them over time?

## E FURTHER INFORMATION

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### Websites:

The [UK] Bribery Act 2010

[www.thebriberyact2010.co.uk](http://www.thebriberyact2010.co.uk)

Publish What You Pay

[www.publishwhatyoupay.org](http://www.publishwhatyoupay.org)

Transparency International, Adequate Procedures Guidance

[www.transparency.org.uk/our-work/business-integrity/bribery-act/adequate-procedures-guidance](http://www.transparency.org.uk/our-work/business-integrity/bribery-act/adequate-procedures-guidance)

Transparency International, The [UK] Bribery Act

[www.transparency.org.uk/our-work/bribery-act](http://www.transparency.org.uk/our-work/bribery-act)

Transparency International, Global Anti-Bribery Guidance

[www.antibriberyguidance.org](http://www.antibriberyguidance.org)

UN Global Compact, Anti-corruption

[www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/anti-corruption.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/anti-corruption.html)

UN Office on Drugs and Crime (UNODC), UNODC's Action Against Corruption and Economic Crime

[www.unodc.org/unodc/en/corruption/index.html](http://www.unodc.org/unodc/en/corruption/index.html)

US Department of Justice, Foreign Corrupt Practices Act

[www.justice.gov/criminal-fraud/foreign-corrupt-practices-act](http://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act)

World Economic Forum, Partnering Against Corruption Initiative

[www.weforum.org/communities/partnering-against-corruption-initiative](http://www.weforum.org/communities/partnering-against-corruption-initiative)

### Publications

KPMG, The Prevention of Corruption (Amendment) Act, 2018: Key Highlights (2018)

<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2018/09/prevention-corruption-amendment-anti-bribery-fcpa.pdf>

OECD, 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](http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html)

# (COP 12) KNOW YOUR COUNTERPARTY (KYC): MONEY LAUNDERING AND FINANCE OF TERRORISM

## A DEFINITIONS AND APPLICABILITY

This provision applies to all facilities.

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

A **counterparty** is any supplier or customer of gold, silver, PGM, diamonds, coloured gemstones or jewellery products containing these materials with whom you do business.

The **financing of terrorism** is any kind of financial support to those who attempt to 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.

**Illegitimate sources** of material go against applicable law. They include all sources involved in illegal mining<sup>1</sup> and gold or money laundering, as well as all sources used to fund conflict, terrorism or crime.

**Know Your Counterparty (KYC) principles**, established to combat money laundering and finance of terrorism, require businesses to identify every organisation that they deal with, to understand the legitimacy of their business relationships and, within reason, to identify and react to unusual or suspicious transaction patterns.

**Money laundering** is the process of disguising the financial proceeds of crime to conceal their illegal origin.

A **politically exposed person** is someone who is or has been entrusted with a prominent public function. Their status and influence puts many of these people in positions that can be potentially abused to commit money laundering and related predicate offences, including corruption and bribery, as well as activities related to terrorist financing.

Sources:

- Financial Action Task Force (FATF), FATF Guidance on the Risk-Based Approach for Dealers in Precious Metals and Stones (2008) [www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachfordealersinpreciousmetalsandstones.html](http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachfordealersinpreciousmetalsandstones.html)
- World Bank, 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](http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf)

## B ISSUE BACKGROUND

'Money laundering' describes 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—are put through a succession of transfers and deals until the illegal source of the funds is obscured and the money appears to be legitimate or 'clean' (see Figure 12.1).

<sup>1</sup> This does not include legitimate but informal artisanal and small-scale miners. See COP 8 Sourcing directly from artisanal and small-scale mining.

# Money laundering

## Placement

Illegal profits are broken up into relatively small amounts and introduced to the financial system, often deposited as cash, cheques or money orders into many different scattered bank accounts.

## Layering

The illegal funds are moved around to distance them from their original source. They may be channeled through investments, or wired across international bank accounts.

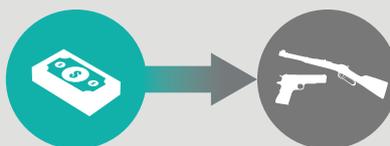
## Integration

The illegal funds re-enter the legitimate economy. They may be mixed with legitimate proceeds in company accounts; or used to buy and sell high-value goods, such as jewellery, cars or antiques.



## Terrorism financing

Can also include legitimate funding sources.



Funds are distributed in the opposite direction: out of the legitimate economy towards criminal organisations, rather than vice versa

Figure 12.1. The three stages of money laundering (and terrorism financing)

The very nature of precious metals, diamonds, coloured stones and jewellery makes them attractive to criminal organisations looking to legitimise assets: they have intrinsic value, are easily smuggled and can be bought and sold anywhere in the world. That makes dealers in these high-value goods, including various parts of the jewellery supply chain, vulnerable to activities such as money laundering and terrorism financing—particularly if controls are too weak to stop anonymous trading.

In addition to legal compliance requirements, KYC policies and procedures are therefore a critical part of a company's due diligence in assessing, mitigating and reporting risks in the supply chain. They are key in ensuring companies avoid illegitimate sources of material and potentially criminal activities.

An effective KYC programme covers both suppliers and customers (and, where required by local law, end consumers). Under the RJC COP Standard, such a programme must enable you to identify every organisation that you deal with, to understand your business relationships and to spot and react to unusual or suspicious transactions.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

In 1989, at its summit in Paris, the G7 established the Financial Action Task Force (FATF) on money laundering to co-ordinate an international response to money laundering. In 2001, the FATF mission was expanded to include reducing or eliminating the financing of terrorism.

The FATF Recommendations<sup>2</sup> (updated in October 2018) sets out the measures that national governments should take to implement programmes for preventing, detecting and suppressing both money laundering and terrorist financing, as well as other types of financial crime.

2 FATF, The FATF Recommendations (2012–2018) [www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html](http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html)

The FATF has also issued guidance on using a risk-based approach to combat money laundering and terrorist financing, designed specifically for dealers in precious metal and stones.

## National and international law

Most countries have strict legislation and regulations to prevent money laundering, which is a criminal activity. You must ensure you are aware of the local anti-money laundering (AML) laws and regulations in every jurisdiction in which you operate. Dealing in high-value goods, such as precious metals, stones or jewels, often triggers regulatory requirements to implement internal transaction monitoring and controls.

## D IMPLEMENTATION GUIDANCE

### COP 12.1: Know your counterparty policy and procedures

**Members shall document and apply a Know Your Counterparty (KYC) policy and procedures for business partners that are suppliers and customers of gold, silver, PGM, diamonds, coloured gemstones or jewellery products containing these materials. The policy and procedures shall:**

- a. Establish the identity of the counterparty by checking government-issued identification. Where triggered by a risk assessment or applicable law, establish the beneficial ownership and principals of the counterparty.
- b. Verify that the counterparty and, if applicable, their beneficial owners are not named on relevant government lists for individuals or organisations implicated in money laundering, fraud or involvement with prohibited organisations and/or those financing conflict.
- c. Maintain an understanding of the nature and legitimacy of their business.
- d. Monitor transactions for unusual or suspicious activity and report suspicions of money laundering or finance of terrorism to the relevant authority as applicable.
- e. Maintain adequate records for either five years minimum or as long as required by national legislation, whichever is longer.

A robust set of documented KYC procedures should support activities in four areas: verifying identities, identifying high-risk counterparties, checking records and monitoring for suspicious transactions (see Figure 12.2).



Figure 12.2. Four areas of documented procedures that underpin a robust KYC programme

## Points to consider:

- KYC procedures should enable you to identify all the suppliers and customers of gold, silver, PGM, diamonds, coloured gemstones or jewellery products containing these materials that you do business with (that is, your counterparties), including their beneficial owners where triggered by a risk assessment or applicable law. That means ensuring that you gather, review and keep records and information to verify the counterparty's identity, including, for example:
  - Name of counterparty (company/organisation/individual).
  - Registered address.
  - Business address.
  - Contact person and information.
  - Date and country of incorporation.
  - Business registration number.
  - Names of parent company and subsidiaries.
  - Description of core business activity (including sources of materials).
  - Beneficial owners (subject to risk level).
  - Shareholders.
  - Board of directors.
  - Management structure.
  - Government, military or political affiliations.
  - Financial information.
  - Copies of relevant policies (that is, KYC policy, supply chain policy).
- Make sure you use government-issued documents (for example, personal identity documents for individuals, and business licences, company registration or tax ID number for companies) to confirm the identity of your counterparties.
- Counterparties do not include end consumers unless this is required by law within the jurisdictions in which you operate.

## How can small businesses get information from very large companies?

Smaller companies may be concerned about asking big clients to provide a copy of their beneficial owner's identity documents. If your counterparty is a company, a copy of its business licence will suffice. You only need to seek the beneficial owner's identification:

1. If your KYC measures uncover a specific need to identify the beneficial owner (for example, because you spot unusual transactions or find that the counterparty operates in a FATF high-risk jurisdiction or is on the sanctions list).
2. If the identity of the beneficial owner is required by law. In this case, check if there are any exemptions for listed companies, and if not, ask your counterparty for identity documents.

Note that the identity information you need about your counterparty may be publicly available through, for example, its registration under a regulatory programme or industry association that verifies its members. This includes members of foreign stock exchanges that belong to the World Federation of Diamond Bourses, companies listed on the officially registered Belgian diamond companies website, and members of the London Bullion Market Association or the American Gem Trade Association.

Relevant information may also be available through sector-specific initiatives that support KYC. For example, the Antwerp World Diamond Centre and the Federal Public Service Economy co-host an online database of registered diamond companies in Belgium that allows businesses to identify their counterparties ([www.registereddiamondcompanies.be](http://www.registereddiamondcompanies.be)).

In India, the Gem and Jewellery Export Promotion Council has a similar database called MyKYCBank that allows companies to store their KYC information and share it with selected trading partners, banks and other financial intermediaries. The database is currently limited to companies based in Belgium and India but may be expanded to include other countries ([www.mykycbank.com](http://www.mykycbank.com)).

### Source:

- FATF, RBA Guidance for Dealers in Precious Metal and Stones (2008)  
[www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf)

- Develop and maintain an understanding of your counterparty, including the nature of their business, their finances and their sources of materials.

- Identify high-risk counterparties using sources such as the FATF list of high-risk and non-cooperative jurisdictions,<sup>3</sup> and establish their beneficial owners and principals.
- Identifying high-risk counterparties can help you understand your vulnerability to involvement in money laundering or terrorism financing. Establish high-risk indicators or ‘red flags’ to screen new customers or suppliers before you first do business with them, and then continue to monitor your transactions. If you identify a counterparty as high risk, follow your due diligence supply chain policy (see COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#)) and consider either applying mitigation measures or ending your relationship. Higher-risk counterparties include those with any of the following characteristics (see the FATF guidance<sup>4</sup> for more information):
  - Limited knowledge of the industry.
  - Requests for unusual financial terms and conditions.
  - Lack of established place of business, or offices in an unusual location or high-risk jurisdiction.
  - Proposals for a transaction that makes no sense.
  - Use of unusual or distant banks.
  - Use of non-bank financial institutions for no apparent legitimate business purpose.
  - Frequent and unexplained changes in bank accounts or accounting personnel.
  - Use of companies without any apparent legitimate fiscal, legal or commercial reason.
  - Unusually complex organisational structure.
  - Offices located in higher-risk jurisdictions.
  - Involvement of third parties in transactions. (Where this is the case, make sure there is a legitimate reason for the third party’s involvement, identify the third party and establish the relationship between them and your counterparty.)
  - Refusal to identify beneficial owners or controlling interests in cases where this would be commercially expected.
  - Attempted anonymity by conducting ordinary business through accountants, lawyers or other intermediaries.
  - Use of cash in a non-standard manner.
  - Involvement of politically exposed persons.
- Make sure that your counterparty (and, if applicable, its beneficial owners) is not named on a relevant government-sponsored watchlist or sanctions list, including lists in both your and your counterparty’s countries of operation, as well as any other lists you deem relevant. Good references include:
  - The Jewelers Vigilance Committee [www.jvclegal.org](http://www.jvclegal.org)
  - The Responsible Minerals Initiative [www.responsiblemineralsinitiative.org](http://www.responsiblemineralsinitiative.org)
  - The US Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List [www.treasury.gov/resource-center/sanctions/Pages/default.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx)
  - Commercial software programs for checking multiple sanction lists at once.
- If you find a counterparty listed on a watchlist or sanctions list, abide by the law; where applicable, discontinue your relationship and submit a suspicious activity report.
- Once you know the identity and level of risk of your counterparties, it is important to gain and maintain an awareness of their business. This means verifying that the organisation actually does what it says it does: use on-site inspections to confirm this for high-risk suppliers.
- Develop monitoring procedures to spot unusual or suspicious transactions. Consider:
  - nurturing contacts with relevant law enforcement agencies;
  - hiring third-party service providers to verify company information and credit reports, and to help screen names against sanctions lists; and
  - documenting your results as part of your overall risk management strategy.
- Establish procedures to properly report suspicious activity to the appropriate authorities.
  - Note that if you identify a risk of money laundering or terrorism financing, it is not your responsibility to determine the type or purpose of the criminal activity at hand. But you are responsible for reporting the risk to the proper authorities.

3 FATF, High-Risk and Other Monitored Jurisdictions [www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate))

4 FATF, Risk-Based Approach [www.fatf-gafi.org/documents/riskbasedapproach](http://www.fatf-gafi.org/documents/riskbasedapproach)

## COP 12.2: KYC responsibility

**Members shall nominate an individual to be responsible for implementing the KYC policy and procedures.**

### Points to consider:

- Make sure that your KYC policy and procedures are overseen by a suitably qualified and experienced individual with:
  - expertise in your industry, and strong awareness of key counterparties; and
  - good knowledge of money laundering techniques, including how they might be used in your industry's transactions and areas of operation.
- Large or high-risk businesses should establish a formal AML and counter-terrorism financing programme that is under the authority of a designated manager and, where appropriate, integrated with other business compliance and security programmes.
- Consider hiring an independent qualified auditor to regularly review and test your KYC programme.

## COP 12.3: KYC review

**Members' KYC policy and procedures shall be up to date and appropriate, and shall include training, documentation procedures and regular reviews.**

### Points to consider:

- Review your KYC policy and procedures regularly—at least once a year.
- If you find gaps in your KYC data, document and monitor any corrective actions taken to make sure that your KYC programme remains robust and effective.
- Depending on the size of your company, make sure you train relevant employees on KYC and related compliance procedures, including risk indicators.

## COP 12.4: KYC cash records

**Members shall maintain records of all single or apparently linked cash or cash-like transactions equal to or above 10,000 euros/US dollars or the threshold defined by applicable law (whichever is lower). Where required by law, members shall report such transactions to the relevant designated authority.**

### Points to consider:

- In most cases, national law will define what makes a transaction or activity 'suspicious', and under what circumstances you need to report it to a competent authority.
- Make sure you are aware of the applicable law, and associated thresholds for reporting, in all jurisdictions that you operate in. If you carry out international transactions, you need to be aware of, and comply with, the applicable law for all relevant jurisdictions.
- If there is no applicable law on money laundering, you must monitor and maintain records of all cash transactions equal to or above 10,000 euros/US dollars where the transaction is carried out in a single operation or in several operations that appear to be linked. (This is in line with many legal frameworks, including the European Union Fourth Anti-Money Laundering Directive.)<sup>5</sup>
- Don't forget that you must use the defined financial threshold under applicable law if it is lower than 10,000 euros/US dollars.
- In all cases, establish procedures to automatically trigger a reporting requirement when the thresholds are exceeded.

<sup>5</sup> European Union, Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Fourth Anti-Money Laundering Directive) (2015) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849>

## Q&A: Know Your Counterparty

### 1. Does our conformance rating rest on how our system and procedures work or achievement of 100 per cent 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 per cent data' at all times as collecting and maintaining relevant data is an ongoing process. 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 your management systems.

There could be a reasonable, practical explanation for why certain identity information is missing or out of date: because your counterparty has moved offices, because your business relationship is inactive or because of a minor clerical error. If, however, basic identity information is frequently missing from your records or if an active counterparty with missing information cannot be contacted or located, you are likely to be in a situation of non-conformance.

You auditor should understand that gathering information about beneficial owners may not be as straightforward as acquiring basic identity information. For example, if your risk assessment suggests you should get information about beneficial ownership but it is not legally required, your counterparty may not co-operate. Similarly, if you have a new counterparty, or one that has just changed ownership, you may well need to chase the information. If, however, you are missing information that is legally required and cannot show that you are actively trying to get it (particularly if it is missing for several counterparties), then you are likely to be in a situation of non-conformance.

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

The FATF Recommendations drive most countries' financial reporting legislation, with more than 190 jurisdictions committed to the recommendations through membership of the FATF or equivalent regional bodies.

While the FATF does not keep a list of reporting thresholds by country, you can find information on these thresholds in the FATF's mutual valuation reports that assess individual countries' compliance with the FATF Recommendations.

See [www.fatf-gafi.org/topics/mutualevaluations](http://www.fatf-gafi.org/topics/mutualevaluations).

## Check:

- Have you got a documented KYC policy and procedures for business partners?
- 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 beneficial ownership and principals?
- 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?

## E FURTHER INFORMATION

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### Websites:

Basel Committee on Banking Supervision  
[www.bis.org/bcbs/index.htm](http://www.bis.org/bcbs/index.htm)

Financial Action Task Force (FATF)  
[www.fatf-gafi.org](http://www.fatf-gafi.org)

FATF, Mutual Evaluations, by country  
[www.fatf-gafi.org/topics/mutualevaluations](http://www.fatf-gafi.org/topics/mutualevaluations)

International Money Laundering Information Network (IMoLIN)  
[www.imolin.org/imolin/index.html](http://www.imolin.org/imolin/index.html)

[US] Jeweler's Vigilance Committee  
[www.jvclegal.org](http://www.jvclegal.org)

Registered [Belgian] Diamond Companies  
[www.registereddiamondcompanies.be](http://www.registereddiamondcompanies.be)

UN Office on Drugs and Crime (UNODC), UNODC on Money-Laundering and Countering the Financing of Terrorism  
[www.unodc.org/unodc/en/money-laundering/index.html](http://www.unodc.org/unodc/en/money-laundering/index.html)

### Publications:

FATF, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: FATF Recommendations (2012, updated 2016)  
[www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

FATF, RBA Guidance for Dealers in Precious Metals and Stones (2008)  
[www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf)

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](http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf)

# (COP 13) SECURITY

## A DEFINITIONS AND APPLICABILITY

**This provision applies to all RJC members that handle jewellery products, use security guards and/or engage public or private security providers; provision 13.3 only applies to RJC members in the mining sector.**

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Sources:

- International Council on Mining and Metals (ICMM) Community Development Toolkit (2012)  
<https://www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf>
- RJC

## B ISSUE BACKGROUND

Individuals, communities, businesses and governments alike all need to feel safe and secure in their day-to-day work. At all levels of the jewellery supply chain, where high-value precious stones and metals are known to be a target for criminals, the risks to personal safety and property require responsible security measures.

This may include the use of security personnel, both public and private (see box 'Private and public security'). In both cases, these personnel's primary role is to protect the company's people, property, product and reputation from security threats, which can emanate from criminal groups, local communities, company employees, illegal artisanal miners and migrant workers. They include things like:

- general theft;
- fraud;
- violent disturbances;
- sabotage of infrastructure;
- illegal mining (that is, armed entry to a mine to steal ore, which is not the same as artisanal and small-scale mining as described in COP 8 **Sourcing directly from artisanal and small-scale mining**);
- organised theft (of ore, company product, fuel or other commodities); and
- kidnapping, intimidation or assassination of staff.

While companies have a legitimate responsibility to staff and shareholders to protect people and property, working with security personnel can, in some circumstances, pose further risks that need to be managed. For example, there are many documented cases where security personnel (both public and private) have been implicated in serious human rights abuses, pursued corrupt policies or practices, resorted to inappropriate use of force or firearms, or otherwise created conflict. Disadvantaged and vulnerable groups may be at greater risk of abuse; all companies need to factor this into their security strategy. Under the COP, RJC members with mining facilities must align this strategy with the principles outlined in the Voluntary Principles on Security and Human Rights (see below).

Ongoing social unrest and conflict at a regional or national level can add complexity to a company's security strategy as company personnel, assets or strategic facilities can all be the target for violent action in these situations.

## Private and public security

Many companies employ private contractors to provide their security. In these cases, companies have a duty to ensure that these contractors work in ways that protect and promote human rights, for example by embedding acceptable policies and procedures into contracts and maintaining clear oversight over all security activities.

In some cases, mining operations rely on public security providers (the police or military) to protect their people and property. In return, companies may be required or expected to contribute to the costs. The potential for corruption, conflict and political violence is no less when using public compared with private security. Indeed, while public security is expected to uphold local, national and international humanitarian law, abuses can and have been known to occur. In repressive societies, public security organisations can have a particularly troubled history.

In all cases, companies that rely on public security must be vigilant to the risks of human rights abuses, and do what they can to ensure public security personnel maintain a respect for human rights.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **Voluntary Principles on Security and Human Rights** (VPs, [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)) serve to guide extractive companies in providing security for their operations in a way that respects human rights. Established through a multi-stakeholder initiative of governments, companies and non-governmental organisations, the principles are aligned with the UN Guiding Principles on Business and Human Rights.<sup>1</sup> They provide a

four-point framework for companies to identify and manage risk when engaging public and private security providers that comprises:

- human rights risk assessment;
- appropriate engagement with security providers and local communities;
- human rights screening and training for security forces; and
- systems for reporting and investigating allegations of human rights abuses.

The **International Code of Conduct Association** (ICoCA, [www.icoca.ch](http://www.icoca.ch)) promotes the responsible provision of private security services and respect for human rights. ICoCA has three interrelated core functions:

- certification of member companies to ensure their systems and policies meet the wide range of standards and principles that make up the code;
- monitoring of company compliance; and
- handling of complaints on alleged violations of the code.

Specifically, the code includes rules for the use of force, prohibition of torture, sexual violence, human trafficking and child labour. It also sets out a series of management and governance principles on, for example, the selection, vetting and proper training of security personnel.

### National law

Most countries have legislation and regulation regarding the appropriate role of security and military forces in society. In many national and state jurisdictions, individuals must be trained and have a licence before they can carry weapons such as firearms, batons or pepper sprays. Police or military certification may be required for certain security duties.

1 UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## D IMPLEMENTATION GUIDANCE

### COP 13.1: Security measures

**Members shall assess security risks and establish measures that protect employees, contractors, visitors and personnel employed by relevant business partners against product theft, damage or substitution of products within the premises and during events, exhibitions and shipments.**

#### Points to consider:

- Make a senior management function responsible for managing security, which should be considered for directly and indirectly employed workers and anyone else that comes to your premises, as well as for all those involved in (or whose security is potentially affected by) your business activities outside the premises (for example, during transport or at events or exhibitions).
- Establish processes that can identify structural and emergent security threats and address them at various levels through effective security management and, where relevant, community engagement. This could include, for example, developing:
  - security policies and procedures that clearly prioritise the protection of people over product;
  - training for employees on relevant security policies and procedures;
  - internal control procedures to rapidly detect theft, should it occur;
  - appropriate arrangements for security during shipment, and for protection of security personnel involved in transportation;
  - relationships with local law enforcement agencies, where appropriate; and
  - regular consultation with host governments and local communities about the impact of security, where appropriate.
- Always protect and strictly control sensitive security-related documents. Note that even though your auditors may not be granted access to the specifics of your security measures, they can still use interviews and observation to determine whether your security measures are appropriate.

### COP 13.2: 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:

- Develop a written policy or agreement on the conduct of security personnel that:
  - emphasises the need to respect human rights;
  - sets the boundaries for security activities;
  - outlines appropriate procedures for managing security issues and conflicts; and
  - states the consequences of any human rights abuses.
- Make arrangements for monitoring performance against the policy, and for carrying out 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. If this is the case, make sure that any armed personnel are properly trained and licensed in accordance with applicable law.
- All these requirements also apply to any security that you outsource to a third party. Before using any third-party security provider, as part of your due diligence, assess their ability to operate within your defined policy. In all cases, incorporate your security policy into contractual agreements with third-party security providers.

### COP 13.3: Voluntary principles on security and human rights

**Members with mining facilities shall ensure that their security approaches are consistent with the Voluntary Principles on Security and Human Rights. In particular, members shall:**

- a. Carry out a risk assessment to evaluate security risks and the potential for human rights abuses.
- b. Contract or otherwise engage with public and private security in a way that helps protect human rights.

#### Points to consider:

- A risk assessment is critical and, in line with the VPs,<sup>2</sup> should consider:
  - the full range of security risks (including political, economic, civil, social and environmental where applicable);
  - the potential for violence;
  - the human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security;
  - the rule of law and local capacity to protect, respect and remedy human rights;
  - the root causes of conflict and level of adherence to human rights (using a conflict analysis); and
  - the risk of human rights abuses related to equipment transfers, where appropriate.
- Where appropriate, your risk assessment should also include security risks relating to interactions with artisanal and small-scale mining, which are often marred by conflict (see COP 35 [Artisanal and small-scale mining and large-scale mining](#)).

#### Security and vulnerable groups

Any security risk assessment must consider the particular risks facing disadvantaged and vulnerable groups. This includes assessing the potential impact that putting security measures in place might have on these groups. Security personnel can encounter disadvantaged and vulnerable groups in various ways: as employee's family members or community members, and as victims, perpetrators or witnesses of alleged crimes on company property.

When developing security strategies and measures, take particular care to protect the rights of children who, because of their young age and physical weakness, are at a greater risk of abuse, intimidation and harassment. Children should never be used by security providers for any tasks, including food procurement, logistics, administration or espionage.

- Use the VPs as a guide to any interactions you may have with public security (either formally or informally). Communicate your security policy and position to host governments and local communities and use your influence to promote the VPs.
  - Note that in some situations, it may be appropriate and possible for you to seek a commitment to the VPs in formal agreements with governments.
- Likewise, use the VPs to guide your interactions with private security providers. Make sure you include requirements for adequate and effective training of personnel on human rights in all contracts with private security providers. These should also include your policies regarding appropriate conduct and the local use of force.
  - Where relevant, make sure that security personnel training covers acceptable conduct when interacting with artisanal and small-scale miners and with local communities generally. (Other project personnel interacting with these miners, such as community liaison, resettlement and livelihood replacement staff, should also receive appropriate training in the VPs.)
- Keep records on training delivered to all security personnel.

### COP 13.4: International code of conduct for private security

**Members whose business is to provide private security services to the jewellery supply chain shall be certified members of the International Code of Conduct Association (ICoCA).**

<sup>2</sup> The Voluntary Principles on Security and Human Rights [http://docs.wixstatic.com/ugd/f623ce\\_60604aa96d1c4bdccb633916da951f25.pdf](http://docs.wixstatic.com/ugd/f623ce_60604aa96d1c4bdccb633916da951f25.pdf)

## Points to consider:

- If you are a private security provider, you must become a certified member of the ICoC and commit to adhering to the obligations and requirements of the code. This includes committing to get certified and to participate in ICoCA reporting and processes (including monitoring and performance assessment, and complaints).

### 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?
- If you are in the mining sector, are your security personnel trained on, and do they operate in accordance with, the Voluntary Principles on Security and Human Rights?
- If you provide private security services, are you a member of the International Code of Conduct for Private Security Service Providers?

## E FURTHER INFORMATION

### Websites:

Business & Human Rights Resource Centre  
[www.business-humanrights.org](http://www.business-humanrights.org)

International Business Leaders Forum  
[www.iblf.org](http://www.iblf.org)

International Code of Conduct Association (ICoCA)  
[www.icoc-psp.org](http://www.icoc-psp.org)

International Committee of the Red Cross (ICRC). Resource Centre  
[www.icrc.org/eng/resources/index.jsp](http://www.icrc.org/eng/resources/index.jsp)

The Montreaux Document [on private military and security companies]  
[www.eda.admin.ch/psc](http://www.eda.admin.ch/psc)

Voluntary Principles on Security and Human Rights  
[www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)

### Publications:

ICMM and partners, Voluntary Principles on Security and Human Rights: Implementation Guidance Tools  
[www.icmm.com/website/publications/pdfs/commitments/voluntary-principles-on-security-and-human-rights-implementation](http://www.icmm.com/website/publications/pdfs/commitments/voluntary-principles-on-security-and-human-rights-implementation)

International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (2005)  
[www.international-alert.org/publications/conflict-sensitive-business-practice-guidance-extractive-industries-en](http://www.international-alert.org/publications/conflict-sensitive-business-practice-guidance-extractive-industries-en)

OECD, Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones (2006)  
[www.oecd.org/daf/inv/mne/weakgovernancezones-riskawarenesstoolformultinationalenterprises-oecd.htm](http://www.oecd.org/daf/inv/mne/weakgovernancezones-riskawarenesstoolformultinationalenterprises-oecd.htm)

OECD Watch, Fact Sheet 3: Assessing Adherence to the OECD Guidelines' Human Rights Provisions (2007)  
[http://oecdwatch.org/publications-en/Publication\\_2402](http://oecdwatch.org/publications-en/Publication_2402)

UNICEF, Child Rights and Security Checklist (2017)  
[www.unicef.org/csr/files/Child\\_rights\\_and\\_Security\\_Checklist\\_ENG.pdf](http://www.unicef.org/csr/files/Child_rights_and_Security_Checklist_ENG.pdf)

UNICEF, Child Rights and Security Handbook (2018)  
[www.unicef.ca/sites/default/files/field\\_files/FINAL\\_CRS%20Handbook%20%28ENGLISH%29\\_February%202018.pdf](http://www.unicef.ca/sites/default/files/field_files/FINAL_CRS%20Handbook%20%28ENGLISH%29_February%202018.pdf)

# (COP 14) PROVENANCE CLAIMS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

The **origin** of mined material is the mine, company, region or geographical location where the mine is located, whether an artisanal and small-scale mine or a medium or large-scale one. The origin of recycled material is the point at which it re-enters the jewellery supply chain. For recycled gold, silver or PGM this is the point at which it is returned to the refiner or other downstream intermediate processor or recycler.

A **provenance claim** is a documented claim, made using descriptions or symbols, that relates to gold, silver, PGM, diamonds or coloured gemstones that are offered for sale (whether as stand-alone materials or set in jewellery). Provenance claims are typically made about a product's origin, verification of source, traceability of material, certification of material or suppliers, or another mechanism to ensure responsible sourcing practices that are not covered elsewhere in the COP.

Source:

- RJC

## B ISSUE BACKGROUND

Businesses in the jewellery supply chain are increasingly asked about the conditions under which their products have been produced or sourced. In turn, they are increasingly doing more to understand their own supply chain and ensure the materials they sell do not contribute to conflict, child labour, human rights abuses, poor mining practices and other risks.

Many have taken to using provenance claims to detail their findings and assure their customers that the products they sell have not contributed to negative social or environmental impacts. It is critical that all provenance claims are both truthful and representative of the systems in place to 'deliver' on the claim: misleading or deceptive claims pose a significant risk to the reputation of individual companies and the industry. The robustness of systems is critical to the credibility of this claim.

Provenance claims are voluntary and the RJC does not require its members to make any provenance claims. If provenance claims are made, they must meet the requirements in this provision, and be audited as part of the COP audit. This section of the COP has been designed to enable our members to define their own provenance claims, while ensuring that any such claims are transparent, well reported and underpinned by effective management systems.

Provenance claims can take many different forms depending on how a business operates, and what commitment it wants to make. The COP covers four main, but not exhaustive or mutually exclusive, scenarios for making provenance claims, for when a business:

- traces material back through the supply chain to its origin, for example through invoices from the mine of origin, using systems such as Canadamark or through systems using new technologies like blockchain;
- verifies the sources or practices related to the material, for example working with suppliers to source recycled material or material from cyanide-free mining, or sourcing from responsible artisanal or small-scale operations;
- sources material from certified suppliers, for example buying Fairmined or Fairtrade gold; and
- scrutinises materials or sourcing in another way, for example going beyond the COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas** requirements by carrying out due diligence on environmental impacts related to mineral production.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The International Organization for Standardization (ISO) 14020 series of standards provides businesses with a globally recognised and credible set of international benchmarks against which they can prepare their environmental labelling. These provide a useful reference for claims and how to communicate them, especially **ISO 14020:2000**<sup>1</sup> on general principles for environmental labels and declarations.

1 ISO, ISO 14020:2000 Environmental Labels and Declarations—General Principles (2000) [www.iso.org/standard/34425.html](http://www.iso.org/standard/34425.html)

## National law

Provenance claims are a form of representation and may be regulated by consumer protection laws that prohibit false and misleading advertising (see COP 28 [Product disclosure](#)).

National industry standards that address risks in sourcing also exist, such as the **Voluntary Code of Conduct for Authenticating Canadian Diamond Claims**.

## D IMPLEMENTATION GUIDANCE

Please note that the RJC management team is the authority on the acceptability of provenance claims. If in doubt, please contact the RJC management team with your provenance claim query.

The RJC has two main requirements for provenance claims:

- a truthful statement of commitment (what is promised); and
- an outline of the underpinning systems that substantiates it (how the promise is achieved).

To achieve conformance with the provision during the audit, you will need to meet requirements for both elements of your provenance claim: the promise and how the promise is achieved. Once your provenance claim has been verified at audit, it will appear on your RJC certificate.

### Changing a provenance claim post-audit

If you change a verified provenance claim, or start making a new, unverified, claim, you must get the relevant claim audited as soon as reasonably practical. If your next audit deadline is more than a year away, you should ask for a 'bolt-on' audit specifically to verify the new or altered provenance claim and add it to your RJC certificate. If you cannot, or do not want to, undergo an additional audit, you will have to stop making the claim.

### COP 14.1: Check applicability

Members shall check whether they make any provenance claims that apply under this provision.

#### Points to consider:

- Establish whether this provision applies to you by reviewing all your advertising, marketing and other sales-related documentation, as well as product invoices and any other type of communications, to determine whether you are making any provenance claims, as defined in sections A and B (also see box 'Examples of provenance claims').
- If you are a large company, co-ordinate your review across departments to make sure you don't miss any claims. This can include asking:
  - Do any clients have specific requirements for their products or materials?
  - To whom does the marketing team talk before developing promotional material?
- If your review determines that this provision does not apply to you, document the results and get them approved by an appropriate senior manager. Include details on what materials were checked and which colleagues were spoken to.
- If an RJC-certified member makes a provenance claim that is not included in their RJC certificate, stakeholders can raise a complaint through the RJC Complaints Mechanism.

## Claims about matters covered in the COP

Claims that relate to compliance with the COP will be audited as part of the relevant COP provision, and will not be certified as provenance claims. This includes claims on:

- adhering to the Kimberley Process Certification Scheme or World Diamond Council System of Warranties (in accordance with COP 29 [Kimberley Process Certification Scheme and World Diamond Council System of Warranties](#));
- sourcing in accordance with the OECD Guidance (in accordance with COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#));
- disclosing place of origin opinion on coloured gemstones (in accordance with COP 28.2 [Product disclosure](#)); and
- testing for undisclosed laboratory-grown diamonds or claims that the diamonds are 'natural' (in accordance with COP 28.3 [Product disclosure](#)).

Claims that relate to product quality, or place of manufacture, similarly do not count as provenance claims under this provision and will not be audited as such. This includes claims such as 'Made in (country)', which require a specific location of manufacture.

### COP 14.2A: Systems

#### Members that make one or more provenance claims shall:

- a. Have systems in place to ensure that the provenance claims are truthful and substantiated by evidence.

#### Points to consider:

- If you make a provenance claim, you must be able to substantiate it with an underpinning management system fit for the claim being made—that is, a system that ensures you can uphold your claim consistently (see box 'Examples of provenance claims').
- You can make provenance claims with one or more existing industry standards. You do not, however, have to adopt any particular industry standards and can choose to develop your own internal systems. If you do, make it transparent so that your system (for example, 'responsible supplier code X') is clear and publicly available.
- Be careful when using words like 'ethical', 'responsible' or 'sustainable' about sourcing and only do so if you clearly define the term within the wording of the claim itself.
- Note that you can still make provenance claims even if they only apply to some, rather than all, of your materials. You need to make this clear in the claim. That means using qualifying phrases such as 'when requested', 'we can offer...' or 'at least 95% of our diamonds are sourced from ...'.
- It is important that you can communicate to customers about changing provenance claims and, if there is significant change or if a new provenance claim is made, that this is audited as soon as possible.
- Systems should include procedures, record keeping and internal material controls (see Figure 14.1).

#### Documentation

Document procedures.

Keep adequate and appropriate records.

#### Transparency

Make information on the provenance claim and underpinning systems available on request.

Make all relevant documents, evidence and records available to the RJC auditor.



#### Control

Maintain internal material controls to support claims that apply to some but not all of your products.

Establish formal procedures to manage any outsourcing of materials covered by the claim.

Figure 14.1. Systems to ensure valid provenance claims

## Examples of provenance claims

### Good practice

- 'When requested, we can source diamonds from Canada, buying them directly from a Canadian diamond mine.'  
This company commits to buying (and selling) Canadian diamonds (the promise) and does this by buying directly from the mine (how they achieve the promise). Customers can find out more information about the mine(s) on request.
- 'We sell only post-consumer, recycled diamonds. This is confirmed by due diligence on our suppliers.'  
This company details in their provenance claim how they verify that the diamonds they sell are recycled.
- 'We sell recycled gold, as verified through the SCS Recycled Content Certification.'  
This member makes clear that they verify their gold is recycled through a specific certification system.
- 'We sell responsibly mined artisanal and small-scale gold that is Fairtrade or Fairmined certified, as a Fairtrade or Fairmined licensee.'  
This company commits to selling gold that is certified to either of these schemes (the promise) and can do this because it is a licensee of both these schemes (how they achieve the promise). Customers should be able to find out more about Fairmined and Fairtrade through links online.

### Poor practice

- 'We source all our materials responsibly.'  
This claim does not make a clear promise (it's vague); nor does it say how the promise is achieved (the systems or requirements in place).
- 'We source responsibly sourced gold based on written assurances from our suppliers.'  
This claim does not explain how 'responsibly sourced' is defined.
- 'Our gold is Fairmined/Fairtrade.'  
If not all the gold bought and sold by a member is certified under these schemes, then the claim is misleading; it would be better to say 'upon request' or 'where possible'.

### Traceability claims

Many new technologies to enable traceability of material have emerged over recent years, for example blockchain and radio-frequency identification (RFID), both of which are increasingly used to trace gold and diamonds. The use of nanoparticles to trace provenance of gems back to the exact mine ('paternity testing') is another emerging example, for emeralds.

If you make any traceability claims using these kinds of systems, you must ensure they are both credible and transparent. This includes checking that there you carry out sufficient technically competent review or verification of the system.

### Claims on ASM progressive improvement initiatives

Several initiatives are working with artisanal and small-scale mining (ASM) communities using progressive improvement approaches that can provide the basis for a company's sourcing practices and therefore a provenance claim for responsible ASM sourcing.

Downstream companies can use these systems to make and verify a claim related to ASM production, tailoring the claim to the level of compliance and type of verification. Some examples of progressive improvement initiatives include:

- The **Code of Risk-mitigation for ASM engaging in Formal Trade (CRAFT)**: an open-source market entry standard for ASM gold producers. [www.responsiblemines.org/en/our-work/standards-and-certification/craft/](http://www.responsiblemines.org/en/our-work/standards-and-certification/craft/)
- The **Better Gold for ASM Continuous Improvement Escalator**: a model, hosted by the Swiss Better Gold Association, with steps for ASM progression to continually improve practices. [www.swissbettergold.ch/en/about-process](http://www.swissbettergold.ch/en/about-process)
- The **Impact Escalator**: a framework under the Impact Facility that allows ASM organisations of different sizes and at different points in their sustainability journey to progress towards certification. [www.impactfacility.com/approach](http://www.impactfacility.com/approach)

See COP 8 [Sourcing directly from artisanal and small-scale mining](#) for more information on the full spectrum of ASM initiatives.

## COP 14.2B: Training

### Members that make one or more provenance claims shall:

- b. Do training to ensure that employees who are responsible for implementing the claims and responding to product enquiries, understand the claims and can explain them accurately.

## Points to consider:

- Identify staff that need training (for example, those making claims, those that are part of the underpinning systems).
- Develop appropriate materials and establish clear procedures for training staff. Keep a register and records of each training session (including attendance sheets and certificates, both of which provide good evidence for auditors).
- Nominate one or more responsible managers to oversee the training programme.
- Make sure employees have access to all relevant documentation on all your provenance claims.

## COP 14.2C and 14.2D: **Transparency and complaint mechanism**

### Members that make one or more provenance claims shall:

- c. Make further information available to customers who ask about a provenance claim.
- d. Have a complaints or grievance mechanism appropriate to the nature, scale and impact of the business to allow interested parties to voice concerns.

## Points to consider:

- This requirement is not meant to restrict your ability to summarise claims for marketing purposes; complying with this provision does not mean you must use the exact words as they appear on your certificate every time you want to talk about your claim. You do, however, need to ensure that the meaning is never changed.
- Your stakeholders should be able to get more information on any of your provenance claims by simply asking for it (with due regard for any confidential information).
- You may find it useful to establish a list of all your provenance claims alongside the systems that sit behind each one. This will help ensure accurate messaging when communicating with customers or answering their requests for more information. If you make it available at the point of sale and on your website, it will also help you meet the requirements of provision 14.3.
- Establish a complaints and grievance mechanism (see box 'Grievance mechanism template'). Ensure that it:
  - is clearly documented;
  - describes what types of complaints are and are not admissible;
  - outlines how complaints are investigated and addressed; and
  - is easily available to interested parties, including customers.

## COP 14.3: **Protecting consumers**

Members who sell directly to consumers must make available at the point of sale and on their website, further detail about the claim/s being made, and the systems in place to achieve them.

## Points to consider:

- If you sell directly to consumers, you must be truthful, clear and transparent in your claims. Take extra care to avoid confusion in how you word your claims, and make sure that your customers have access to all the information they may need to make their purchasing decision.
- When buying your product, consumers must be able to understand all the claims you are making, and what you do to uphold these. This means you must communicate your claims clearly and comprehensively at point of sale through, for example, a high-level summary of your systems or some other documentation (see provisions 14.2a and 14.2c).
- You can use a combination of point-of-sale and online statements to ensure consumers have all the information they need when buying your products. For example:
  - At the point of sale: 'We source conflict-free gold from Fairmined/Fairtrade mining organisations.'
  - On your website: 'We define conflict-free gold as gold that does not directly or indirectly support non-state armed groups or public or private security forces through the extraction, transport, trade, handling or export. We pay [INSERT AMOUNT] amount of premium to miners per kilo we buy and have purchased [INSERT %] percentage of our gold from Fairtrade/Fairmined-certified miners. See our Fairtrade/Fairmined licence at [INSERT LINK].'
- Consider adding a link to your RJC webpage from your website and sales materials so that consumers can check certificates and membership status for themselves.

## Check:

- Have you confirmed whether you make any provenance claims? Can you provide evidence of this?
- If you make provenance claims, do you have systems in place to ensure they are truthful and substantiated?
- Do you have procedures for checking how you achieve the claim's promise?
- If you make multiple claims, or claims that only apply to some of your products, do you have controls to protect the integrity of materials?
- Do you train relevant employees on the provenance claims you make?
- Can you show how customers can access more information on what your provenance claims mean?
- Do you have a working complaints mechanism?

## E FURTHER INFORMATION

### Websites:

ISO Environmental labels and declarations standards

[www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html)

14020:2000 General principles

14021:2016 Self-declared claims (Type II)

14024:2018 Labelling (Type I)

14025:2006 Declarations (Type III)

14026:2017 Communicating footprint information

14027:2017 Product category rules

Sustainability Claims Good Practice Guide

[https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL\\_Claims\\_Good\\_Practice\\_Guide.pdf](https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Claims_Good_Practice_Guide.pdf)

### Grievance mechanism template

You can develop a new grievance mechanism, or use one that you already have (for example, to meet COP 6 **Human rights**, COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**, or COP 18 **Harassment, discipline, grievance procedures and non-retaliation**). Note that your grievance mechanism will likely have to incorporate different procedures for workers to raise grievances (for COP 18) because employee information may only be legally accessed by Human Resources. The template below can be used for external stakeholders.

#### Template text

[ENTITY NAME] has established this complaints procedure to hear concerns about circumstances in the supply chain.

[NAME OF SENIOR MANAGER] is responsible for implementing and reviewing this procedure.

Concerns can be raised by interested parties via email or telephone to:

[NAME]

[TELEPHONE]

[EMAIL ADDRESS]

On receiving a complaint, we will aim to:

- get an accurate report of the complaint;
- explain our complaints procedure;
- find out how the complainant would like it handled;
- decide who is the appropriate person internally to handle the complaint, or help redirect the complaint to another entity, such as the relevant supplier, or a relevant industry body;
- where the issue can be handled internally, seek further information where possible and appropriate;
- identify any actions we should take, or monitor the situation;
- advise the complainant of any decisions or outcomes; and
- keep records on complaints received, and the internal process followed, for at least five years.

Signed/endorsed:

Date of effect: / /

# LABOUR RIGHTS AND WORKING CONDITIONS



# (COP 15) GENERAL EMPLOYMENT TERMS

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members.

**Apprentices** are workers who are doing vocational training in the workplace for a fixed period. The fundamental aim of an apprenticeship is to learn a trade or acquire a skill. Apprentices do not participate fully in the production process of the unit because they work under an apprentice's contract that stipulates this, or because the fact that they are undertaking vocational training impinges significantly on their productivity.

An **employee** is an individual who has entered into, or works under, a contract of employment, service or apprenticeship. This includes permanent, temporary, full-time, part-time, casual, homework and seasonal employees at any level. Under the COP, employees include both directly employed workers and indirectly employed workers who regularly work at members' sites:

- **Directly employed workers** have employment contracts with the RJC member. The RJC member is responsible for paying taxes and social security contributions, and the contractual relationship is subject to national legislation.
- **Indirectly employed workers** have employment contracts with a third party, such as a labour agent, labour provider or a subcontractor. Examples include subcontracted personnel such as security guards, housekeeping and canteen staff, as well as temporary or seasonal workers.

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

**Homeworkers** are contracted by the company or by a third party (for example, a supplier, sub-supplier or subcontractor), but do not work on the company's site.

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

**Vulnerable workers** are specific groups of people, such as women, migrants, people with disabilities, ethnic or religious groups, that exist within a larger population and that are at higher risk of being harassed, exploited or in any other way discriminated against.

Sources:

- International Labour Organization (ILO), Decent Work Indicators: Concepts and Definitions (2013)  
[www.ilo.org/integration/resources/pubs/WCMS\\_229374/lang--en/index.htm](http://www.ilo.org/integration/resources/pubs/WCMS_229374/lang--en/index.htm)
- ILO, Governance and Tripartism Department (Governance)  
[www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm](http://www.ilo.org/public/english/dialogue/ifpdial/areas/legislation/employ.htm)
- ILO, Overview of Apprenticeship Systems and Issues (2012)  
[www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/genericdocument/wcms\\_190188.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/genericdocument/wcms_190188.pdf)
- Organisation for Economic Co-operation and Development (OECD), Glossary of Statistical Terms (2004)  
<https://stats.oecd.org/glossary/detail.asp?ID=6228>
- Social Accountability International (SAI), Guidance Document for Social Accountability 8000(SA8000®:2014) (2016)  
[www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

## B ISSUE BACKGROUND

The employment relationship is the legal link between employers and employees. It exists when a person does work or provides services under certain conditions in return for remuneration. The corresponding legal instrument is an employment contract, which should be formalised in writing and given to employees for their own records and reference.

It is through the employment relationship, however contractually defined, that reciprocal rights and obligations are created between the employee and the employer. This relationship is also the main vehicle for workers to access the rights and benefits associated with employment laid down by labour social security laws. Keeping accurate records of employees' benefits and entitlements is an essential part of the employer's role in ensuring 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 past 30 years, new patterns of employment have emerged in the global economy. These include an increasing use of fixed-term contracts and other contractual arrangements where workers are not strictly employees. Some of these workers—particularly migrant workers and homeworkers—are often afforded weaker protection under labour or social security law.

Exploitative working arrangements have also emerged, such as false apprenticeship schemes, where workers get reduced wages or fewer benefits during a ‘training period’ without any real intent to impart skills or provide regular or ongoing work afterwards.

Homeworking, successive short-term contracts, apprenticeships, subcontracting and labour-only contracting can all be legitimately used within employment relationships if they are lawfully permitted, adequately documented and not used to exploit workers. But they all tend to carry a higher risk of not meeting legal obligations to workers. The COP does not unduly restrict the general use of these working arrangements. But under the COP, they cannot be used to avoid labour and social security obligations; nor can they be used for extended periods of time to cover ongoing, routine tasks necessary for the organisation to operate.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

In 2006, in recognition of the growing number of workers without protection in their employment relationships, the International Labour Organization (ILO) adopted the **Employment Relationship Recommendation R198**.<sup>1</sup> This offers countries guidance on how to reform national law and practice to protect workers against the circumvention of obligations through contractual or other legal arrangements.

### National law

National laws and regulations, as well as collective bargaining agreements, offer workers protections. They also help address discrimination in employment terms through mandatory disclosure requirements (see box ‘Addressing gender pay gaps’). It is essential to keep up to date on the legal requirements for employment contracts, expectations for employee–employer relationships and reporting requirements in all jurisdictions of operation.

#### Addressing gender pay gaps in the United Kingdom

All over the world, across diverse sectors, women are generally paid less than men. The difference between the average earnings of men and women who are working is commonly known as the ‘gender pay gap’ (or ‘gender wage gap’).

In 2017, the United Kingdom introduced mandatory gender pay gap reporting for the first time. Under the new legislation, UK-based organisations with 250 or more employees must publish and report specific figures about their gender pay gap, including:

- the mean and median gender pay gap in hourly pay;
- the mean and median bonus gender pay gap;
- the proportion of men and women in each pay quartile; and
- the proportion of men and women receiving bonus payments.

This data provides information on the difference between the average pay of men and women across an organisation, irrespective of their role. This means that a company can be paying women and men equally for equal work and still have a significant gender pay gap if they are employing more men in senior roles.

Source:

- UK Government, Gender Pay Gap Reporting: Overview (2017)  
[www.gov.uk/guidance/gender-pay-gap-reporting-overview](http://www.gov.uk/guidance/gender-pay-gap-reporting-overview)

1 ILO, R198—Employment Relationship Recommendation, 2006 (No. 198) (2006)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312535](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535)

## D IMPLEMENTATION GUIDANCE

### COP 15.1: Employment terms

Members shall ensure that employment terms with regards to wages, working hours and other employment conditions are communicated to employees in writing before employment starts, in a language that is understood by them.

#### Points to consider:

- Employment contract requirements differ from country to country and can change over time. It is your responsibility to understand and adhere to applicable law in all countries where you operate. Establish a process to stay up to date with legal requirements for employment relationships and contracts.
- Give all your workers written contracts of employment that clearly define and communicate conditions of employment (such as wages, working hours, overtime, compensation and benefits). These must comply with applicable law and any collective bargaining agreements in place.
- Write all contracts in a language that your workers will understand, remembering that some workers (such as migrant workers) can be particularly vulnerable when negotiating employment terms because of education, literacy and language barriers, and cultural and social differences. Make sure written contracts are verbally explained to vulnerable workers in terms they understand, as part of the recruitment process.
- All workers, whether directly or indirectly employed, should be given a contract before they start work; and copies of these should be kept within workers' employment files. Make sure you communicate this expectation to your business partners that are responsible for indirectly employed workers on your sites (see COP 5 [Business partners](#)).
- Under COP 15.1, you are not allowed to simply substitute contracts or add supplemental agreements to the original contract after a worker arrives on-site. In cases where there are material changes to contract conditions, make sure you:
  - draft an amended employment contract;
  - get written agreement by the employee;
  - give the employee a printed copy of the new contract; and
  - keep a copy in the worker's employment file.

### COP 15.2: Labour and social security obligations

Members shall not avoid fulfilling legal labour and social security obligations to employees by using labour-only contracts, false apprenticeship schemes, excessive consecutive short-term employment contracts, and/or subcontracting or homeworking arrangements.

#### Points to consider:

- If you use labour-only contracting, you must make sure contracts are legitimate and that they are not being used as a way of avoiding legal obligations to employees. Some forms of labour-only contracting are prohibited under applicable law. Many jurisdictions have guidelines or criteria that define permissible contracting arrangements. These can include, for example:
  - whether workers provide the materials or equipment to do the work;
  - whether they can delegate their work;
  - whether they provide their services through an independent business; and
  - whether they also provide these services to others.
- Using labour agents or providers to hire workers can be risky if you have no control or oversight of the conditions of recruitment. See COP 20 [Forced labour](#) for more guidance on monitoring for risks of human trafficking.

#### Apprenticeships

- Apprenticeship schemes have an important role in training and are allowed under the COP. But many jurisdictions regulate the period of training and the level of compensation that is payable to apprentices, so it is important that you understand applicable law within countries of operations to ensure all apprenticeships and training positions align with legal requirements.
- If there are no legal protections against reduced wages for apprentices, you should make sure that the 'training period' during which the worker receives reduced wages is not excessive and that it is defined within the apprentice's employment contract.

- Apprenticeships or traineeships are 'false' if they are used to underpay workers or avoid legal obligations, or if they operate without any real intent to impart skills or provide regular employment. Children and young workers are particularly vulnerable to being exploited through such false schemes.

## Temporary workers

- The RJC recognises that temporary or outsourced labour is sometimes needed to manage varying business demand; and the use of short-term employment contracts, subcontracting and homeworking is allowed under the COP. You must not, however, use these employment arrangements to avoid your statutory obligations to employees.
- The use of short-term contracts (less than six months) might be considered excessive:
  - if you employ large numbers of workers under these terms to perform ongoing, routine tasks; or
  - if your workers have to reapply for successive short-term contracts over long periods of time.
- Where such practices exist, consider developing policies and programmes to improve business planning and enhance job security for workers.

### COP 15.3: 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:

- Find out if there are any legal, certification or buyer requirements where you operate related to gender pay gaps or any other type of disclosure involving employee records. If there are, make sure you define procedures to collect and maintain data in a way that allows it to be shared securely without compromising privacy laws.
- Keep employee records in a way that is consistent with the terms and conditions of the employment contract:
  - Where wage payments depend on working hours, you should record individual employee hours on a daily, weekly or monthly basis as part of your time-keeping system to ensure accurate payment (see COP 17 [Remuneration](#)).
  - Where working hours do not vary (for example, in a general office or retail environment) or are at the discretion of the employee (for example, for management positions), you can simply describe working hours in employment contracts.
  - Where wages are paid by piece instead of by hours worked (as part of a piece-rate payment scheme), you should keep accurate records of individual employee output as well as hours worked. (To learn more about piece-rate payment schemes and wage expectations, see box 'Piece-rate payment schemes' under guidance for COP 17 [Remuneration](#).)
- In all cases, note that recording output, hours worked and total wage payments will also help you check conformance with COP 16 [Working hours](#) and COP 17 [Remuneration](#).

## Check:

- Can you show the auditor that employees understand their employment terms?
- Do both directly and indirectly employed workers receive employee contracts in a language they understand before they start employment?
- Do you keep copies of employment contracts in workers' employment files?
- If employment terms have changed, can you show that you followed the correct procedures for updating contracts (that is, that you drafted an update, got written agreement from the employee, gave one copy to the employee and saved another copy in their employment file)?
- If you use labour-only contracting, apprenticeships, consecutive short-term employment contracts, subcontracting or homework arrangements, are these structured so that employees receive the right labour and social security benefits?
- Can you show that your apprenticeships comply with local law?
- Have you identified disclosure requirements involving employee records; and do you have procedures in place to report the required information without compromising privacy laws?
- Do you have records of piece-rate and wage payments and working hours for all employees?

## E FURTHER INFORMATION

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### Websites:

ILO, Decent Work Indicators

[www.ilo.org/integration/themes/mdw/WCMS\\_189392/lang--en/index.htm](http://www.ilo.org/integration/themes/mdw/WCMS_189392/lang--en/index.htm)

ILO, Employment relationship

[http://ilo.org/ifpdial/areas-of-work/labour-law/WCMS\\_CON\\_TXT\\_IFPDIAL\\_EMPREL\\_EN/lang--en/index.htm](http://ilo.org/ifpdial/areas-of-work/labour-law/WCMS_CON_TXT_IFPDIAL_EMPREL_EN/lang--en/index.htm)

Verité, Fair Hiring Toolkit

<http://helpwanted.verite.org/helpwanted/toolkit>

### Publications:

Business for Social Responsibility (BSR), Good Practice Guide: Global Migration (2010)

[www.bsr.org/reports/BSR\\_Good\\_Practice\\_Guide\\_Global\\_Migration.pdf](http://www.bsr.org/reports/BSR_Good_Practice_Guide_Global_Migration.pdf)

ILO, The Employment Relationship: An Annotated Guide to Recommendation No. 198 (2007)

[www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS\\_172417/lang--en/index.htm](http://www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS_172417/lang--en/index.htm)

SAI, Guidance Document for Social Accountability 8000 (SA8000®:2014) (2016)

[www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

UK Government, Gender Pay Gap Reporting: Overview (2017)

[www.gov.uk/guidance/gender-pay-gap-reporting-overview](http://www.gov.uk/guidance/gender-pay-gap-reporting-overview)

# (COP 16) WORKING HOURS

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members.

A **collective bargaining agreement** is a legally enforceable, written contract between a company's management and its employees, represented by a trade union or equivalent. Collective bargaining agreements must comply with applicable law. Some of the subjects of collective bargaining, as identified by the International Labour Organization (ILO) include wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of collective agreement and granting of trade union facilities.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Non-voluntary overtime** refers to any overtime work an employee does under threat of penalty, or without willing consent. It is considered an indicator of forced labour, and a violation of COP 20 **Forced labour**.

The **normal working week** limits the amount of non-overtime hours an employee works per week to a maximum of 48 hours under international labour standards. National or local law can sometimes define the limit as less than 48 hours per week; so can a collective bargaining agreement.

**Overtime** refers to the number of hours an employee works beyond the normal working week. International standards set overtime limits at 60 hours per week. But different countries, local laws and collective bargaining agreements may accept different standards.

**Production peaks** are defined as occurring for a 17-week period (a third of the year). This is an industry accepted norm dating back to 1996 when the Apparel Industry Partnership was established, known today as the Fair Labor Association.

**Rest days** are a continuous period of not less than 24 hours during which an employee is entitled to abstain from working for her employer.

**Working hours** are the amount of time employees spend working on behalf of their employer.

Sources:

- ILO, C030—Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (1930) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312175](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312175)
- ILO, Q&As on business and collective bargaining [www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_CB\\_FAQ\\_EN/lang--en/index.htm#Q11](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm#Q11)
- Social Accountability International (SAI), Guidance Document for Social Accountability 8000 (SA8000®:2014) (2014) [www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

## B ISSUE BACKGROUND

Working hours are a fundamental component of safe and humane working conditions. The first ever International Labour Organization (ILO) Convention in 1919<sup>1</sup> focused 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, excessive working hours also create workplace health and safety risks.

A combination of remote sites, a migrant or expatriate workforce, and premium compensation for working long shifts makes long working hours common in the mining industry. The seasonal nature of the jewellery industry also contributes to long working hours in midstream and downstream companies in the supply chain. A business's ability to deal with customer demands and workers' desire to work overtime can all contribute to excessive working hours. Working hours are also strongly linked to wages because employees may seek to work longer hours to increase their income. Some factories pay by item completed (or 'piece'), rather than by hour, which can also lead to longer working hours.

1 ILO, C001—Hours of Work (Industry) Convention, 1919 (No. 1) (1921) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C001](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C001)

Weekly rest and paid annual leave are expected as a normal part of working agreements, typically required by national and local law, and must be provided to employees as part of their benefits. Where shift rosters mean workers don't always get one rest day in seven, alternative arrangements should be agreed in compensation. For example, some mines will operate 'fly-in, fly-out' contracts where (non-local) workers a number of weeks of consecutive workdays followed by a number of weeks of leave. Special leave, such as maternity, paternity and compassionate leave, should be provided for in compliance with applicable national law.

Some companies set a shorter normal working week that allows more flexibility for expanded hours during peak demand and creates the opportunity for workers to have more rest days within the week. Others provide long leave periods during special holidays. The RJC's approach to working hours takes these measures into account in recognition of the seasonal nature of the jewellery supply chain.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

A combination of ILO conventions provides the global (and COP) standards on working hours, weekly rest and annual leave (see Table 16.1).

Table 16.1. ILO conventions providing standards on working hours, weekly rest and annual leave

ILO convention	Year	International standard for workers
<b>ILO-1</b> Hours of Work (Industry)	1919	Maximum working hours of 8 hours per day; or 48 hours per week.
<b>ILO-30</b> Hours of Work (Commerce and Offices)	1930	<ul style="list-style-type: none"> <li>This principle forms the basis of much national legislation.</li> </ul>
<b>ILO-116</b> Reduction of Hours of Work	1962	Maximum working hours per week of 40 hours. <ul style="list-style-type: none"> <li>A principle prominent in high-income countries</li> </ul>
<b>ILO-14</b> Weekly Rest (Industry)	1921	At least 24 hours consecutive rest each week.
<b>ILO-106</b> Weekly Rest (Commerce and Offices)	1957	<ul style="list-style-type: none"> <li>Employers may agree alternative arrangements in consultation with trade unions or other worker representatives.</li> </ul>
<b>ILO-132</b> Holidays with Pay (Revised)	1970	At least three weeks of guaranteed holiday each year.
<b>ILO-183</b> Maternity Protection	2000	Access to maternity leave for women following childbirth. Time during the day to breastfeed for women returning to work after maternity leave.

Both conventions ILO 1 and ILO 30 allow for some departure from maximum working-hour limits in certain circumstances. For example, there are exceptions for employees whose work is by nature intermittent or must be done outside the limits laid down for other employees. There are exceptions for work that has to be carried out continuously by a succession of shifts (in which case, a weekly maximum is set at 56 hours with weekly rest days compensated by a process secured under national law). And the conventions also recognise the need for temporary exceptions, for example to complete urgent work or repairs, or because alternative arrangements have been agreed between workers' and employers' organisations and by the government.

### National law

National law may vary from the ILO conventions described above. It is essential to understand the relevant legislation and regulations in every country you have operations. Note that, if national law differs from COP requirements, the RJC expects you to follow whichever is more stringent.

Nearly all countries have national or local legislation to govern working hours overall, as well as for specific sectors or jobs. In many countries, there is a limit on the number of normal working hours an employee can work each week, although precise limits may vary. For example, Chinese law limits overtime to 3 hours per day, and 36 hours per month; Vietnamese law sets a daily limit of 4 hours, and an annual limit of 200 hours. Brazil, India, Indonesia, Italy, Pakistan and Thailand all also have explicit limits on hours worked within a particular period.

National and local legislation also define requirements for weekly rest days and annual holiday entitlements, as well as maternity and paternity leave. Failure to comply with these laws can lead to penalties ranging from fines to imprisonment.

## D IMPLEMENTATION GUIDANCE

### Points to consider:

- Identify applicable national and local laws related to working hours and leave in all countries of operations.
- Make a senior management function, such as human resources, responsible for setting and overseeing working hours, overtime and rest and leave entitlements. And make sure it establishes documented procedures for monitoring, approving and managing in accordance with local law and COP requirements.
- Compile all your collective bargaining agreements with trade unions or other worker organisations and:
  - make sure they define the agreed-upon working hours, overtime, breaks and leave; and
  - confirm that the terms of each agreement comply with applicable law.
- Develop a timekeeping system—such as time cards or other record of working hours, including overtime—for all workers (permanent, contracted or temporary) to accurately track their working hours whether paid by piece or hour. This system can be used to calculate wages.
  - Note that it is considered best practice for workers to personally record the time they begin and end their workday because it creates a level of worker oversight in the timekeeping system.
- Make sure your staff are adequately trained and educated on all relevant issues. This includes:
  - training those responsible for daily management on applicable law, COP requirements and your own policies and procedures for managing working hours;
  - educating managers and workers on the normal working hours and overtime limits, your timekeeping system and the process to report errors in time reporting; and
  - special training for managers and supervisors on working hours for children and young workers (which are usually different) to help ensure these workers are not put at risk of working overtime or of working during time periods when they legally cannot work (see also COP 19 [Child labour](#)).
- Where relevant, do a risk assessment appropriate to your business's circumstances to assess where there is a risk of maximum working hours being exceeded or leave entitlements being breached. Get senior management to review the results to determine how it can reduce overtime by, for example, adjusting capacity and timelines or hiring temporary labour.

### COP 16.1: Working hours

**Members shall comply with applicable law on working hours. The normal working week, not including overtime, shall not exceed 48 hours.**

### Points to consider:

- Working hour limits for both the normal working week and overtime (COP 16.2) apply to hourly workers, and managers with a contract with defined working hours. They do not apply to salaried managers (although employment terms for salaried managers must still comply with applicable law, and also should be defined in the employee's contract).
- The COP defines the normal working week at 48 hours per week. If national or local law differs from this, you should follow whichever is more stringent. That is:
  - if local law sets a weekly limit above 48 hours, you must comply with the COP; and
  - if it sets a limit below 48 hours you must comply with local law.
- The only exceptions to the 48-hour requirement are for mines or other similar industrial environments that operate on a roster cycle or rotational shift basis, or in emergency situations. Either way, working hours must still comply with applicable law and you must still take appropriate safeguards to protect your workers' health and safety.
- The COP does not set a daily working-hour limit. But you should review applicable law and comply with any legally defined daily limits.
- If you use a piece-rate or other incentive system, make sure that the minimum daily production quota is achievable by most workers within an eight-hour shift. This will help ensure that most workers do not have to work more than eight hours per day to earn minimum (or prevailing industry) wage. Consider designing your system so that a significant portion of your workers exceed the daily quota, to earn extra pay.

- Calculate the normal working week for part-time workers using a prorata basis against a normal full-time week.
- Where allowed under applicable law, you can average the number of hours of work over a legally defined time period to help manage and report hours worked per normal working week and overtime.
  - Note that formal and procedural requirements may need to be attached to such calculations, such as obtaining permission from the relevant authorities.

## COP 16.2: Overtime

### If overtime work is required for business needs, members shall ensure that:

- a. They strive to use voluntary systems for overtime work. Required overtime is only acceptable where it is allowed under applicable law or collective bargaining agreements, within the limits defined by COP 16 and outlined in employment contracts.
- b. In all other circumstances, overtime work shall be requested under a voluntary system and within limits set under applicable law or collective bargaining agreements. The imposition of overtime where employees cannot leave the work premises or are in any way forced to accept it (through abuse, threats of dismissal or other) is not allowed. Refusal to work overtime shall not be punished, retaliated against or penalised in any way.
- c. The sum of the normal working week and overtime hours shall not exceed 60 hours in a week unless defined otherwise by applicable law or a collective bargaining agreement, or unless there are exceptional circumstances (such as production peaks, accidents or emergencies), which will be assessed as outlined in the guidance for COP 16. In all cases, members shall take appropriate safeguards to protect the workers' health and safety.

### Points to consider:

- Establish a policy stating that workers will not be required to work overtime involuntarily, and will not be punished, retaliated against or penalised in any way for refusing to work overtime.
- Required (or mandatory) overtime can be defined and agreed within employment contracts if allowed by law or collective bargaining agreements. By signing contracts with these terms, workers are voluntarily consenting to mandatory overtime.
- Communicate your policy to supervisors and employees so they are aware and understand how to report non-compliances. And make sure grievances related to this policy can be raised through your existing grievance mechanism and procedures (see COP 18.4d [Harassment, discipline, grievance procedures and non-retaliation](#)).
- Make sure you have appropriate controls to avoid children and young workers from working overtime or from being asked to work at times they legally cannot. For more guidance, see COP 19 [Child labour](#).
- Always try to make allowances for the personal and domestic circumstances of individual workers when requesting overtime; and make provision for the needs of pregnant or nursing women or people with disabilities.
- The COP defines the maximum number of hours an employee can work (including normal working week plus overtime) as 60 hours per week. You should pay the normal working week at the normal wage rate (at or above minimum wage) and pay overtime hours at a premium rate. If national or local law differs from this, you should follow whichever is more stringent.
- You can make overtime arrangements through a collective bargaining agreement with trade union representatives. In countries like India, where there are few trade unions, you can establish overtime arrangements through written records of meetings with other representatives freely designated by the workers, without your obstruction or intervention. For more information on determining conformance in such situations, see COP 21 [Freedom of association and collective bargaining](#).
  - Note that collective bargaining agreements do not take precedence over applicable law. That means that if local law sets a limit for the normal working week plus overtime at less than 60 hours per week, the agreement must comply with the lower limit.
- Where allowed under applicable law, you can calculate hours of work including overtime as an average over a period of longer than one week.

## Overtime variations

The RJC has adopted an approach that defines a degree of tolerance for overtime that occurs due to exceptional circumstances (such as peak production, emergencies and accidents). The tolerance level is strictly defined based on severity and pervasiveness thresholds. This is to clearly distinguish between isolated instances of limited overtime (conformance) and routine or excessive overtime (non-conformance). This means that a non-compliance related to employees working 70 hours a week for two weeks will not be assessed in the same as one related to employees working 70 hours a week for several consecutive months.

RJC auditors will assess working-hour compliance using an average of the total working hours per week to identify any non-conformances based on predefined thresholds (see Table 16.2). The conformance assessment will be applied across the facility and for specific areas or job functions.

In cases where local law does not limit hours, or the threshold exceeds 84 hours per week, RJC members should reduce working hours to the 60-hour industry standard in accordance with Table 16.2 so that there are no critical or major non-conformances.

Table 16.2. Tolerance levels for assessing conformance with COP requirements on working hours

Total working hours per week (average for the week)	% of working weeks with overtime (total or specific area or job function)		
	Between 1% and 5%	Between 5% and 40%	Greater than 40%
More than 84 hours per week*	<b>Critical</b> non-conformance		
More than 72 and less than or equal to 84 hours per week (and less than local law limit)	<b>Major</b> non-conformance	<b>Critical</b> non-conformance	<b>Critical</b> non-conformance
More than 60 and less than or equal to 72 hours per week (and less than local law limit)	<b>Minor</b> non-conformance (conformance in exceptional circumstances**)	<b>Major</b> non-conformance	<b>Critical</b> non-conformance
More than local law limit*** and less than or equal to 60 hours per week	<b>Minor</b> non-conformance (conformance in exceptional circumstances**)	<b>Minor</b> non-conformance (conformance in exceptional circumstances**)	<b>Major</b> non-conformance (minor non-conformance in exceptional circumstances**)
Less than or equal to 60 hours per week or local law limit (whichever is lower)	<b>Conformance</b>		

\* Note that a tolerance of 1% of population is allowed. So, if less than 1% of workers is detected to do more than the legal limit, then this is conformance (except if more than 84 hours).

\*Overtime exceeding 84 hours per week will always be assessed as a 'critical' non-conformance even if local law does not limit working hours or the legal (or collective bargaining agreement) overtime limit exceeds 84 hours per week.

\*\* If working hours exceed 60 hours per week, the assessor will verify whether the case meets the definition of exceptional circumstances. If so, and if the facility has supporting records to demonstrate exceptional circumstances occurred, it will not be assessed as a non-conformance. Any hours worked above 72 hours per week will be assessed as a non-conformance, even if the facility can demonstrate exceptional circumstances.

\*\*\* Where local law sets the working week limit lower than 60 hours per week.

### COP 16.3: Rest days

**Members shall provide all employees with at least one rest day in seven consecutive working days in accordance with International Labour Organization (ILO) Convention 14. Work time exceeding this limit is permitted only under the following circumstances:**

- a collective bargaining agreement or applicable law allows for work time averaging including adequate rest periods; or
- during peak production periods, so long as the longer work time is rare, voluntarily performed and compensated at the appropriate premium level established by 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:

- Make sure all employees are given at least one rest day (equal to 24 consecutive hours) each week.
- If you want employees to work on a rest day (for example, due to scheduling demands), make sure you give them an alternative rest day within the same week or the one immediately after, as in accordance with local law.
- If work-time averaging has been agreed through a collective bargaining agreement and is permitted by local law, make sure that workers' occupational health and safety has been assessed and is not being compromised.
- Peak production is defined as a 17-week period (a third of the year) when exceptions to the rest day requirement can be made in conformance with this provision. This is not a continuous period but cumulative sum, which can take place at different times throughout the year.

### COP 16.4: 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, three weeks' paid annual leave shall be provided in accordance with ILO Convention 132. Special leave or working-time arrangements for employees with family responsibilities shall apply to all employees regardless of gender.**

### Points to consider:

- Annual leave should be paid at the same rate as a worker's standard wages.
- Identify all public holidays and paid leave entitlements required by applicable law and make sure these dates are recorded and tracked to manage your scheduling and capacity planning. Define these public holiday and leave entitlements within employment contracts.
- Where major local holidays (such as Eid, Diwali, Christmas or Chinese New Year) require operations to be temporarily shut down, you can offset the period of vacation against annual leave. But make sure you communicate this to workers in writing in advance.
- Where allowed under applicable law, a collective bargaining agreement may provide for swapping alternative periods of leave in lieu of public holidays.
- Work with employees with family responsibilities to accommodate scheduling requests. This could include temporarily (or permanently) adjusting the employee's working hours. For example, a worker might need to take a morning off to take her or his child to the doctor. You may be able to accommodate this request by either rescheduling their work for a later shift, or allowing them to make up the time later that day. Similarly, if a worker needs to get home before her or his child comes out of school, it may be possible to adjust their standard schedule to ensure an earlier finish.

### COP 16.5: Breaks

**Members shall provide all employees with a workday break in accordance with applicable law. If there is no applicable law, then members shall provide employees with at least one uninterrupted work break of reasonable duration if they work longer than six hours.**

### Points to consider:

- Review applicable law and identify what type of workday breaks, and how many, employees are entitled to.
- If local law doesn't specify workday breaks, you must give your employees at least one uninterrupted work break if their shift is six or more hours.
- Schedule breaks for the middle of a worker's shift. A reasonable duration for coffee and tea breaks is commonly 10 to 30 minutes; for meal breaks it is 30 minutes to two hours.
- Establish internal procedures to give and track work breaks and communicate this information to supervisors and employees.
- Bathroom breaks should be given as and when needed by the worker and are different to work and meal breaks. Note that some people may require more frequent bathroom breaks, for example when pregnant or due to medical conditions.

## Check:

- Have you effectively communicated your working-hour policies and procedures to workers?
- Do you have a reliable and accurate system for recording the number of hours worked by each worker, and for tracking overtime, leave entitlements and parental leave in compliance with national law and regulations?
- Are you aware of, and do you comply with, applicable law related to working hours and leave in all countries of operation (including laws about child and young workers)?
- Do you comply with national law, existing collective bargaining agreements if applicable, and COP requirements for regular working week and overtime limits and rest days?
- Can you show that any cases where working hours exceed the 60-hour limit fit the COP's exception criteria?
- Can you show that all overtime is voluntary and that workers are not penalised if they decline to work overtime?
- If you use production quotas or piece-rate systems, can you show that the minimum daily quota is achievable by most workers within an eight-hour shift?
- Do you give workers at least one rest day every week? If not, can you show that the work time complies with a collective bargaining agreement or with applicable law?
- Do you give workers reasonable breaks during shifts—specifically, if an employee's shift is six or more hours?

## E FURTHER INFORMATION

### Websites:

ILO, Conventions (conventions 1, 14, 132 and 183 are particularly useful)

[www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO)

ILO, Inclusive Labour Markets, Labour Relations and Working Conditions Branch

[www.ilo.org/public/english/protection/condtrav/database/](http://www.ilo.org/public/english/protection/condtrav/database/)

ILO, Q&As on business and working time

[www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_TIM\\_FAQ\\_EN/lang--en/index.htm](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm)

### Publications:

The Factories Act, 1948 as amended by the Factories (Amendment) Act, 1987 (1987) [India]

[www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm](http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm)

Fair Labour Association, FLA Workplace Code of Conduct and Compliance Benchmarks (2011)

[www.fairlabor.org/sites/default/files/fla\\_complete\\_code\\_and\\_benchmarks.pdf](http://www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf)

ILO, Better Work 8: Working Time (2013)

<https://betterwork-org/global/wp-content/uploads/Guidance-8-Working-Time-rev-Jan-2013.pdf>

ILO, C030–Hours of Work (Commerce and Offices) Convention (1930)

[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312175](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312175)

ILO, Rest Periods: Definitions and Dimensions (2015)

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_491374.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_491374.pdf)

SAI, Guidance Document for Social Accountability 8000 (SA8000®:2014) (2016)

[www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

# (COP 17) REMUNERATION

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members.

A **collective bargaining agreement** is a legally enforceable, written contract between a company's management and its employees, represented by a trade union or equivalent. Collective bargaining agreements must comply with applicable law. Some of the subjects of collective bargaining, as identified by the International Labour Organization (ILO) include wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of collective agreement and granting of trade union facilities.

**Deductions** are the financial amount withheld from an employee's earnings. Common legally required deductions include taxes, health care and social insurance. Deductions may also include lawful garnishments, where employers are required to deduct funds from employees' wages, for example as a result of a court order to pay off a debt.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

A **living wage** is the remuneration received for a normal working week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing and other essential needs including provision for unexpected events.

The **minimum wage** is the legally required minimum amount that must be paid to workers. It is the higher of that set by the government or that contained in an applicable collective bargaining agreement.

A **premium rate of pay** is one that is higher than the normal working week pay rate.

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

A **social insurance scheme** is any government-sponsored programme that provides protection against various economic risks to people (such as loss of income due to sickness, old age or unemployment) and that requires financial contributions, usually from employers.

**Vulnerable workers** are specific groups of people, such as women, migrants, people with disabilities, ethnic or religious groups, that exist within a larger population and that are at higher risk of being harassed, exploited or in any other way discriminated against.

Sources:

- Global Living Wage Coalition, What is a Living Wage?  
[www.globallivingwage.org/about/what-is-a-living-wage](http://www.globallivingwage.org/about/what-is-a-living-wage)
- ILO, C100—Equal Remuneration Convention (1951)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)
- OECD, Glossary of Statistical Terms (2001)  
<https://stats.oecd.org/glossary/detail.asp?ID=2490>
- Social Accountability International (SAI), Guidance Document for Social Accountability 8000 (SA8000®:2014)(2016)  
[www.iqnet-certification.com/userfiles/SA8000\\_MS\\_New/18.%20SA8000%202014%20Guidance%20Document\\_May%202016\\_FINAL.pdf](http://www.iqnet-certification.com/userfiles/SA8000_MS_New/18.%20SA8000%202014%20Guidance%20Document_May%202016_FINAL.pdf)

## 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, workers may be given non-wage benefits such as health care, accommodation, 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. More than 90 per cent of countries have legislation setting the minimum wage. Ideally, the minimum wage is calculated as a 'living wage' that can cover the minimum needs of the worker and his or her family, in light of the country's prevailing economic and social conditions. But this is not always the case, especially in labour-intensive countries. This can lead to a detrimental cycle of employees taking on too much work and overtime to make ends meet; working hours and remuneration are closely linked.

In addition to needing living wages, workers also need to receive these regularly to meet their domestic needs. The frequency of payments—weekly, fortnightly or monthly, for example—should be predetermined and respected.

## Piece-rate payment schemes

Some employers pay wages by piece instead of by hours worked, especially in labour-intensive roles. In many factories, failure to reach production quotas can lead to fines or deductions from wages. These payment schemes are often difficult for workers to understand, leaving them vulnerable to underpayment because they can't easily calculate or verify their wages. Piece-rate payment schemes can also drive excessive working hours as workers take on more and more overtime to meet unreasonable quotas to avoid penalties. They also tend to incentivise verbal or physical abuse.

Properly implemented, piece-rate payment schemes can serve to benefit workers because they allow for bonus pay without overtime. In India, for example, a 'monthly fixed rate' is increasingly used in the diamond sector to set a legal minimum wage based on the average output of piece-rate workers during normal working hours.

Source:

- SAI, Guidance Document for Social Accountability 8000 (SA8000®:2014)(2016) [www.ignet-certification.com/userfiles/SA8000\\_MS\\_New/18.%20SA8000%202014%20Guidance%20Document\\_May%202016\\_FINAL.pdf](http://www.ignet-certification.com/userfiles/SA8000_MS_New/18.%20SA8000%202014%20Guidance%20Document_May%202016_FINAL.pdf)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

In 1928, the International Labour Organization (ILO) adopted **Convention 26**,<sup>1</sup> 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**,<sup>2</sup> which outlined the factors that must be included when calculating 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** on Hours of Work (Commerce and Offices)<sup>3</sup> 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).<sup>4</sup> 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 that determines minimum wages nationally, or for sectors or occupations. Wages and other benefits may also be directly negotiated through collective bargaining agreements between employers and workers represented by independent trade unions or other worker representatives.

In most jurisdictions, overtime must be paid at a premium. As this varies between sectors and countries, it is essential to be aware of all relevant wage conditions in all jurisdictions of operation.

## D IMPLEMENTATION GUIDANCE

Assign responsibility for setting and overseeing remuneration and statutory benefits to a senior management function, such as human resources. If you have a collective bargaining agreement, make sure it deals with wages, benefits, overtime rates, methods of payment and deductions (if applicable).

1 ILO, C026—Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (1930) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C026](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026)

2 ILO, C131—Minimum Wage Fixing Convention, 1970 (No. 131) (1972) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312276](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312276)

3 ILO, C030—Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (1933) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312175](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312175)

4 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

## COP 17.1: Wages for normal hours worked

Members shall pay all employees a wage rate for normal hours worked, not including overtime, based on the higher of either the applicable legal minimum wage, plus associated statutory benefits, or the prevailing industry standards. Wages paid on a performance-related basis shall not be less than the legal minimum wage for a normal working week. Members shall ensure that comparable wages are given to all employees for carrying out work of equal value with processes to assess and remediate any potential wage disparity that discriminates against any category of workers.

### Points to consider:

- The legal minimum wage varies with region, type of facility and skill level of the worker: be careful to identify and understand the applicable law in all countries of operation.
- If you have part-time workers, calculate pro rata wages for them based on full-time annual rates.
- Aim to ensure that the minimum wage you pay is high enough for workers to maintain a normal standard of living (that is, a 'living wage'). A living wage is not always the same as the statutory minimum wage and can vary a lot between and within countries (see box 'Living wage').

### Living wage

The 1966 International Covenant on Economic, Social and Cultural Rights defines a wage that enables people to meet their basic living needs as a universal human right. The covenant states that workers should be remunerated fairly, women and men should be paid equally for the same work and that both should be able to make a decent living for themselves and their families. Yet, many workers do not earn this 'living wage', which makes them vulnerable to exploitation.

There are different methods for calculating and implementing living wages. The following resources include practical guidance on both:

- Ethical Trading Initiative, Living wage resources  
[www.ethicaltrade.org/issues/living-wage-workers/living-wage-resources](http://www.ethicaltrade.org/issues/living-wage-workers/living-wage-resources)
- Iseal Alliance, How to measure living wage: 10 things you should know (2018)  
[www.isealalliance.org/sustainability-news/how-measure-living-wage-10-things-you-should-know](http://www.isealalliance.org/sustainability-news/how-measure-living-wage-10-things-you-should-know)
- WageIndicator Foundation  
<https://wageindicator.org/Wageindicatorfoundation>

- If you employ apprentices:
  - Make sure they make at least minimum wage; do not use apprenticeships to pay workers lower wages or benefits.
  - Find out whether the local government has any extra requirements relating to young workers (because most apprentices tend to be young).

## Apprenticeships' pay in India

In September 2014, the Indian Ministry of Labour and Employment amended the Apprenticeship Act detailing the minimum rate of stipend per month payable to trade apprentices for four years of training as follows:

Year of training	Percentage minimum wage of semi-skilled worker
Year 1	70%
Year 2	80%
Year 3	90%
Year 4	90%

The Act is not specific to the gem and jewellery industry and some industry stakeholders consider that the minimum wage for apprentices is set too high. This is because of the high costs associated with training apprentices who generally start out unskilled and because of the risks of damage to high value goods. The act is therefore not being fully implemented.

The table below tries to account for this by introducing some flexibility in assessing conformance with this provision. **In all cases** apprentice training records will need to be kept for the entirety of the apprenticeship.

Year of training	Conformance	Minor non-conformance	Major non-conformance
1	Pay $\geq$ 70%	—	Pay < 70%
2	Pay $\geq$ 80%	Pay = 75% to 79% (and an annual rise in apprentice salary)	Pay < 75% (or no annual rise in salary)
3	Pay $\geq$ 90%	Pay = 75% to 89% (and an annual rise in apprentice salary)	Pay < 75% (or no annual rise in salary)
4	Pay $\geq$ 90%	Pay = 75% to 89% (and an annual rise salary)	Pay < 75% (or no annual rise in salary)

Minor non-conformances must be addressed by the next RJC audit.

Source: Government of India. Ministry of Labour and Employment <https://labour.gov.in/>

- If you use probationary or training periods for employment, make sure that:
  - these are legally allowed;
  - the wage does not fall below the legal minimum applicable for that category of work; and
  - any substandard wages for this period are limited to a defined period of time that is strictly adhered to and clearly communicated to workers.
- If you pay workers by the hour, establish clear processes and procedures for calculating wages and use an effective time management system to help ensure accuracy (see COP 16 [Working hours](#)).
- If you pay workers by piece, set a minimum daily production quota low enough to make it achievable by most workers within an eight-hour shift. This will help ensure your workers don't have to work beyond the normal working week, excluding overtime, to earn a minimum wage (or the prevailing industry wage, whichever is higher).
- In all cases, make sure that wages:
  - are paid regularly and in a timely manner; and
  - are paid equitably across all employees performing similar roles. You are expected to actively work to prevent any actual or perceived wage disparity based on gender, ethnicity, age, migrant status or any other demographic as outlined in COP 22.1 [Non-discrimination](#). You should conduct annual wage reviews to identify pay gaps and address any potential pay-based discrimination against vulnerable workers.
- Where payment of statutory benefits depends on registering employees into social insurance schemes and the like, you are responsible for doing the necessary administration to ensure your workers receive their benefits in accordance with applicable law.

## Provident fund contributions in India

In 2011, two high courts in India, in two separate cases, ruled that various allowances paid by an employer to its employees (including conveyance, education, food concession, medical, special holidays, night shift incentives and city compensatory allowance) qualified as basic wages and must be included when calculating monthly provident (or pension) fund contributions. A Supreme Court case is underway.

In 2012, the Employees' Provident Fund Organisation (EPFO), which administers India's largest compulsory provident fund scheme, issued a circular to clarify the basis for calculating contributions, and which appeared to corroborate the findings of the two high court cases. The circular has been temporarily suspended since December 2012, pending further investigation by the EPFO.

In view of EPFO's ongoing efforts to clarify the process for calculating provident fund contributions, the RJC's position is that all members must justify their calculations to auditors and be able to show that these are based on applicable law.

### COP 17.2: 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:

- It is important that you are aware of any applicable laws, collective bargaining agreements and industry standards, and calculate overtime pay in accordance with these. See also guidance on COP 1 [Legal compliance](#).
- If there is no applicable law or collective bargaining agreement (or if neither provides specific direction on overtime), calculate overtime pay at a premium rate, that is, a higher rate than the normal working week rate. This should at least match prevailing industry standards.
  - Note that ILO Convention 1 and Convention 30 set the rate of pay for overtime as not less than one-and-a-quarter times the regular wage rate, which should be used as a benchmark in the absence of other regulation.
- Overtime pay benefits apply to workers and managers with a contract with defined hours; they may not be required for managers who genuinely set their own work schedules.
- In most cases, overtime calculations are based on hours worked, so make sure you also follow the guidance for COP 16 [Working hours](#).
- If you use a piece-rate pay scheme, calculating overtime pay can be very complex. A simple incentive system that provides a higher flat rate for every piece beyond the production quota can be easier to understand, and therefore implement, for both workers and managers. Alternatively, you can adopt a 'monthly fixed rate' system that sets a legal minimum wage based on the average output of your workers in normal working hours and pays anything above this output at a higher rate as an 'incentive payment'.

### COP 17.3: Method of payment

**Members shall make wage payments to employees in accordance with the law that are:**

- a. Regular and predetermined, and not delayed or deferred.
- b. By bank transfer to an account controlled by the employee, or in cash or cheque form in a manner and location convenient to the employees.
- c. Accompanied by a wage slip that clearly details wage rates, benefits and deductions where applicable, and is in a format that employees can easily understand.
- d. If employment agencies are used, members shall have systems to ensure equitable compensation and workplace standards, and to ensure that wages are effectively received by employees, including migrant, contract, contingent and temporary employees.

## Points to consider:

- Pay your workers regularly and reliably. That means making sure that you:
  - comply with any relevant national laws and regulations on frequency of remuneration;
  - establish clear procedures for calculating, checking and distributing wages;
  - use a bank transfer to an account controlled by the worker, cash or cheque to pay workers; and
  - pay wages directly to your worker, and not to a third party.
- You cannot offer promissory notes, coupons or merchandise in lieu of wages. This is because promissory notes allow payments to be delayed; and vouchers or coupons can force workers to buy specifically from the company-owned store, limiting their choices and tying them to their employer. Payment should be made in a timely manner so that workers do not have to stay for a prolonged period to receive backwages.
- Your workers should be able to understand how their wages are calculated and be able to report any incorrect payments without fear of retaliation. To that end:
  - Stipulate the level of wages and how they will be paid in all employment contracts.
  - Give your workers regular wage slips that clearly show and explain the rates of pay, as well as any benefits paid or deductions made.
  - Train your workers in how to read these wage slips.
  - Establish a clear process for reviewing and correcting payment errors and communicate it to your workers so that they know what to do if their wages have been incorrectly calculated.
- Your workers should not be obliged to travel any significant distance, or incur costs, to collect their pay.
- You are expected to keep time, wage and leave records (see COP 15 [General employment terms](#)).

## COP 17.4 and 17.5: Deductions

### 17.4 Members shall only make deductions from wages if these deductions:

- a. Comply with the law and, if applicable, are governed by collective bargaining agreements.
- b. Are determined and calculated following a documented due process that is clearly communicated to employees.
- c. Do not result in an employee making less than the minimum wage.

### 17.5 Members shall not make deductions for disciplinary purposes.

## Points to consider:

- All deductions must:
  - be determined by due process;
  - be accurately calculated and administered according to applicable law;
  - be communicated to employees as part of their employment contract; and
  - must not result in an employee receiving wages below the minimum wage.
- Acceptable deductions under the COP include those that are either required or permissible by law.
  - Common legally required deductions include taxes, health care and social insurance. They may also include lawful garnishments, where employers are required to deduct funds from employees' wages, for example as a result of a court order to pay off a debt. (Note that lawful garnishments are subject to applicable law and fall outside the scope of provision 17.4b.)
  - Common legally permissible deductions include transportation, meals, medical assistance, childcare, union fees, loan repayments and lodging.
- Unacceptable deductions under the COP include:
  - Recruitment fees, either to the employer or to an agency.
  - Charges for personal protective equipment, which must be provided free of charge to comply with COP 23.6 [Health and safety](#).
  - Any form of deposit or advance on equipment.
  - Deductions as a disciplinary measure for employee behaviour.
- Voluntary deductions—for example, to pay back a loan voluntarily taken from the employer—fall outside the scope of COP 17.4.

## COP 17.6: Provisions and services

**Members shall not force employees to buy provisions or services from their own business or facilities; where there is no alternative, members shall not charge excessive rates for these.**

### Points to consider:

- Forcing your workers to buy provisions from you can be a form of bonded labour, as outlined in COP 20 **Forced labour**, and can undermine the intent of proper remuneration practices.
- If your employees have limited access to provisions and services at work, for example in isolated mines or factories, make sure provisions are charged at an affordable price. Buying provisions at work should not result in an employee earning less than the minimum wage.

## COP 17.7: 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:

- Make sure that any wage advances or loans you offer workers comply with applicable law.
- Compare your interest rates and terms for repayment with those offered by other available sources of credit to make sure they are fair and not excessive.
- Do not let the repayment period for a loan exceed the term of your employee's employment contract, as this can be a form of bonded labour, which is prohibited under COP 20 **Forced labour**.
- Both you and your employee will need to sign an advance written agreement on the terms and conditions of the loan and its repayment.
  - You should both receive signed copies of the loan agreement and keep your copy in the employee's personal file as part of your record-keeping process.

## COP 17.8: Benefits

**Members shall ensure that all benefits are given to employees in accordance with applicable law.**

### Points to consider:

- Review local law and identify the legal requirements on all benefits, including maternity, paternity and childcare benefits. Compare these with what you currently offer workers and adjust your policy and practice to comply with (or go beyond) applicable law.
- Inform workers of which benefits are legally required and which are additional ones provided by you. This will help ensure workers know you are abiding by the law, while helping you retain staff.

## Check:

- Can you show that your workers understand their wage payments?
- Do your employment contracts accurately detail all benefits (that is, standard wage rate, overtime wage rate, piece-rate information, deductions, paid holiday and annual leave)?
- Can you show that workers' wages are paid directly, accurately, regularly and in a timely manner, by bank transfer, cheque or cash?
- Do payments for normal working hours and overtime comply with local law and collective bargaining agreements?
- Can you show that all deductions are legal, communicated to the worker and verified to ensure a worker isn't earning less than minimum wage?
- Are your employees forced to buy provisions from you? If you sell provisions to employees, are they sold at a reasonable rate that does not result in employees earning less than minimum wage?
- If you provide wage advances or loans, can you show the auditor that the repayment terms are transparent, fair and do not lead to debt bondage?
- Do you keep signed copies of all loan agreements?
- Do you provide legally mandated parental and childcare benefits?

## E FURTHER INFORMATION

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### Websites

ILO, Resource Guide on Minimum Wages

[www.ilo.org/inform/online-information-resources/resource-guides/minimum-wages/lang--en/index.htm](http://www.ilo.org/inform/online-information-resources/resource-guides/minimum-wages/lang--en/index.htm)

ILO, Working Conditions Laws Database

[www.ilo.org/dyn/travail/travmain.home](http://www.ilo.org/dyn/travail/travmain.home)

### Publications

Ethical Trade Initiative (ETI), Base Code Guidance: Living Wages

[https://www.ethicaltrade.org/sites/default/files/shared\\_resources/eti\\_living\\_wage\\_guidance\\_2.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_living_wage_guidance_2.pdf)

ETI, Living Wages in Global Supply Chains: A New Agenda for Business (2015)

[www.ethicaltrade.org/sites/default/files/shared\\_resources/living-wages-in-global-supply-chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/living-wages-in-global-supply-chains.pdf)

ILO, C100—Equal Remuneration Convention (1951)

[www.ilo.org/ilolex/cgi-lex/convde.pl?C100](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100)

Oxfam, Steps Towards a Living Wage in Global Supply Chains (2014)

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/336623/ib-steps-towards-living-wage-global-supply-chains-101214-en.pdf;jsessionid=04ECE190A8F4EF6DF91733D8A5754261?sequence=1>

SAI, Guidance Document for Social Accountability 8000 (SA8000@:2014) (2016)

[www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8](http://www.sa-intl.org/index.cfm?fuseaction=document.viewDocument&documentid=563&documentFormatId=1166&vDocLinkOrigin=1&CFID=22979020&CFTOKEN=2db102a753d2089b-A258963B-1C23-C8EB-80C2745C596B15C8)

# (COP 18) HARASSMENT, DISCIPLINE, GRIEVANCE PROCEDURES AND NON-RETALIATION

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Active communication** means using appropriate methods and frequency for relaying information that enable the receptor to effectively understand and act on the information.

**Disciplinary procedures** are a set way for dealing with disciplinary issues. They 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.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Grievance mechanisms** are formal complaint processes for individuals, workers, communities and/or civil society organisations adversely affected by business activities and operations to report their grievances for investigation and remediation as necessary. For this provision, a grievance mechanism refers to the means by which employees can raise concerns about workplace-related conditions. They are defined through an internal set of defined protocols that are collectively referred to as the **grievance procedures**.

**Harassment** is any type of unwelcome conduct from a boss, co-worker, group of co-workers, customer or vendor whose actions, communication or behaviour mocks, demeans, puts down, disparages or ridicules an employee. Physical assaults, threats and intimidation are severe forms of harassment.

**Retaliation**<sup>1</sup> is any kind of negative action taken against an employee as a result of reporting a grievance. This includes any form of punishment and any action that creates a hostile, threatening or uncomfortable environment.

**Vulnerable workers** are specific groups of people, such as women, migrants, people with disabilities, ethnic or religious groups, that exist within a larger population and that are at higher risk of being harassed, exploited or in any other way discriminated against.

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

Source:

- Sedex Supplier Workbook (2014)  
<https://cdn.sedexglobal.com/wp-content/uploads/2016/09/Sedex-Supplier-Workbook-2014-version-Web.pdf>

## B ISSUE BACKGROUND

### Harassment

Preventing harassment in the workplace is part of creating decent working conditions for employees and protecting workers' rights to a safe working environment. Harassment comes in many different forms, from a single supervisor publicly shouting at a worker to a group of workers consistently harassing someone because of their gender, religion or ethnicity.

More severe forms of harassment include intimidation, threats and physical or sexual violence. But harassment can also come in seemingly benign communications that are not made in anger, such as jokes or comments on appearance or lifestyle (see box 'Sexual harassment in the workplace'). Harassment can also be indirect, for example conduct, remarks or malicious gossip about an employee shared between people behind the employee's back. Third parties observing sexual harassment can also be the victim of the harassment. It's important for employers to understand the different forms of possible harassment in order to create a non-hostile working environment. It's also important to be aware that some workers are more vulnerable to harassment in the workplace and that vulnerability can vary across space and culture. RJC does not tolerate any form of harassment or violence, regardless of severity.

1 In some jurisdictions, this may be known as 'victimisation'.

Companies play a vital role in addressing harassment by setting and enforcing responsible workplace standards and policies to drive behaviour change. Investing in workforce education to help workers and supervisors understand what harassment is and why it cannot be tolerated is a critical step towards creating a harassment-free work environment. But it is just as important to invest in training and empowering workers to speak up if they experience or witness violence or harassment in the workplace. Employers are responsible for creating an environment that not only encourages employees to speak up, but ensures no retaliatory actions will result. Employers should also consider what extra protection is needed for vulnerable workers.

## Sexual harassment in the workplace

The International Labour Organization (ILO) defines sexual harassment as a sex-based behaviour that is both unwelcome and offensive to its recipient. It can take two forms:

1. Quid pro quo, in which a job benefit—such as a pay rise, a promotion or even continued employment—is made conditional on the victim acceding to demands to engage in some form of sexual behaviour.
2. Hostile working environment in which the harassment behaviour creates conditions that are intimidating or humiliating for the victim.

Sexual harassment in the workplace can be both physical and psychological. It includes behaviours that are:

- Physical: for example, physical violence, sexual assault, touching, unnecessary close proximity.
- Verbal: for example, comments and questions about appearance, lifestyle or sexual orientation, offensive phone calls, inappropriate 'jokes'.
- Non-verbal: for example, wolf whistling, making sexually suggestive gestures, displaying sexual materials.

While men and boys can experience sexual violence and harassment, the vast majority of victims are women and girls. Creating harassment-free workplaces is critical to achieving decent work for all and gender equality.

Sources:

- ILO, Ending Violence and Harassment Against Women and Men in the World of Work (2018)  
[www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS\\_553577/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_553577/lang--en/index.htm)
- ILO, Sexual Harassment at Work: Fact Sheet  
[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_fs\\_96\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_96_en.pdf)

## Discipline

For companies to operate effectively, they need clearly defined, and fully respected, standards for performance and conduct. Cases of minor misbehaviour or unsatisfactory performance can be best dealt with informally: a quiet word is often all that is needed to improve an employee's conduct or performance. It is also important to ensure that the complainant (if there is one) is informed of your actions as a result of the complaint.

In cases that require formal disciplinary action, the type of action that is reasonable or justified will depend on the specific circumstances. But in all cases, managers should act promptly, fairly and consistently. And in all cases, discipline in the workplace should only ever be seen as a way to correct problem behaviours or performance issues, not as a way to punish employees.

Unfortunately, in some workplaces discipline can take on extreme forms of abuse, including physical (corporal punishment), mental, psychological, verbal or sexual abuse. Documented examples of unreasonable disciplinary practices include employees being yelled at or shamed; forced to do push-ups or run laps; made to stand in the sun for extended periods; beaten or hit; threatened with violence; sexually or racially harassed; or denied wages, food or services. All of these, or similar actions, are considered to violate basic human rights.

## Grievance procedures and non-retaliation

If workers are harassed, disciplined inappropriately, paid incorrectly or treated unfairly, they should be able to report their grievances through a confidential channel for their employer to review and address appropriately. These channels, called grievance mechanisms or procedures, create an effective avenue for companies to receive, process and provide adequate response or remedy for grievances raised by employees.

A grievance mechanism can only really serve its purpose if people know it is there, know how to use it and trust that it works fairly. The UN Guiding Principles on Business and Human Rights sets out eight criteria for designing an effective grievance mechanism that can do this, ranging from making the process legitimate and accessible to ensuring it is rights-compatible and rooted in engagement (see Figure 18.1).

In all cases, it is important that nobody suffers negative consequences from raising a grievance.



Figure 18.1. Characteristics of an effective grievance mechanism

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

Both the 1948 **Universal Declaration of Human Rights (UDHR)**<sup>2</sup> and the 1966 **International Covenant on Civil and Political Rights**<sup>3</sup> 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 1975 **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**<sup>4</sup> 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 UN member states.

The ILO is reviewing gaps in legal protections against violence and harassment in the workplace. As part of its efforts, it is convening members to discuss a new international legal instrument—which might be a convention, a recommendation or some combination of both—to protect workers.

2 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

3 UN, International Covenant on Civil and Political Rights (1966) [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)

4 UN, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) [www.ohchr.org/en/professionalinterest/pages/declarationtorture.aspx](http://www.ohchr.org/en/professionalinterest/pages/declarationtorture.aspx)

## National law

Many countries prohibit corporal punishment, usually within their constitutional framework. Some countries also have legislation specifically aimed at employers about disciplinary practices, abuse, harassment and grievance procedures. RJC members are expected to know the legal requirements in all countries where they operate.

## D IMPLEMENTATION GUIDANCE

### COP 18.1: No violence or harassment

**All forms of violence and harassment in the workplace are prohibited, including but not limited to corporal punishment; harsh or degrading treatment; sexual or physical harassment; mental, physical, verbal or sexual abuse; retaliation; coercion; and intimidation. Both direct and indirect harassment in any form is not acceptable in workplace facilities. Members shall ensure that employees are treated with dignity and respect and are not subjected to harassment or violence, or threatened with these towards themselves, their family or colleagues.**

#### Points to consider:

- Make sure you have policies that prohibit all forms of violence and harassment in the workplace; and communicate this information to supervisors and workers.
- Your policy must be supported by written procedures. Together they should define and address direct and indirect harassment, as well as harassment that can occur outside the workplace. This should include things like business trips or social events (for example, after-work drinks) and non-work-related communications between co-workers (sharing messages and photos).
- Your policies and procedures for addressing gender-based violence should focus on helping victims, preventing any further harm to them and having disciplinary measures for perpetrators. That includes disallowing retaliation against victims and giving victims flexibility in their ability to take leave or other related benefits that help safeguard them.
- To effectively address gender-based violence, your policy should also:
  - respect the confidentiality of the situation;
  - defer to the victim's assessments of safety wherever reasonably possible; and
  - actively promote prevention and awareness training.
- Use a risk assessment to help you identify training needs for supervisors and workers on acceptable workplace behaviours and on how to report grievances.
- Help create a positive work environment by removing offensive, explicit or pornographic materials such as calendars, posters or literature from the workplace.
- Carry out periodic audits to monitor the working environment and incidence of sexual harassment. This can be internal audits. For smaller companies, this can be a relatively straightforward periodic internal check.

## Unacceptable behaviours

Below are some examples of workplace harassment and abuse; all are considered unacceptable behaviours.

- 'Staring' or standing too close to the opposite sex.
- Inappropriately touching hands, arms or hair.
- A man intentionally brushing up next to a woman in a queue.
- A man touching a woman's breasts.
- Making inappropriate comments about a woman's or man's appearance, body or sexual habits.
- Asking for sexual favours in return for something (for example, overtime or job security).
- Forced kissing or fondling.
- Coercive sex (rape).
- Using sexually explicit language.
- Abusive name-calling (for example, 'prostitute' or 'slut').
- Verbal abuse or use of foul language.
- Shouting, with the intent to demean, bully or intimidate.
- Pushing, pulling, hitting or shoving someone of the opposite sex.
- Pulling hair.
- Slapping, pinching, pricking with pins.
- Displaying sexually explicit pictures on the wall.
- Sending abusive or sexual messages, photographs or images by phone, email or social media.

Source:

- ILO International Training Centre, Gender-Based Violence in Global Supply Chains: Resource Kit (2013)  
<https://gbv.itcilo.org/index.php/index.html#home-index>

### COP 18.2: Key staff training

**Doctors, nurses and key personnel among security staff, managers or others shall be regularly trained to recognise signs of gender-based violence and understand relevant laws and organisational policies.**

#### Points to consider:

- Managers, medical professional and other key personnel can be uniquely placed to help prevent and address violence in the workplace (including gender-based violence). It is critical that these people are trained to help identify victims of workplace violence who may not feel safe reporting incidents through the grievance procedures.
- Identify the relevant key staff who are best positioned to help prevent violence and hostile environments in the workplace and focus training on them (see box 'Practical training references').
- Consult with local organisations and law enforcement to identify and understand:
  - all relevant laws related to gender-based violence;
  - local and national victim support services available; and
  - requirements for reporting incidents to local authorities.

## Practical training references

A practical reference for recognising gender-based violence is the ILO's toolkit with case studies and implementation guidance. Module 6 covers practical ways to identify, monitor and report on gender-based violence and sexual harassment, with a specific focus on low- and non-unionised workplaces.

Sources:

- ILO International Training Centre, Gender-Based Violence in Global Supply Chains: Resource Kit (2016) <https://gbv.itcilo.org/>

Other sources with indicators for medical professionals include:

- UNFPA, A Practical Approach to Gender-Based Violence: A Programme Guide for Health Care Providers and Managers (2001) [www.who.int/hac/techguidance/pht/gbv\\_a\\_programme\\_guide\\_health\\_care.pdf](http://www.who.int/hac/techguidance/pht/gbv_a_programme_guide_health_care.pdf)
- UNFPA and WAVE, Strengthening Health System Responses to Gender-Based Violence in Eastern Europe and Central Asia (2014) <https://eeca.unfpa.org/sites/default/files/pub-pdf/WAVE-UNFPA-Report-EN.pdf>

## COP 18.3: Disciplinary process

**Members shall clearly and actively communicate their 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 disciplinary action, outlining the legal and company-specific penalties for different types of inappropriate action, both in terms of worker and supervisor behaviour. Make sure you proactively communicate it with your employees.
- Make a senior management function, such as human resources, responsible for discipline and grievance procedures; and strictly prohibit anyone else from disciplining employees. Security guards and the military, in particular, should not be allowed to discipline the workforce; their role must be clearly limited to safeguarding the premises and the personnel and product therein.
- Disciplinary measures, if and when required, should be applied consistently and fairly among all employees.
- Never use discipline to punish, humiliate or intimidate your workers. Instead, use it to promote and encourage a high standard of personal conduct. In particular, your disciplinary measures must not include:
  - any deductions to wages (see COP 17 [Remuneration](#));
  - retaliation for submitting a grievance or complaint;
  - compulsory labour as a punishment; or
  - punishment for taking part in a strike (unless there has been serious misconduct or criminal acts). Note that in this case, 'punishment' includes deducting wages beyond that corresponding to time lost during a strike, terminating or failing to renew workers' contracts, reducing benefits or seniority, and imposing heavier workloads.
- The risks of inappropriate disciplinary measures may be higher or more evident in specific countries, sectors or roles (such as security provision). Do a risk assessment to identify risks in your operations.
- In all cases, establish a series of escalating steps for disciplinary procedures to remediate unacceptable behaviour or performance. This should begin with verbal and written warnings before progressing to more serious disciplinary action, unless the seriousness of the offence warrants immediate escalation.
- Train your staff—especially those in any position of authority—on how to manage disciplinary issues appropriately. Include explicit training on what type of discipline, and by who, is and is not allowed, and what the penalties are for breaching disciplinary procedures.
- Make sure workers are aware of the disciplinary procedures as part of new-hire and regular employee training.
- When subject to disciplinary action, workers have the right to know why they are being disciplined and the right to defend themselves. In practice, that means you must, in all cases and without any negative consequences:
  - give the worker details of the allegations;
  - provide an opportunity for them to respond to allegations, and to appeal any disciplinary decisions; and
  - allow them to consult with, or be represented by, a trade union (or other chosen person).
- If misconduct is alleged, give the worker time to prepare a defence.
- Make sure you have a robust system for keeping records of any verbal and written warnings, suspensions and dismissals within employee files.

## COP 18.4: Grievance procedures

**Members shall have clear, confidential and unbiased grievance procedures and investigation processes and actively communicate 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 shall be kept of employee grievances raised, investigation processes and outcomes.
- d. The selection of individuals to manage and assess the grievances shall be sensitive to the situation and strive to ensure gender balance.

### Points to consider:

- Establish procedures for workers to raise grievances; at minimum, these must ensure the confidentiality and anonymity of the person raising the grievance and protect them from retaliation. They will need to involve your human resources department. For this reason, your grievance procedures for workers will likely have to be different from those used for external stakeholders to meet requirements of COP 6 **Human rights**, COP 32 **Stakeholder engagement** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**.
- Your grievance procedures should reflect the size and scale of your operations, and the needs of your workers and local communities. In all cases, they should meet the effectiveness criteria set out by the UN Guiding Principles (see Figure 18.1), and must define:
  - how workers and individuals can file grievances;
  - how management investigates grievances and decides how to remedy them;
  - how management communicates the outcomes after a grievance investigation; and
  - how outcomes are documented and kept confidentially.
- Think carefully about who will receive and investigate grievances. Whoever it is should be a trusted person, equipped with the necessary cultural and gender sensitivity to meet the needs of vulnerable populations in the workplace that are more likely to receive unfair treatment. The person must be trained and empowered to make decisions, or at least have access to decision-makers. In some cases, the person may operate outside your business.
- Your grievance procedures should be inclusive of all who may wish to use them. To that end, make sure you:
  - train all supervisors and workers on the procedures, and specifically on how to raise a grievance or concern;
  - make communications about grievance procedures available in languages that all workers understand;
  - let workers be accompanied by a fellow worker or union official during formal processes; and
  - allow non-employees to submit grievances about the workplace and give them the same level of confidentiality and protection from retaliation as employees.
- Record-keeping is critical to demonstrating that you have fair and effective grievance procedures: keep an accurate and updated record of all grievances and follow-up actions. To protect the confidentiality of those raising grievances, make sure these records are kept in a secure location.
- Review the effectiveness of your grievance procedures regularly, and update them accordingly, to ensure workers and community members remain confident in using them (see box 'Assessing grievance procedures').

### Assessing grievance procedures

Some ways for you to assess the effectiveness of your grievance procedures include:

- **Review grievances.** Look through all the grievances received and take note of how many there are, what they are about, who submitted them and what the outcomes were.
- **Consult stakeholders.** Talk to your managers, workers and local community members to get their perspective on how well your grievance procedures work and how they can be improved.
- **Use effectiveness criteria.** Consider your grievance procedures against each of the UN Guiding Principles' effectiveness criteria to identify and address any gaps.

Source:

- Ergon Associates, Access to Remedy—Operational Grievance Mechanisms (2017)  
[https://ethicaltrade.org/sites/default/files/shared\\_resources/ergon\\_-\\_issues\\_paper\\_on\\_access\\_to\\_remedy\\_and\\_operational\\_grievance\\_mechanims\\_-\\_revised\\_draft.pdf](https://ethicaltrade.org/sites/default/files/shared_resources/ergon_-_issues_paper_on_access_to_remedy_and_operational_grievance_mechanims_-_revised_draft.pdf)

## COP 18.5: Non-retaliation policy

Members shall have a policy and management systems to avoid retaliation for individuals filing complaints or engaging with the grievance procedure, in line with COP 2 (Policy and implementation).

### Points to consider:

- Make sure you have a policy prohibiting retaliation. This can be a stand-alone policy, or part of an overarching company policy (as part of COP 2 **Policy and implementation**).
- Either way, you should have procedures in place to support your non-retaliation policy.
- If you have any concerns that someone raising a grievance will suffer retaliation, make extra efforts to prevent this from happening. That might include adjusting the person's working hours or reassigning them to another supervisor.

### Check:

- Do you have policies that prohibit retaliation, harassment and violence in the workplace; and have those been implemented and communicated to workers and supervisors?
- Can you show that key personnel have been trained to recognise signs of gender-based violence?
- Have supervisors and security personnel been trained on appropriate disciplinary procedures and what types of discipline are not acceptable?
- Can you show that security guards are not allowed to discipline workers?
- Do you keep records of disciplinary actions in employee records?
- Can you show that workers know in advance what allegations are being made against them, and that they have a right to defend themselves?
- Can you show that your grievance procedures meet the UN Guiding Principles' effectiveness criteria?
- Does your facility keep investigation records of submitted grievances in a secure location to protect confidentiality?
- Are the people responsible for reviewing grievances properly trained?

## E FURTHER INFORMATION

### Websites:

Acas (Advisory, Conciliation and Arbitration Service), Discipline  
[www.acas.org.uk/index.aspx?articleid=1774](http://www.acas.org.uk/index.aspx?articleid=1774)

Chartered Institute of Personnel and Development, Discipline and Grievance at Work  
[www.cipd.co.uk/subjects/emplaw/discipline/disciplingrievprocs.htm](http://www.cipd.co.uk/subjects/emplaw/discipline/disciplingrievprocs.htm)

UN Human Rights, Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.  
[www.ohchr.org/en/professionalinterest/pages/cat.aspx](http://www.ohchr.org/en/professionalinterest/pages/cat.aspx)

Verité, An Introduction to Grievance Mechanisms  
<https://helpwanted.verite.org/node/735/lightbox2>

# (COP 19) CHILD LABOUR

## A DEFINITIONS AND APPLICABILITY

**This provision applies to all RJC members and applies to directly employed workers and indirectly employed workers who regularly work at members' sites.**

A **child** is anyone under the age of 18, as defined by the UN Convention on the Rights of the Child.

**Child labour** is defined as work done by children that deprives them of their childhood, potential and dignity, and that is harmful to their social, physical and mental development. In particular, it refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children;
- deprives them of the opportunity to attend school;
- obliges them to leave school prematurely; or
- requires them to attempt to combine school attendance with excessively long and heavy work.

**Hazardous work** is any work that puts a child's (or young worker's) physical or psychological well-being at risk because of the nature of the work or the conditions under which it is carried out. Based on International Labour Organization (ILO) Recommendation 190, this includes:

- work that 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, for example one that exposes children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health; and
- work under particularly difficult conditions such as long hours, night work or work that unreasonably confines children to the employer's premises.

**Light work** is not likely to harm the health or development of children, and does not prejudice their attendance at school, their participation in legitimate vocational orientation or training programmes, or their capacity to benefit from the instruction received.

The **minimum working age** as defined by ILO Convention 138 is 15 years, or statutory school-leaving age, whichever is higher. This age can vary by country.

**Night** is defined as the consecutive hours between 8 p.m. and 8 a.m. Under ILO Convention 33, young workers are not allowed to work at night.

The worst forms of child labour are defined by ILO Convention 182 as:

- 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;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- 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; and
- work that is likely to harm the health, safety or morals of children. This includes hazardous work as defined above.

Young workers are those under 18 but over the minimum working age.

#### Sources:

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## B ISSUE BACKGROUND

Child labour is one of the highest-profile and most widely condemned social performance issues. And yet it is still widespread in many parts of the world. The ILO's 2017 global report on child labour found that some 152 million children (aged 5–17) across the world were still trapped in child labour, with 73 million in hazardous work.<sup>1</sup>

### Child labour in mineral supply chains

Of the 152 million children in child labour in the world, about a million work in mining or quarrying in gold, tin, coal, diamonds, gems, stone and salt mines. Almost all child miners work in artisanal and small-scale mining (ASM).

Many experts agree that there is very little, if any, work in mining that would not be considered 'hazardous' under international law. For example, working underground, working with dangerous machinery, carrying heavy loads and working with toxic substances, which are common in the mining sector, are all hazardous work. Mining is also by far the most deadly category of 'hazardous work' for children: according to the OECD, it has an average fatality rate of 32 per 100,000 full-time worker equivalents for children aged 5 to 17.<sup>2</sup> In addition, children in some ASM communities are not always adequately safeguarded, and sexual and physical abuses can be a risk. This can take the form of sexual exploitation in exchange for protection in a dangerous mining situation, sexual violence in the community or sexual violence in the home where children are left behind while their parents mine (see COP 6 [Human rights](#)).

The complex drivers behind child labour in ASM are rooted in poverty. They include things like a need or desire to access cash quickly to cope with household emergencies, seasonal costs (such as schooling costs) or chronic poverty. To learn more about how to identify and address child labour in the mineral supply chain, see: OECD, *Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains* (2017)

[www.oecd.org/daf/inv/investment-policy/child-labour-risks-in-the-minerals-supply-chain.htm](http://www.oecd.org/daf/inv/investment-policy/child-labour-risks-in-the-minerals-supply-chain.htm)

It is important to understand the context in which child labour occurs and the impacts it can have. There are various reasons why children enter employment; financial need is the most common. Families in marginal economic circumstances may depend on children earning incomes.

But child labour ultimately impedes economic growth and development. It deprives children of the opportunity to be educated for productive and decent work, often consigning them to low-paying and unskilled jobs in adulthood. 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 poverty and lack of development, circumstances that drive child labour in the first place.

These complexities and interrelated factors mean that addressing child labour is rarely a simple matter of removing children from the workforce. Efforts to tackle child labour must be approached with an understanding of the economic drivers at hand, and a sensitivity to the alternatives available.

1 ILO, *Global Estimates of Child Labour: Results and Trends, 2012–2016* (2017)  
[www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575499.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf)

2 OECD, *Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains* (2017)  
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## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The ILO leads the world's efforts to set standards for child labour through two major conventions: the Minimum Age Convention 138 (1973)<sup>3</sup> and the Worst Forms of Child Labour Convention 182 (1999).<sup>4</sup> These are summarised below. Even if ILO member states have not ratified either of these 'core' conventions, they are still bound to promote the effective abolition of child labour through the 1998 ILO Declaration on Fundamental Principles and Rights at Work ([www.ilo.org/declaration](http://www.ilo.org/declaration)).

The **ILO Minimum Age Convention 138 (ILO C138)** offers the most comprehensive and authoritative international definition of minimum working age, which it sets at 15 years or statutory school-leaving age, whichever is higher. Exceptions to this rule are made for:

- hazardous work, which carries a higher minimum working age of 18 (in exceptional circumstances, countries can, under ILO C138, allow hazardous work from 16, provided that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or training);
- light work, which carries a lower minimum working age of 13 (factors to consider in determining whether a particular job constitutes light work for a child relate to whether the work is likely to be harmful to their health or development and includes hours of work, school attendance and performance, participation in vocational orientation or training, and the working environment); and
- countries whose economy and educational facilities are insufficiently developed, in which case the minimum working age can be initially reduced to 14 years.

Through ILO C138, countries are required to set the minimum age for entry into work or employment and to establish national policies to eliminate child labour. The convention also defines a range of protections for young persons that are older than the minimum working age but are still under 18.

ILO C138 does not apply to work done by children in schools as part of their education or training. Nor does it apply to work done by children at least 14 years old in businesses, provided that the work is part of a school or training institution programme or is a government-approved apprenticeship.

The **ILO Worst Forms of Child Labour Convention 182 (ILO C182)** calls on countries to prohibit and eliminate the worst forms of child labour; it applies to all children under 18. Through ILO C182, countries are also required to define in law what constitutes 'hazardous work', and to find ways to monitor how the convention is applied.

Beyond the ILO, international efforts to protect against child labour include:

- The **Convention on the Rights of the Child**,<sup>5</sup> which was adopted by the UN General Assembly in 1989, and which 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 **UN Guiding Principles on Business and Human Rights**,<sup>6</sup> which sets out companies' responsibilities to respect all human rights, including the right to be free from child labour. Under these principles, companies must avoid causing or contributing to child labour through their own activities; they must also seek to prevent and mitigate child labour that is directly linked to their operations, products or services by their business relationships, such as suppliers. If instances of child labour are found, companies also have a duty under the UN Guiding Principles to ensure the affected children have access to effective remedy. This requires careful consideration of how best to rehabilitate children away from the workplace in a way that enables them to return to school. More information about the UN Guiding Principles and the RJC's expectations for remedy and human rights due diligence are outlined in COP 6 [Human rights](#).

### National law

Most countries have national legislation establishing a minimum working age, often with particular provisions for different sectors (see box 'Child labour law in India').

3 ILO, C138—Minimum Age Convention (1973) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

4 ILO, C182—Worst Forms of Child Labour Convention (1999) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

5 UN Human Rights, Convention on the Rights of the Child (1989) [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx)

6 UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Child labour law in India

On 28 August 2012, the Union Cabinet of India approved amendments to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The Act bans all forms of child labour under the age of 14 and makes the employment of these children a criminal offence. The Act further prohibits the employment of children (or 'adolescents') aged 14–18 in hazardous work.

Under the 2012 Amendment Bill, 'hazardous work' includes, among other things:

- any occupation connected with mines (underground and underwater) and collieries;
- gem cutting and polishing; and
- any processing that involves toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.

In 2016, another amendment was published to expand protections for children and adolescents, focusing on the rehabilitation of children and adolescents who have already been employed in contravention to the age limits set out in the bill.

Source:

- India, The Child Labour (Prohibition and Regulation) Amendment Bill, 2016  
[www.prsindia.org/uploads/media/Child%20Labour/Child%20labour%20as%20passed%20by%20RS.pdf](http://www.prsindia.org/uploads/media/Child%20Labour/Child%20labour%20as%20passed%20by%20RS.pdf)

## D IMPLEMENTATION GUIDANCE

### COP 19.1 and 19.2: Minimum working age of 15 years and worst forms of child labour

**19.1 Members shall not engage in or support child labour as defined in ILO Convention 138 and Recommendation 146, which set 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 countries where compulsory schooling ends earlier than 15 years can start RJC membership while allowing a minimum working age of 14 (subject to applicable law) but shall transition to a minimum working age of 15 by the end of their first certification period.

**19.2 Members shall not engage in or support the 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 risk assessment and controls under COP 23 (Health and safety), a minimum age of 16 is allowed 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.

### Points to consider:

- Make a senior management function, such as human resources, responsible for the child labour policy and procedures, and all remediation of potential and confirmed non-compliances.
- Establish a policy prohibiting the use of child labour and preventing young workers from doing hazardous work. Do this in a stand-alone policy or incorporate it into an existing policy. Either way, make sure you communicate the child labour policy to all managers and staff as well as any business partners that employ workers on your sites.
- You will need to do a risk assessment appropriate to your business circumstances to identify areas where there may be a risk of child labour in your operations or supply chain. Do this as part of your human rights due diligence (see COP 6 [Human rights](#) and COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#)) and make sure you include the following activities, as appropriate:
  - Identify responsibilities related to hazardous work, and map current worker ages against these to confirm that no young worker is involved.
  - Identify all indirectly employed workers on-site to confirm that they all meet the minimum working age requirements.
  - Assess any light work done by young workers to ensure that it complies with applicable law and the COP, and that it does not interfere with schooling (note that you should support young workers participating in a structured formal education programme in these cases).

- Pay extra attention to artisanal mining sourcing relationships, which tend to carry a high risk of child labour (see COP 8 [Sourcing directly from artisanal and small-scale mining](#)).
- Develop procedures and management systems to help implement your child labour policy. In particular:
  - Establish a process for verifying age as part of your hiring process, and keep copies of proof of age documents with employment records. If using a recruitment or labour agency to hire workers, make sure they confirm proof of age before employing workers on your site or assigning them hazardous work.
  - If an applicant doesn't have official documents to prove their age, use several different verification approaches and 'triangulate' them. For example, do a medical examination, get copies of other documents like school certificates or family testimonies and carry out interviews. In all cases, remain sensitive to gender and culture. Make sure that anyone responsible for hiring and assigning tasks to workers are trained on how to avoid hiring underage workers or giving young workers hazardous work.
  - Attach proof of age and a description of duties to the employment records of all workers under 18 years of age. This will help you confirm your workers are not subjected to hazardous work or the worst forms of child labour.
  - Create and maintain a list of young workers and monitor their work schedules and duties to verify compliance with local law and the COP with regards to working-hour limits, scheduling and school attendance. That includes ensuring that schedules and work assignments comply with:
    - ILO Convention 33, which prohibits young workers from working night hours; and
    - ILO Convention 182 and Recommendation 190, which allows children that are 13 to 15 years of age to do light work, as long as it does not threaten their health and safety or hinder their education or vocational orientation and training.
- Note that you must not dismiss child workers in advance of your RJC audit; you are expected to remedy non-compliances as set out in COP 19.3.

## Child-headed households

In some countries, children have no option but to work because, for example, they have been orphaned by conflict, disease or natural disasters; they can end up in ASM operations.

The decision to either refuse a subsistence opportunity or consciously accept child labour can pose a serious dilemma for ASM communities—one that has been duly considered by the Alliance for Responsible Mining in developing the Fairmined Standard ([www.fairmined.org/the-fairmined-standard](http://www.fairmined.org/the-fairmined-standard)), which mirrors the COP's approach.

In practice, this means:

- If you find that children living in child-headed households or outside family or guardian care are in child labour in ASM under your control, you must use the guiding principles of the UN Convention on the Rights of the Child to ensure the children's well-being and safety.
- If you find young workers in the worst forms of child labour in ASM under your control, you must withdraw them immediately and find safe alternative income-generation opportunities for them, including flexible schooling if they are younger than minimum working age.
- If you find child labour in ASM that is not under your control but is in or near your concessions, you should engage in broader programmes aimed at withdrawing child labour from mining and providing remedy.

### COP 19.3: Where child labour is found at a facility

**Notwithstanding COP 19.1, where child labour is found at a facility, members shall develop documented child labour remediation processes that include steps for the child's continued welfare and consider the financial situation of the child's family. Remediation shall include:**

- Immediately withdrawing any children engaged in child labour.
- For a child still subject to compulsory education laws or attending school, offering adequate support to enable the child to attend and remain in school until she/he completes compulsory education.
- For a child not still subject to compulsory education laws or attending school, finding alternative income generation and/or vocational training opportunities. This can include decent and permissible employment.
- 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:

- Instances of child labour require considered responses that take account of local circumstances and applicable law. All forms of remedy and corresponding stakeholder communication should align with COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**.
- Develop appropriate remediation strategies to deal with instances of non-conformance with the ILO conventions and applicable law (see Table 19.1).

Table 19.1. Remediation strategies for non-conformances with ILO conventions and applicable law

Where children or young workers are found	Remediation strategies
<b>In child labour</b>	Remove children under the minimum working age from employment and give them appropriate remedy, including access to good quality education with real prospects of meaningful employment when they leave school. This is especially important where there is a risk that simply withdrawing children from employment will result in their working for other organisations with uncontrolled working conditions.
<b>In worst forms of child labour, doing hazardous work</b>	Remove children or young workers from the situation immediately, report it to relevant authorities and deploy a remediation strategy as above, seeking alternative light work for young workers.

- If children not engaged in worst forms of child labour continue to work during the remediation process, you must ensure that they:
  - do not work during school hours;
  - do not spend more than 10 hours a day in work and school combined (including time spent travelling to and from work and school);
  - can have at least 12 hours night-time rest;
  - have a minimum of customary weekly rest days;
  - are given fair payment for their work; and
  - are not allowed to work any overtime.
- Achieving this in practice is not easy. Under the RJC system, if you have identified an instance of child labour, are in remediation and are adhering to all these points, you will not be in a situation of critical breach. You must, however, immediately develop procedures to prevent any more children from being employed.
- When designing and implementing any remediation strategy, consider working with local non-government organisations to ensure your approach is informed by local cultural and geographical priorities and perspectives. This will help guard your strategies against unintentionally causing further harm to the child or community.
- Consider supporting community development initiatives to eradicate 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 organisations, trade unions, non-government organisations and community groups. They include local programmes and projects specifically aimed at improving access to education, or at withdrawing children from child labour and enrolling them in school or vocational training.

## Check:

- Is a senior management function, such as human resources, responsible for child labour policies and procedures?
- Do you have a written policy against child labour?
- Do you have written procedures for verifying workers' age during recruitment?
- Do you keep proof of age within employee files?
- Have you done a risk assessment to identify areas of hazardous labour and checked to make sure no workers under 18 years of age are involved?
- If any children are found in employment, do you have a remediation process in place? And is it in accordance with provision 19.3?

## E FURTHER INFORMATION

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### Websites:

Children's Rights and Business Principles  
<http://childrenandbusiness.org/>

Ethical Trade Initiative (ETI), Child Labour  
[www.ethicaltrade.org/issues/child-labour](http://www.ethicaltrade.org/issues/child-labour)

Global Child Forum  
[www.globalchildforum.org](http://www.globalchildforum.org)

Human Rights Watch, Child Labour  
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[www.unglobalcompact.org/what-is-gc/mission/principles/principle-5](http://www.unglobalcompact.org/what-is-gc/mission/principles/principle-5)

US Department of Labor, List of Goods Produced by Child Labor or Forced Labor  
[www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods](http://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods)

### Publications:

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[www.aidenvironment.org/media/uploads/documents/Child\\_Labour\\_Platform\\_Report\\_2010-11.pdf](http://www.aidenvironment.org/media/uploads/documents/Child_Labour_Platform_Report_2010-11.pdf)

ILO, Age Verification: Protection for Unregistered Children from Child Labour (2016)  
[www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_29095/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_29095/lang--en/index.htm)

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[www.ilo.org/global/publications/books/WCMS\\_575499/lang--en/index.htm](http://www.ilo.org/global/publications/books/WCMS_575499/lang--en/index.htm)

ILO, R146—Minimum Age Recommendation (1973)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R146](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R146)

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[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R190](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R190)

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[www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_30315/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_30315/lang--en/index.htm)

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[https://reliefweb.int/sites/reliefweb.int/files/resources/CL-Report-2017-engl\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/CL-Report-2017-engl_0.pdf)

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# (COP 20) FORCED LABOUR

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Forced labour** includes any work or service that is exacted from someone under the menace of a penalty, and which the person has not voluntarily agreed to do. There are four key types of forced labour:

- **Bonded labour**, also known as debt bondage, happens when a worker pledges their labour (or that of their family members) as security to repay a loan or wage advance from an employer or labour recruiter, where the terms of repayment are not clear and the loan provider does not intend to ever declare the loan repaid. Bonded labour can trap workers in debt to a particular employer for years, sometimes even passing from generation to generation.
- **Indentured labour** happens when a third party, often a parent or guardian, offers a worker in exchange for money. Indentured labourers are forced to work for either a fixed time, or until the proprietors decide they have received fair value.
- **Human trafficking** involves recruiting, harbouring or transporting people into a situation of exploitation through the use of violence, coercion or deception and forced to work against their will. People can be trafficked for many reasons, including forced labour.
- **Prison labour** is involuntary work done by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority. It also includes involuntary work done by a prisoner for the benefit of a private undertaking.

**Vulnerable workers** are specific groups of people, such as women, migrants (see box 'Vulnerable migrant workers'), people with disabilities, ethnic or religious groups, that exist within a larger population and that are at higher risk of being harassed, exploited or in any other way discriminated against.

Sources:

- International Labour Organization (ILO), C029—Forced Labour Convention (1930)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029)
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[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf)
- Social Accountability International (SAI), Social Accountability SA8000® (2008)  
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## B ISSUE BACKGROUND

Forced labour can be found in high- and low-income countries alike. It exists in formal and informal economies, and it can be found in the supply chains of multinational companies as well as those of small and medium-sized enterprises (SMEs). The 2017 Global Estimates of Modern Slavery<sup>1</sup> suggests that there are around 24.9 million men, women and children in forced labour around the world today. Among them, 16 million are exploited in the private economy, with women and girls disproportionately affected.

Forced labour does not necessarily involve physical violence or sexual abuse. Debt bondage affects half of all victims of forced labour imposed by private actors—giving a worker wages or other form of compensation does not necessarily mean that the labour is not forced or compulsory. Most victims of forced labour suffer multiple forms of coercion from employers or recruiters, ending up in situations where they cannot leave their job without being penalised (or threatened with penalty). Such penalty or threat might be physical constraint or punishment, but it could also be other forms of abuse, such as threat of deportation, restricted movement, confiscation of passports, deceptive recruitment or debt bondage (see COP 20.1).

1 ILO, Walk Free Foundation and International Organization for Migration, Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (2017)  
[www.ilo.org/global/publications/books/WCMS\\_575479/lang-en/index.htm](http://www.ilo.org/global/publications/books/WCMS_575479/lang-en/index.htm)

Trafficking involves the movement of a person, sometimes across international borders but more commonly within a country, for the purpose of exploitation. Human trafficking is broader than forced labour as it also includes trafficking people for forced marriage, organ removal or adoption.

Companies can be affected by human trafficking in several ways. They can be directly linked to it, for example by recruiting trafficking victims as workers or by using company vehicles or premises to transport or harbour trafficking victims. They can also be indirectly linked to trafficking through the actions of their suppliers or business partners, including subcontractors, labour brokers or private employment agencies. This means that companies can be implicated in trafficking if they source goods or use services that are produced or provided by trafficking victims.

## Vulnerable migrant workers

Migrant workers are particularly vulnerable to forced labour, especially if they have illegal or restricted employment status, are economically vulnerable or belong to an ethnic group subject to discrimination. Unscrupulous recruiters or labour intermediaries can exploit these vulnerabilities by using deceptive recruiting tactics, charging recruitment fees, or withholding identity documents and threatening denunciation to authorities and deportation. Under these conditions, migrant workers may accept to pay large fees to secure their job and work in substandard conditions and end up in forced and bonded labour.

If you have migrants in your workforce, particularly if you use a third party to recruit them, you should:

- know who these workers are and where they come from;
- ensure that their recruitment was completely legitimate, done without deception, coercion or recruitment fees;
- develop a company policy on recruiting migrant workers; and
- only engage reputable recruitment and employment agencies.

## Responsible recruitment

One of the major causes of forced labour in today's global supply chains involves deceptive recruitment practices and the charging of recruitment fees. These practices disproportionately affect vulnerable workers and leaves them open to exploitation and bonded labour. Responsible recruitment is an effort to break the cycle of exploitation and recruitment-related debt.

With a focus on migrant workers, and rooted in the Dhaka Principles for Migration with Dignity (see box 'Dhaka Principles'),<sup>2</sup> responsible recruitment starts with the principle that 'no fees are charged to migrant workers' and that employers should meet all the costs associated with recruiting migrant workers. This 'employer pays' model of recruitment ([www.employerpays.org](http://www.employerpays.org)) is supported and implemented by a group of leading companies known as the Leadership Group for Responsible Recruitment. It has been adopted by many business-led organisations including the Responsible Business Alliance and Building Responsibly. And this model, which is seen as the first step to eliminating workers' debt burden and preventing forced labour, is also increasingly being used by companies across a range of sectors and countries.

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2 Institute for Human Rights and Business, The Dhaka Principles for Migration with Dignity (2012) [www.ihrb.org/dhaka-principles](http://www.ihrb.org/dhaka-principles)

## Dhaka Principles

The Dhaka Principles for Migration with Dignity (the 'Dhaka Principles') aim to enhance respect for the rights of migrant workers from the moment they are recruited, through their employment overseas, to the moment they move on to further employment or return safely to their home countries.

Based on the UN Guiding Principles on Business and Human Rights and international human rights and labour standards, the Dhaka Principles are intended for use by all industry sectors and in any country where workers migrate, in or out. The 12 Dhaka Principles are:

1. All workers are treated equally and without discrimination.
2. All workers enjoy the protection of employment law.
3. No fees are charged to migrant workers.
4. All migrant worker contracts are clear and transparent.
5. Policies and procedures are inclusive.
6. No migrant workers' passports or identity documents are retained.
7. Wages are paid regularly, directly and on time.
8. The right to worker representation is respected.
9. Working conditions are safe and decent.
10. Living conditions are safe and decent.
11. Access to remedy is provided.
12. Freedom to change employment is respected, and safe, timely return is guaranteed.

Source:

- Institute for Human Rights and Business, The Dhaka Principles for Migration with Dignity (2012) [www.ihrb.org/dhaka-principles](http://www.ihrb.org/dhaka-principles)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The freedom from forced and compulsory labour is enshrined in Article 4 of the **Universal Declaration of Human Rights**,<sup>3</sup> which states that 'no one shall be held in slavery or servitude'.

The ILO leads the world's efforts and has set standards to prevent forced labour through two major international conventions:

- **Forced Labour Convention, 1930 (ILO C029)**:<sup>4</sup> this was the first convention demanding ILO member states to take action against forced labour. It sets the most comprehensive and authoritative definition of forced labour (see Section A), and lists five exceptions: compulsory military service, normal civic obligations, minor communal services, legitimate prison labour and work exacted in emergencies.
- **Abolition of Forced Labour Convention, 1957 (ILO C105)**:<sup>5</sup> this complements ILO C029, with a focus on five types of state-imposed forced labour that emerged after the Second World War. These include forced labour as punishment for expressing political views or taking part in strikes, as a means of discrimination or labour discipline, or for purposes of economic development.

Even if ILO member states have not ratified either of these two 'core' conventions, they are still bound to eliminate all forms of forced and compulsory labour as these conventions are mentioned in the 1998 ILO Declaration on Fundamental Principles and Rights at Work ([www.ilo.org/declaration](http://www.ilo.org/declaration)) that applies to all member states to the ILO.

In 2014, the ILO adopted another two instruments against forced labour:

- **Protocol of 2014 to the Forced Labour Convention, 1930 (ILO P029)**:<sup>6</sup> this is a legally binding instrument that establishes ILO member states' obligations to prevent forced labour, protect victims and provide them with access to remedies. Emphasising the link between forced labour and human trafficking, the protocol also reaffirms the importance of prosecuting all perpetrators of forced labour.

3 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

4 ILO, C029—Forced Labour Convention (1930) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029)

5 ILO, C105—Abolition of Forced Labour Convention (1957) [www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105)

6 ILO, P029—Protocol of 2014 to the Forced Labour Convention, 1930 (2014) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

- **Forced Labour (Supplementary Measures) Recommendation, 2014 (ILO R203):**<sup>7</sup> this provides non-binding practical advice on how to strengthen national law and policy on forced labour to meet the obligations set out in the new protocol.

The increasing awareness of human trafficking over the past 20 years has led to new international and regional anti-trafficking instruments emerging beyond the ILO, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, or the ‘Palermo Protocol’,<sup>8</sup> and the Council of Europe Convention on Action against Trafficking in Human Beings. These 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 the adoption of new policies in this field.

## National law

Applicable national and local laws in most countries (and regulations generally) are quite clear in addressing trafficking, involuntary servitude, prison labour and bonded labour. It is essential to be aware of all relevant legislation and regulation in all jurisdictions of operations, especially those extraterritorial laws that impose specific requirements on companies to conduct due diligence or report on steps they have taken to prevent forced labour in their operations and supply chain. Such laws are rapidly expanding.

For more information on some of the most recent legislation in 2018—including the UK and Australian Modern Slavery Acts, the French Duty of Vigilance Law and the California Transparency in Supply Chains Act—see the box ‘Recent regulations’ in COP 6 [Human rights](#).

## D IMPLEMENTATION GUIDANCE

### COP 20.1: No forced labour

**Members shall not engage in or support the use of forced labour, including bonded, indentured or involuntary prison labour as defined in ILO Convention 29.**

### Points to consider:

- Clearly state your position against forced labour, either in a stand-alone policy or as part of a broader human rights policy, and communicate this expectation to all business partners in your supply chain. In cascading your expectation within the supply chain, you should reinforce an understanding that your company will potentially terminate business with any suppliers that use forced labour.
  - Note that clearly communicating your position against forced labour to business partners is also important to implement your human rights policy as required in COP 6.1a [Human rights](#).
- Make a senior management function, such as human resources, responsible for forced labour issues.
- To help prevent use of forced labour in your business:
  - Use standard employment contracts, including statutory and collectively agreed terms, working hours and wages. This includes ensuring workers understand the terms of employment and are given a copy of the final employment contract, and that standard regular wage payments are made directly to the worker and are not replaced by in-kind remuneration (see COP 15 [General employment terms](#)).
  - Formally prohibit any employee or contractor from using (or threatening to use) violence or penalties, or from using intimidating practices, such as bullying. This includes ensuring that all workers and contractors know how to use your grievance mechanism to anonymously report any infringements (see COP 18 [Harassment, discipline, grievance procedures and non-retaliation](#)).
- If you use contractors, suppliers, agencies or labour providers, make sure your human rights due diligence includes assessing these business partners for potential instances of forced labour.
- The ILO defines 11 indicators of forced labour that you can use to help you identify instances in your supply chain. If you find evidence of one indicator, there may be unfair labour practices present; evidence of two or more indicators suggests a heightened risk of forced labour. The 11 indicators are:

7 ILO, R203—Forced Labour (Supplementary Measures) Recommendation (2014) [www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:12100:P12100\\_ILO\\_CODE:R203:NO](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:12100:P12100_ILO_CODE:R203:NO)

8 UN, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000) [www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx](http://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx)

- Abuse of vulnerability.
- Deception.
- Restriction of movement.
- Isolation.
- Physical and sexual violence.
- Intimidation and threats.
- Retention of identity documents.
- Withholding of wages.
- Debt bondage.
- Abusive working conditions.
- Excessive overtime.

## COP 20.2: Voluntary work

**Members shall ensure that all employees are working in voluntary situations. Members shall not:**

- Unduly restrict the freedom of movement of employees in the workplace or in on-site housing.
- Retain original copies of an employee's personal documentation, such as identity papers.
- Use deceptive recruitment practices and/or require employees to pay any deposits, equipment advances or recruitment fees (either wholly or partially) as part of the recruitment process. If any such fees are found to have been paid by employees, they shall be reimbursed.
- Withhold any part of an employee's salary, benefits or property to force an employee to continue working.
- Prevent employees from terminating their employment after reasonable notice or as established by applicable law.

### Points to consider:

- If you use security measures (such as locked doors and security guards at exits) to protect workers and property on your sites, make sure workers can still leave with no, or only limited and duly justified, restrictions at the end of their shift and in any case of danger or threat to their person.
  - Note that as long as you can prove that workers can leave without threat or penalty, and that all work is voluntarily done, taking security precautions at exits is not considered forced labour.
- Giving workers freedom of movement also includes making sure:
  - workers can leave their workstation for specific purposes, such as going to the bathroom, having a hydration break or seeking medical attention (under no circumstance must you restrict access to food, water, toilets or medical care in the workplace as a way of disciplining workers); and
  - workers have no unreasonable restrictions on moving around in any employer-provided housing, including both employer-operated and third party-contracted residences.
- Do not keep workers' original identity documents, such as their passport, under any circumstances other than to respond to local work-related administrative processes (such as obtaining a work visa, local ID, etc.).
- It is considered best practice to give workers free access to a secure place where they can keep their valuables and personal documents while at work. This can include safety deposit boxes if your employees need to have their passports stored securely.
- Do not charge workers, either directly or indirectly, any fees or deposits for recruitment. If you find that a worker has paid recruitment fees, you must set up a system that will compensate workers for the full amount they paid.
- Be proactive in ensuring that neither you nor your business partners defer or withhold any part of a worker's wage payments to make them work for longer; and follow guidance for COP 17 **Remuneration** to make sure workers are paid appropriately.
- In the absence of contractual notice period, if a worker resigns, you can ask them to keep working for a fixed period of time until you can find a replacement. But make sure the worker is free to decline your request without being threatened or having their remaining wages withheld.

## COP 20.3: Human trafficking

**Members shall not engage in or support human trafficking or any other type of deceptive recruitment and/or bonded labour practices. Members shall clearly communicate this requirement to labour recruiters, agencies and providers with whom they work, and shall monitor their relationships and remedy negative human rights impacts as they may occur, as defined in COP 6.1 (Human rights).**

## Points to consider:

- Clearly state your position against human trafficking, deceptive recruitment and bonded labour (either in a stand-alone policy or as part of a broader human rights policy) and communicate this to any labour recruiters, agencies or providers that you work with.
- Use due diligence to identify any risk of human trafficking or deceptive recruitment or bonded labour in your own operations and those of your supply chain (see COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**).
- If you use labour recruiters, agencies and providers:
  - Only use those whose business is formally licensed or certified by the competent authority.
  - Carry out due diligence to check for any instances of human trafficking or deceptive recruitment or bonded labour, especially if migrant workers are involved (see Figure 20.1).
  - Make sure they do not engage in any practice that puts workers at risk of human trafficking or deceptive recruitment or bonded labour (including recruitment fees, debt bondage or intimidation).
- Continue to monitor your own operations and those of any labour recruiters, agencies and providers that you use to ensure ongoing compliance with COP 20.3. For example, by:
  - holding regular worker interviews or surveys;
  - doing desktop reviews of policies and procedures to confirm they have the right controls in place (this could include reviewing employee contracts); and
  - requiring formal audits.

<b>Indicators of forced labour</b>	<b>Recruitment</b> Initial and subsequent recruitment (including travel)	<ul style="list-style-type: none"> <li>Use of deception, false promises.</li> <li>Payments to intermediaries to get jobs, identity papers, travel documents, etc.</li> <li>Job imposed as a condition of other benefits.</li> <li>Forced recruitment, kidnapping.</li> <li>Kind of travel arrangements (if relevant).</li> <li>Change of job without possibility of refusal.</li> <li>Violence or threats of violence in case of refusal to change job.</li> </ul>
	<b>Living conditions</b> during employment	<ul style="list-style-type: none"> <li>Freedom to choose living quarters.</li> <li>Wage deductions for lodging or work tools.</li> <li>Freedom to leave the premises, contact family, talk with people outside.</li> <li>Surveillance of living quarters.</li> <li>Quality, quantity and price of employer-provided food.</li> <li>Freedom to buy food outside the workplace.</li> </ul>
	<b>Worker coercion</b> to make the employee work or to stop them from leaving	<ul style="list-style-type: none"> <li>Withholding of salary.</li> <li>Debt manipulation.</li> <li>Abuse of worker's vulnerability resulting from irregular migration status.</li> <li>Retention of identity papers or travel documents.</li> <li>Close surveillance of worker's movements.</li> <li>Impossibility of leaving the work premises.</li> <li>Violence or threat of violence.</li> <li>Threats against worker or family members if worker leaves.</li> <li>Threats of denunciation or deportation.</li> </ul>

Figure 20.1. Key indicators of forced labour that can be used to support due diligence processes for selecting and monitoring labour recruiters, agencies and providers

Source: ILO, Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children (2012)[http://ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182096.pdf](http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf)

## Q&A: Forced labour

### 1. If an employee has verbally or in writing given 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 voluntarily. For example, where consent to work has been given under the threat of violence, there can be no voluntary offer to work. Similarly, if a worker is induced by deceit, false promises or the confiscation of identity documents, they cannot be said to offer their work voluntarily and so are in forced labour.

### 2. Does keeping personal documents during the term of employment count as forced labour?

Only if workers cannot access these documents when they want to, or if they feel they cannot leave employment without risking the loss of these documents.

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

Not if it stays within the limits set out by national legislation or collective agreements. Forced labour occurs if overtime exceeds the weekly or monthly limits allowed by law and is made compulsory (irrespective of the reason why). Overtime is also considered forced labour if workers are penalised, fined or threatened for refusing to do it (see COP 16 [Working hours](#)).

### 4. If I am giving my workers full wages and benefits, can a forced labour problem ever arise?

If a person is not free to leave his or her employment without threat or penalty, they are in forced labour regardless of whether or not you give them full wages or other forms of compensation.

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

Not if workers can leave without threat or penalty and all work is performed voluntarily. The unreasonable restriction of movement by security personnel can indicate forced labour and so should be treated with caution. Make sure your security arrangements also comply with COP 13 [Security](#).

Source:

- ILO, Q&As on Business and Forced Labour  
[www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_FL\\_FAQ\\_EN/lang--en/index.htm](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm)

## Check:

- Have you assessed the risks of forced labour and human trafficking in your company, within your supply chain and in any recruitment agencies?
- Do your security arrangements unreasonably restrict movement via penalty or threat of penalty to workers?
- Can workers access their identity documents and passports when they need to?
- Can you show that workers are not forced to perform compulsory overtime?
- Can you show that workers were informed of employment terms and given an accurate contract in a language they understand before beginning work?
- Have you confirmed workers were not charged recruitment fees as part of their hiring process? If a worker was charged recruitment fees, can you show these were fully reimbursed?
- Can you show that workers are free to leave employment after reasonable notice without penalty or deliberate retention of wages?
- Can you show that you are assessing and monitoring facility labour recruiters, agencies and providers?

## E FURTHER INFORMATION

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### Websites:

ILO, Special Action Programme to Combat Forced Labour  
[www.ilo.org/global/topics/forced-labour/WCMS\\_210827/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/WCMS_210827/lang--en/index.htm)

SAI, Social Accountability SA 8000® International Standard  
<http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1689>

UN Global Compact, Principle Four: Labour  
[www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle4.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle4.html)

UN Global Initiative to Fight Human Trafficking (UNGIFT)  
[www.ungift.org](http://www.ungift.org)

Verité, Fair Hiring Toolkit  
<http://helpwanted.verite.org/helpwanted/toolkit>

### Publications:

The Danish National Board of Social Services, Managing the Risk of Hidden Forced Labour: A Guide for Companies and Employers (2014)  
[www.gla.gov.uk/media/1578/guidelines-riskmanagement-eng-version-1-0.pdf](http://www.gla.gov.uk/media/1578/guidelines-riskmanagement-eng-version-1-0.pdf)

Institute for Human Rights and Business, Migration with Dignity: A Guide to Implementing the Dhaka Principles (2017)  
[www.ihrb.org/uploads/member-uploads/IHRB%2C Migration with Dignity - Implementing the Dhaka Principles.pdf](http://www.ihrb.org/uploads/member-uploads/IHRB%2C%20Migration%20with%20Dignity%20-%20Implementing%20the%20Dhaka%20Principles.pdf)

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[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C029)

ILO, C105—Abolition of Forced Labour Convention (1957)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312250:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO)

ILO, Combating Forced Labour: A Handbook for Employers and Business (2015)  
[www.ilo.org/global/topics/forced-labour/publications/WCMS\\_101171/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm)

ILO, Forced Labour and Human Trafficking: Handbook for Labour Inspectors (2008)  
[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_097835.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf)

ILO, General Principles and Operation Guidelines for Fair Recruitment (2016)  
[www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755/lang--en/index.htm](http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm)

ILO, Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children (2012)  
[http://ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182096.pdf](http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf)

ILO, ILO Indicators of Forced Labour (2012)  
[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)

Responsible Recruitment Toolkit, Eliminating Recruitment and Employment Fees Charged to Workers in Supply Chains (2017)  
<https://responsiblerecruitmenttoolkit.org/wp-content/uploads/Eliminating-Recruitment-and-Employment-Fees-Charged-to-Workers-in-Supply-Chains.pdf>

Stronger Together, Tackling Modern Slavery in Global Supply Chains Toolkit (2017)  
[www.stronger2gether.org/product/toolkit-for-global-supply-chains/](http://www.stronger2gether.org/product/toolkit-for-global-supply-chains/)

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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](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf)

Verité, Help Wanted: The Verité Toolkit for Fair Hiring Worldwide (2011)  
[www.verite.org/sites/default/files/images/Verite-Help-Wanted-A Fair Hiring Framework for Responsible Business.pdf](http://www.verite.org/sites/default/files/images/Verite-Help-Wanted-A%20Fair%20Hiring%20Framework%20for%20Responsible%20Business.pdf)

# (COP 21) FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Collective bargaining** is the process of negotiation between organisations of workers and their employers (or a single employer). It involves joint decision-making and so is distinct from other forms of governance such as government regulation, individual contracts or the unilateral decisions of employers.

A **collective bargaining agreement** is a legally enforceable written contract that sets out terms and conditions at work, based on negotiations between an employer and a workers' organisation. Collective bargaining agreements usually state the rights and responsibilities of both employers and workers; in all cases they must comply with applicable law.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

**Freedom of association** is the right of all workers and employers without exception to establish and join organisations of their own choosing without prior authorisation and without interference from government or from one another.

A **workers' organisation** is a voluntary association of workers organised for occupational purposes with the aim of furthering and defending the interests of workers.

Sources:

- Ethical Trading Initiative (ETI), Freedom of Association in Company Supply Chains: A Practical Guide (2013) [www.ethicaltrade.org/sites/default/files/shared\\_resources/foa\\_in\\_company\\_supply\\_chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/foa_in_company_supply_chains.pdf)
- International Labour Organization (ILO), ILO Declaration on Fundamental Principles and Rights at Work (1998) [www.ilo.org/declaration/lang--en/index.htm](http://www.ilo.org/declaration/lang--en/index.htm)
- 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 and Verité, Sedex Supplier Workbook. Chapter 1.3: Freedom of Association and Collective Bargaining (2014) [https://cdn.sedexglobal.com/wp-content/uploads/2016/09/Part-1-Labour-Standards\\_Sedex-Supplier-Workbook-2014.pdf](https://cdn.sedexglobal.com/wp-content/uploads/2016/09/Part-1-Labour-Standards_Sedex-Supplier-Workbook-2014.pdf)

## B ISSUE BACKGROUND

The right to freedom of association is proclaimed in the **Universal Declaration of Human Rights**.<sup>1</sup> At work, this means the right to freely form workers' organisations. Workers who do not wish to join such organisations also have their rights protected and cannot be coerced into joining against their will.

Freedom of association does not mean that companies should organise workforces or invite unions into the workplace. It simply means that employers must not interfere in an employee's decision to join an association or discriminate against the employee for their choice. This includes indirect undermining of freedom of association, for example by preventing unions from accessing workers or by interfering or influencing the election outcomes of workers' organisations.

Collective bargaining is a voluntary process that takes place between workers' representatives and employers' representatives. It usually focuses on negotiating the terms and conditions of employment, such as wages, working hours, working conditions, grievance procedures and the rights and responsibilities of both workers and employers. The main principle for the negotiation is that it should be carried out in good faith, with genuine effort to reach agreement in reasonable time. The mutually acceptable result of collective bargaining is called a 'collective bargaining agreement'. If the parties cannot reach agreement, they enter dispute settlement procedures, which range from conciliation to mediation to arbitration.

Freedom of association has not yet received the same level of attention from companies as health and safety or abolition of child labour. But increasing globalisation, privatisation and legal action against companies is bringing freedom of association into greater focus. As part of the framework of basic human rights, it should be high on the agenda of all companies.

1 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

## Collective bargaining: good for business

According to the International Labour Organization (ILO), 'far from dragging businesses down and reducing productivity, there is considerable evidence that collective bargaining agreements actually reduce wage inequality and can contribute to productivity and competitiveness'.<sup>2</sup>

The collective voice of workers can be an important influence not only in stabilising labour relations but in improving management performance. Research shows that a trade union presence in a company is associated with:

- greater wage equality;
- a higher share of income allocated to social benefits;
- lower employee turnover, leading to lower recruitment and training costs;
- skills retention and development;
- smoother changes in workplace practices; and
- increased productivity.

Source:

- Ethical Trading Initiative, Freedom of Association in Company Supply Chains: A Practical Guide (2013) [www.ethicaltrade.org/sites/default/files/shared\\_resources/foa\\_in\\_company\\_supply\\_chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/foa_in_company_supply_chains.pdf)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

Article 20 of the **Universal Declaration of Human Rights**<sup>3</sup> states that 'everyone has the right to freedom of peaceful assembly and association', 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.

The ILO leads global efforts to define and set standards for upholding these rights through two major conventions:

- **Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO C087)**;<sup>4</sup> and
- **Right to Organise and Collective Bargaining Convention, 1949 (ILO C098)**.<sup>5</sup>

Together, these conventions highlight six features of what it means to have freedom of association (see Figure 21.1).

2 ILO, Weakening Collective Bargaining Hurts Recovery (2012) [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_189517](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_189517)

3 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

4 ILO, C087—Freedom of Association and Protection of the Right to Organise Convention (1948) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)

5 ILO, C098—Right to Organise and Collective Bargaining Convention (1949) [www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no::P12100\\_Ilo\\_Code:C098](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no::P12100_Ilo_Code:C098)

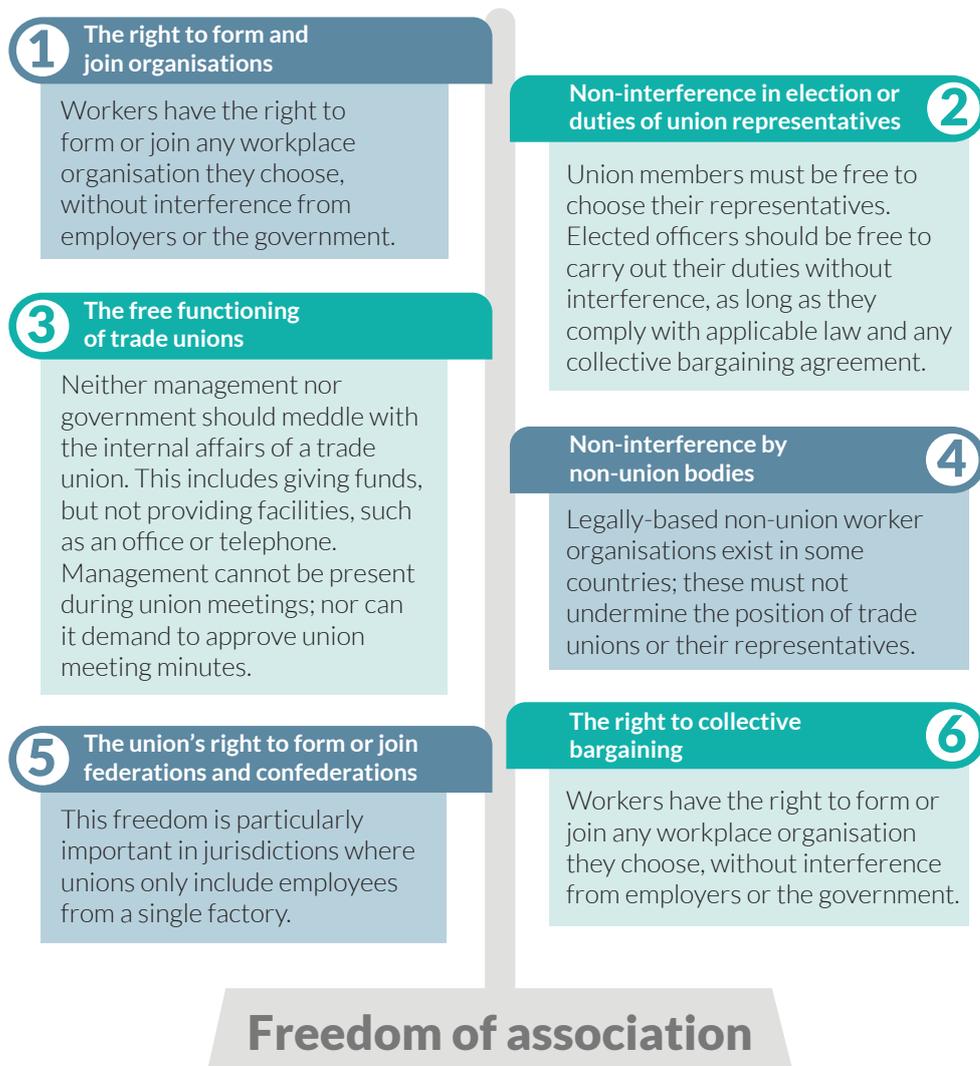


Figure 21.1. Six elements of freedom of association

Source: ETI, Freedom of Association in Company Supply Chains: A Practical Guide (2013)  
[www.ethicaltrade.org/sites/default/files/shared\\_resources/foa\\_in\\_company\\_supply\\_chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/foa_in_company_supply_chains.pdf)

Even if ILO member states have not ratified either of the ‘core’ conventions, they are still bound to uphold freedom of association and the right to collective bargaining through the 1998 ILO Declaration on Fundamental Principles and Rights at Work ([www.ilo.org/declaration](http://www.ilo.org/declaration)).

Other ILO conventions further support freedom of association and the right to collective bargaining. For example, ILO Convention 135<sup>6</sup> deals with workers’ representatives and states that management should not try to place restrictions on whom the union elects as its officers (for example, by stipulating that elected officers must have certain levels of education or have served the company for certain lengths of time). Under Convention 135, union members must be free to choose their representatives, who should then be free to carry out their duties without interference. This does not mean that representatives can do whatever they want or give up working. They should function in accordance with national law and/or under a collective agreement on such matters as the facilities they can use and the amount of time they can take off work for union duties.

## National law

Most national labour and employment laws have very specific provisions on freedom of association, collective bargaining and the structures that support these. Some countries restrict freedom of association through trade unions at a country level, within special economic zones or for certain categories of workers, such as migrant workers. In other countries where freedom of association is legal, there may still be restrictions on the full expression of freedom of association.

It is essential to be aware of all relevant legislation in the jurisdictions of operation.

6 ILO, C135—Workers’ Representatives Convention (1971) [www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312280](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312280)

## 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 and Verité, Sedex Supplier Workbook. Chapter 1.3: Freedom of Association and Collective Bargaining (2014) <https://cdn.sedexglobal.com/wp-content/uploads/2016/09/Sedex-Supplier-Workbook-2014-version-Web.pdf>

## D IMPLEMENTATION GUIDANCE

### COP 21.1: Respect employees' right to associate freely

Members shall respect the right of employees to associate freely in workers' organisations of their choice, without interference or negative consequences. Members shall ensure that employees seeking to form or join an organisation of their own choosing are not subject to any form of harassment as outlined in COP 18.1 (Harassment, discipline, grievance procedures and non-retaliation).

#### Points to consider:

- Make a senior management function, such as human resources, responsible for being aware of, and complying with, this provision.
- Make sure that your procedures for hiring, terminating and reviewing the performance of employees do not discriminate against union members, or those seeking to form a union in accordance with applicable law (see COP 22 **Non-discrimination**). Establish grievance mechanisms that allow workers to raise any concerns (see COP 18 **Harassment, discipline, grievance procedures and non-retaliation**).
- It is your responsibility to ensure your workers understand their right to organise, which they must be free to do without any interference from you. Establish a formal process for communicating, in an unbiased way, with workers about their right to join or form trade unions.
- Be careful not to promote any particular union or workers' association, and do not force your workers to join or leave one.
- Do not obstruct or intervene in any way the election of union representatives.
- Make sure unions and their representatives have the right to carry out their activities as described under applicable law.

### COP 21.2: Respect the right of employees to collective bargaining

Members shall respect the right of employees to collective bargaining, and shall adhere to collective bargaining agreements, where these exist. Members shall, subject to applicable law, participate in any collective bargaining processes in good faith.

#### Points to consider:

- Where a workers' organisation exists, negotiate with it to reach a collective bargaining agreement.
- You are expected to negotiate and bargain in good faith and not to engage in undue litigation or other actions to slow, stop or limit the bargaining process. This means that during negotiations, you should show a willingness to discuss, compromise and reach a mutually agreed solution.
- All collective bargaining agreements must comply with applicable law. As this can vary significantly across jurisdictions, it is important that you take time to identify and understand your legal obligations.
- Once a collective bargaining agreement is reached—at a company, sector or national level—make sure you fully implement it within your business.
- Note that collective bargaining agreements may also be subject to other COP requirements, for example those in:
  - COP 16 **Working hours** if they are used to set out workers' collective agreement to working overtime in some circumstances, working longer hours, or averaging rest days; and
  - COP 17 **Remuneration** if they are used to define the agreed overtime wage rate or the circumstances under which wage deductions can be made.

## Conforming with COP 21 in India

In some businesses or jurisdictions, there may be forms of worker engagement or agreements that do not seem to satisfy the requirements of COP 21.

For example, many companies in India do not have trade unions, so collective bargaining does not take place. Instead, 'works committees' provide forums for raising and discussing issues between workers and management. The members of these committees are not officially elected; rather, they are usually nominated by general consensus among the workers. Their discussions with management, along with any outcomes and agreements reached, are usually documented in meeting minutes and are sometimes written up as a memorandum of understanding (MOU). These are not, however, considered equivalent to 'collective bargaining agreements' under Indian law, because the committee is not a freely associating workers' organisation or trade union.

Under Indian legislation (the Indian Industrial Disputes Act), works committees serve to secure and preserve good relations between a company and its workers, comment upon common matters of interest or concern and try to settle any material difference of opinion. In all cases, the RJC encourages the use of these committees, especially as a way of raising awareness about the RJC COP.

Depending on the specific form of worker engagement or agreement in place, your business may or may not conform with COP 21, as follows:

- **Conformance:** Collective bargaining agreements comply with applicable law and govern relevant work terms or conditions.
- **Minor non-conformance:** Some form of legally constituted worker engagement exists, and an agreed document (such as an MOU or minutes of properly constituted meetings) governs relevant work terms or conditions. In this case, the agreed document is not considered a collective bargaining agreement under applicable law and corrective action is needed to either turn it into a legally recognised collective bargaining agreement, or to ensure employment terms and conditions comply with applicable law.
- **Major non-conformance:** No form of legally constituted worker engagement governs the relevant work terms and conditions.

### COP 21.3: Countries where rights are restricted

Where legislation restricts the right to freedom of association and collective bargaining, members shall not obstruct alternative means that are allowed under applicable law.

#### Points to consider:

- Respect legal alternative means for workers to associate.
- Do not pressure your workers to join a company-controlled organisation in place of an organisation created and controlled by workers.

#### Check:

- Do you let your workers associate freely in the organisations or unions of their choice?
- Do you have processes to communicate with workers in a non-biased way about their right to organise?
- Do you participate in collective bargaining agreements in good faith and adhere to the agreed outcomes?
- Do collective bargaining agreements comply with applicable law?
- In countries where workers' rights to associate are restricted, do you let your workers associate in state-controlled unions or alternative legal means of association?

## E FURTHER INFORMATION

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### Websites:

ETI, The ETI Base Code

[www.ethicaltrade.org/resources/key-eti-resources/eti-base-code](http://www.ethicaltrade.org/resources/key-eti-resources/eti-base-code)

ILO, ILO Declaration on Fundamental Principles and Rights at Work

[www.ilo.org/declaration](http://www.ilo.org/declaration)

UN Global Compact, Principle Three: Labour

[www.unglobalcompact.org/what-is-gc/mission/principles/principle-3](http://www.unglobalcompact.org/what-is-gc/mission/principles/principle-3)

### Publications:

Better Work, Guidance Sheet 4: Freedom of Association and Collective Bargaining (2009)

<http://betterwork.com/global/wp-content/uploads/4-Freedom-of-Association.pdf>

ETI, Freedom of Association in Company Supply Chains: A Practical Guide (2013)

[www.ethicaltrade.org/sites/default/files/shared\\_resources/foa\\_in\\_company\\_supply\\_chains.pdf](http://www.ethicaltrade.org/sites/default/files/shared_resources/foa_in_company_supply_chains.pdf)

ILO, C087—Freedom of Association and the Right to Organise Convention (1948)

[www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C087](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C087)

ILO, C098—Right to Organise and Collective Bargaining Convention (1949)

[www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C098](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098)

Sedex and Verité, Sedex Supplier Workbook. Chapter 1.3: Freedom of Association and Collective Bargaining (2014)

<https://cdn.sedexglobal.com/wp-content/uploads/2016/09/Sedex-Supplier-Workbook-2014-version-Web.pdf>

UN, Universal Declaration of Human Rights: Article 20 (1948)

[www.un.org/en/universal-declaration-human-rights/index.html](http://www.un.org/en/universal-declaration-human-rights/index.html)

# (COP 22) NON-DISCRIMINATION

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members and to all directly employed workers and indirectly employed workers who regularly work at members' sites.

**Discrimination** is where people are treated differently, or given unequal opportunities, because of their race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital or pregnancy status, physical appearance, HIV status, age or any other personal characteristic.

Discrimination can 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) is also considered discrimination when it is based on discriminatory grounds.

**Non-discrimination** means employees are judged 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.

Source:

- International Labour Organization (ILO), Equality and Discrimination [www.ilo.org/global/topics/equality-and-discrimination/lang--en/index.htm](http://www.ilo.org/global/topics/equality-and-discrimination/lang--en/index.htm)
- Better Work, Guidance Sheet 2: Discrimination (2009) <http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>

## B ISSUE BACKGROUND

Discrimination at work takes many forms and occurs in diverse sectors and occupational settings. It is found in high- and low-income countries, in rural and city settings, and in low- and high-technology workplaces. It can affect how an employee is given responsibilities, training or promotion; how they are treated at work; or how secure their job is. It can even stop someone getting a job in the first place. Ultimately, discrimination creates and reinforces inequalities and is a breach of human rights.

Globally, women suffer some of the most discrimination, in terms of the jobs available to them, their remuneration, benefits and working conditions, and access to decision-making positions.<sup>1</sup> Other groups routinely discriminated against include young people and older people, migrant workers and refugees, ethnic minorities, people with disabilities and people with HIV/AIDS.

For employers, direct discriminatory practices arise when, for example, laws, rules or customs explicitly cite a reason such as sex or race to deny equal opportunity. Indirect discrimination is much more common and much more difficult to identify in practice. It happens when rules, practices or attitudes seem to be neutral but in fact lead to exclusions or preferential treatment. Harassment is also considered discrimination when it is based on discriminatory grounds (see COP 18 [Harassment, discipline, grievance procedures and non-retaliation](#)). Where discrimination is indirect or is culturally ingrained, it requires a conscious effort from employers to identify and address in a purposeful way.

Freedom from discrimination is a fundamental human right. But bringing equality to the workplace has economic benefits, too. Employers who eliminate discrimination can access a larger and more diverse workforce. Workers who enjoy equality have greater access to training, often receive higher wages and improve the overall quality of the workforce.

<sup>1</sup> ILO, Equality at Work: The Continuing Challenge (2011) [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_154779.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_154779.pdf)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

Non-discrimination principles are enshrined in the **Universal Declaration of Human Rights**:<sup>2</sup>

- 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 through two major conventions of the International Labour Organization (ILO):

- **Discrimination (Employment and Occupation) Convention, 1958 (ILO C111)**:<sup>3</sup> Under ILO C111, countries must develop and implement a national policy to promote equal opportunity and treatment, with a view to eliminating discrimination in the workplace. This includes eliminating discrimination in access to vocational training, employment, particular occupations, and terms and conditions of employment.
- **Equal Remuneration Convention, 1951 (ILO C100)**:<sup>4</sup> This requires countries to ensure men and women are given equal pay for work of equal value.

Even if ILO member states have not ratified either of these 'core' conventions, they are still bound to eliminate discrimination in respect of employment and occupation through the 1998 ILO Declaration on Fundamental Principles and Rights at Work ([www.ilo.org/declaration](http://www.ilo.org/declaration)).

### National law

Most national labour and employment laws have provisions for non-discrimination. In some countries, however, 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 all jurisdictions of operation.

## D IMPLEMENTATION GUIDANCE

### COP 22.1: Not practice or condone any form of discrimination

Members shall not practise or condone any form of discrimination in the workplace in terms of hiring, continued employment, remuneration, overtime, access to training, professional development, promotion, termination or retirement. This includes discrimination based on race, colour, ethnicity, caste, national origin, religion, disability or genetic information, gender, sexual orientation, union membership, political affiliation, marital status, parental or pregnancy status, physical appearance, HIV status, age or any other personal characteristic unrelated to the inherent requirements of the work. Members shall ensure that all individuals who are 'fit for work' are given equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.

### Points to consider:

- Make a senior management function, such as human resources, responsible for discrimination issues.
- Take action to reduce the risks of discrimination, remembering that these may be higher or more evident in certain countries, industry sectors, particular occupations, or on issues such as union membership or pregnancy or maternity.
  - Review your operations and assess the risks of discrimination. The RJC hosts a risk assessment toolkit that includes a general risk assessment template you might find useful, especially if you are a small business. Alternatively, use your own tried and tested risk assessment process.
  - Where appropriate, develop hiring, termination, promotion and performance review policies and procedures to address any potential or actual discrimination issues.

2 UN, Universal Declaration of Human Rights (1948) [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

3 ILO, C111—Discrimination (Employment and Occupation) Convention (1958) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)

4 ILO, C100—Equal Remuneration Convention (1951) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)

- Train anyone involved in hiring, firing and managing employees in diversity and anti-discrimination to make sure they make decisions based on a person's qualifications, skill and experience.
- Use anti-discrimination training to raise awareness of what direct and indirect discrimination looks like, and how employees can report it confidentially without fear of retaliation (see COP 18.4 [Harassment, discipline, grievance procedures and non-retaliation](#)).
- Management should carefully review any reported or suspected cases of discrimination. Make sure that any response takes local circumstances into account, while still aligning with the COP.

### Check:

- Is a senior management function responsible for all discrimination issues?
- Are there risks of discrimination in your company and are senior managers aware of these?
- Where risks are identified, do you have policies and procedures to address them?
- Have those employees responsible for recruitment, placement, training and advancement procedures been given diversity and anti-discrimination training?
- Have the rest of your employees received anti-discrimination training? And do they know how to report any potential discrimination through your grievance mechanism?

## E FURTHER INFORMATION

### Websites:

ILO, Equality and Discrimination  
[www.ilo.org/global/topics/equality-and-discrimination/lang--en/index.htm](http://www.ilo.org/global/topics/equality-and-discrimination/lang--en/index.htm)

ILO, Working Conditions Laws Database  
[www.ilo.org/dyn/travail/travmain.home](http://www.ilo.org/dyn/travail/travmain.home)

UN Global Compact, Principle 6: Labour  
[www.unglobalcompact.org/what-is-gc/mission/principles/principle-6](http://www.unglobalcompact.org/what-is-gc/mission/principles/principle-6)

### Publications:

Better Work, Guidance Sheet 2: Discrimination (2009)  
<http://betterwork.com/global/wp-content/uploads/2-Discrimination.pdf>

International Finance Corporation (IFC), Good Practice Note: Non-Discrimination and Equal Opportunity (2006)  
[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/publications/publications\\_gpn\\_nondiscrimination](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_nondiscrimination)

UN, Universal Declaration of Human Rights [Articles 2, 7 and 23] (1948)  
[www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html)

# HEALTH, SAFETY AND ENVIRONMENT



# (COP 23) HEALTH AND SAFETY

## A DEFINITIONS AND APPLICABILITY

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**This provision applies to all RJC members.**

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

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

**Health and safety** includes a diverse range of initiatives intended to protect workers from exposure to short- and long-term risks at work and to reduce workplace injuries and illnesses.

**Personal protective equipment (PPE)** refers to protective clothing and garments (such as gloves, footwear, helmets, goggles and earplugs) designed to protect the wearer from exposure to job-related hazards.

*Sources:*

- International Labour Organization (ILO), C155—Occupational Safety and Health Convention (1981)  
[www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312300](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312300)
- Social Accountability International (SAI), SA8000® Guidance Document (2014)  
[www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=725](http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=725)

## B ISSUE BACKGROUND

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Work-related health and safety needs vary enormously across countries, sectors and social groups. Every year more than two million people globally die from occupational injuries or diseases.<sup>1</sup> Often it is the most disadvantaged and vulnerable groups who are most affected by unsafe and unhealthy working conditions. These conditions are not limited to large-scale factories or mine sites; they can occur within small businesses and even within homes, for homeworkers.

Every worker has the right to a safe work environment. And every company has a fundamental responsibility to ensure its workers are not harmed because of their work, and to consider the health and safety of other people in the workplace, including visitors and local communities.

Most company health and safety programmes focus on preventing injuries and illnesses at work by minimising specific occupational risks and hazards. There are many such hazards in the jewellery supply chain: mines can be dangerous workplaces, and precious metal and gemstone processing and refining can involve toxic chemicals and heavy machinery (see Table 23.1). In addition, all workplaces carry a risk of injury or illness from general hazards, including slips and trips, manual handling, workstation ergonomics, basic hygiene and transport.

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<sup>1</sup> ILO, Safety and Health at Work [www.ilo.org/global/topics/safety-and-health-at-work](http://www.ilo.org/global/topics/safety-and-health-at-work)

Table 23.1. Occupational health and safety hazards often found in the jewellery supply chains

Sector	Common occupational health and safety hazards
<b>Mining</b>	<ul style="list-style-type: none"> <li>• Mine collapse, rock falls or subsidence.</li> <li>• Vehicle-related accidents (including passenger vehicles and specialised mining vehicles).</li> <li>• Working at heights and objects dropped from heights.</li> <li>• Exposure to toxic chemicals (such as cyanide and mercury) or gases (such as carbon monoxide or methane) or to hazardous substances (such as dust, which can cause silicosis, or radiation).</li> <li>• Electrocutation.</li> <li>• Lack or misuse of equipment, including PPE; or use of poorly maintained, outdated or otherwise inappropriate equipment, causing injuries.</li> <li>• Use and handling of explosive substances.</li> <li>• Injuries with mechanical or manual tools.</li> <li>• Noise, vibration (in particular with the use of jackhammers), heat, poor ventilation, overexertion and inadequate workspace, particularly in underground operations.</li> <li>• Exposure to extreme heat and cold.</li> <li>• Lack of knowledge or training, particularly among workforces with low levels of education.</li> <li>• Vector-borne diseases such as malaria, yellow fever, dengue and others.</li> <li>• Long and unsociable working hours and shifts.</li> </ul>
<b>Gold, silver and PGM processing and refining</b>	<ul style="list-style-type: none"> <li>• Exposure to molten metal, electromagnetic radiation and high temperature sources.</li> <li>• Exposure to toxic chemicals including hydrochloric acid and chlorine fumes.</li> <li>• Use of heavy machinery such as rotating plants.</li> <li>• Use of dangerous equipment such as pumps, crushers and dryers.</li> <li>• Vehicle-related accidents.</li> </ul>
<b>Coloured gemstone treatments</b>	<ul style="list-style-type: none"> <li>• Use of laser drilling and high pressure and high temperature treatments.</li> <li>• Exposure to toxic chemicals, particularly:               <ul style="list-style-type: none"> <li>• hydrogen peroxide (bleaching);</li> <li>• nitric acid (acid bleaching);</li> <li>• sulfuric acid (colouration);</li> <li>• hydrofluoric acid (polishing);</li> <li>• polymers (filling and impregnation);</li> <li>• mercuric chloride (laquer and nacre);</li> <li>• silver nitrate (foiling);</li> <li>• metal oxides (surface and backing coatings);</li> <li>• coloured dyes (dyeing);</li> <li>• beryllium (used in the diffusion process); and</li> <li>• trace elements (emitted during treatments like heating).</li> </ul> </li> <li>• Exposure to radioactive diamonds and gemstones during irradiation treatments.</li> </ul>
<b>Cutting and polishing and jewellery manufacturing</b>	<ul style="list-style-type: none"> <li>• Dust inhalation, eye strain, poor posture leading to back and shoulder problems.</li> <li>• Long working hours.</li> <li>• Lack or misuse of equipment, including PPE, or use of poorly maintained, outdated or otherwise inappropriate equipment.</li> <li>• Locked emergency exits.</li> <li>• Unhealthy or unsanitary working conditions, including poor ventilation.</li> <li>• Cramped and unsafe on-site housing with limited facilities for washing, sleeping and preparing food.</li> <li>• Lack of training on chemical substances and protective measures.</li> <li>• Exposure to toxic fumes and chemicals.</li> <li>• Eye strain.</li> </ul>
<b>Trading, service industries and retail</b>	<ul style="list-style-type: none"> <li>• General workplace risks, including slips and trips, manual handling, workstation ergonomics, basic hygiene and transport.</li> <li>• Repetitive strain or eye strain.</li> </ul>

Some businesses look beyond simply preventing injury and illness to develop health and safety programmes that support the general health and well-being of workers. This involves incorporating, for example, strategies to tackle stress, obesity, fatigue or substance addiction and abuse, and initiatives to promote fitness for work, reproductive health and work-life balance.

Implementing a holistic approach to health and safety in the workplace can deliver substantial productivity benefits.<sup>2</sup> These include:

- fewer injuries and illnesses among workers;
- fewer sick days;
- fewer insurance claims, premiums and regulatory fines; and
- stronger staff motivation and performance.

In contrast, poor health and safety management programmes result in more sick days, higher accident rates and greater reputational risks, which can impact commercial performance. The International Labour Organization (ILO) estimates the economic burden of poor occupational safety and health practices at 4 per cent of global gross domestic product each year.<sup>3</sup>

There are lots of different approaches to implementing health and safety, but a robust programme will include nine key elements, ranging from policies, procedures and infrastructure to training, equipment and incident investigation (see Figure 23.1). Even in small businesses, aspects of each of these will need to be included (see box 'Managing health and safety in small businesses' in Section D).



Figure 23.1. The nine components of a robust health and safety programme (these align directly with COP provisions 23.1–23.9)

2 PricewaterhouseCoopers, Building the Case for Wellness (2008)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209547/hwwb-dwp-wellness-report-public.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/209547/hwwb-dwp-wellness-report-public.pdf)

3 ILO, International Labour Standards on Occupational Safety and Health  
[www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The ILO has more than 70 conventions and recommendations on health and safety issues. These cover preventative and protective measures and include both general risks that apply to multiple sectors as well as specific risks found in individual industries. A select few are summarised below.

- The **Occupational Safety and Health Convention, 1981 (ILO C155)**<sup>4</sup> sets the standards for promoting occupational health and safety and for improving working conditions at the national and company level. This includes setting out company obligations to ensure that processes and equipment are safe, and that workers have access to protective clothing and equipment where necessary.
- The **Promotional Framework for Occupational Safety and Health Convention, 2006 (ILO C187)**<sup>5</sup> was established to promote a preventative safety and health culture. Under ILO C187, countries are required to develop, in consultation with stakeholders, a national policy, system and programme on occupational safety and health. This includes establishing the laws, regulations, authorities and compliance mechanisms needed to implement the national policy at the company level.<sup>6</sup>
- The **Safety and Health in Mines Convention, 1995 (ILO C176)**,<sup>7</sup> which came into force in 1998, regulates various aspects of health and safety in mines, including inspection, special working devices and special protective equipment of workers. It includes recommendations on issues such as handling of chemicals, emergency preparedness and the right of employees to report accidents to local authorities. It also prescribes requirements relating to mine rescue.

In 2018, the International Organization for Standardization (ISO) released a new international standard on **occupational health and safety (ISO 45001)**,<sup>8</sup> which offers a framework for improving employee safety, reducing workplace risks and creating better, safer working conditions. ISO 45001 aligns with ILO conventions, recommendations and guidelines as well as various national standards. It replaces the widely used British standard for occupational health and safety management BS OHSAS 18001. (Note that all companies certified to BS OHSAS 18001 will need to upgrade to ISO 45001 by March 2021.) ISO 45001 is also one of the standards the RJC recognises for compliance with specific parts of this provision (see Assessment Manual).

Beyond the ILO and ISO instruments, industries and organisations have developed their own voluntary standards and guidance to help improve workplace health and safety and address industry-specific risks. These include:

- The **International Council on Mining and Metals (ICMM) 10 Principles** ([www.icmm.com/en-gb/members/member-commitments/icmm-10-principles](http://www.icmm.com/en-gb/members/member-commitments/icmm-10-principles)) Membership of ICMM requires a commitment to the 10 principles, which serve as a best-practice framework for sustainable development in the mining and metals industry. ICMM Principle 5 requires members to 'pursue continual improvement in health and safety performance with the ultimate goal of zero harm'.<sup>9</sup>
- The **International Cyanide Management Code** ([www.cyanidecode.org](http://www.cyanidecode.org)) focuses exclusively on the safe management of cyanide in gold and silver mining, and is addressed in COP 40 **Cyanide**.

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight performance standards, including:

- Performance Standard 2: Labor and Working Conditions, which includes requirements for companies to provide safe and healthy working conditions.

The IFC Performance Standards are embedded in the **Equator Principles** (<http://equator-principles.com>); see COP 24 **Environmental management** for more information.

The **World Bank Group Environmental, Health, and Safety Guidelines** (EHS Guidelines, [www.ifc.org/ehsguidelines](http://www.ifc.org/ehsguidelines)) are referred to in the World Bank's Environmental and Social Framework and in IFC Performance Standards and include specific guidelines on occupational health and safety, including general and sector-specific examples of best practice.

More generally, workplace health and safety is part of a broader human rights framework that is addressed under the UN Guiding Principles on Business and Human Rights<sup>10</sup> (see COP 6 **Human rights**).

4 ILO, C155—Occupational Safety and Health Convention (1981) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312300](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312300)

5 ILO, C187—Promotional Framework for Occupational Safety and Health Convention (2006) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C187](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187)

6 Note that this framework is currently open for denunciation and as a result its enforcement may change.

7 ILO, C176—Safety and Health in Mines Convention(1995) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C176](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C176)

8 ISO, ISO 45001: Occupational health and safety [www.iso.org/iso-45001-occupational-health-and-safety.html](http://www.iso.org/iso-45001-occupational-health-and-safety.html)

9 ICMM, Principle 5 [www.icmm.com/en-gb/members/member-commitments/icmm-10-principles/icmm-principle-5](http://www.icmm.com/en-gb/members/member-commitments/icmm-10-principles/icmm-principle-5)

10 UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Consumer protection

Under the 2016 UN Guidelines for Consumer Protection,<sup>11</sup> countries have a duty to protect consumers from hazards to their health and safety. Many countries have consumer protection rules and regulations to ensure that products and services are safe and do not pose risks to consumers.

In addition, the ISO has developed a range of international guidelines that cover all aspects of product safety, including product recall procedures, child-related products, cross-border trade and product safety. For example, ISO 10377 ([www.iso.org/standard/45967.html](http://www.iso.org/standard/45967.html)) offers suppliers practical guidance on assessing and managing the safety of consumer products.

Most jewellery products do not pose health and safety risks to consumers. But it is still important that companies assess any potential risks to their consumers and that they mitigate these to ensure their products are safe—first during product design, and again if required during quality assessments before sale. In particular, businesses are generally responsible for:

- adhering to national and international product safety laws, standards, regulations and bans;
- communicating health and safety information through product disclosures and labelling (see COP 28.2 [Product disclosure](#));
- monitoring the safety of products over their lifecycle and documenting any issues; and
- acting on safety issues once you become aware of them, including product recall.

## National law

Regulation on health and safety in the workplace largely resides at a national or even local level; many countries have entire government departments to oversee occupational health and safety.

Enforcement of health and safety legislation varies from country to country, as do sanctions for non-compliant employers. In some countries, local law may require companies to provide rehabilitation or compensation for injured workers. Serious accidents at work often incur significant fines or compensation costs and can jeopardise 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 a company's senior managers or directors.

## Health and safety in India: combining national and COP expectations

The Indian Factories Act of 1948 sets out requirements for factories of a certain type and size that are potentially relevant to COP 23. Recognising the challenges that exist in meeting some of these requirements, the RJC has developed four conformance criteria for factories in India that fall within the remit of the Indian Factories Act.

- 1. Engagement of a safety or welfare officer.** Recruiting degree-qualified professionals for these roles can be a challenge in some parts of India. In these situations, you can engage safety and welfare officers with other relevant forms of external health and safety training to achieve conformance.
- 2. Provision of an ambulance room, trained nurse and doctor on premises.** The COP requires that workplaces have first-aid provisions and at least one trained first-aid provider, and absence of these constitutes a major non-conformance. Having an on-site facility such as a first-aid, ambulance or nurse room, with access to appropriate transport to local hospitals, will be considered conformance with this requirement. Other acceptable approaches include several factories pooling resources to support a shared ambulance room.
- 3. Provision of canteen.** If a factory has a canteen for its workers, it must be sanitary and provide access to safe and potable drinking water to conform with COP 23.2a and b. If there is no canteen, the provision of a meal allowance combined with adequate time and physical access to food prepared outside the factory is enough to achieve conformance.
- 4. Provision of crèche.** If a factory provides a crèche for its workers, it must be sanitary and provide access to safe potable drinking water and clean and hygienic washing and toilet facilities to conform with COP 23.2a, b and c. If workers do not wish to use an on-site crèche, conformance can be achieved by showing signed letters from all relevant employees indicating that they have sufficient access to off-site childcare. Auditors must verify through worker interviews that no coercion was involved in obtaining these statements.

11 UN, United Nations Guidelines for Consumer Protection (2016) <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

RJC members are responsible for identifying, and staying up to date with, all relevant health and safety laws and regulations, including:

- consumer health and safety laws (which may fall under legislation for consumer protection);
- trade or nuclear regulation;
- reporting requirements;
- enforcement processes; and
- penalties for non-compliance.

## D IMPLEMENTATION GUIDANCE

### COP 23.1: Working conditions

**Members shall provide safe and healthy working conditions for all employees in accordance with applicable law and other relevant industry standards.**

#### Points to consider:

- Health and safety is important for all workplaces, including office environments. Regardless of your type of business, you must provide your workers with:
  - a safe workplace and safe ways of working;
  - equipment, tools and machinery in a safe condition;
  - secure facilities for storing chemicals used in the workplace;
  - safe and hygienic facilities, including toilets, eating areas and first aid;
  - information, training and supervision;
  - a way to be consulted about, involved in and informed of decisions that may affect their health and safety; and
  - processes for identifying hazards and assessing and controlling risks.
- At each workplace, make a senior manager responsible for on-site health and safety.
- Establish procedures to identify and keep up to date with legislation on workplace health and safety, as well as regulatory guidance, compliance issues and procedures, and reporting and record-keeping requirements in all jurisdictions of company operations.
- Seek to establish a safety culture within the workplace:
  - Develop a written policy, alongside procedures and management systems, for workplace health and safety.
  - Communicate these to workers and incorporate them into new hire induction programmes and orientation sessions. Make sure they are written in language that workers can understand and display them in common areas in the workplace.
- Health measures should also be considered, for example:
  - Annual health plans can be used to promote a health culture. Make sure you seek the formal input of all groups of workers, especially vulnerable groups, in developing these.
  - Health data, disaggregated by sex and age, can also be gathered and reviewed by relevant worker committees and management to track health.
  - If you have any health staff, they should participate in all worker committees and, as appropriate, management committees to engage on health issues and activities.

## COP 23.2: Workplaces

### Members shall provide and maintain workplaces, and on-site housing where relevant, with:

- a. Safe and accessible potable drinking water.
- b. Sanitary facilities for eating and storing food.
- 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.
- g. Childcare and breastfeeding facilities in accordance with applicable law.
- h. Suitable conditions for pregnant or nursing women, or alternative working arrangements to avoid unsuitable workplaces.

### Points to consider:

- Make sure that all your buildings follow applicable law and that:
  - all facilities adhere to local regulations and building codes, and have the right permits in place.
  - any on-site housing or other workers' accommodation meets local standards on space, privacy and storage of personal items—note that if local law does not define any standards, you should follow international standards such as the workers' accommodation standards developed by the IFC and European Bank for Reconstruction and Development (EBRD).<sup>12</sup>

### Food, water and sanitation

- In all facilities and on-site accommodation, make sure you give workers access to:
  - running water, soap and towels or other drying devices;
  - a safe place to store food; and
  - as much potable water as they need—if contamination risks are high, carry out regular tests to ensure the water remains safe to drink, and keep records of the results.
- If you operate a cafeteria or canteen that handles food for workers, make sure:
  - it complies with all relevant food safety and hygiene legislation; and
  - all staff working in it are given hygiene training or have relevant food-handling certifications.
- If you provide showers for workers, make these gender-specific (unless they are in a private room intended for individual use with a lockable door).

### Fire safety and emergency exits

- All your facilities and on-site accommodation should have fully operational fire safety equipment (including fire extinguishers) that:
  - complies with local law, including requirements for the number and type of equipment and where it is placed;
  - is appropriate to the type of potential fire risks on-site and close to potential sources of ignition; and
  - is well maintained and routinely checked to confirm it works and is accessible and easy to use.
- All your facilities and on-site accommodation must also have an appropriate number of emergency exits, based on the building's structure, the number of workers and local regulations.
  - Exits must not be locked or impeded (although they may be alarmed). Note that if you have security guards at exits, you must give them special training to ensure workers can leave without restrictions during an emergency.
  - Exits should be easily identifiable, even if the building loses power. This means you need backup power to provide emergency lighting and signage in case of power outages.
  - All exits should lead to open areas and pathways. You will also need an assembly point for workers to safely gather in case of an emergency.

<sup>12</sup> IFC/EBRD, Workers' Accommodation: Processes and Standards (2009) [www.ebrd.com/downloads/about/sustainability/Workers\\_accomodation.pdf](http://www.ebrd.com/downloads/about/sustainability/Workers_accomodation.pdf)

- Get your managers to monitor conditions and confirm ongoing conformance with these requirements through regular visits to your sites. These visits should include:
  - checking that exits and walkways are kept clear; and
  - confirming that supervisors and workers understand their responsibility to keep exits and walkways clear.

## Nursing and expectant mothers

- Give nursing and expectant mothers special consideration to ensure their work does not put them or their children at risk. In practice, that means:
  - establishing procedures to assess potential risks in the workplace;
  - minimising those risks by, for example, assigning them different tasks or workloads; and
  - communicating with managers and supervisors to ensure nursing and pregnant workers are not discriminated against because of their condition (see COP 22 [Non-discrimination](#)).

### COP 23.3: 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. The risk assessment shall consider hazards associated with the members' 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:

- Carry out a risk assessment appropriate to your business's context and identify where risks may arise, how likely they are and which practices and procedures could be improved to prevent them.
  - Your assessment should consider risks associated with each of the hazards listed in COP 23.3 and should also include evaluating the risk of different emergencies (see COP 23.8).
  - The RJC hosts a risk assessment toolkit that includes a general risk assessment template you might find useful, especially if you are a small business. Alternatively, use your own tried and tested risk assessment process.
- Consider your improvement opportunities to address risks using a hierarchy of hazard controls (see Figure 23.2) that prioritises action in the following order:
  - Eliminate the hazard by removing or modifying the activity causing it—for example, swapping hazardous chemicals for safe ones, or using different manufacturing processes.
  - Control the hazard at the point where it starts—for example, installing local ventilation or dust extraction systems, isolation rooms or acoustic insulation and noise control systems.
  - Minimise the hazard by designing safe work systems and/or taking administrative or institutional measures—for example, providing training or communication materials on safe work procedures, monitoring the workplace, limiting exposure or working hours, or promoting job rotation and better use of PPE.

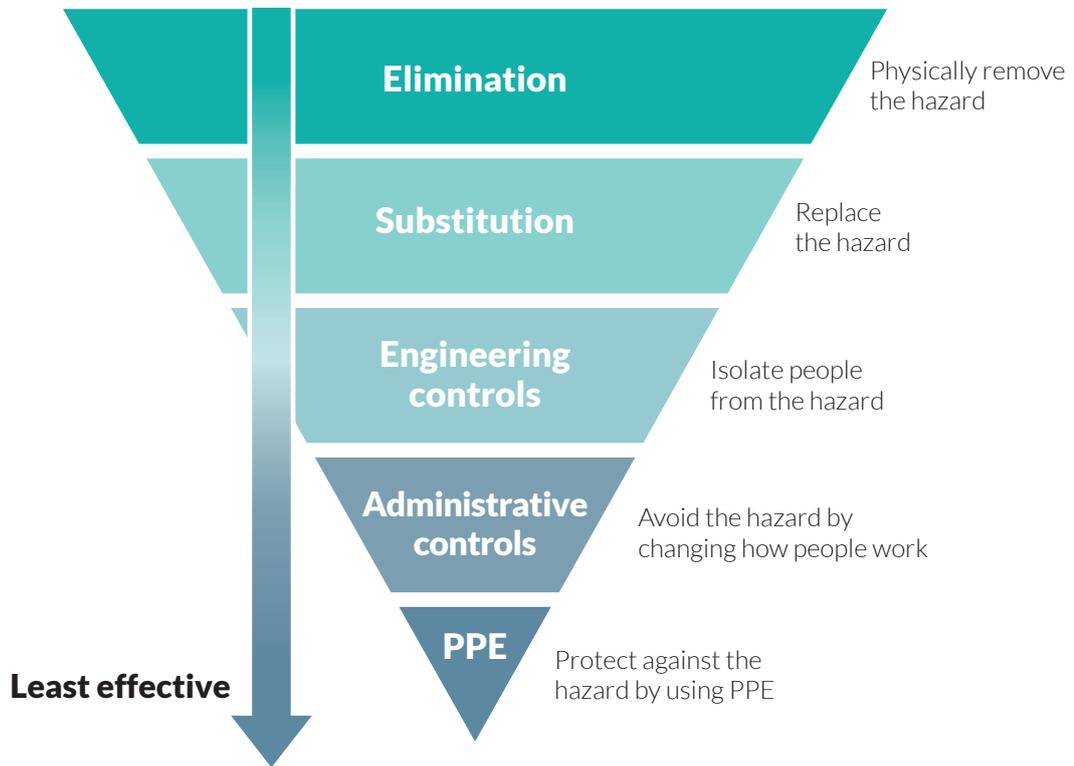


Figure 23.2. The hierarchy of hazard controls

Source: CDC, Hierarchy of Controls [www.cdc.gov/niosh/topics/hierarchy](http://www.cdc.gov/niosh/topics/hierarchy)

- Use the results of your risk assessment to develop an action plan, and establish systems to:
  - implement actions in a timely manner;
  - regularly review risks to see if the actions taken have worked, and to identify any new risks; and
  - document all risk assessments, action plans and actions taken.

#### COP 23.4: Health and safety committees

**Members shall provide employees 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:

- Establish procedures for workers to choose representatives for the joint health and safety committee (or equivalent mechanism), for example through the union or workforce nominations or elections.
- Make sure that the committee includes:
  - a senior manager, wherever possible;
  - any on-site health staff; and
  - representation to reflect the size and structure of your facility—for example, if you operate multiple shifts, the committee should include representation from all shifts.
- If on-site contractors are not eligible to participate, make sure the committee can still function as a mechanism for them to raise health and safety issues.
- The committee should meet regularly and serve as a forum to discuss health and safety matters requiring collaboration between management and workers, for example:
  - the root causes of recent accidents and how to prevent recurrences;
  - the effectiveness of training;
  - potential health and safety risks; or
  - short- and long-term health trends identified by employees, contractors or management.

- The committee should also consider whether there are special needs for different groups within the workforce, such as women or migrants. This could include reviewing accidents or injuries by group and taking appropriate action.
  - For example, if women are not using their PPE, the committee should talk to female workers to find out why: it may be because they don't understand the benefits, or it may simply be because the PPE wasn't designed for women and is uncomfortable to wear or impractical to use.
- Consider using both formal and informal channels to get workers' input on potential risks or improvements for the committee's consideration, including surveys or roundtables and suggestion boxes or team meetings.
- Either way, make sure that workers can raise health and safety issues without fear of criticism or reprisal.
- Keep a record of all committee meetings, including matters discussed and actions taken.

### COP 23.5: Training

**Members shall provide training and information about health and safety to employees in a form and language they can understand. This will include training and information on:**

- Specific role-related health and safety hazards and controls.
- Appropriate action in the event of an accident or emergency.
- Fire safety and emergency procedures.
- First-aid training for designated employee representatives.
- Workers' right and responsibility to stop work or refuse to work in situations with uncontrolled hazards, and to immediately flag these situations to those at imminent risk and to management.

#### Points to consider:

- One of the most effective ways to implement health and safety procedures is through training, including both general training on facility-wide health and safety policies and emergency protocols, as well as job-specific training on, for example, how to handle hazardous materials, operate heavy machinery or use PPE.
  - General safety training should be given as part of a new employee's induction or orientation process.
  - Job-specific safety training should also be given when a new employee starts, as well as every time an employee has to do a new type of work or use a new piece of equipment.
- Make sure you also give extra, relevant training to:
  - all employees with emergency responsibilities—for example, training fire wardens in how to use firefighting equipment, and training first-aid responders in how to administer first aid; and
  - all managers on how to coach employees who do not comply with health and safety procedures, and what to do if protocols are not followed.
- In all cases:
  - Training can be formal (for example, facilitated training sessions) or informal (for example, job shadowing).
  - Training must be given free of charge, during working hours.
  - Training formats and materials must take gender, language and levels of education into account.
  - Records of any training given, including who it was given to, must be kept.
- Monitor and test employees to confirm they are following safety procedures correctly. Consider setting targets to encourage employees to follow key procedures.
- Consider displaying safety procedures and information in areas where high-risk activities are performed, using simple signs and symbols where appropriate.
  - Make sure these materials are written at an appropriate literacy level for most of your workers and in languages most workers can read.
  - If a worker is illiterate or cannot read these materials because of language barriers, make sure a manager trains the worker verbally.

### COP 23.6: Personal protective equipment

**Members shall ensure that appropriate personal protective equipment (PPE) is provided free of charge and verify that it is current and correctly worn or used.**

### Points to consider:

- PPE includes protective clothing and any other garment (including gloves, protective footwear, helmets, goggles and earplugs) designed to protect the wearer from exposure to job-related occupational hazards.
- Note that some businesses also have additional requirements for safe attire in the workplace, for example long sleeves, closed footwear or respirators.
- Use a robust selection process when buying PPE to ensure it is fit for purpose (see Figure 23.3).

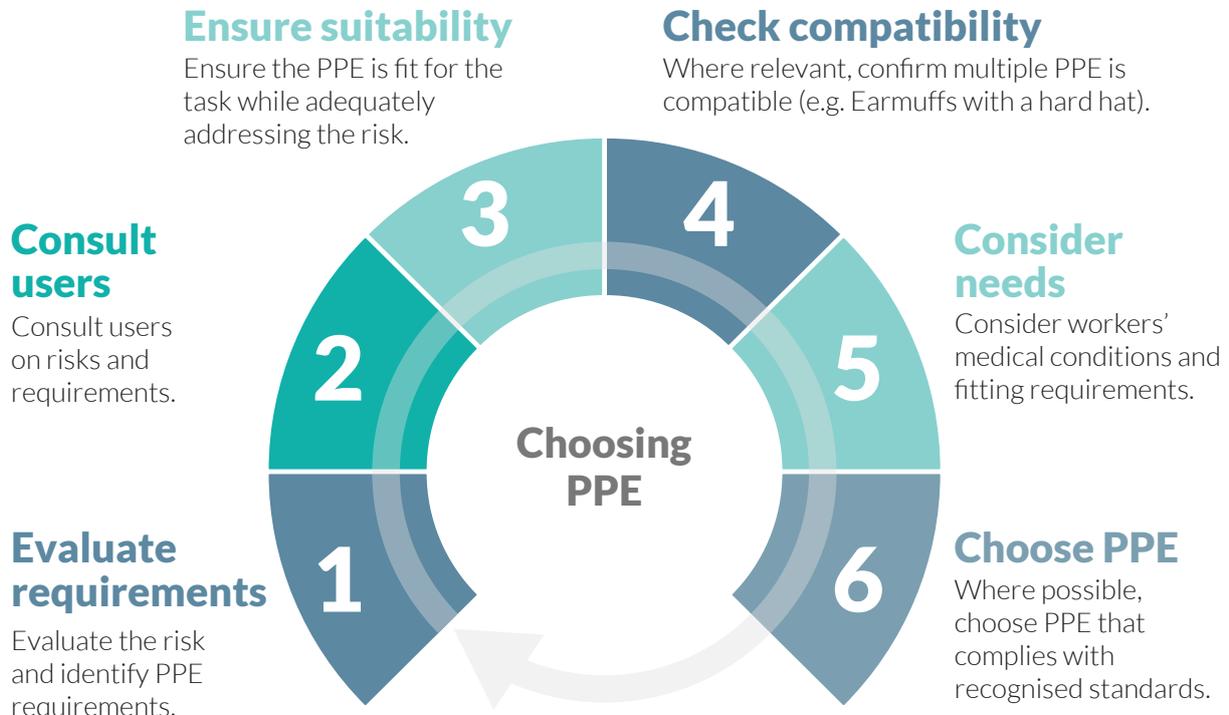


Figure 23.3. Six steps in choosing the right PPE to buy

- PPE needs to be appropriate, clean, hygienic, properly maintained and stored, and replaced when it expires or is damaged. To help ensure this:
  - establish procedures for when and how each piece of PPE should be used in relation to specific job functions; and
  - develop guidance on how the equipment should be stored when not in use.
- Train all workers that have to wear PPE on how to use and store the equipment, and why this is important.
- Put up signs everywhere that workers have to use PPE as a reminder of what type of PPE should be used. Make these signs available in multiple languages as appropriate to most workers.

### COP 23.7: Medical facilities

Members shall provide access to adequate on-site first-aid provisions and trained first aid personnel, have appropriate procedures for transportation to local medical facilities in the case of a medical emergency and assist workers with work-related injuries to physically access medical treatment in accordance with country law and company policy.

### Points to consider:

- Make sure all your sites have, at a minimum, first-aid provisions and at least one trained first-aid responder, even in low-risk environments close to a health clinic or hospital.
- The first-aid response and medical care available must be adequate to the workplace, and take into account the number of workers, the risks of workplace hazards, proximity and means of transport to clinics or hospitals, and access to services after work hours.

- If your site is far from a medical facility, consider providing an on-site medical facility that can respond to workplace injuries.
- If you have an on-site medical facility, note that you must be able to give health providers accurate information if they ask for it. You must also keep health records for as long as the law says you have to, which could be up to 30 years. Records should include information on:
  - the facility's exact location and hours of operation;
  - the gender of healthcare providers at the facility;
  - the types of health products and services available and related costs (if any);
  - how much each product and service costs; and
  - the general quality of care.

Note that you must not give out worker-specific medical information unless the worker asks you to and local laws on health privacy allow you to.

- Give all first-aid responders appropriate first-aid training, focusing on the most significant risks and most common accidents in your facility.
- If a worker is injured at work, make sure they can access any follow-up medical treatment they need. This includes arranging transport to a medical facility immediately after first-aid treatment if necessary, and adjusting the worker's work schedule to accommodate treatment.
- Consider making personal health and well-being materials and services available to employees. This includes, for example, materials on how to manage common health problems such as depression, alcohol or back pain, as well as services such as maternal and reproductive counselling or medicines and vaccines against common illnesses. Investing in prevention activities like these can reduce unplanned absences and boost productivity in the workplace.

### COP 23.8: Emergency procedures

**Members shall establish emergency procedures and evacuation plans for all reasonably foreseeable health and safety emergencies. These shall be accessible or clearly displayed, regularly tested (including through evacuation drills) and periodically updated.**

#### Points to consider:

- Your risk assessment should have identified all reasonably foreseeable emergencies, which may include fire, explosion, medical emergency, incidents with hazardous chemicals, bomb threats, armed confrontations and natural disasters (see COP 23.3).
- For each likely emergency:
  - work with local emergency response services (including fire brigades, hospitals and the police) to develop and implement a written emergency response plan outlining what workers and others in the workplace should do if the emergency arises;
  - communicate the plan to workers; and
  - display the plan clearly in the workplace or make it readily available.
- If the emergency may impact nearby operations or communities, include these stakeholders in your emergency response planning.
- Identify a common external assembly point across all the emergency response plans, where workers should meet during any evacuation away from potential harm. Establish a process to ensure all personnel are accounted for in an evacuation, and make sure all evacuation routes and exits are prominently displayed.
- Test all your emergency plans regularly. Evacuation drills are important to confirm that everyone can be quickly and safely evacuated during an emergency; do one every six months and keep a record of how long it takes to get everyone out.
  - Note that you can address concerns about product theft during emergency tests or evacuation drills by planning them in advance and doing them after all product has been secured.
- Review and refine your plans regularly, drawing on lessons learned from tests, drills or actual incidents.

### COP 23.9: Incident investigation

**Members shall investigate health and safety incidents and feed the results into reviews of relevant hazard controls to identify opportunities for improvement.**

## Points to consider:

- Use incident investigations to try and find the root cause of any health and safety incident that arises (rather than just identifying the last thing to take place before the incident happened).
- Make sure you also investigate near-miss situations, where the actual consequences were minor but the potential consequences could have been serious.
- Establish procedures for notifying worker health and safety representatives of incidents and near-miss situations, and communicate these to all workers and supervisors.
- Include workers or their representatives in the investigation process; and where available and practicable, include independent personnel or external experts in the investigation team, particularly for significant incidents.
- Document all incidents, making sure to record:
  - a description of the incident;
  - the date and time of the incident;
  - the name of the workers involved;
  - the root cause;
  - the actions taken to prevent recurrences; and
  - any other relevant details, such as compensation paid for lost earnings or productivity time lost during machine replacements.
- Keep records for as long as possible as they provide useful statistical data and help identify trends. At a minimum, you must keep records of all incidents for as long as required by local regulations and at least three years.
  - Note that if there is potential for long latency diseases, such as noise-induced hearing loss or occupational cancers, you will need to keep occupational health data for much longer, up to 30 years.
- Analyse your incident records every year to identify trends and feed your results into the next health and safety risk assessment (see COP 23.3).

### COP 23.10: Cobalt-free scaifes

**Members engaged in the cutting and polishing of diamonds and/or coloured gemstones shall use cobalt-free diamond-impregnated scaifes.**

## Points to consider:

- Inhaling cobalt-containing dust can have serious health effects.
- If you have a cutting and polishing facility, confirm that all diamond-impregnated scaifes used are guaranteed by the supplier to be cobalt-free.

### Check:

- Have you nominated a manager to be responsible for health and safety at each workplace?
- Do you have health and safety policy and procedures and have these been communicated to all staff?
- Do you have a system for staying up to date with local, national and international health and safety laws and regulations?
- Are workplaces inspected to ensure conformance with the requirements set out in COP 23.2?
- Have you assessed the risks of workplace hazards and implemented controls to minimise these?
- Do you have a health and safety committee, and do you keep records of its meetings?
- Is there a mechanism in place for workers to raise health and safety issues?
- Do employees know what to do in the event of an accident or emergency?
- Do you give training on general and job-specific health and safety in languages that workers understand?
- Do you provide appropriate PPE, free of charge, and is this used in accordance with company policy and regulatory requirements?
- Are there adequate on-site health and medical facilities? If not, can you show there are adequate facilities within a reasonable distance?
- Are evacuation plans in place for reasonably foreseeable emergencies, and are these displayed and tested?
- Have you considered the off-site implications of emergencies and worked with external stakeholders to develop response plans?
- Are procedures in place to investigate incidents? Do you keep incident records?

## Managing health and safety in small businesses

Health and safety risks are specific to the type of business, industry and tasks performed. Small businesses may not require the same level of controls as large companies, but they still have a responsibility to provide workers with a safe working environment. Some of the most common health and safety risks associated with small business, and recommendations for how to address these, are listed in the table below.

Risk	Recommendation
<b>Fire</b>	Ensure extinguishers are in place, maintained and clearly marked.
<b>Exits</b>	Ensure all fire exits and exit paths are not locked or obstructed and are accessible by workers. The number of exits should comply with local law and be sufficient to the number of workers at the facility.
<b>Electrical</b>	Keep plugs, sockets and switches in good condition. Keep floors clear of extension cords, which should be tested and tagged where required by applicable law. Make sure safety switches are hardwired into electrical switchboards.
<b>Chemical</b>	Keep your workplace chemicals register and safety data sheets (SDS) up to date. Train employees in how to handle and store chemicals to SDS guidelines.
<b>Slips, trips and falls</b>	Keep work areas clean, uncluttered and well lit, and make sure employees wear suitable footwear.
<b>Storage and racking</b>	Make sure that racking systems are stable and in good condition, and that they comply with the specified safe working load. Provide safe access to storage areas.
<b>Noise</b>	Eliminate or reduce noise from loud processes or equipment. Where applicable, give workers hearing protection equipment and put up signs to indicate when and where it must be worn.
<b>PPE</b>	Ensure workers have and use the appropriate PPE. Do not charge workers for PPE.
<b>Heights</b>	Ensure mezzanine floors have safe access and fall protection, and that handrails are secure, steps are well maintained, and any platform ladders are industrial grade and comply with standards.
<b>Manual handling</b>	Eliminate all hazardous manual handling. Provide adequate space to work on or store items and use trolleys to move them. Make sure work areas are between knee and shoulder height and are close to the worker's body.
<b>First aid</b>	Keep a first aid box readily available and appropriately stocked. Make sure qualified first aid staff are available and known to staff, and that you have sufficient amenities for all staff.
<b>Machinery</b>	Provide safe access to machinery and equipment. Make sure moving parts cannot strike or reach people, and assess all other hazards associated with machinery such as fumes, chemicals and noise.
<b>Investigations</b>	Have procedures for reporting and investigating health and safety incidents and communicate these to all workers. Keep records of all incidents and actions taken.

Workplace safety doesn't have to be difficult. 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, assign responsibility for required actions to the appropriate people in your business. This can form the basis of your approach to occupational health and safety.

### Step 2. Plan to work safely

Think about what activities happen in your facilities, identifying any potential risks to workers, and actions needed to control these risks.

### Step 3. Involve your workers

It is important to talk to workers and indirect employees and set up ways for them to be involved in 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. This includes implementing appropriate controls and assessing any risks to health and safety with their use.

### Step 5. Inform and train workers

Give employees, particularly those who are new to the workplace or job, information and training about hazards in their job and workplace. This may vary from a 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. Ensure all training provided is delivered in a manner understood by workers. This may mean having multiple translations of written training materials and posters.

### 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

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### Websites:

International Council on Mining and Metals (ICMM)  
[www.icmm.com](http://www.icmm.com)

International Finance Corporation (IFC), Environment, Health, and Safety Guidelines  
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ILO, International Labour Standards on Occupational Safety and Health  
[www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm)

National Skin Centre, Nickel Allergy  
[https://www.nsc.com.sg/Patient-Guide/Health-Library/Types of Skin Conditions/Pages/Nickel-Allergy.aspx](https://www.nsc.com.sg/Patient-Guide/Health-Library/Types%20of%20Skin%20Conditions/Pages/Nickel-Allergy.aspx)

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ICMM, Community Health Programs in the Mining and Metals Industry (2013)  
[www.icmm.com/en-gb/publications/mining-partnerships-for-development/community-health-programs-in-the-mining-and-metals-industry](http://www.icmm.com/en-gb/publications/mining-partnerships-for-development/community-health-programs-in-the-mining-and-metals-industry)

ICMM, Good Practice Guidance on Occupational Health Risk Assessment (2017)  
[www.icmm.com/gpg-occupational-health](http://www.icmm.com/gpg-occupational-health)

ICMM, Good Practice in Emergency Preparedness and Response (2005)  
[www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response](http://www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response)

ICMM, ICMM Sustainable Development Framework [ICMM Principle 5] (2003)  
[www.iucn.org/sites/dev/files/import/downloads/minicmmstat.pdf](http://www.iucn.org/sites/dev/files/import/downloads/minicmmstat.pdf)

IFC, Environmental, Health and Safety Guidelines for Mining (2007)  
[www.ifc.org/wps/wcm/connect/1f4dc28048855af4879cd76a6515bb18/Final+-+Mining.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/1f4dc28048855af4879cd76a6515bb18/Final+-+Mining.pdf?MOD=AJPERES)

IFC, General Environmental, Health, and Safety Guidelines: Community Health and Safety (2007)  
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[www.hse.gov.uk/pubns/guidance/ocm8.pdf](http://www.hse.gov.uk/pubns/guidance/ocm8.pdf)

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US Nuclear Regulatory Commission, Backgrounder on Irradiated Gemstones (2016)  
[www.nrc.gov/reading-rm/doc-collections/fact-sheets/irradiated-gemstones.html](http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/irradiated-gemstones.html)

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

The **environment** is the surroundings in which a company's 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 interrelationships. The environment in this context extends from within a company's area of operation to the global system.

**Environmental management** is the process of regulating and administering environment-related risks and issues. It may involve directly managing the environment itself, but is more often about controlling the organisation's activities, products and services that interact with the natural environment to minimise adverse impacts and, where possible, have a positive impact.

**Residual risk** is the risk that still remains after protective measures (risk reduction) have been taken.

Sources:

- International Organization of Standardization (ISO), Terms and Definition in ISO 14001:2015—Where Did They Originate From? (2015)  
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## B ISSUE BACKGROUND

Environmental pollution, degradation and destruction can all adversely impact an ecosystem's ability to function and carry out all the ecological processes it needs to sustain itself and maintain its evolutionary potential over the long term. When this happens, the tangible and intangible benefits that ecosystems provide—ranging from fresh water and climate regulation to soil fertility and cultural heritage—are reduced. We all rely on these 'ecosystem services' to survive; for many disadvantaged and vulnerable groups they also provide a direct source of livelihoods and income. This makes adverse environmental impacts a human rights issue (see COP 6 [Human rights](#)).

As members of both a global society and the local communities where they operate, businesses big and small have a moral duty to sustain the environments and ecosystems around them. At the same time, companies have to minimise adverse environmental impacts to comply with a fast-evolving set of national and international laws and regulations; and to meet the growing expectations of diverse stakeholders, including investors, consumers, communities and environmental organisations.

Good environmental management also makes good business sense. Experience shows that it can reduce operational costs, improve sales and market access, increase worker engagement and enhance brand reputation.<sup>1</sup> That is why many leading companies are now embedding a strong regard for the environment into their core business functions like planning, operations and sourcing. In doing so, they are effectively harnessing the same business systems and management approaches that make their overall enterprise successful.

Exactly how companies approach environmental management varies depending on the nature and scale of the business and the risks and contexts at hand. But in general, an environmental management system is simply a structured framework for managing people, processes and resources so that a company can minimise adverse impacts on its environment, identify environmental benefits that it's already providing, improve the environmental performance of its products and services, and boost productivity and profit.

<sup>1</sup> BSI, ISO 14001 Environmental Management: It's Your Responsibility (2013) [www.bsigroup.com/LocalFiles/en-GB/iso-14001/resources/ISO-14001%20Implementing%20Guide.pdf](http://www.bsigroup.com/LocalFiles/en-GB/iso-14001/resources/ISO-14001%20Implementing%20Guide.pdf)

These systems usually comprise a set of operational procedures, practices, plans, and related documents (including legal agreements). They almost always start with an assessment of overall operations and business partners and include activities to:

- set tangible objectives (for example to reduce chemical use, decrease water and energy consumption, use less packaging or packaging with fewer negative environmental impacts, or install pollution prevention measures);
- implement action plans;
- review the system and track progress; and
- take corrective action.

In this way, environmental management systems work as a cycle of continual improvement, commonly known as the 'Plan-Do-Check-Act' cycle (see Figure 24.1).

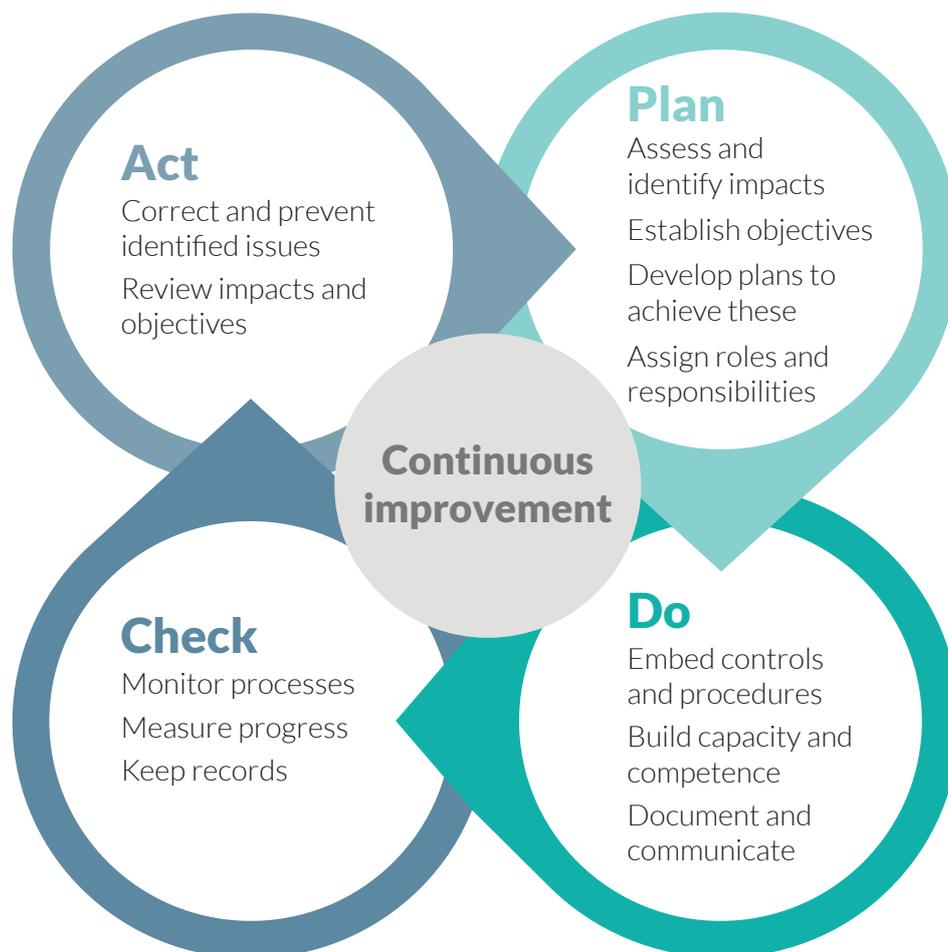


Figure 24.1. . The Plan-Do-Check-Act cycle for continuous improvement

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

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### International standards

The **UN Global Compact** ([www.unglobalcompact.org](http://www.unglobalcompact.org)) is a voluntary initiative for businesses to support corporate sustainability. It is built on 10 principles of responsible business that include three directly related to the environment: to support a precautionary approach to environmental challenges (Principle 7), to undertake initiatives to promote greater environmental responsibility (Principle 8) and to encourage the development and diffusion of environmentally preferable technologies (Principle 9).

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, which describes the requirements for a good environmental and social management system.
- Performance Standard 3: Resource Efficiency and Pollution Prevention, which describes how to integrate practices and technologies that use resources more efficiently and sustainably, and that reduce greenhouse gas (GHG) emissions.
- Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources, which sets out requirements for protecting biodiversity and ecosystems.

The IFC Performance Standards are embedded in the **Equator Principles** (<http://equator-principles.com>)—a risk management framework adopted by 94 private financial institutions to ensure that the large-scale development projects they finance appropriately determine, assess and manage potential impacts on the environment and affected communities.

A range of other international initiatives and agreements are driving interest in strong environmental management, by states and businesses alike. This includes agreements like the **UN Framework Convention on Climate Change (UNFCCC) Paris Agreement**,<sup>2</sup> which gives unprecedented recognition to the role that businesses have in mitigating and adapting to the impacts of climate change (see COP 27 **Use of natural resources**).

As the number of international standards and initiatives on environmental management rises, certifications like **ISO 14001:2015 Environmental Management Systems** ([www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html)) have emerged to help businesses establish and demonstrate effective environmental management systems. ISO 14001 provides a framework for organisations to follow to minimise negative environmental impacts, meet legal obligations and adopt a continuous improvement approach. It is also one of the standards RJC recognises for compliance with specific environment-related COPs (see Assessment Manual).

ISO standards on environmental management extend beyond ISO 14001, to encompass more than 50 standards (published or under development) covering seven relevant topics, from auditing and labelling to performance evaluation and GHG management (see Table 24.1 for the published ones).

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<sup>2</sup> UNFCCC, Paris Agreement (2015) [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)

Table 24.1. Summary list of published ISO standards related to environmental management. Source: ISO. Standards Catalogue: ISO/TC 207 Environmental Management [www.iso.org/committee/54808/x/catalogue/p/1/u/1/w/0/d/0](http://www.iso.org/committee/54808/x/catalogue/p/1/u/1/w/0/d/0)

ISO topic	Published standards
<b>Environmental management</b> 6 published standards (5 more under development)	<ul style="list-style-type: none"> <li>• Guide 64:2008 Environmental issues in product standards</li> <li>• 14050:2009 Vocabulary</li> <li>• 14051:2011 and 14052:2017 Material flow cost accounting</li> <li>• 14055-1:2017 Combatting land degradation and desertification</li> <li>• 14062:2002 Product design and development</li> </ul>
<b>Environmental management systems</b> 5 published standards (5 more under development)	<ul style="list-style-type: none"> <li>• 14001:2015 System requirements</li> <li>• 14004:2016 Implementation</li> <li>• 14005:2010 Phased implementation</li> <li>• 14006:2011 Incorporating ecodesign</li> <li>• 14008:2019 Monetary valuation of environmental impacts</li> </ul>
<b>Environmental auditing and related investigations</b> 1 published standard (1 more under development)	<ul style="list-style-type: none"> <li>• 14015:2001 Environmental assessment of sites and organisations</li> </ul>
<b>Environmental labels and declarations</b> 6 published standards (none under development)	<ul style="list-style-type: none"> <li>• 14020:2000 General principles</li> <li>• 14021:2016 Self-declared claims (Type II)</li> <li>• 14024:2018 Labelling (Type I)</li> <li>• 14025:2006 Declarations (Type III)</li> <li>• 14026:2017 Communicating footprint information</li> <li>• 14027:2017 Product category rules</li> </ul>
<b>Environmental performance evaluation</b> 4 published standards (5 more under development)	<ul style="list-style-type: none"> <li>• 14031:2013 Performance evaluation</li> <li>• 14033:2012 Quantitative information</li> <li>• 14034:2016 Environmental technology verification (ETV)</li> <li>• 14063:2006 Communication</li> </ul>
<b>Lifecycle assessment</b> 11 published standards (2 more under development)	<ul style="list-style-type: none"> <li>• 14040:2006 Principles and framework</li> <li>• 14044:2006 Requirements and guidelines</li> <li>• (14044:2006 Amendment)</li> <li>• 14045:2012 Eco-efficiency assessment of product systems</li> <li>• 14046:2014 Water footprint</li> <li>• 14047:2012 Impact assessment</li> <li>• 14048:2002 Data documentation format</li> <li>• 14049:2012 Goal and scope definition and inventory analysis</li> <li>• 14071:2014 Review processes and reviewer competencies</li> <li>• 14072:2014 Organisational life cycle assessment</li> <li>• 14073:2017 Water footprint examples</li> </ul>
<b>Greenhouse gas (GHG) management and related activities</b> 8 published standards (9 more under development)	<ul style="list-style-type: none"> <li>• 14064-1:2018 Quantifying and reporting GHG at organisational level</li> <li>• 14064-2:2006 Quantifying and reporting GHG at project level</li> <li>• 14064-3:2006 Validating and verifying GHG assertions</li> <li>• 14065:2013 Validation requirements for accreditation</li> <li>• 14066:2011 Competence requirements for validation and verification</li> <li>• 14067:2018 Carbon footprint</li> <li>• 14069:2013 Applying 14064-1</li> <li>• 14080:2018 Methods for climate actions</li> </ul>

## National law

The concept of environment, in legislative terms, has traditionally focused on human surroundings, both man-made and natural. Most countries have formal laws and regulations governing the effects of businesses on the environment. Many of these focus on controlling pollution, although an increasing number of countries now also regulate natural resource management (including forests and minerals).

In many national and state jurisdictions, companies must be able to satisfy specific conditions on air and water quality, land management, noise and waste disposal. Some kinds of industrial operations must also be licensed under environmental law and these licences must be valid and complied with at all times.

## D IMPLEMENTATION GUIDANCE

### COP 24.1: Risks, impacts and performance

Members shall establish and implement an environmental management system.

#### Points to consider:

- This provision is essentially about implementing the Plan-Do-Check-Act cycle of continuous improvement (see Figure 24.1).
- Your first step should be to clearly state your commitment to environmental management, either in a stand-alone environment policy or as part of a broader company policy (see COP 2 [Policy and implementation](#)).
- Make a senior manager responsible for your environment policy, including oversight of an effective environmental management system to fulfil the policy commitments.
  - Note that if you have more than one facility, each one should have an environmental management system in place unless the type of facility and location present the same risk in the same context, for example a chain of retail stores in one region.
- Follow the steps below to put your environmental management system in motion.

#### Using a lifecycle-based approach

The use of life-cycle approaches is integral to ISO 14001 on environmental management systems, which emphasises the need to prevent environmental impacts from being unintentionally shifted elsewhere within the product lifecycle.

A business operation or company as a whole can contribute to various environmental impacts. Life-cycle thinking considers the range of impacts throughout the operation or company, looking at emissions, wastes, and resources consumed, and any other environmental impacts. For example, a decision to collect wastes in one part of operations could result in an increase in emissions. Care needs to be taken to avoid shifting problems from one stage to another and consider the trade-offs in an informed way.

In implementing your environmental management system, you should use life-cycle thinking using a common sense approach, working with employees from different parts of the business to get an informed view on the whole lifecycle of environmental impacts (although you do not need to do a full life-cycle analysis).

#### Sources:

- ISO, ISO 14001:2015 Environmental Management Systems—Requirements with Guidance for Use [www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html);
- European Commission, Life Cycle Thinking and Assessment for Waste Management [http://ec.europa.eu/environment/waste/publications/pdf/Making\\_Sust\\_Consumption.pdf](http://ec.europa.eu/environment/waste/publications/pdf/Making_Sust_Consumption.pdf)

## Plan

### 1. Assess risks and impacts

- Review all business processes and activities to understand how your company interacts with the environment and to identify any actual and potential environmental impacts, which may involve pollution of air, water or soils, use of materials and energy, wastes and emissions, noise and visual effects.
- Environmental impact assessments (EIAs) are a commonly used tool to identify real and potential risks. EIAs are legally required in some countries as part of the approval process for development projects. They are common practice for mining projects (see COP 34 [Impact assessment](#)) but are also relevant for any other large-scale project.
- Your risk assessment should be appropriate to your circumstances and should identify where the risks lie and how likely they are to turn into real impacts. This will help you spot potentially deficient procedures so you can make appropriate plans to mitigate the risks.
- The RJC hosts a risk assessment toolkit that includes a general risk assessment template you might find useful, particularly if you are a small business. Alternatively, use your own tried and tested risk assessment process.
- The risk assessment must identify **significant** environmental impacts. ISO 14001 defines this as ‘the potential or actual environmental effect or risk ... that an organization intends to manage or is managing through operational controls’. Judgement must be used to determine what is significant taking into account:
  - all nearby environments and communities that may be affected, especially those that are sensitive and susceptible to pollution or contamination, for example drinking water sources, sensitive plant and animal species and habitats (see COP 38 [Biodiversity](#) for mining impacts on areas of biodiversity importance); and
  - the receiving environment of any emissions and wastes—in highly industrial regions, your relatively low negative individual impact may be contributing to a relatively high negative cumulative impact.
- Document both the process itself as well as any action plans that emerge from it to mitigate and monitor identified risks and impacts.

### 2. Check legal compliance

- Make sure you understand all applicable environmental laws and regulations.
- Establish a process to stay up to date with local legislation.
- Define operational controls and standard operating procedures to help managers and workers comply with all requirements.

### 3. Set targets

- Establish a robust set of objectives, targets and key performance indicators that can be used to guide and evaluate improvements in your environmental performance (as well as in the management system itself).
- Example targets could include reducing GHG emissions, decreasing water and energy consumption, using fewer raw materials or more environmentally preferable materials, reducing the use of chemicals and hazardous materials, and transitioning to zerowaste.

### 4. Identify options

- Use the results of your risk assessment to identify improvement opportunities and determine what action is needed where.
- Note that the RJC expects all members, regardless of whether their operations have the potential to cause significant adverse impacts on the environment or not, to identify and implement opportunities to improve performance (for example, by recycling, using resources and materials more efficiently and switching to less hazardous substances).
- In considering your opportunities to improve environmental performance, remember to:
  - use the mitigation hierarchy and first ask how you can eliminate the risk or impact at source before thinking about what controls are needed to minimise it (see COP 24.2); and
  - give preference to the option that is most likely to avoid irreversible damage to the environment and is cost-effective (including consideration of a ‘do nothing’ option).

## Do

- When developing controls to manage identified risks and minimise negative environmental impacts, use the mitigation hierarchy (see Figure 24.2). This tool, commonly used by mining companies to address biodiversity risks, offers a best-practice approach to achieving no overall negative environmental impacts.
- Like the hierarchy of hazard controls described in COP 23.3 [Health and safety](#), the mitigation hierarchy involves prioritising options in a sequential way, starting with action to avoid impacts, followed by action to minimise them. If the negative environmental impacts are significant, it can also be appropriate to restore and, finally, offset them.
- Note that you should only choose to offset environmental impacts as a last resort to tackle residual impacts. In all cases, residual impacts must be permitted under applicable national law.

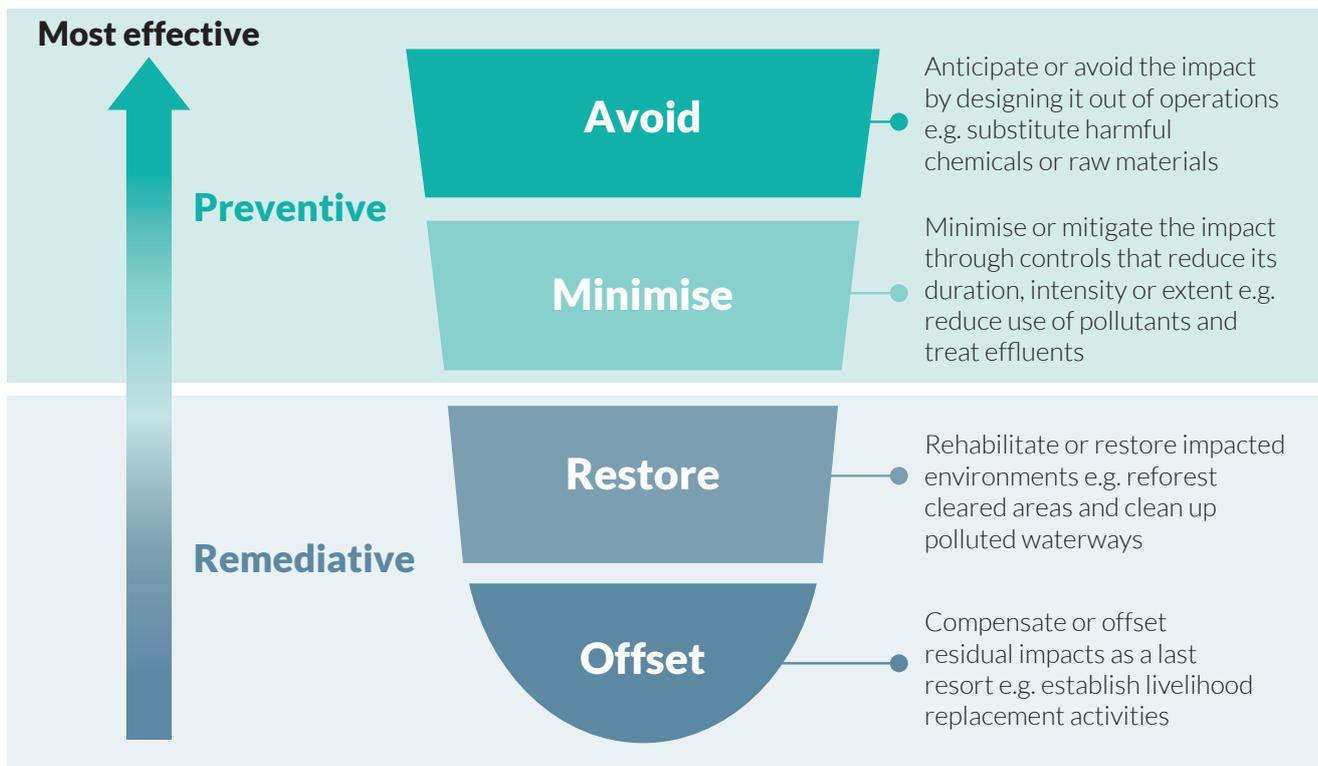


Figure 24.2. The mitigation hierarchy

- In practice, implementing options in the mitigation hierarchy may involve changing operational processes, products, work practices or raw materials.
- Consider developing written specific policies and procedures for these control measures when business operations and processes have the potential to cause significant impacts or breach environmental regulations.

#### Check and act

- Monitor, measure and report on processes, discharges and emissions, as appropriate.
  - Quantifying changes in impacts can be a useful way to track improvements; however, this may not always be possible for smaller businesses or for some types of risks.
  - A risk register can prove useful for tracking performance over time.
- As part of your efforts towards continuous improvement, assess all activities to control environmental impacts regularly and ensure they remain effective, and adapt your control measures accordingly.

#### COP 24.2: Training and communication

Members shall provide training and information about environmental risks and controls to all relevant employees. These shall be given in a format and language that workers can easily understand.

## Points to consider:

- It is good practice to provide environmental training and information to all your workers. Identify all those who play a part in your environmental management system and develop appropriate training for them. This applies to directly employed workers as well as indirectly employed workers who regularly work at your sites (for example, contractors and subcontractors). Train relevant personnel so that they are aware of potential risks, understand the controls for managing and minimising environmental impacts and appreciate their roles and responsibilities in upholding your environment policy.
- Make sure that this training:
  - is given to all on-site workers and, where relevant, homeworkers (for example, by incorporating it into induction or orientation training sessions); and
  - is delivered in a language that workers understand (if there are literacy barriers, provide one-to-one verbal training).
- Keep records of all training and use these to plan refresher training sessions.
- Get managers to regularly observe tasks involving hazardous substances and verify workers are following procedures appropriately. If they are not, carry out additional training or revise existing procedures to mitigate identified risks.
- Communicate your commitments to, and expectations of, good environmental management to all contractors during the bidding or contracting process. Include compliance requirements within the contract and make it clear that these extend to any subcontractors.

## Check:

- Have you made a formal commitment to reduce and manage environmental impacts, either in a stand-alone policy or as part of another company policy?
- Is a senior manager responsible for environmental performance and compliance?
- Have you reviewed all your business activities and identified those with the potential to cause adverse environmental impacts?
- Do you have an overall environmental management system appropriate to your level of risks and impacts?
- Have you identified and implemented controls to eliminate or minimise risks and significant adverse impacts?
- Have you identified opportunities for improvement in your environmental performance? Are they being implemented?
- Have you trained all relevant employees, and can you show the auditor records of this?

## Tips for small business

No matter how big or small your business is, identifying and properly managing environmental risks is important. Most jurisdictions have strict controls for managing and disposing of hazardous substances regardless of business size: tiny quantities of incorrectly disposed hazardous waste can lead to significant fines.

Even small businesses, or businesses with low risk, can benefit from good environmental management systems that ensure compliance with applicable law and make better use of resources (water, gas and electricity).

If you are a small business, consider these simple actions to improve your environmental management systems:

- Inform employees about proper waste disposal, including for chemical, hazardous and general office waste.
- Install special bins that are properly labelled for hazardous waste (hazardous waste collectors can often provide these for you).
- Engage water or energy providers to do an audit that can identify savings opportunities.
- Talk to peer companies and other members of industry associations to gather ideas on how to improve your environmental performance at minimal cost: there is a good chance someone else has faced the same issue and has done something simple about it.

Also see the guidance for COP 25 [Hazardous substances](#), COP 26 [Wastes and emissions](#) and COP 27 [Use of natural resources](#).

## E FURTHER INFORMATION

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### Websites:

Environment Agency (UK)

[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

Environment and Climate Change Canada

[www.ec.gc.ca](http://www.ec.gc.ca)

ISO, ISO 14001:2015 Environmental Management Systems

[www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html)

ISO, Standards Catalogue: ISO/TC 207 Environmental Management

[www.iso.org/committee/54808/x/catalogue/p/1/u/0/w/0/d/0](http://www.iso.org/committee/54808/x/catalogue/p/1/u/0/w/0/d/0)

UN Environment (formerly UN Environment Programme, UNEP)

[www.unenvironment.org](http://www.unenvironment.org)

UN Environment, Global Environment Outlook

[www.unenvironment.org/global-environment-outlook](http://www.unenvironment.org/global-environment-outlook)

UN Global Compact

[www.unglobalcompact.org](http://www.unglobalcompact.org)

UN Sustainable Development Knowledge Platform

<https://sustainabledevelopment.un.org>

US Environmental Protection Agency (EPA), Environmental Management Systems

[www.epa.gov/ems](http://www.epa.gov/ems)

US EPA, Small Business Gateway

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

### Publications:

IFC, Environmental, Health, and Safety Guidelines (2007)

[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/ehs-guidelines](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines)

IFC, Good Practice Note: Managing Contractors' Environmental and Social Performance (2017)

[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/publications/publications\\_gpn\\_escontractormangement](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_escontractormangement)

IFC, Guidance Note 3: Resource Efficiency and Pollution Prevention (2012)

[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps3](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps3)

IFC, Performance Standard 3: Resource Efficiency and Pollution Prevention (2012)

[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps3](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps3)

# (COP 25) HAZARDOUS SUBSTANCES

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members.

**Active communication** means using appropriate methods and frequency for relaying information that enable the receptor to effectively understand and act on the information.

**Employees** include both directly employed workers that have contracts with the RJC member and indirectly employed workers that regularly work at members' sites and that have employment contracts with a third party, such as a labour agent, labour provider or contractor/subcontractor.

A **hazardous substance** is any material that poses a threat to human health or the environment.

A **safety data sheet (SDS)** is a document giving information on the properties of hazardous chemicals and how they affect health and safety in the workplace.

Source:

- Government of Western Australia, Guidance about Hazardous Substances  
[www.dmp.wa.gov.au/Safety/Guidance-about-hazardous-6930.aspx](http://www.dmp.wa.gov.au/Safety/Guidance-about-hazardous-6930.aspx)

## B ISSUE BACKGROUND

Substances are generally defined as hazardous if they are flammable, oxidising, corrosive, toxic, radioactive or explosive, and if they pose threats to public health or the environment. Hazardous substances can be solid, liquid or a vapour, and their precise effect on people and planet depends on both their toxicity and the extent and duration of exposure. The use of hazardous substances is governed by a broad range of international, national and local laws and is often highly regulated; some materials are completely banned.

In the jewellery supply chain, hazardous substances can be found in:

- input or raw materials, such as organic solvents, oxidising agents, metal oxides and salts, refrigerants, acids, welding fluxes and many industrial chemicals and cleaning agents (the raw metal concentrate (doré) used by refiners, for example, can often contain mercury or residually radioactive material);
- waste streams, such as discharges to air, water or land, waste rock, empty hazardous substance packaging, tailings, waste rock and mineral processing residues, used oils, batteries and acid sulphate soil; and
- by-products of work activities, such as silica dust, fibres, welding fumes and diesel exhaust.

Safety data sheets (SDSs), sometimes called material or product safety data sheets, are a critical tool in hazardous substances management. They are essentially easy-to-understand documents containing information on the chemical make-up and potential hazards of a substance along with instructions on how to store, handle and dispose of it safely. They come in different formats, depending on where you are in the world, but they generally include:

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

SDSs give employers, self-employed persons, workers and other health and safety representatives the information they need 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 an SDS.

Other commonly used approaches to managing hazardous substances include labelling, training, communication and various hazard control measures (see the hierarchy of hazard controls in Figure 23.2 COP 23 **Health and safety**).

More information on managing wastes is provided in the guidance for COP 26 **Wastes and emissions**.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

International standards and regulations exist for many of the hazardous substances used in the gold, diamond and coloured gemstone jewellery supply chain. Some of the most significant are listed below.

The **Rotterdam Convention** ([www.pic.int](http://www.pic.int)), signed in 1998, is a multilateral environmental agreement on the import and export of certain hazardous chemicals. Countries make informed decisions to accept the chemicals they are prepared to receive and exclude those they decide they cannot manage safely. Every year, the list of chemicals covered by the convention is reviewed and updated.

The **Stockholm Convention** (<http://chm.pops.int>) came into force in 2004. It is an international legally binding treaty that aims to protect human health and the environment from the adverse effects of persistent organic pollutants (POPs) that persist in the environment and accumulate in people and wildlife. Signatory countries are required to reduce, restrict or eliminate 29 different POPs listed in the convention's annexes. This impacts companies because as soon as a hazardous substance is added to the list, countries must act to ensure industry compliance.

The **Montreal Protocol** (<https://ozone.unep.org>) is an international agreement ratified by all countries in the world to protect the earth's ozone layer by phasing out of production a number of ozone-depleting substances (with a focus on chlorofluorocarbons (CFCs)). Since its adoption in 1987, it has successfully eliminated more than 98 per cent of controlled substances.<sup>1</sup>

The **Minamata Convention on Mercury** ([www.mercuryconvention.org](http://www.mercuryconvention.org)) is a global treaty to protect human health and the environment from the adverse effects of mercury. Key points of the convention, which entered into force on 16 August 2017, include a ban on new mercury mines, the phase-out of existing ones, the phase-out of mercury use in a number of products and processes, control measures on emissions to air and on releases to land and water, and regulation of artisanal and small-scale gold mining. (For members with mining facilities, control of mercury is covered under COP 41 [Mercury](#).)

The **International Labour Organization (ILO) Chemicals Convention, 1990 (ILO C170)**<sup>2</sup> has been in force since 1993 to protect workers from the harmful effects of chemicals in the workplace. It requires employers to label all chemicals and make SDSs available to workers, and ensure workers are not exposed to chemicals above the exposure limits defined in the SDS. To help employers meet these requirements, the ILO published a code of practice on safety in the use of chemicals at work.<sup>3</sup>

The **UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS)** ([www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)) is a system for standardising and harmonising the classification and labelling of chemicals and hazardous substances to support their safe use, transport and disposal. The GHS defines the classification of chemicals by hazard (health, physical and environmental). It also provides a common language for communicating about chemicals and protective measures on labels and SDSs, including standard pictograms. The system is a voluntary agreement, rather than a law; nevertheless, it is already being implemented in more than 70 countries.<sup>4</sup>

The **International Cyanide Management Code** ([www.cyanidecode.org](http://www.cyanidecode.org)) focuses exclusively on the safe management of cyanide in gold and silver mining (see COP 40 [Cyanide](#)).

The **World Bank Group Environmental, Health, and Safety Guidelines** (EHS Guidelines, [www.ifc.org/ehsguidelines](http://www.ifc.org/ehsguidelines)) are referred to in the World Bank's Environmental and Social Framework and in the International Finance Corporation's Performance Standards and include specific guidelines on hazardous materials.

### National law

Most countries have laws and regulations to govern the handling, management, use and disposal of hazardous substances, which reflect the ILO Chemicals Convention, 1990. Most also have laws to implement the UN GHS, for example requiring all hazardous substances to be accompanied by an SDS or equivalent. Many jurisdictions further require that SDSs must have been issued within the previous three years.

Many countries also define exposure limits for hazardous materials, which may vary across different jurisdictions.

RJC members are expected to be aware of, and comply with, all applicable laws and regulations.

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1 UN Development Programme, Montreal Protocol [www.undp.org/content/undp/en/home/sustainable-development/environment-and-natural-capital/montreal-protocol.html](http://www.undp.org/content/undp/en/home/sustainable-development/environment-and-natural-capital/montreal-protocol.html)  
2 ILO, C170—Chemicals Convention (1990) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C170](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C170)  
3 ILO, Safety in the Use of Chemicals at Work (1993) [www.ilo.org/safework/info/standards-and-instruments/codes/WCMS\\_107823/lang-en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/codes/WCMS_107823/lang-en/index.htm)  
4 UNECE, GHS Implementation [www.unece.org/trans/danger/publi/ghs/implementation\\_e.html](http://www.unece.org/trans/danger/publi/ghs/implementation_e.html)

## D IMPLEMENTATION GUIDANCE

### COP 25.1: Inventory and documentation

Members shall maintain an inventory of hazardous substances at facilities. Safety data sheets (or equivalent) shall be accessible wherever hazardous substances are used and their associated risks shall be clearly and actively communicated to all employees who work with them.

#### Points to consider:

- At each facility, make a manager responsible for keeping an inventory of hazardous substances. Make sure this person:
  - has the authority to approve the introduction of new chemicals into the facility and to provide adequate resources to store and respond to incidents specific to the nature of the substance; and
  - works closely with (or is the same as) the person responsible for your environmental management system (COP 24 [Environmental management](#)) and workplace health and safety (COP 23 [Health and safety](#)).
- The inventory itself shall:
  - list all hazardous substances used at the facility (even where these are rarely used or exist in small quantities);
  - include basic information on the type, quantity and proper disposal of each hazardous substance (see 'Hazardous substances inventory: example template' in Section D); and
  - identify which tasks each hazardous substance is related to.
- Establish procedures for maintaining inventory records; these should be appropriate to the amount and diversity of hazardous substances present in your workplace. For example:
  - In office and retail environments using limited hazardous substances, you may choose to record quantities as a long-term range (for example, '3 to 5 bottles of 150ml of isopropyl alcohol'), rather than trying to continuously update the figures.
  - In operational workplaces using large volumes of hazardous substances, such as a refiner or manufacturer, you will need a more sophisticated system that regularly updates the quantities, locations and status of each hazardous substance. In these types of environments, it may be appropriate to keep the inventory in an electronic database; various third-party database systems are available for these purposes.
- For each substance listed on your inventory:
  - Make sure the substance has an SDS or equivalent. For some commonly used hazardous substances bought in small volumes, you will find the equivalent of an SDS on the label of its container.
  - Review how workers use and handle the substance to identify any risks to workers' health or the environment. (Do this as part of your health and safety risk assessment (COP 23.3 [Health and safety](#)) or your environmental management risk assessment (COP24.1 [Environmental management](#)); use the RJC risk assessment toolkit or your own process.)
  - Establish controls to minimise risks associated with the substance and define operating procedures to ensure it is labelled, handled, stored and disposed of correctly (in line with its SDS). These controls can be managed separately or incorporated into a broader environmental or health and safety management system.
- Establish written policies and procedures on using chemicals. These should explicitly state the need for SDSs to accompany all hazardous substances, and for all relevant workers to be suitably trained and equipped to handle them (see COP 23 [Health and safety](#)).
- Communicate policies and procedures for hazardous substances to anyone that is likely to handle them. This includes:
  - training workers on correct procedures before they start handling a hazardous substance;
  - giving instructions on what to do if there is an incident involving any of the substances on-site; and
  - making SDSs and operating procedures easily available, for example stored in your inventory and publicly displayed close to where the substance is used or stored.
- Make sure you keep records of all training.

## Tracking tips

Inventories are subject to constant change as substances are used, moved, replaced and disposed of. And hazardous substances that are kept for a long time, are infrequently used or are used in very small quantities are vulnerable to being misplaced, mislabelled and improperly handled. The points below offer some basic tips to help you avoid costly mistakes and keep accurate track of hazardous substances over time.

- Don't reuse original containers for a different purpose without properly cleaning and relabelling them.
- Always keep labels securely fixed and protected from damage, especially for substances in long-term storage.
- Store all vessels and containers in a way that keeps the label visible.
- Be extra careful when transferring hazardous substances to new containers to ensure they have appropriate physical properties and are properly labelled.
- Never dispose of empty containers and packaging as general waste. These may be contaminated with residual material and their disposal should follow local regulations for hazardous waste.

## COP 25.2: International bans

**Members shall not manufacture, trade or use chemicals and hazardous substances subject to international bans. Any hazardous substances subject to international phase-outs shall not be manufactured or traded and their use shall be phased out in accordance with the regulation.**

### Points to consider:

- Chemicals and hazardous substances are usually banned due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, irreversible ecological impacts or depletion of the ozone layer.
- Complying with applicable law is often a secure way of avoiding the use of banned substances. But the list of hazardous substances subject to international bans or phase-outs is constantly growing. To make sure you keep up with the changes:
  - Review the latest international agreements regularly and confirm you are not using any hazardous substances subject to international phase-outs or bans (see Table 25.1 for some examples of banned substances).
  - Make sure you only procure hazardous substances through legitimate commercial suppliers.
- Note that this provision allows for **non-consumptive** use of hazardous substances, such as CFCs,<sup>5</sup> that were integrated into equipment before restrictions were introduced—if this adheres to applicable law. When products containing non-consumptive goods such as CFCs are disposed of, this must be done safely and in accordance with the law.

Table 25.1. Some examples of internationally banned hazardous substances

Type of hazardous substance	Examples
<b>Ozone-depleting substances</b>	<ul style="list-style-type: none"><li>• Chlorofluorocarbons (CFCs), hydrobromofluorocarbons (HBFCs) and hydrochlorofluorocarbons (HCFCs)</li><li>• Halons</li><li>• Carbon tetrachloride (CCl<sub>4</sub>)</li><li>• Methyl chloroform (CH<sub>3</sub>CCl<sub>3</sub>)</li><li>• Methyl bromide (CH<sub>3</sub>Br)</li></ul>
<b>Persistent organic pollutants</b>	<ul style="list-style-type: none"><li>• Aldrin, chlordane, dieldrin, endrin, hexachlorobenzene, mirex or toxaphene</li><li>• Dioxins and furans</li><li>• Dichlorodiphenyltrichloroethane (DDT)</li><li>• Polychlorinated biphenyls (PCBs)</li><li>• Polychlorinated terphenyls (PCTs)</li></ul>
<b>Other substances</b>	<ul style="list-style-type: none"><li>• Tributyltin (TBT)</li><li>• Hexavalent chromium</li><li>• Brominated flame retardants (BFR)</li><li>• Polybrominated biphenyls</li><li>• Polybrominated diphenyl ether</li></ul>

5 Compounds of carbon, hydrogen, chlorine and fluorine (typically gases used in refrigerants and aerosol propellants) that are harmful to the ozone layer. See Table 25.1.

## COP 25.3: Alternatives

Wherever technically feasible and economically viable, members shall use alternatives to hazardous substances in their business processes.

### Points to consider:

- Even if you are a small- to medium-sized business, you may be surprised at the quantity and diversity of hazardous substances in your workplace.
- Following the hierarchy of hazard controls, try to first eliminate and then make substitutions for all hazardous substances in the workplace before resorting to control measures or protective equipment (see COP 23.3 **Health and safety**).
- Focus your attention first on those hazardous substances that pose the greatest risk to workers' health or the environment, but make sure you consider elimination or substitution for all hazardous substances listed in your inventory.
  - In some cases, this will be relatively straightforward: many hazardous substances are not commonly recognised as such and are present in small quantities without being used for long periods—these can often be easily eliminated or substituted with safer alternatives.
  - In other cases, it will be more difficult; it may even be impossible.
- Before using a potential alternative to a hazardous substance, always:
  - check that it will not pose a greater threat to the environment or workers; and
  - assess its effectiveness to confirm it can be used without compromising business results.
- Never let a minor inconvenience stand in the way of using a non-hazardous alternative.

### Check:

- Is a manager responsible for hazardous substances?
- Do you have a policy and procedures for handling hazardous substances?
- Have individuals who work with hazardous substances received the necessary training before handling the materials? Do you keep training records?
- Do you have an inventory of hazardous substances used?
- Have you done a risk assessment of all hazardous substances used on-site and established controls to address actual and potential risks?
- Are all safety data sheets accessible and in a language that those responsible for handling hazardous substances can understand?
- Have you checked whether your business manufactures, trades or uses any substances subject to international bans or phase-outs?
- Can you show the auditor that you have tried to identify suitable alternatives to hazardous substances used in your business?

### Hazardous substances inventory: example template

A typical inventory will account for the type of hazardous substances on-site, how much of each type you have and how best to dispose of any waste. A template is provided below, which may be particularly useful for small businesses, which often have a range of hazardous substances in their operations and activities, many in small quantities.

Feel free to modify or adapt this template to suit your own business context. Alternatively, develop your own inventory for hazardous substances. Either way, make sure you review and update the inventory regularly, but especially every time there is a major change. You can also use the inventory as the basis for assessing risks associated with the handling, use, storage and disposal of the substances (see COP 25.1).

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	Tasks
List name and alternative names of chemicals.	Most hazardous substances have a unique ID or UN no.	Provide the supplier(s) name(s).	Identify the location, room, storage cabinet where the substance is stored. Consider also listing where it is used.	Give 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.		Identify which tasks each hazardous substance is related to.

## E FURTHER INFORMATION

### Websites:

GESTIS Substance Database [a free resource to search exposure limits by chemical]

[http://gestis-en.itrust.de/nxt/gateway.dll/gestis\\_en/000000.xml?f=templates\\$fn=default.htm\\$vid=gestiseng:sdbeng\\$3.0](http://gestis-en.itrust.de/nxt/gateway.dll/gestis_en/000000.xml?f=templates$fn=default.htm$vid=gestiseng:sdbeng$3.0)

The Montreal Protocol on Substances that Deplete the Ozone Layer

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-2-a&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-2-a&chapter=27&clang=en)

Nevada Division of Environmental Protection, Mining

<https://ndep.nv.gov/land/mining>

OECD, Substitution and Alternatives Assessment Tool Selector

[www.oecd-saatoolbox.org/Home/Tools](http://www.oecd-saatoolbox.org/Home/Tools)

Rotterdam Convention on the Prior Informed Consent for Certain Hazardous Chemicals and Pesticides in International Trade

[www.pic.int](http://www.pic.int)

Stockholm Convention on Persistent Organic Pollutants

[www.pops.int](http://www.pops.int)

UN Economic Commissions for Europe (UNECE), About the GHS

[www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)

UN Environment, Global Mercury Partnership

<http://web.unep.org/globalmercurypartnership>

UN Environment, Persistent Organic Pollutants (POPs)

[www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/persistent-organic-pollutants-pops](http://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/persistent-organic-pollutants-pops)

Verisk 3E, Safety Data Sheet (SDS) Search

[www.msds.com](http://www.msds.com)

### Publications

Artisanal Gold Council, Developing Baseline Estimates of Mercury Use in Artisanal and Small-Scale Gold Mining Communities: A Practical Guide (2015)

[https://wedocs.unep.org/bitstream/handle/20.500.11822/11559/AGC\\_Inventory\\_Guide\\_v1\\_Oct2015.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/11559/AGC_Inventory_Guide_v1_Oct2015.pdf?sequence=1&isAllowed=y)

ILO, Safety in the Use of Chemicals at Work (1993)

[www.ilo.org/safework/info/standards-and-instruments/codes/WCMS\\_107823/lang--en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/codes/WCMS_107823/lang--en/index.htm)

UN Environment, Bridging the Emissions Gap: The Role of Non-State and Subnational Actors (2018)

[https://wedocs.unep.org/bitstream/handle/20.500.11822/26093/NonState\\_Emissions\\_Gap.pdf?isAllowed=y&sequence=1](https://wedocs.unep.org/bitstream/handle/20.500.11822/26093/NonState_Emissions_Gap.pdf?isAllowed=y&sequence=1)

# (COP 26) WASTES AND EMISSIONS

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members.

**Effective waste management** involves a commitment to minimise waste, supported by suitable measures for handling, storing, transporting and disposing of different wastes.

**Significant** wastes and emissions are those that are hazardous and require special handling and disposal, have the potential to harm the environment or individuals, or require a licence or permit.

**Wastes and emissions** are solid, liquid or gaseous materials that are released, discarded or no longer needed. Wastes and emissions can cause pollution and adversely impact 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.

## B ISSUE BACKGROUND

The jewellery supply chain generates different kinds of waste and emissions (see Figure 26.1). Improperly managed, these can lead to soil, water and air pollution, threatening human, animal and environmental health. Just one litre of used oil disposed of improperly can contaminate one million litres of water.<sup>1</sup> And climate change fuelled by greenhouse gas (GHG) emissions poses one of the most serious challenges to human and ecosystem survival in the world today.

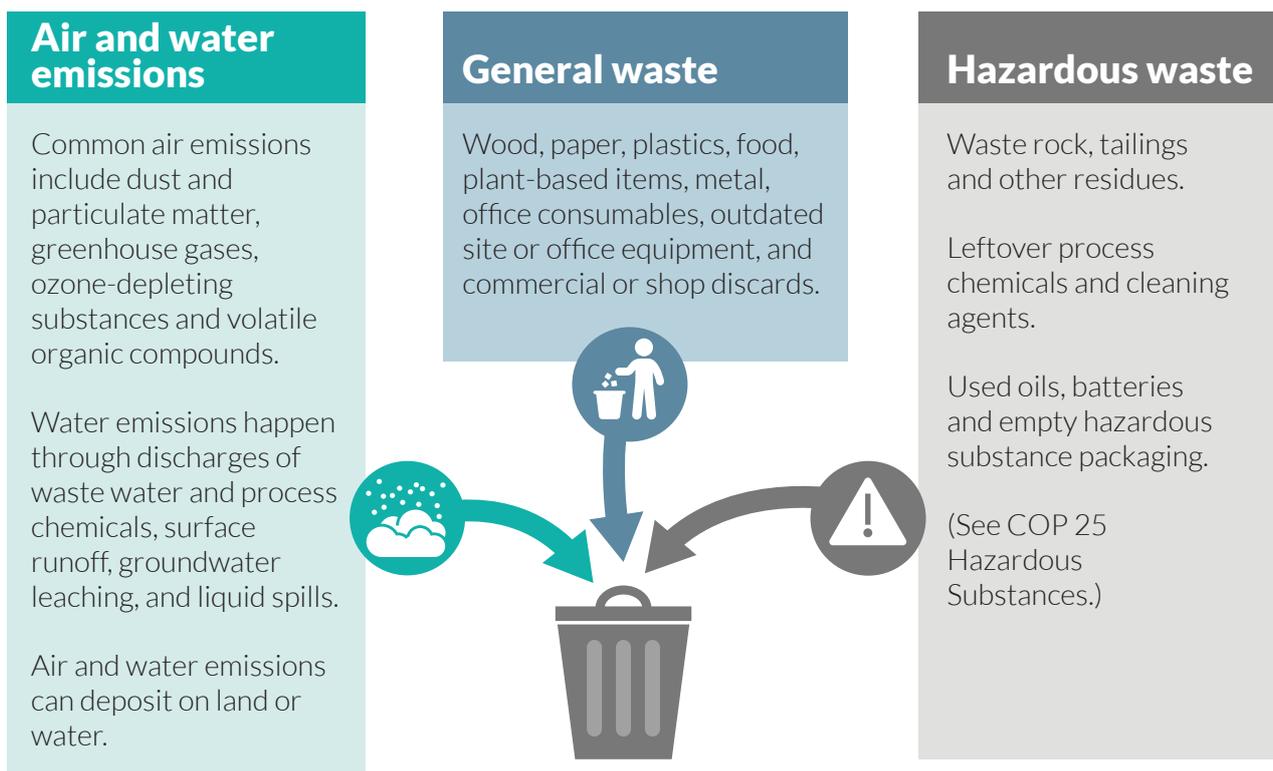


Figure 26.1. Common types of waste and emissions from jewellery supply chain

In the face of these threats and adverse impacts, companies have a duty to manage their waste effectively and reduce their emissions. This applies both to waste and emissions directly generated by, for example, processing raw materials or replacing old equipment, as well as waste and emissions from indirect sources such as infrastructure development, administration and transport.

<sup>1</sup> Creamer Media's Mining Weekly, Mines Urged to Do 'all they can' to Limit Pollution from Used Oil (2018) [www.miningweekly.com/article/used-oil-storage-disposal-requirements-to-mitigate-water-contamination-rose-foundation-2018-09-28/rep\\_id:3650](http://www.miningweekly.com/article/used-oil-storage-disposal-requirements-to-mitigate-water-contamination-rose-foundation-2018-09-28/rep_id:3650)

Companies also have a legal duty to manage waste effectively, as established in numerous national and international rules and regulations (see Section C). Air and water emissions are attracting increasingly strict regulatory limits and reporting requirements. And a growing public environmental conscience is increasing public pressure on companies to seek clean, eco-efficient and life-cycle approaches to design and production that minimise use of natural resources and reduce environmental impact.

## The 4 Rs of waste management

There are many different ways to minimise and manage waste effectively, depending on the type of waste at hand, where it has been generated and the waste facilities available. But in all cases, the same basic hierarchy of principles, commonly called the '4 Rs of waste management', apply (see Figure 26.2).

### Reduce

the amount of waste produced wherever possible.



### Reuse

waste materials if practical.



### Recycle

materials that cannot be reduced or reused.



### Recover

materials or energy.



### Dispose

of any residual waste safely, as a last resort.



Figure 26.2. The 4Rs of waste management

All along the supply chain general waste can comprise diverse materials, including wood, paper, plastics, food, plant-based items, metal, office consumables, outdated site or office equipment, and commercial or shop discards. The first step to managing these waste streams effectively lies in separating them. Opportunities to then reduce, reuse, recycle and recover resources can then be sought. These will vary across individual businesses and countries, but experience suggests that in the face of rising costs for collecting, transporting, storing, treating and disposing of different wastes, practising the 4 Rs makes good financial sense (see box 'Cost savings from reducing waste').

### Cost savings from reducing waste

The International Institute for Sustainable Development (IISD) suggests that by reducing waste, reusing products, recycling, and making environmentally conscious purchases, businesses can cut costs and increase profits. Savings take the form of:

- lower waste treatment and disposal costs;
- lower energy costs;
- savings on materials and supplies;
- reduced regulatory compliance costs;
- lower storage costs; and
- cost recovery through the sale of recyclable materials.

Source:

- IISD, The 4 Rs: Reduction, reuse, recycling and recovery [www.iisd.org/business/tools/bt\\_4r.aspx](http://www.iisd.org/business/tools/bt_4r.aspx)

## Tackling greenhouse gas emissions

Small or large, all businesses in one way or another are responsible for producing the GHG emissions that fuel climate change. The international emissions accounting initiative GHG Protocol (<http://ghgprotocol.org>) classifies these emissions into three groups, or 'scopes':

1. **Direct GHG emissions** from sources that the company owns or controls, for example emissions from boilers, furnaces, vehicles or from chemical production.
2. **Indirect GHG emissions from electricity** bought and consumed by the company. These emissions physically occur at the facility where the electricity is generated (rather than at the company's facilities).
3. **Other indirect GHG emissions** from sources beyond the company's ownership or control, for example emissions related to the extraction, production or transport of bought materials.

Under COP 27 **Use of natural resources**, RJC members are required to try and reduce their emissions by reducing their energy consumption, improving their energy efficiency and using more renewable sources of energy wherever they can.

Some companies are also adopting other initiatives—including carbon offsetting and emissions trading—to further limit their carbon footprints. Carbon offsetting involves companies investing in environmental projects—such as tree planting, renewable energy, energy conservation and methane capture—to balance out their own carbon footprints (see box 'Calculating my carbon footprint'). Many companies have made commitments to become 'carbon neutral', whereby their entire net release of carbon is offset.

Carbon or emissions trading, also called 'cap and trade' schemes, involves the buying and selling of a limited number of 'carbon credits' that allow the credit holder to emit a specific amount of carbon over a specific amount of time. This means that companies that need to discharge more emissions have the flexibility to do so, but at the cost of having to hold more credits.

Emissions trading programmes may be suitable for companies if their emissions:

- occur over a relatively large geographic area with a significant number of sources; and
- can be consistently and accurately measured.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International agreements

Two major international conventions govern hazardous waste management:

- The **Basel Convention** ([www.basel.int](http://www.basel.int)) on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was signed in 1989 and is the most comprehensive global environmental agreement on hazardous and other wastes. Aimed at protecting human health and the environment, the convention requires countries to practise environmentally sound waste management and limits the import and export of hazardous waste.
- The **Bamako Convention** ([www.informea.org/en/treaties/bamako-convention](http://www.informea.org/en/treaties/bamako-convention)) is a treaty of African nations banning the import into Africa of any hazardous wastes. In force since 1998, the Bamako Convention is much stronger than the Basel Convention in prohibiting all imports of hazardous waste and making no exceptions, including for radioactive materials.

The **Rotterdam Convention** ([www.pic.int](http://www.pic.int)), signed in 1998, is a multilateral environmental agreement on the import and export of certain hazardous chemicals. Countries make informed decisions to accept the chemicals they are prepared to receive and exclude those they decide they cannot manage safely. Every year, the list of chemicals covered by the convention is reviewed and updated.

The **UN Framework Convention on Climate Change** (UNFCCC, <https://unfccc.int>) and **Paris Agreement** (<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>) are two notable global agreements on climate change, both of which include requirements to limit and report on GHG emissions (see COP 27 **Use of natural resources** for more information).

## International standards

The most widely recognised standard on environmental management is the **ISO14000 family** of standards ([www.iso.org/iso-14001-environmental-management.html](http://www.iso.org/iso-14001-environmental-management.html)), developed by the International Organization for Standardization (ISO). ISO 14001:2015 Environmental Management Systems,<sup>2</sup> for example, provides a framework for organisations to minimise negative environmental impacts, meet legal obligations and adopt a continuous improvement approach. It is also one of the standards the RJC recognises for compliance with specific environment-related COPs (see Assessment Manual).

Other particularly relevant ISO standards include:

- The **ISO 14060 series** on GHG management and related activities ([www.iso.org/committee/546318/x/catalogue](http://www.iso.org/committee/546318/x/catalogue)). This set of eight standards covers topics such as quantifying and reporting GHG emissions at organisation and project level, validating and verifying GHG assertions, validation requirements for external accreditation, calculating carbon footprints and methods for climate actions.
- The **ISO 14040 series** on life-cycle assessment ([www.iso.org/committee/54854/x/catalogue](http://www.iso.org/committee/54854/x/catalogue)). Together, these 11 standards set out the framework for applying a life-cycle approach, including how to carry out eco-efficiency assessments, calculate water footprints and document data.

Companies can use these as a framework for developing their own systems to manage their environmental responsibilities and seek certification where appropriate.

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 3: Resource Efficiency and Pollution Prevention, which sets out detailed requirements for managing waste and hazardous materials. The standard comes with relevant guidance, including on how to avoid generating hazardous and non-hazardous waste; reduce, recover, reuse and recycle materials where possible; and dispose of waste in an environmentally sound way and in accordance with local laws (including adhering to restrictions on transboundary movements).

## International initiatives

The **Zero Waste International Alliance** (<http://zwia.org>) works at international, national and local levels to promote positive alternatives to landfill and incineration, and to raise community awareness of the social and economic benefits of regarding waste as a 'resource base'.

A number of tools and initiatives exist to support GHG monitoring and reporting. The **Greenhouse Gas Protocol** (<http://ghgprotocol.org/>), for example, is a global standardised framework to measure and manage GHG emissions for a company's own operations or its supply chain. The protocol is the product of a 20-year partnership between the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD). This protocol is very widely used and can provide the basis for feeding into reporting schemes like the Global Reporting Initiative (GRI), which includes requirements to report on a number of emissions-related metrics.

Various other carbon and water emissions initiatives focus on disclosure and are also important, for example the Carbon Disclosure Project (CDP), the Task Force on Climate-related Financial Disclosures and the CEO Water Mandate (see COP 27 [Use of natural resources](#) for details).

## National law

National regulation on waste and emissions is often complex, with varying responsibilities at national, state and 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 reducing waste voluntarily. Companies must be aware of all relevant legislation, regulations and key bodies in their jurisdictions of operation.

Mandatory GHG reporting is required in more than 40 countries around the world and across multiple stock exchanges for publicly listed companies. Reporting qualifications vary across jurisdictions. For example, the United Kingdom only requires incorporated companies listed on the main markets of the London Stock Exchange, European Economic Area, New York Stock Exchange or NASDAQ to report. The scope of reporting also varies by country: most countries require reporting for emissions scopes 1 and 2; emissions scope 3 is usually optional. Many countries use the WRI/WBCSD Greenhouse Gas Protocol as the basis for reporting requirements, but there can be local variations.

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<sup>2</sup> ISO, ISO 14001:2015 Environmental Management Systems—Requirements with Guidance for Use (2015) [www.iso.org/standard/60857.html](http://www.iso.org/standard/60857.html)

Penalties for non-compliance with applicable law vary from country to country, but they can include significant fines and may extend to criminal liability. Violating, or infringing on, waste disposal or emissions rules can jeopardise operating licences and other permits. Significant impacts may require remediation to be undertaken at the company's cost.

## National initiatives

The **Mining Association of Canada (MAC)** has a protocol for energy use and GHG emissions (<http://mining.ca/towards-sustainable-mining/protocols-frameworks/energy-and-ghg-emissions-management>) to help mining companies reduce their operational costs and limit their impacts on the environment. The protocol defines several management system requirements, including assigned accountability from senior management, energy awareness training, internal and external reporting and processes to ensure energy data is reviewed regularly and well integrated with operations.

## D IMPLEMENTATION GUIDANCE

### COP 26.1: Identify wastes and emissions

Members shall identify significant wastes and emissions to air, water and land generated in their business processes in accordance with COP 24 (Environmental management).

#### Points to consider:

- Review all business processes and activities, listing the inputs and outputs of each one and identifying any waste streams to air, waterways, sewers, land or other off-site disposal routes.
- Wherever possible, collect information on the characteristics of the waste stream (see box 'Characterising waste').

#### Characterising waste

Waste products may be liquid, solid or gaseous. Determining how best to manage them, including assessing their potential impact on people and environments, requires an understanding of the waste product's characteristics and life-cycle impacts, including its:

- sources;
- composition;
- toxicity;
- separation;
- quantities;
- flow/production rates;
- transfer of wastes;
- storage;
- treatment;
- destination/pathways; and
- disposal.

- For each emission and waste stream identified, determine whether it is 'significant' or not:
  - Consider composition, toxicity and regulatory requirements to identify significant wastes and emissions that require special handling or disposal, or that require a licence or permit (see definition of 'significant' in Section A).
  - Carry out a risk assessment to determine whether an emission or waste stream is significant based on its potential environmental and human rights impacts. This needs to take into account the receiving environment. This can be a stand-alone risk assessment or part of a broader one, for example on environmental management (COP 24 [Environmental management](#)).
- Note that your risk assessment should be appropriate to your business's circumstances and should identify where issues may arise, the likelihood of occurrence and potentially deficient procedures.
- Remember to consider the sensitivity of receiving environments in assessing potential for environmental impacts as well as any potential transboundary effects (for example, of emissions to air or water).

## COP 26.2: Manage wastes and emissions

**Members shall responsibly manage the identified wastes and emissions. In particular, they shall:**

- a. Quantify wastes and emissions to manage and monitor trends over time and drive continuous improvement in environmental performance.
- b. Apply the principles of reduce, reuse, recycle and recover to minimise environmental impact where applicable, including reducing greenhouse gas emissions and increasing energy efficiency in alignment with COP 27 (Use of natural resources).
- c. Discharge or dispose of wastes and emissions in compliance with applicable law or, where applicable law does not exist, in line with prevailing international standards.

### Points to consider:

- Establish written policies and procedures for monitoring and controlling all identified significant wastes and emissions. Make sure these:
  - include clearly defined roles and responsibilities;
  - are integrated into the facility's environmental management system; and
  - comply with all applicable regulatory limits and reporting requirements, including those on carbon emission limits and trading or offsetting programmes. If there is weak or no regulation, make sure you comply with prevailing international standards, as listed in Section C.
- In designing your approach, follow the 4Rs of waste management as outlined in Section B, and the mitigation hierarchy described under COP 24 **Environmental management**:
  - **Avoid** or anticipate risks by changing your operations to no longer produce the waste or emission.
  - **Minimise** or mitigate unavoidable wastes and emissions through controls or treatments that reduce their levels or make them less hazardous or lower impact.
  - **Restore** or rehabilitate impacted environments or communities by cleaning up or providing remedy.
  - **Offset** or compensate residual impacts as a last resort.

### Reducing plastic waste

According to UN Environment, the world produces nearly 300 million tonnes of plastic waste every year. About 80 per cent of that accumulates in landfills, dumps or the natural environment. The world's rivers act as direct conduits for plastic waste and eight million tonnes of it end up in the world's oceans every year. Because plastics are durable and resistant to degradation, they are nearly impossible for nature to completely break down and never fully disappear.

Practical tips for reducing plastic waste in offices, factories, warehouses and retail outlets include:

- Seek to remove all single-use plastics. Avoid plastic bags, straws, cups and plates. Seek to avoid single-use plastic packaging in your products.
- Invest in innovation and design of products for reuse.
- Develop or use fully reusable, recyclable or compostable packaging.
- Ensure effective plastics waste management, recycling as much as possible.
- Remove microbeads from products.
- Encourage and incentivise workers and suppliers and raise awareness.

Sources:

- UN Environment, Our Planet Is Drowning in Plastic Pollution  
[www.unenvironment.org/interactive/beat-plastic-pollution](http://www.unenvironment.org/interactive/beat-plastic-pollution)
- The Ocean is Everybody's Business, Significantly Reduce Plastic Waste (2019)  
[www.theoceaniseverybodysbusiness.org/take-action/significantly-reduce-plastic-waste](http://www.theoceaniseverybodysbusiness.org/take-action/significantly-reduce-plastic-waste)

- The mitigation hierarchy particularly applies to carbon emissions and should be embedded in policies and procedures to minimise these.
- Use a life-cycle approach to make sure you consider the full range of potential impacts of waste management and emissions (see COP 24 **Environmental management**). For example, while replacing machinery with more efficient models may reduce GHG emissions, it will also create another waste stream as the old machinery is disposed of.
- Wherever possible, quantify your wastes and emissions. This includes determining your carbon emissions (see box 'Calculating my carbon footprint') and calculating volumes of other waste streams.

## Calculating my carbon footprint

Many companies choose to be carbon neutral. But you can't manage or neutralise your carbon emissions if you don't know how much you are emitting.

ISO 14067:2018 Carbon Footprint Quantification<sup>3</sup> and ISO 14026:2017 Footprint Communication<sup>4</sup> are both useful frameworks for calculating your carbon footprint. Note that offsetting must not be included in the calculation of a carbon footprint according to ISO 14067. There are lots of different tools available designed for companies, including:

- Carbon Trust calculator for SMEs: [www.carbontrust.com/resources/tools/carbon-footprint-calculator](http://www.carbontrust.com/resources/tools/carbon-footprint-calculator)
- Carbon Trust footprinting software for large companies: [www.carbontrust.com/client-services/advice/footprinting/carbon-footprint-software](http://www.carbontrust.com/client-services/advice/footprinting/carbon-footprint-software)
- Carbon Footprint calculator: <https://calculator.carbonfootprint.com/calculator.aspx>

These require different levels of information to work: the more information you have, the more accurate your calculation will be, which will save you buying more credits than you need.

If you want to become carbon neutral, you can hire consultants to help. These experts will usually review your processes and mitigation activities to make sure you are minimising your footprint before offsetting, and they will also buy the carbon credits to certify you as a carbon neutral company. Examples of companies that provide these services include:

- Carbon Expert, which works with the gem and jewellery industry through a partnership with the World Jewellery Confederation, CIBJO (<http://carbon-expert.com>); and
- Carbon Trust, which works with large companies and brands ([www.carbontrust.com/home](http://www.carbontrust.com/home)).

You can also choose to buy your own carbon credits, for example through Gold Standard ([www.goldstandard.org](http://www.goldstandard.org)) or Carbon Footprint ([www.carbonfootprint.com/carbonoffset.html](http://www.carbonfootprint.com/carbonoffset.html)). Your claims about carbon neutrality can then be certified against the PAS 2060 Carbon Neutrality standard by the British Standards Institution ([www.bsigroup.com/en-HK/PAS-2060-Carbon-Neutrality](http://www.bsigroup.com/en-HK/PAS-2060-Carbon-Neutrality)).

- Consider commissioning qualified experts to carry out a bespoke assessment to identify and characterise your wastes and emissions, calculate costs and liabilities, develop performance metrics and targets, and identify your best options for improving waste management. Such options may include:
  - technical measures, such as pollution-control equipment or bunding;
  - operational controls, including better-defined procedures or limited hours of operations;
  - production controls, such as restricting and controlling the types of materials used;
  - management controls, including supervision and clearly defined responsibilities; and
  - training.
- Consider opportunities to generate employee awareness of responsible management of wastes and to encourage employees to raise waste management concerns with management.
- Incorporate your expectations for responsible waste management into your contractor selection criteria and documents, and carry out appropriate reviews before hiring any contractors. Make sure you:
  - review the licences held by the waste transporter and disposal site to ensure they match the nature of the waste materials; and
  - carry out periodic audits.
- Establish a systematic approach for monitoring your waste and emissions to drive continuous improvement over time. Such an approach should be embedded into your environmental management system, and could include efforts to regularly:
  - collect quantitative or qualitative measurements (using calibrated equipment and established methods) to analyse trends in performance and support management decisions;
  - evaluate compliance with regulatory requirements;
  - manage the effectiveness of established risk controls; and
  - identify emerging issues regarding waste and emissions.

3 ISO 14067:2018 Greenhouse Gases—Carbon Footprint of Products—Requirements and Guidelines for Quantification (2018) [www.iso.org/standard/71206.html](http://www.iso.org/standard/71206.html)

4 ISO 14026:2017 Environmental Labels and Declarations—Principles, Requirements and Guidelines for Communication of Footprint Information (2017) [www.iso.org/standard/67401.html](http://www.iso.org/standard/67401.html)

## Tips for small business

If you are a small business, consider taking one or more of these simple actions to reduce your waste and emissions:

- Identify wastes that can be recycled or reused at low or no cost (for example, metals, glass and paper) and install easily accessible, and clearly labelled, bins to put them in. This can reduce disposal costs.
- Install special bins that are properly labelled for hazardous waste (hazardous waste collectors can often provide these for you). This avoids mixing hazardous and non-hazardous wastes and can reduce the volume of waste and handling and disposal costs.
- If recycling services are not available because you only produce small volumes of waste, consider working with other small businesses to aggregate waste.
- Engage workers to gather ideas and discuss opportunities for reducing waste and emissions.
- Talk to peers and other members of industry associations to gather ideas on how to reduce waste and emissions at minimal cost: there is a good chance someone else has faced the same issue and has already found a simple solution.

## Check:

- Is someone responsible for overseeing your facility's waste and emissions?
- Have you identified significant wastes and emissions streams from all your operations? Can you show the auditor how you did this?
- Have you done a risk assessment to identify all significant wastes and emissions? And have you established controls for these?
- Are you aware of applicable law and do you comply with all regulatory limits?
- Have you quantified your wastes and emissions?
- Have you identified opportunities to reduce wastes and emissions?
- Can you show what measures you have taken to reduce, reuse, recycle or recover wastes or emissions?
- Do you have a policy and procedures for managing significant wastes and emissions, including regular monitoring?
- Are you monitoring and analysing key characteristics of your waste and emissions to identify trends? Are you using this information to help drive improvements?
- Can you show reductions in greenhouse gases and decreased energy consumption?

## E FURTHER INFORMATION

### Websites:

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal  
[www.basel.int](http://www.basel.int)

The Carbon Disclosure Project (CDP)  
[www.cdp.net](http://www.cdp.net)

Carbon Offset Research and Education (CORE)  
[www.co2offsetresearch.org](http://www.co2offsetresearch.org)

The CEO Water Mandate, Corporate Water Disclosure Guidelines  
<https://ceowatermandate.org/disclosure>

The CEO Water Mandate, Integrity in Water Stewardship Initiatives  
<https://ceowatermandate.org/integrity>

Environment Protection Authority Victoria, Waste Assessment  
[www.epa.vic.gov.au/bus/resource\\_efficiency/waste\\_assessment.asp](http://www.epa.vic.gov.au/bus/resource_efficiency/waste_assessment.asp)

Global Reporting Initiative (GRI)  
[www.globalreporting.org](http://www.globalreporting.org)

Greenhouse Gas Protocol  
<https://ghgprotocol.org>

ISO, ISO 14000 Family—Environmental Management  
[www.iso.org/iso-14001-environmental-management.html](http://www.iso.org/iso-14001-environmental-management.html)

ISO, Standards Catalogue: Greenhouse Gas Management and Related Activities [ISO 14060 series]  
[www.iso.org/committee/546318/x/catalogue/p/1/u/0/w/0/d/0](http://www.iso.org/committee/546318/x/catalogue/p/1/u/0/w/0/d/0)

Mining Association of Canada (MAC), Energy and GHG Emissions Management  
<http://mining.ca/towards-sustainable-mining/protocols-frameworks/energy-and-ghg-emissions-management>

US Environment Protection Agency, Simplified Greenhouse Gas Emissions Calculator  
[www.epa.gov/climateleadership/center-corporate-climate-leadership-simplified-ghg-emissions-calculator](http://www.epa.gov/climateleadership/center-corporate-climate-leadership-simplified-ghg-emissions-calculator)

Water Research Center, Monitoring the Quality of Surface Waters (WQI Calculator)  
[www.water-research.net/index.php/water-treatment/water-monitoring/monitoring-the-quality-of-surfacewaters](http://www.water-research.net/index.php/water-treatment/water-monitoring/monitoring-the-quality-of-surfacewaters)

Zero Waste International Alliance  
[www.zwia.org](http://www.zwia.org)

## **Publications:**

African Union, Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991)  
<https://au.int/en/treaties/bamako-convention-ban-import-africa-and-control-transboundary-movement-and-management>

The CEO Water Mandate, Guidance for Companies on Respecting the Human Rights to Water & Sanitation (2015)  
<https://ceowatermandate.org/resources/guidance-for-companies-on-respecting-the-human-rights-to-water-sanitation-2015/>

The CEO Water Mandate, Risk Assessment 101: Understanding Your Unique Water Stewardship Challenges (2018)  
<https://ceowatermandate.org/academy/risk-assessment-101-understanding-your-unique-challenges>

The Chartered Institute of Purchasing & Supply (CIPS), How to Develop a Waste Management and Disposal Strategy (2007)  
[www.cips.org/Documents/About%20CIPS/Develop%20Waste%20v3%20-%202020.11.07.pdf](http://www.cips.org/Documents/About%20CIPS/Develop%20Waste%20v3%20-%202020.11.07.pdf)

International Council on Mining and Minerals, A Practical Guide to Catchment-Based Water Management (2015)  
[www.icmm.com/guide-to-catchment-based-water-management](http://www.icmm.com/guide-to-catchment-based-water-management)

IFC, Performance Standard 3: Resource Efficiency and Pollution Prevention (2012)  
[www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3_English_2012.pdf?MOD=AJPERES)

ISO, 14026:2017 Environmental Labels and Declarations—Principles, Requirements and Guidelines for Communication of Footprint Information (2017)  
[www.iso.org/standard/67401.html](http://www.iso.org/standard/67401.html)

ISO, 14046:2014 Environmental Management—Water Footprint—Principles, Requirements and Guidelines (2014)  
[www.iso.org/standard/43263.html](http://www.iso.org/standard/43263.html)

MAC, Towards Sustainable Mining Energy and Greenhouse Gas Emissions Management Reference Guide (2014)  
<http://mining.ca/sites/default/files/documents/EnergyandGreenhouseGasEmissionsManagementReferenceGuide2014.pdf>

# (COP 27) USE OF NATURAL RESOURCES

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members.

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

**Renewable energy** is any form of energy from solar, geophysical or biological sources that is replenished by natural processes at a rate that equals or exceeds its rate of use. Renewable energy includes low-carbon technologies such as solar energy, hydropower, wind, tide and waves, and ocean thermal energy, as well as renewable fuels such as biomass.

Source:

- Intergovernmental Panel on Climate Change (IPCC), Renewable Energy Sources and Climate Change Mitigation (2012) [www.ipcc.ch/report/renewable-energy-sources-and-climate-change-mitigation](http://www.ipcc.ch/report/renewable-energy-sources-and-climate-change-mitigation)

## B ISSUE BACKGROUND

Using natural resources more efficiently is one of the most effective ways to reduce business costs. This includes a diverse range of measures to save energy, water or other resources that can be implemented in buildings and facilities, production processes and end-use products. Insulating buildings, turning off lights and equipment, installing water-saving measures and optimising processes all lead to a more efficient use of natural resources.

Efficiency measures will be part of an overarching environmental management plan (see COP 24 **Environmental management**) and will most commonly include energy- and water-saving measures. It is, however, important to remember that there are other land, air and water resources that businesses can target to improve efficiency and reduce environmental impact, including forest products (paper, cardboard and wood) and plastics (for example, in packaging) or land use in mining with resulting impacts on biodiversity (see COP 38 **Biodiversity**).

The inefficient use of natural resources not only causes adverse environmental impacts but can also adversely impact human rights. For example, if a company's actions end up reducing availability of water, it can directly impact local communities' right to food and clean water. The UN Special Rapporteur on human rights and the environment claims that a safe, clean, healthy and sustainable environment underpins a wide range of human rights, including the rights to life, health, food, water and sanitation. As awareness of the links between human rights and environment grows, so too do the calls for a global recognition of the right to a safe and healthy environment.

Energy-saving measures are important to reduce the greenhouse gas (GHG) emissions associated with inefficient use of fossil fuels, which is a major driver of climate change. Climate change is one of the most pressing challenges facing the world today and is the focus of UN Sustainable Development Goal (SDG) 13.<sup>1</sup> Reducing climate change drivers is a concern for all companies, not just big business (see COP 26 **Wastes and emissions** for more detail on carbon emissions). Direct efforts to reduce energy consumption and emissions can be complemented by indirect methods such as:

- carbon or emissions trading schemes, which involve companies buying and selling carbon permits as part of a wider state-run programme to reduce emissions; and
- carbon offset schemes, which involve companies investing in environmental projects—such as tree planting, renewable energy, energy conservation and methane capture—to balance out their own carbon footprints.

Water is also a fundamental resource for people and ecosystems, and the right to water and sanitation is recognised as a human right under the 2010 UN Resolution 64/292. As summarised under SDG 6<sup>2</sup> on clean water and sanitation, 'water scarcity, poor water quality and inadequate sanitation negatively impact food security, livelihood choices and educational opportunities for poor families across the world. At the current time, more than 2 billion people are living with the risk of reduced access to freshwater resources.' Companies therefore need to ensure that their use of water does not directly or indirectly impact the rights of people in the communities within which they operate, and this should be included as part of human rights due diligence as required in COP 6.1b **Human rights**.

1 UN, Sustainable Development Goals, Goal 13: Take Urgent Action to Combat Climate Change and Its Impacts [www.un.org/sustainabledevelopment/climate-change-2](http://www.un.org/sustainabledevelopment/climate-change-2)

2 UN, Sustainable Development Goals, Goal 6: Ensure Access to Water and Sanitation for All [www.un.org/sustainabledevelopment/water-and-sanitation](http://www.un.org/sustainabledevelopment/water-and-sanitation)

In addition to direct impacts on water, companies can have environmental impacts on ecosystems and species as well as social and cultural impacts related to water. These impacts can be far-reaching in situations where there is an insufficient governance framework on water and where the company is an important water user relative to the local water catchments, as can be the case for mining activities.

Water stewardship is an important responsible business practice in this context. It is defined as 'the use of fresh water that is socially equitable, environmentally sustainable and economically beneficial, achieved through a stakeholder-inclusive process that involves site- and catchment-based actions'.<sup>3</sup>

Regardless of company size, most measures to reduce energy consumption, water and other natural resource use will save money in the long term, increasing a company's profitability. Reducing energy consumption should be seen as an opportunity to both reduce environmental impact while providing a strong business advantage.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

Global efforts to address climate change and water use are increasingly designed to encourage and mandate environmental management and disclosure in business. Some of the most notable international standards are described in turn below. This field is evolving quickly and companies should actively monitor emerging standards, legislation and guidance to ensure they know what is expected of them.

Established in 1994, the **UN Framework Convention on Climate Change** (UNFCCC, <https://unfccc.int>) has been ratified by 192 countries, achieving near universal membership. It was created as a mechanism to explore how to mitigate climate change and how to cope with any inevitable impacts. The Kyoto Protocol is a legally binding addition to the convention that commits signatories to reducing GHG emissions.

The **UNFCCC Paris Agreement** (<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>) was established in 2015 to build on the UNFCCC and bring countries together to combat climate change and adapt to its effects. In particular, the agreement intends to strengthen the global response to climate change by keeping any increase in global temperatures to less than 2 degrees Celsius above pre-industrial levels (and trying to keep it under 1.5 degrees Celsius). The agreement also aims to strengthen countries' ability to deal with the impacts of climate change, with a specific emphasis on giving low- and middle-income countries extra help. To ensure countries can fulfil the Paris Agreement's ambitious goals, the global community will need to develop appropriate financial flows, a new technology framework and enhanced transparency and capacity-building frameworks.

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 3: Resource Efficiency and Pollution Prevention, which provides detailed requirements and associated guidance for major development projects (like mining) to promote more sustainable use of resources including energy and water, and reduce project-related GHG emissions.

Specifically, Performance Standard 3 requires companies to integrate practices and technologies that promote energy efficiency, use resources like energy and water sustainably and reduce GHG emissions. Cost-effectiveness is determined according to the capital and operational cost and financial benefits of the measure considered over its lifetime. A measure is considered cost-effective if it is expected to provide a risk-rated return on investment at least comparable to the project itself.

In 1998, the UN Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, also known as the **Aarhus Convention** ([www.unece.org/env/pp/treatytext.html](http://www.unece.org/env/pp/treatytext.html)). It establishes several rights of the public with regard to the environment, including:

1. The right for everyone to receive access to environmental information held by public authorities.
2. The right for stakeholders, including non-governmental organisations and the public, to comment on proposals for projects, plans and programmes that relate to, or impact, the environment (and for decision-makers to take these comments into account).
3. The right for anyone to challenge public decisions through judicial or administrative recourse procedures if those decisions have been made without respecting environmental law or rights 1 and 2.

3 Alliance for Water Stewardship, Glossary of Terms(2015) <https://a4ws.org/download/glossary-of-terms>

The rights established in the convention are particularly relevant to water use by mining companies and other users of natural resources with potentially significant local impacts.

The International Council on Mining and Metals (ICMM) defines good practices in **water stewardship through its position statement** ([www.icmm.com/water-ps](http://www.icmm.com/water-ps)), which its members must implement. Through this statement, mining companies must apply strong and transparent water governance, manage water at operations effectively and collaborate to achieve responsible and sustainable water use. ICMM provides further guidance on implementing its position statement through:

- the **Water Stewardship Framework** ([www.icmm.com/water-stewardship-framework](http://www.icmm.com/water-stewardship-framework)), which offers practical guidance on how to adopt a catchment-based approach to water management; and
- **A Practical Guide to Consistent Water Reporting** ([www.icmm.com/water-disclosure-standard](http://www.icmm.com/water-disclosure-standard)), which offers guidance and a minimum disclosure standard to support the industry in making consistent, transparent and material water reports.

Led by CEOs, **The CEO Water Mandate** (<https://ceowatermandate.org>) shares best and emerging practices and enables multi-stakeholder partnerships to address challenges related to water scarcity, water quality, water governance, and access to water and sanitation. The initiative facilitates meaningful collective action to improve conditions in at-risk river basins around the world.

In 2015, the Mining Association of Canada (MAC) adopted a Towards Sustainable Mining (TSM) **Water Stewardship Policy Framework** (<http://mining.ca/towards-sustainable-mining/protocols-frameworks/water-stewardship>) to detail its members' commitments to water stewardship that go beyond legal compliance. And in 2018, MAC released a Water Stewardship Protocol as a tool for companies to measure implementation of the framework's commitments. The protocol comprises four performance indicators: water governance, operational water management, watershed-scale planning, and water reporting and performance.

## Investor focus on environmental disclosure

The investor community is beginning to make financial decisions that include considerations of all material factors such as climate- and water-related risks and opportunities. Some are starting to ask for extra disclosure and reporting to encourage companies to set and achieve sustainability targets that decrease their consumption of natural resources and promote more environmentally sustainable business practices.

The **Task Force on Climate-related Financial Disclosures** (TCFD, [www.fsb-tcdf.org](http://www.fsb-tcdf.org)) was established by the Financial Stability Board in 2015 to help identify what information investors, lenders and insurance underwriters need to appropriately assess and price climate-related risks and opportunities. Since then, the task force has developed a set of voluntary climate-related financial disclosures that companies can use to inform investors, lenders and insurance underwriters. Their recommendations are now informing the potential development of mandatory disclosure laws. Companies are encouraged to review these and understand the expectations.

**CDP** (formerly the Carbon Disclosure Project, [www.cdp.net](http://www.cdp.net)) runs a system for self-reported environmental data for companies (specifically on climate change, water security and forests) and transforms the data into detailed analysis for investors. Through its questionnaires, CDP requests information on climate and water risks and opportunities from the world's largest companies, and also scores them. CDP has integrated the TCFD recommendations into its 2018 sector-specific climate change questionnaires. Companies, particularly larger publicly listed companies, are encouraged to review these and understand the financial community's growing expectations on disclosure.

## National law

National and regional governments often set regulations, guidelines and industry targets for water and energy efficiency. Under the UNFCCC, governments are required to launch national strategies for reducing GHG emissions. This can include setting national targets for emissions reductions, as well as developing specific legislation on use of resources.

Some countries also mandate companies to disclose certain information about how they operate and manage social and environmental challenges. For example, the European Union Directive 2014/95/EU,<sup>4</sup> which amends the accounting directive 2013/34/EU, requires companies to include non-financial statements in their annual reports from 2018 onwards.

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 and disclosure.

4 European Union, Directive 2014/95/EU (2014) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

## D IMPLEMENTATION GUIDANCE

### COP 27.1 AND 27.2: Energy and water and other resources

27.1. In alignment with the approach required for COP 22 (Environmental management), members shall monitor energy and water use in their business and establish energy and water efficiency initiatives.

27.2. Members shall identify other significant natural resources used in their business and seek to ensure their efficient use.

#### Points to consider:

- One of the strongest arguments for adopting energy-efficiency measures is that in most cases you can easily forecast, measure and calculate the benefits to your business. You can similarly make significant cost savings from using and treating water more efficiently.
- Follow the four steps below to help you calculate and improve your energy and water use, and also the use of other natural resources, such as forest products and plastics.
- Identify what other significant natural resources you use as part of your environmental risk assessment under COP 24.1 **Environmental management**. As part of that, you can:
  - list the natural resources used in your business and identify their sources; for example, find out how much wood or plastic you use and where it comes from; and
  - identify significant resource uses, including resources that are naturally scarce or that you use in high volumes, as well as uses that carry a high risk of adverse environmental impact.

#### Step 1. Identify

- Review your operations to identify your energy, water and other natural resource use by source, quality and quantity.
- If possible, monitor your consumption (through metering for example) to identify the opportunities for efficiency initiatives in the business. If you have a large workplace, or use processes that require large amounts of water and energy:
  - Assign responsibility for your energy and water management system to a manager.
  - Consider setting targets for efficiency improvements.
  - Use technical analyses appropriate to the nature of your business to identify potential efficiency improvements.
  - Consider using audit services by qualified experts to get detailed, written assessments of your water and energy use to identify opportunities for efficiency improvements.
  - Make use of information and advisory services from local utility providers and public agencies, where available and appropriate.
- If monitoring is not practical (for example, because you have a small workplace in an office building that is not separately metered), you may still be able to find ways to increase your water and energy efficiency (see Figure 27.1).

#### Step 2. Prioritise

- Once you have identified the opportunities for reducing consumption or increasing efficiency, prioritise these according to cost, savings and certainty. Note that:
  - As a general rule, you should implement initiatives that generate a positive financial return, unless you have identified other risks.
  - You can use simple payback calculations (how long it would take to recover the cost of an efficiency initiative through reduced consumption) to quantify the advantages of each initiative.
  - You should also take GHG emissions into consideration and think about how these will be impacted by efficient energy use over the full lifecycle of each product, project or process (see COP 26 **Wastes and emissions**).

### Step 3. Implement

- Adopt solutions that are technically and financially feasible and cost-effective.
- You don't necessarily have to invest lots of money to make meaningful efficiency improvements. Simply reminding workers to shut off equipment when not in use can also make a difference (see Figure 27.1).
- Consider using internal targets as a way to drive performance improvements.

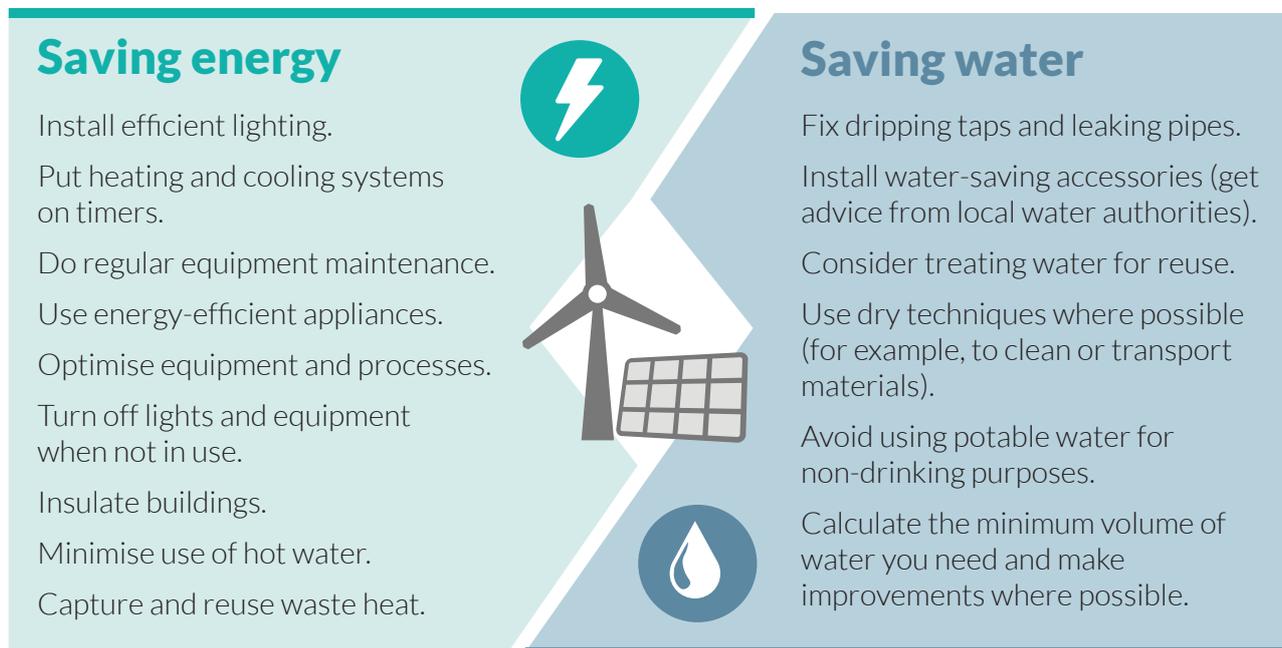


Figure 27.1. Examples of simple efficiency measures businesses can take to reduce their water and energy use

### Step 4. Review

- Get senior management to regularly review the business's water and energy consumption to assess progress against efficiency targets and identify cost savings made.
- Report your use of water and energy in alignment with COP 3 [Reporting](#).

#### COP 27.3: Renewable energy

Members shall work towards using renewable energy in alignment with national frameworks, targets and/or legislation.

#### Points to consider:

- Identify all the clean energy frameworks, targets and legislation that apply to your operations.
- Make a manager responsible for tracking applicable law and implementing any related initiatives (whether in response to national frameworks or voluntary).

## COP 27.4: Water stewardship in mining

### Members in the mining sector shall:

- a. Apply strong and transparent water governance, including policies, procedures and clear allocation of responsibilities.
- b. Manage water at facilities effectively using a water balance and considering cumulative impacts.
- c. Publicly report company water performance in line with COP 3 (Reporting).
- d. Collaborate with stakeholders to achieve responsible and sustainable water use at a water catchment level.

### Points to consider:

- Water closely connects mining operations to the surrounding communities and landscape, so particular care needs to be taken to incorporate a catchment-level approach into their water management. If you are in the mining sector, you must be able to show that you have a robust system for water management (or governance) that includes stakeholders and is transparent and effective. To help do that, make sure you:
  - create a policy on water management and establish procedures to fulfil it;
  - define clear responsibilities for all internal and external stakeholders with a potential role in supporting the policy, and communicate the policy, procedures and responsibilities to all parties involved;
  - understand whom might be impacted by your water use and vice versa and implement an effective engagement strategy with these stakeholders in alignment with COP 32 **Stakeholder engagement**; and
  - publicly report your water management efforts through annual reports, sustainability reports or other legally required forms of disclosure.
- The challenges related to water in specific catchments are shared by all the countries, sectors and communities present there. Tackling them requires collaboration and concerted action from all parties, including government, civil society, business and local communities. That means that to use water sustainably, you must engage with all stakeholders that may influence or be affected by your water use and discharge, as well as engaging with governments, local authorities and others who can help develop effective regulation for integrated water resource management.
- Effective water management at a mine is a significant task and requires use of a site-level management plan and a long-term water balance that looks at the flow of water in, out and within the mining operation, and communicates both quantity and quality values. Using a water balance will help you prioritise your efficiency efforts, but you should support it with other technical tools, such as operational flowcharts and site water circuit diagrams.
  - Remember to include water diversions in your risk assessment: while you may not actively manage or use diverted water, it can still present risks to your operations and the catchment.
- For every new project (or significant change to existing projects), assess potential water impacts in the catchment area through an environmental and social impact assessment that includes processes for stakeholder engagement and aligns with COP 34 **Impact assessment**.
  - Remember to evaluate dependencies on water and environmental thresholds; and as water catchments can have many users, make sure you also consider cumulative impacts.
- Use meaningful metrics to measure water-related performance at your site. In particular, consider following the ICMM water reporting guidance<sup>5</sup> and:
  - collate simple, consistent data on water withdrawal, discharge, consumption and efficiency for each site;
  - compile this internal data into a company-wide dataset; and
  - use it to feed into formal external reporting systems such as the CEO Water Mandate, CDP Water and Global Reporting Initiative.

## Check:

- Are you monitoring your energy and water use and keeping records?
- 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?
- Have you identified any renewable energy national frameworks, targets and/or legislation with which you must comply?

### Mining sector members only:

- Have you established a water management system that demonstrates strong and transparent water governance?
- Do you have a policy and established procedures for your water management system?
- Can you demonstrate the facility is effectively using a water balance and considering cumulative impacts?
- Do you have evidence of your collaboration with others on sustainable water use at a water catchment level?

## E FURTHER INFORMATION

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### Websites:

Alliance for Water Stewardship  
<https://a4ws.org>

Carbon Catalogue, Carbon Offset Directory  
<http://forestcarbonportal.org>

Carbon Footprint, Reducing Your Impact  
[www.carbonfootprint.com](http://www.carbonfootprint.com)

CDP (formerly Carbon Disclosure Project)  
[www.cdp.net](http://www.cdp.net)

Greenhouse Gas Protocol  
<http://ghgprotocol.org>

IFC, Performance Standards  
[www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)

Intergovernmental Panel on Climate Change (IPCC)  
<http://www.ipcc.ch/>

International Emissions Trading Association (IETA)  
[www.ieta.org](http://www.ieta.org)

UN Framework Convention on Climate Change (UNFCCC)  
<https://unfccc.int/>

UN Global Compact, The CEO Water Mandate  
<https://ceowatermandate.org>

UN Global Compact, Local Network Resources: Engagement Framework  
[www.unglobalcompact.org/engage-locally/manage/engagement/caring-for-climate](http://www.unglobalcompact.org/engage-locally/manage/engagement/caring-for-climate)

US Environmental Protection Agency, WaterSense  
[www.epa.gov/watersense/](http://www.epa.gov/watersense/)

## Publications:

Business for Social Responsibility, Business Opportunities in Sustainable Consumption (2012)  
[www.bsr.org/en/our-insights/report-view/business-opportunities-in-sustainable-consumption](http://www.bsr.org/en/our-insights/report-view/business-opportunities-in-sustainable-consumption)

Environmental Protection Authority Victoria (Australia), Lower Your Impact: Conserving Energy (2012)  
[www.epa.vic.gov.au/bus/resource\\_efficiency/conserves\\_water.asp](http://www.epa.vic.gov.au/bus/resource_efficiency/conserves_water.asp)

European Commission, Non-Financial Reporting (2014)  
[https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en)

Greenhouse Gas Protocol, Corporate Standard (2015)  
[www.ghgprotocol.org/standards/corporate-standard](http://www.ghgprotocol.org/standards/corporate-standard)

ICMM, Position Statement on Water Stewardship (2017)  
[www.icmm.com/water-ps](http://www.icmm.com/water-ps)

ICMM, A Practical Guide to Catchment-Based Water Management  
[www.icmm.com/guide-to-catchment-based-water-management](http://www.icmm.com/guide-to-catchment-based-water-management)

ICMM, A Practical Guide to Consistent Water Reporting (2017)  
[www.icmm.com/water-disclosure-standard](http://www.icmm.com/water-disclosure-standard)

ICMM, Water Management in Mining: A Selection of Case Studies (2012)  
[www.icmm.com/en-gb/publications/water/water-management-in-mining-a-selection-of-case-studies](http://www.icmm.com/en-gb/publications/water/water-management-in-mining-a-selection-of-case-studies)

ICMM, Water Stewardship Framework (2014)  
[www.icmm.com/water-stewardship-framework](http://www.icmm.com/water-stewardship-framework)

IFC, IFC Performance Standards on Environmental and Social Sustainability (2012)  
[https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES)

IFC, Performance Standard 3: Resource Efficiency and Pollution Prevention (2012)  
[www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/25356f8049a78eeeb804faa8c6a8312a/PS3_English_2012.pdf?MOD=AJPERES)

IFC and ICMM, Shared Water, Shared Responsibility, Shared Approach: Water in the Mining Sector (2017)  
[www.ifc.org/wps/wcm/connect/ee079cb5-222c-4fe7-8844-8210ac77f0dc/ICMM-IFC-Water-and-Mining-FINAL.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/ee079cb5-222c-4fe7-8844-8210ac77f0dc/ICMM-IFC-Water-and-Mining-FINAL.pdf?MOD=AJPERES)

MAC, Towards Sustainable Mining Framework: Water Stewardship (2017)  
<http://mining.ca/sites/default/files/documents/TSM-Water-Stewardship-Framework.pdf>

Minerals Council of Australia, Water Accounting Framework for the Australian Minerals Industry (2011)  
[www.minerals.org.au/water-accounting-framework-australian-minerals-industry](http://www.minerals.org.au/water-accounting-framework-australian-minerals-industry)

UN, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)  
[www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf)

UNFCCC, The Paris Agreement (2015)  
<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

# GOLD, SILVER, PGM, DIAMOND AND COLOURED GEMSTONE PRODUCTS



## A DEFINITIONS AND APPLICABILITY

**This provision applies to members that handle diamonds, coloured gemstones, gold, silver or PGM products.**

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

A **coloured gemstone** forms in nature. Each variety has unique chemical, optical and physical properties.

A **composite coloured gemstone** is created by bonding or blending together two or more different materials. The components may be natural, synthetic or artificial. Composite gemstones can be made by fusing two or more parts together in parallel planes, or by using chemical leaching to remove extraneous materials, followed by immersion in some type of glass or filler to fill in the cracks.

A **diamond** is a mineral that has been formed completely by nature without human interference during its formation.

A **diamond simulant** is a product that imitates the appearance of a diamond but does not have the same physical and chemical properties.

An **imitation or artificial coloured gemstone** is a product that imitates the appearance of a natural gemstone but does not have the same chemical or physical properties.

**Product disclosure** refers to the proper, complete and accurate disclosure of all relevant information about jewellery products, including the types of treatments used to alter the product's appearance, and whether or not the product needs special care (either because of its physical characteristics or because of any treatments it has undergone). This information must be disclosed for diamonds, treated diamonds, synthetic diamonds and diamond simulants; coloured gemstones and synthetic, imitation, treated, artificial, reconstructed or composite coloured gemstones; and gold, silver and PGM products.

A **reconstructed coloured gemstone** (also called a reconstituted gemstone) is an imitation stone made by melting (without subsequent crystallisation) or fusing together natural materials.

**Representation** includes illustrations, descriptions, expressions, words, figures, depictions or symbols shown in a way that may reasonably be regarded as relating to the jewellery product. Representations, particularly to the final consumer, must be truthful and accurate, without leaving out anything that may affect the product's value, appearance, durability or rarity.

**Selling** includes offering a product for sale, exposing it for sale or displaying it in any way that could reasonably lead someone to believe it is intended for sale.

A **synthetic coloured gemstone** is a man-made gemstone with the same chemical and physical properties as its naturally occurring counterpart.

A **synthetic diamond** is a man-made diamond with essentially the same physical and chemical properties as a natural, mined diamond.

A **treated coloured gemstone** has been altered to change its appearance or durability.

A **treated diamond** has undergone a process to alter its colour or clarity.

Sources:

- American Gem Trade Association (AGTA), AGTA Gemstone Information Manual (2016)  
<https://agta.org/wp-content/uploads/2018/05/15thEditionGemstoneInformationManual.pdf>
- AGTA, Gemstone Enhancement Codes  
<https://agta.org/wp-content/uploads/2018/05/Enhancement-Codes-Labels-5163.pdf>
- World Jewellery Confederation (CIBJO), Blue Books  
[www.cibjo.org/index.php?option=com\\_content&view=article&id=270&Itemid=261](http://www.cibjo.org/index.php?option=com_content&view=article&id=270&Itemid=261)

## B ISSUE BACKGROUND

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Product disclosure within the jewellery industry depends on honesty and transparency about the nature and quality of products being bought and sold. Increasing use of technologies to treat stones, create synthetic or simulant stones or develop new alloys add to the complexity of the jewellery supply chain and consumer market and increase the relevance of product disclosure. It is especially important because end consumers rarely have good technical knowledge about the products they are buying and rely on the advice of sellers.

Industry guidelines and legal requirements exist to protect consumers and guide those working with precious metals, coloured gemstones and diamonds. These cover diverse areas, including:

- gold, silver and platinum assaying, quality marking or hallmarking to indicate fineness;
- diamond grading for larger stones through independent gemmological laboratories;
- coloured gemstone and diamond treatments and enhancements;
- standard terminology and classification for communicating product attributes;
- whether a coloured gemstone or diamond is natural, synthetic or has been altered in any way; and
- information requirements for altered coloured gemstones or diamonds when the treatment is temporary, diminishes over time, requires special care or has a significant impact on the product's value.

At all levels of the supply chain, misinformation poses a significant risk to the reputation of individual companies and the industry as a whole. Companies failing to disclose all relevant information, or making false statements about articles sold, risk losing business and being expelled from industry organisations. Selling a product without disclosing full and accurate information about it, or with misleading information, even unknowingly, is illegal under most jurisdictions. Offenders can face penalties including fines and prison sentences.

The risk of undisclosed synthetic diamonds entering the jewellery supply chain have increased significantly in recent years. Production techniques have developed to the point where it is possible to produce gem-quality synthetic diamonds that to many jewellery professionals are almost indistinguishable from natural polished diamonds. However, through synthetic detection undertaken with the correct experience, equipment and protocols they can be identified. At the same time, the costs associated with producing synthetic diamonds have decreased and production capacity is increasing. The undisclosed mixing of synthetic diamonds with natural diamonds is a growing concern for both the industry and consumers alike. Many companies have introduced measures, such as routine testing, to manage these risks.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

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### 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**:<sup>1</sup> publications outlining terminology, classification and ethical guidelines for diamonds, coloured gemstones and precious metals. The Blue Books are considered important standards for product disclosure and, while voluntary, are directed at 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 cover both direct and indirect claims about the products.

The CIBJO Blue Books for gemstones and diamonds have been in use since 1975, regularly reviewed and updated to reflect the latest knowledge. In 2007, the equivalent for precious metals was launched; others have followed.

Beyond the Blue Books, a number of international standards on product disclosure have come into force over the past decade to provide a central reference point, better harmonise global practice and protect consumer confidence (see Figure 28.1).

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1 CIBJO, Blue Books [www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

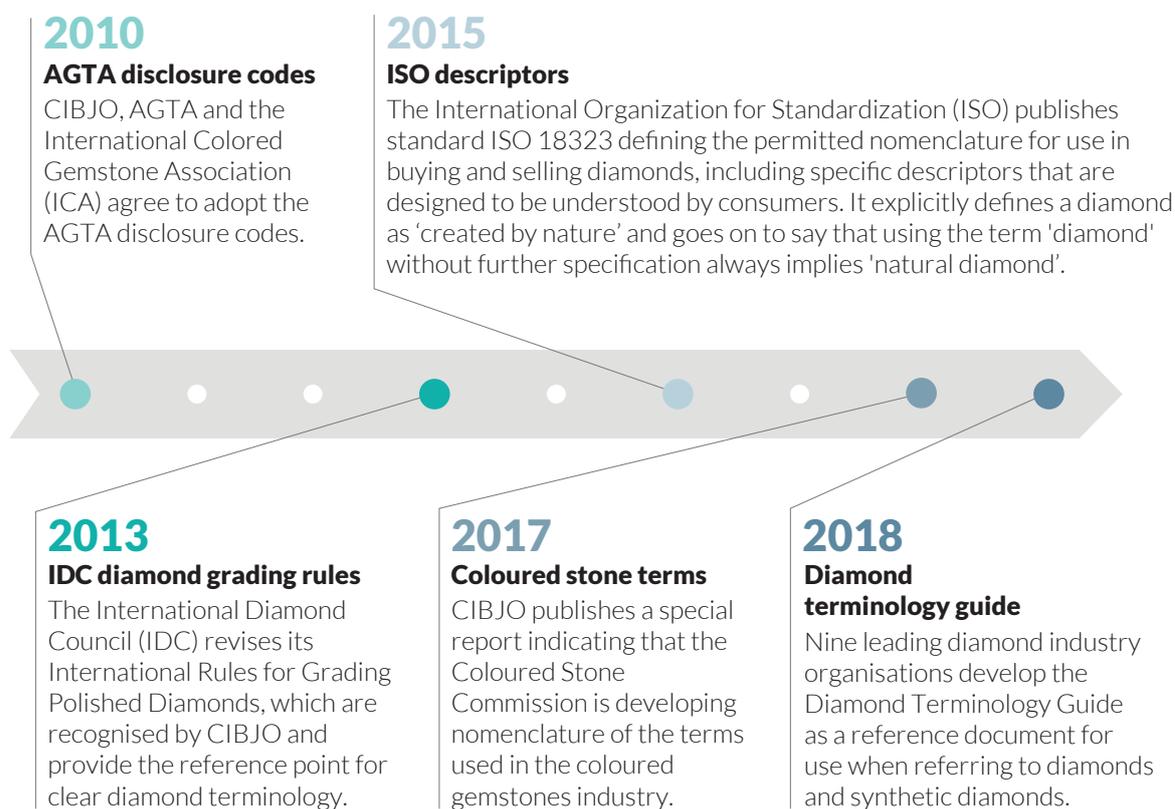


Figure 28.1. Key initiatives in international standards to support product disclosure since 2010

## National law

Specific laws and regulations may vary across countries, but most nations have mechanisms in place to protect consumers, regulate trade and marketing and prevent fraud. Most have legislation that makes it unlawful to wrongly describe any goods in terms of their composition, physical characteristics or history. Legal obligations may cover knowingly, as well as unknowingly, providing wrongful or misleading information in the sale of goods.

Some countries also have specific laws or regulations relating to gemstones and precious metals, for example the US Federal Trade Commission (FTC) guides for jewellery, precious metals and pewter businesses to help prevent deception in marketing.<sup>2</sup>

<sup>2</sup> FTC.Guides for the Jewelry, Precious Metals, and Pewter Industries (2018)  
[www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/jewelry-precious-metals-pewter-industries](http://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/jewelry-precious-metals-pewter-industries)

## D IMPLEMENTATION GUIDANCE

### COP 28.1: Representations

Members shall not make any untruthful, misleading or deceptive representation, or make any material omission in the selling, advertising or marketing of any gold, silver and PGM materials, jewellery products, diamonds, coloured gemstones, or treated, synthetic, reconstructed, composite or simulant diamonds or coloured gemstones. Members shall follow internationally accepted standards.

#### Points to consider:

- A representation can take many different forms (including words, symbols and depictions) and can be made through many different media, including the internet. It can be express or implied.
- A misrepresentation or material omission involves deliberately leaving out or misstating information that could influence a buyer's decision; and it may be illegal. For example, failing to disclose to a buyer that a gold ring is hollow (i.e. electroformed) would be considered a material omission.
- Whether information is 'material' or not depends on the business context: material information for a retail consumer may be different from that for a business-to-business transaction. In considering whether a piece of information is material or not, ask yourself whether leaving it out goes against accepted practice in your sector or jurisdiction.
- Make sure you are aware of the applicable law regarding false and misleading representations, including what constitutes 'material information' with regard to what would be considered 'material omission', particularly for consumers.
- Train your sales staff to ensure they know their legal obligations and do not engage in misleading or deceptive verbal representations or omit material information about the products they are selling.
- Internationally accepted standards are listed in Figure 28.1, including but not limited to the CIBJO Diamond Book<sup>3</sup> and the ISO 18323 standard.<sup>4</sup> The Diamond Terminology Guideline<sup>5</sup> is the reference for diamond nomenclature.
- Other terms are sometimes used, for example 'simulant' coloured gemstones can be called 'imitation', and 'composite' diamonds can be called 'assembled'. If in doubt about terminology for coloured gemstones, consult the CIBJO Blue Book and ISO 18323 standard.

### COP 28.2: Disclosure

Members shall disclose information on the physical characteristics of the materials listed in COP 28.1 in compliance with applicable law. Unless a conflict with applicable law exists, members shall apply the following requirements to support disclosure about physical characteristics:

#### Points to consider:

- Establish a policy or register on product disclosure that explains relevant laws, regulations and industry standards, including penalties for non-compliance (you should have already gathered information on product disclosure standards and regulatory requirements as part of implementing COP 1 **Legal compliance**).
- Use the terms set down in national legislation. If there is no applicable law, follow the COP. Note that if there is a conflict between COP provisions and applicable law (i.e. where following the COP requirements under this provision would result in you being in a position of non-compliance with applicable law), then the law has precedence. If you find a conflict, please alert the RJC as soon as possible so that we can develop consistent advice for our members and auditors.
- As an RJC member, you must maintain up-to-date knowledge of the relevant legislation across all your areas of operation. If your responsible senior managers are not familiar with the applicable law, particularly if your business includes retail sales, you run a higher risk of non-conformance.
- Remember that disclosure requirements apply at each and every level of the jewellery supply chain, and that you must disclose information in accordance with the applicable law and the COP even if your buyer has not asked for it. Establish procedures for proper disclosure in all your transactions, including purchases. These should include a clear statement on how to proceed if a supplier fails to provide appropriate product information. Look at example invoices for 'common disclosure' within the trade on the ICA and AGTA websites.

3 CIBJO, The Diamond Book (2015) [www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

4 ISO, ISO 18323:2015 Jewellery—Consumer Confidence in the Diamond Industry (2015) [www.iso.org/standard/62163.html](http://www.iso.org/standard/62163.html)

5 AWDC, CIBJO, DPA, GJEPC, IDI, IDMA, USJC, WDC and WFDB, Diamond Terminology Guideline (2018) [www.awdc.be/en/guideline](http://www.awdc.be/en/guideline)

- In cases where you sell a gemstone, diamond or jewellery product to an end consumer who will not personally view the product (for example, because you are selling it through a catalogue, mail order, website, shopping channel, telephone order or other sales platform), you must still disclose relevant information in the product description.
- Where applicable, establish procedures for reviewing and approving sales and marketing materials to ensure that they do not contain any potentially misleading or deceptive information and that they comply with the law and the COP.
- Train your staff so that they understand, where appropriate:
  - all applicable gold, silver and PGM quality marks and hallmarks;
  - the 4 Cs of diamonds (cut, colour, clarity and carat weight);
  - any relevant legal compliance requirements (for example, if you are selling in the United States, you are legally required to comply with FTC guidelines); and
  - any relevant disclosure standards (for example, the CIBJO Blue Book or AGTA Gemstone Information Manual).
- Record-keeping is critical, especially during the processing stage; make sure you clearly assign someone with responsibility for implementing and checking all record-keeping procedures.

### COP 28.2A: Gold, silver and PGM

- a. The fineness of gold, silver or PGM shall be accurately disclosed. The description of fineness or content shall be equally conspicuous as the word 'gold', 'silver' or the PGM or abbreviation. Any quality marks used shall be applied in accordance with applicable law or industry standards.

#### Points to consider:

- If you apply quality marks to a product, these must indicate the quality of the gold, silver or PGM and be in accordance with applicable law or relevant international standards. In the United States, for example, you must also include a federally registered trademark.
- You do not have to include a description of fineness if it is not required by applicable law. For example, some jurisdictions do not require a description of fineness for gold that is 24k, and platinum that is more than 950 parts per thousand.

### COP 28.2B: Plating

- b. The use of gold, silver and PGM as a plating material shall be accurately disclosed. The description of the plating and fineness or content of material used shall be equally conspicuous as the word 'gold', 'silver' or the PGM or abbreviation.

#### Points to consider:

- Ensure you comply with applicable law in disclosing information about metal plating of any kind. If there is no applicable law, follow the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries<sup>6</sup> on requirements for plating disclosure.

### COP 28.2C: Treatments

- c. Treated diamonds and treated or heated coloured gemstones shall be disclosed as either 'treated' or with specific reference to the treatment. The description shall be equally conspicuous as the word 'diamond' or the name of the coloured gemstone. Any special care requirements that the treatment creates shall be disclosed.

#### Points to consider:

- You cannot mislead the consumer about treatments in any way. Do not use any term that is designed to disguise the fact that the product has been treated, or to imply that treatment is part of the normal polishing process. Do not, for example, use the term 'improved' to describe a treated diamond or coloured gemstone; and do not use the term 'organic' to describe lead glass-filled rubies.
- The COP does not prescribe where to place the description of a treatment, but you do have to ensure the treatment description is clearly associated with the product and that it is just as conspicuous as the stone's name. For example, the words 'diamond' and 'treated', or the words 'ruby' and 'heated', must be equally conspicuous. Always check applicable law for any additional requirements.

6 FTC, Guides for the Jewelry, Precious Metals, and Pewter Industries (2018) <https://www.ftc.gov/news-events/media-resources/tools-consumers/jewelry-guides>

- Do not use the names of firms, manufacturers or trademarks in connection with treated diamonds or coloured gemstones unless such names are clearly followed by the word 'treated' or are otherwise equally conspicuously and prominently disclosed as treated.
- If you suspect, but are not certain, that a coloured gemstone or diamond has been treated, then you must disclose what you know. Some coloured gemstone types are known to be routinely treated and should be disclosed as such.

### 'Black diamonds'

Although black diamonds may occur in nature, polished diamonds that are black in colour are very likely to have been treated. Some marketers may assume this is commonly known and refer to them simply as 'black diamonds' without disclosing the treatment used. This is improper. ISO 18323:2015 explicitly defines a diamond as 'created by nature' and states that using the term 'diamond' without further specification always implies 'natural diamond'.

Whenever a diamond has been treated, it must be disclosed. The CIBJO Diamond Book demands the seller to make specific reference to the treatment used and ensure the treatment's description is as conspicuous as the word 'diamond' or 'synthetic diamond', as the case may be.

### COP 28.2D–F: Synthetics, composites and reconstructed stones

- d. Wholly or partially synthetic diamonds or synthetic coloured gemstones shall be disclosed as 'laboratory created', 'laboratory grown' and/or 'synthetic'. The description shall be equally conspicuous as the word 'diamond' or the name of the coloured gemstone.
- e. Composite (or assembled) diamonds and coloured gemstones constructed of two or more parts shall be disclosed as 'composite', 'assembled', 'doublet' or 'triplet', and by the correct name of the material of which it is composed. The description shall be equally conspicuous as the word 'diamond' or the name of the coloured gemstone used.
- f. Reconstructed diamonds and coloured gemstones shall be disclosed as such and the description shall be equally conspicuous as the word 'diamond' or the name of the coloured gemstone.

### Points to consider:

- ISO 18323:2015 defines a stone as synthetic if the product is artificial (that is, is produced completely or partially through human intervention) and its properties are essentially the same as those of its natural counterpart. Synthetic stones are therefore artificial products that essentially have the same chemical composition, crystal structure and physical (including optical) properties as a diamond/coloured gemstone.
- You must not use any term that is designed to disguise the fact that a diamond or coloured gemstone is synthetic, or that misleads the consumer in any way. That includes using abbreviations such as 'lab grown', 'lab created', 'lab diamond' or 'syn diamond'.
- Remember that the word 'laboratory' refers to the facility that may produce the synthetic stones. Do not confuse it with a gemmological laboratory that analyses, authenticates, identifies and grades diamonds and coloured gemstones.
- Note that the term 'cultured' is not an acceptable description for synthetic diamonds or coloured gemstones under ISO 18323 or the COP. If you are in the United States, you are allowed to use the term under FTC 2018 guidelines, but only when it is qualified by a clear and conspicuous disclosure (such as 'laboratory created', 'laboratory grown' or 'synthetic') conveying that the product is not a mined stone.
- Using the name of a stone without qualification (for example, 'diamond', 'gemstone' or 'emerald') always means you are talking about a natural, untreated stone.
- If you work with stones that have been synthetically enlarged (for example, starting with a 0.25ct diamond and growing it to 0.75ct), always disclose them as 'laboratory created', 'laboratory grown' and/or 'synthetic'.

### COP 28.2G: Simulants (or imitation)

- g. Any artificial product used to imitate the appearance of diamonds or coloured gemstones without having their chemical composition, physical properties and/or their structure shall be disclosed as 'imitation' or 'simulant' along with the correct name of the material of which it is composed, for example 'x compound', 'glass', 'plastic'. The description shall be equally conspicuous as the word 'diamond' or the name of the coloured gemstone.

#### Points to consider:

- You must not use any term designed to disguise the fact that a stone is a simulant, or that misleads the consumer in any way. That includes using words such as 'real' or 'genuine'.
- You can only use the word 'natural' to describe a simulant if it is a naturally occurring mineral or compound, in which case you must also give its actual name.
- Note that this provision only applies to simulants that are for sale. Simulants that are exclusively used for promotional or display purposes, for example in retail environments, do not need disclosure.

### COP 28.2H: Descriptions of polished diamonds and coloured gemstones

- h. Describe the size or carat weight, colour, clarity or cut of diamonds and the quality of coloured gemstones in accordance with the recognised guidelines appropriate to the particular jurisdiction.

#### Points to consider:

- Describe the size or carat weight, colour, clarity and cut of diamonds and the quality of coloured gemstones in accordance with IDC rules<sup>7</sup> or the CIBJO Gemstone Book.<sup>8</sup>
  - Note that in some cases, for example for small diamonds or coloured gemstones that are set in jewellery, you do not have to provide individual descriptions for each stone.
- Do not use the word 'flawless' to describe:
  - any diamond or coloured gemstone that contains 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 grading or appraisal; or
  - any article of jewellery that contains any diamonds or coloured gemstones that do not meet the definition of flawless.
- Only use the terms 'brilliant', 'brilliant cut' or 'full cut' when referring to a round diamond with at least 32 facets plus the table above the girdle, and at least 24 facets below it.
- Avoid commercial terms such as 'pigeon blood' or 'royal blue' to describe colour in gemstones unless the term has been accepted into internationally accepted nomenclature or terminology and has clearly defined parameters. Refer to the CIBJO Gemstone Book and the Laboratory Manual Harmonisation Committee for further information and updates.

### COP 28.2I: Place of origin for coloured gemstones

- i. When describing the place of origin of a coloured gemstone, the information on how this was determined shall be disclosed. The place of origin shall only be used when it denotes a geographical area where gemstones have been mined.

7 IDC, IDC-Rules for Grading Polished Diamonds (2013) [www.internationaldiamondcouncil.org/sites/default/files/downloads/IDC-Rules%20Version%202013%20%28July%29.pdf](http://www.internationaldiamondcouncil.org/sites/default/files/downloads/IDC-Rules%20Version%202013%20%28July%29.pdf)

8 CIBJO, The Gemstone Book (2015) [www.cibjo.org/introduction-to-the-blue-books/](http://www.cibjo.org/introduction-to-the-blue-books/)

## What is 'place of origin' and why is it important for coloured gemstones?

The 'place of origin' for a coloured gemstone refers to the geographical area where the stone was originally mined. Buyers and sellers alike want to know a stone's place of origin because it can impact the stone's value. Gemstone traders rely on different levels of assurance about a stone's place of origin, sometimes using a report from a qualified gemmological laboratory but also sometimes accepting a verbal assurance.

In all cases, information on place of origin should be treated as opinion, rather than fact. A ruby from Mozambique may be visually very similar to a ruby from Myanmar, and it is not always easy to pin down the correct place of origin even through gemmological laboratory analysis. Experienced gemmologists using the correct instruments are generally able to find the small differences that allow them to establish place of origin with relative certainty, but this is always a matter of informed opinion.

Do not confuse place of origin descriptions with information on the source or origin of minerals for the purposes of due diligence on conflict-affected and high-risk areas (COP 7 [Due diligence for responsible sourcing from conflict-affected and high-risk areas](#)). Use of the place of origin for coloured stones is in no way associated with risk conditions. Also, since place of origin descriptions are already covered under this provision, they cannot be audited as provenance claims under COP 14 [Provenance claims](#). Only claims that go beyond the requirements of the COP will be audited as a provenance claim.

### Points to consider:

- Make sure any descriptions for place of origin adhere to guidance set out in the CIBJO Gemstone Book. This means ensuring that you:
  - only use names of geographical areas to denote the areas where gemstones were mined;
  - only offer place of origin information as a matter of opinion;
  - do not use place of origin to imply level of quality; and
  - do not use the names of cutting, processing or exporting centres to imply place of origin.
- Clearly state whether or not you have determined the place of origin based on gemmological laboratory analysis. If you have, remember to include the name of the laboratory and the date of analysis.

## Country of origin: customs law in the United States

US customs law dictates that you must declare the country of origin for all imported products. Where a product undergoes 'substantial transformation' before entering the United States, the country of origin will change to reflect where the transformation took place. Jewellery importers must therefore take steps to identify the country where the product is manufactured, noting that simply setting a stone does not confer substantial transformation. For example, if a stone was mined in Myanmar, cut and polished in Thailand (a substantial transformation), and set in an Italian-manufactured gold necklace in Italy, the product would need to be marked country of origin Thailand (gemstone) and Italy (necklace) for customs purposes.

Make sure you follow all applicable laws, including customs law. Take care, however, to prevent potential confusion between 'country of origin' (for customs) and 'place of origin' (the geographic area where the stone was mined). Any information provided to clients about country or place of origin must be clear and avoid misleading them about where the stones are originally from. In the example above, any descriptors to clients about the place of origin of the stone must indicate Myanmar and say how this was determined (for example, based on analysis by gemmological laboratory X on Y date).

## COP 28.2J: Product health and safety information

- j. Any relevant health and safety information about the materials listed in COP 28.1 in jewellery products sold by members to end consumers shall be disclosed.

### Points to consider:

- In their natural state, gold and silver are inert and considered non-hazardous. But when used in jewellery products, they are often alloyed with other metals. Ingestion remains non-toxic but, depending on the type and amount of these alloys, the final jewellery product may cause contact dermatitis or other allergic reactions:
  - For example, metal jewellery containing nickel alloys has been documented to cause nickel allergies, which tend to first appear as a red itchy rash on the skin where the jewellery is worn. This allergic reaction is sometimes called 'jewellery dermatitis'. It can only be treated by avoiding all contact with the product containing nickel.
- Diamonds and coloured gemstones are also chemically inert in their natural state. The only potential health hazards are those introduced through treatments.
  - For example, some irradiation treatments to enhance a stone's colour can end up making the stone radioactive, potentially posing threats to human health. This includes irradiation using radium in a nuclear reactor or accelerator (but not cobalt or cesium irradiators). In practice, radioactive stones are rare because the distribution of irradiated stones tends to be heavily regulated to ensure levels of radioactivity remain within safe limits.
  - For further guidance, see ISO 10377 on consumer product safety.<sup>9</sup>

## COP 28.3: Undisclosed synthetic diamonds

**Members shall take substantive and documented action to avoid buying or selling undisclosed synthetic diamonds. To that end, members buying or selling diamonds shall:**

### COP 28.3A: Written warranty

- a. Obtain a written warranty from their suppliers.

### Points to consider:

- Develop a warranty statement and ask your suppliers to include this on all invoices with respect to diamonds. For example, the World Federation of Diamond Bourses (WFDB) statement:  
'The diamonds herein invoiced are exclusively of natural origin and untreated based on personal knowledge and/or written guarantees provided by the supplier of these diamonds.'

### COP 28.3B: Policies, procedures, training and monitoring

- b. Have effective policies, procedures, training and monitoring systems in place to avoid the possibility of undisclosed synthetic diamonds being switched for natural diamonds at their facilities

### Points to consider:

- Establish one or more product security policies that:
  - include measures to avoid the possibility of undisclosed synthetic diamonds being switched for natural diamonds at your facilities—use the policies to set out the expectations of employees, on-site contractors and visitors (also review COP 13 [Security](#));
  - outline how you will segregate your natural diamond processing and trade from your synthetic diamond business (where applicable);
  - address all potential contamination points (that is, anywhere in your facilities with a potential risk that synthetic diamonds could be switched for natural diamonds);
  - are reflected in relevant operational procedures; and
  - are communicated internally.

- Make sure that your operational procedures cover the handling, storage and transportation of diamonds at all points in your facilities. That includes, for example:
  - ensuring strict controls to determine who is authorised to handle diamonds, and under what circumstances;
  - clearly defining and controlling arrangements for securely storing diamonds on-site;
  - using strong inventory management and chain-of-custody systems for all diamonds stored, transported and handled on-site; and
  - reviewing your security systems in and around the areas where diamonds are handled, stored and transported.
- Train all staff involved in handling, moving or storing diamonds at your facilities. Review your training programmes at least once a year.
- Monitor how well your policies and procedures are implemented and review their effectiveness regularly. Make sure you address any gaps and weaknesses identified during review, and investigate all instances of product switching thoroughly.
- In all cases, be sure to fully document all your procedures.

### COP 28.3C: Due diligence on undisclosed synthetic diamonds

- c. Employ a documented due diligence process to identify and mitigate risks related to undisclosed synthetic diamonds entering their supply chain. Identify possible high-risk contamination points.

#### Points to consider:

- Map your diamond sources and suppliers, and identify anywhere with a high risk of introducing undisclosed synthetic diamonds into your supply chain. Note:
  - Buying rough diamonds is considered low risk because given the correct training and experience you can easily distinguish rough natural diamonds from rough synthetic ones by eye, without the need for detection equipment. If your company handles rough diamonds, make sure your relevant staff know how to make this distinction.
  - Buying polished diamonds from the open market carries varying levels of risk. If your supplier is audited to ensure they address contamination points (and can provide auditing results), buying polished diamonds from them is considered low risk. If there is insufficient or no evidence that your supplier has addressed potential contamination points, the risk is considered high.
- Update your risk map any time you engage a new supplier.
- Document your due diligence process and keep records of any action you take to mitigate risk, such as gathering further information from suppliers.

### COP 28.3D: Testing

- d. For polished diamonds classified as high risk, carry out testing using a defined, credible and transparent protocol. This can be an existing industry-accepted protocol or one that is defined by the member. The protocol must:
- Incorporate an appropriate approach for testing loose and set polished diamonds.
  - Include either in-house testing, using relevant and effective detection equipment, or outsourced testing by a qualified service provider, such as a gemmological laboratory.
  - Include testing at least once at a point in the process where there is no longer any risk of introducing undisclosed synthetics before the diamond parcel is sold. This is normally just before sale.
  - Be available to clients, including the procedure for managing test referrals.

#### Points to consider:

- Establish a robust protocol for testing polished diamonds for undisclosed synthetic diamonds. You can develop your own new protocol or use an existing one, for example one developed by a supplier or customer. Either way, make sure you document it and make it accessible to suppliers, customers and other relevant stakeholders.
- In all cases, your testing protocol should be defined, credible, robust and transparent, as set out in Table 28.1.
- Use the results of Project ASSURE (<https://diamondproducers.com/assure/>) to help you choose appropriate equipment for testing. This project, which is a collaboration of the Diamond Producers Association (DPA) and Signet Jewelers, tests the performance and functionalities of available equipment (or diamond verification instruments) using an independent testing laboratory and publishes the results to help companies make informed decisions about which equipment to use.

Table 28.1. Characteristics of an acceptable protocol for testing polished stones and diamond parcels for undisclosed synthetic diamonds

Protocol characteristics		Implementation notes
<b>Defined</b>	The protocol must include an approach for testing loose and set polished diamonds classified as high risk.	<ul style="list-style-type: none"> <li>• Aim to test all high-risk polished stones and diamond parcels. But be practical: in some cases, for example if you are handling large numbers of very small melee polished diamonds, testing all stones may be impractical. At a minimum, you will need a robust sampling approach for testing high-risk stones, ensuring a large enough sample size that is statistically significant.</li> <li>• If you outsource your testing, make sure that the protocol and sampling approach used by your service provider is fully documented.</li> </ul>
<b>Credible</b>	The protocol must include <b>either</b> in-house tests using relevant and effective detection equipment <b>or</b> tests outsourced to a qualified gemmological laboratory or equivalent.	<ul style="list-style-type: none"> <li>• There are many different diamond screening and testing technologies available on the market. Make sure you use appropriate equipment that is specifically designed to identify synthetic diamonds and disclose which technology you are using in your protocol.</li> <li>• Be sure to take account of the error margin specified for the particular equipment you are using as this may impact the reliability of the results.</li> <li>• If you prefer to outsource testing, make sure your service provider is suitably qualified, with appropriate product control systems and protocols.</li> </ul>
<b>Robust</b>	The protocol must include at least one round of testing with no further risk that undisclosed synthetics will be introduced before sale.	<ul style="list-style-type: none"> <li>• It is up to you to decide when to test your stones. You can test them once or many times. Ideally, you should test stones once when you buy them, and again before you sell them.</li> <li>• Whatever you decide, you must be able to show that there is no further risk of contamination between your last test and the stones' sale.</li> </ul>
<b>Transparent</b>	The protocol in full must be available to clients.	<ul style="list-style-type: none"> <li>• You must make your protocol available to clients, either by publishing it online or by making it available on request.</li> <li>• This includes outlining your process for managing referrals, being clear about when and how you deal with them. For example, where screening results are inconclusive, the stones are retested using a different device or sent to a gemmological laboratory for full testing.</li> </ul>

### Claims on testing of synthetic diamonds

You may be applying testing methodologies that go beyond the requirements of COP 28.3d, for example testing 100 per cent of diamonds. Whatever approach you choose, this is part of ensuring that you are not making any misleading representation on the product you are selling (that is, making sure you are not selling synthetics that are represented as diamonds).

As such, this does not need to be audited as a provenance claim. However, your testing methodology will be checked as part of your compliance with COP 28.1 to ensure that it is truthful and substantiated. For example, if your process specifies that you are testing 100 per cent of stones, you will need to provide evidence of this.

#### Check:

- Do you know the applicable regulatory requirements and disclosure standards for diamonds, coloured gemstones, gold, silver and PGM products?
- Can you show the auditor how you check that sales and marketing materials comply with the law and with COP requirements?
- Do you have appropriate record-keeping and training to support proper product disclosure?
- Have you developed policies and procedures to avoid buying or selling undisclosed synthetic diamonds?
- Do you have a documented protocol for testing polished diamonds?

## E FURTHER INFORMATION

## Websites:

American Gem Trade Association (AGTA)

[www.agta.org](http://www.agta.org)

Diamond Producers Association (DPA)

<https://diamondproducers.com>

FTC, In the Loupe: Advertising Diamonds, Gemstones and Pearls

[www.lawpublish.com/ftc-gem.html](http://www.lawpublish.com/ftc-gem.html)

International Colored Gemstone Association (ICA)

[www.gemstone.org](http://www.gemstone.org)

Jewelers Vigilance Committee (JVC)

[www.jvclegal.org](http://www.jvclegal.org)

Laboratory Manual Harmonization Committee

[www.lmhc-gemology.org](http://www.lmhc-gemology.org)

US Federal Trade Commission (FTC)

[www.ftc.gov](http://www.ftc.gov)

World Gold Council (GC)

[www.gold.org](http://www.gold.org)

The World Jewellery Confederation (CIBJO)

[www.cibjo.org](http://www.cibjo.org)

## Publications:

AWDC, CIBJO, DPA, GJEPC, IDI, IDMA, USJC, WDC and WFDB, Diamond Terminology Guideline (2018)

[www.cibjo.org/wp-content/uploads/2018/01/Diamond-Terminology-Guideline.pdf](http://www.cibjo.org/wp-content/uploads/2018/01/Diamond-Terminology-Guideline.pdf)

CIBJO, Blue Books

[www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

CIBJO, Understanding disclosure terminology is key to protecting consumer confidence in gemstones (2017)

[www.cibjo.org/congress2017/wp-content/uploads/2017/09/CIBJO-Special-Report-2017-Coloured-Stones.pdf](http://www.cibjo.org/congress2017/wp-content/uploads/2017/09/CIBJO-Special-Report-2017-Coloured-Stones.pdf)

FTC, Commission Denies Petition Regarding Use of Term 'Cultured' to Describe Laboratory-Created Gemstones; Commission Approves Federal Register Notice Regarding Fees to Access the National Do Not Call Registry (2008)

[www.ftc.gov/opa/2008/07/jvc.shtm](http://www.ftc.gov/opa/2008/07/jvc.shtm)

IDC, IDC Rule Book (1995)

[www.internationaldiamondcouncil.org/idc-rule-book](http://www.internationaldiamondcouncil.org/idc-rule-book)

ISO, ISO 18323:2015 Jewellery—Consumer Confidence in the Diamond Industry (2015)

[www.iso.org/standard/62163.html](http://www.iso.org/standard/62163.html)

# (COP 29) KIMBERLEY PROCESS CERTIFICATION SCHEME AND WORLD DIAMOND COUNCIL SYSTEM OF WARRANTIES

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members that handle diamonds.

**Conflict diamonds** are rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described by the UN Security Council (UNSC) and as recognised by the UN General Assembly (through resolution A/RES/55/56).<sup>1</sup>

The **Kimberley Process Certification Scheme (KPCS)** is a binding joint government, international diamond industry and civil society initiative to stem the flow of conflict diamonds.

The **World Diamond Council (WDC) System of Warranties (SoW)** is a programme to strengthen the KPCS. The SoW requires all diamond suppliers and jewellery manufacturers to pass on a warranty statement each time rough and polished diamonds change hands, assuring the next buyer that they were traded in compliance with the KPCS.

Sources:

- Jewelers of America [US]  
[www.jewelers.org](http://www.jewelers.org)
- Kimberley Process Certification Scheme  
[www.kimberleyprocess.com](http://www.kimberleyprocess.com)
- World Diamond Council  
[www.worlddiamondcouncil.org](http://www.worlddiamondcouncil.org)

## B ISSUE BACKGROUND

The issue of conflict diamonds began gaining public prominence in the late 1990s, as various human rights non-governmental organisations drew attention to the illegal trade in rough diamonds that was funding rebel movements in Angola and Sierra Leone and indirectly contributing to human rights atrocities. The diamond and jewellery industry was thrust into the media and consumer spotlight.

In response, the industry, through its representative organisation the World Diamond Council (WDC), began working with a broad range of stakeholders, including civil society, affected governments and the UN, to seek a solution. Their meetings became known as the Kimberley Process; their outcome was the Kimberley Process Certification Scheme (KPCS) to prevent conflict diamonds from entering the supply chain. The KPCS is implemented by governments and imposes requirements on the export and import of legitimate rough diamonds between participating countries. To support it, the WDC also created a voluntary programme of industry self-regulation called the System of Warranties (SoW) that extends to the trade in cut and polished stones.

The diamond industry stands firmly against complicity in the sale of conflict diamonds and is committed to both the KPCS and the SoW. Companies that fail to abide by either risk expulsion from industry organisations and loss in trade.

The KPCS and SoW definition of 'conflict diamond' was originally aimed at rebel movements and does not include violence and human rights abuses perpetrated by state actors or private security firms outside the context of efforts to unseat legitimate governments. In this sense, while compliance with the KPCS is essential, it is important to remember that this alone does not necessarily provide assurance that diamonds are not connected to other types of adverse impacts associated with conflict-affected and high-risk areas.

<sup>1</sup> UN General Assembly, The Role of Diamonds in Fuelling Conflict: Breaking the Link Between the Illicit Transaction of Rough Diamonds and Armed Conflict as a Contribution to Prevention and Settlement of Conflicts (2001) <https://undocs.org/en/A/RES/55/56>

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### The Kimberley Process Certification Scheme (KPCS)

The KPCS ([www.kimberleyprocess.com](http://www.kimberleyprocess.com)), which came into effect in 2003, requires participating nations to keep conflict diamonds out of legitimate channels of commerce. Under the scheme, all imports and exports of rough diamonds must go through a government-monitored process that ensures those engaged in the export of rough diamonds:

- keep records on the rough diamonds they ship, to demonstrate they are not conflict diamonds;
- ensure that diamonds are packed in tamper-resistant containers; and
- employ a forgery-resistant, government-verified certificate with a unique identity number and data to describe the shipment's contents, value, exporter and importer.

Government signatories to the KPCS must implement national legislation that enforces internal controls on the movement of rough diamonds, and can only move them to or from other countries that are part of the KPCS.

### The World Diamond Council System of Warranties (SoW)

Under the SoW ([www.worlddiamondcouncil.org/downloads/WDC%20SoW%20Guidelines.pdf](http://www.worlddiamondcouncil.org/downloads/WDC%20SoW%20Guidelines.pdf)), every transaction of diamonds—regardless of whether they be rough, polished or set in jewellery—must be accompanied by a written warranty on the invoice every time the diamonds change hands. The system covers the full supply chain, extending all the way down to retail jewellers (but not to end consumers). For companies, the SoW means ensuring that every shipment of rough or polished diamonds bought or sold is covered by the required warranty, and reconciling all warranties every year.

## D IMPLEMENTATION GUIDANCE

### COP 29.1 and 29.2: Conflict diamonds and Kimberley Process certification scheme

**29.1 Members shall neither knowingly buy or sell conflict diamonds nor help others to do so.**

**29.2 Members involved in the international trade of rough diamonds shall comply with the Kimberley Process Certification Scheme (KPCS) minimum requirements and recommendations as incorporated into the applicable legislation of countries where they operate.**

### Points to consider:

- The KPCS minimum requirements are set out in Annexes I and II to the KPCS Core Document<sup>2</sup> and in the KPCS Administrative Decision on Improving Implementation of Internal Controls in the KPCS.<sup>3</sup>
- In practice, the KPCS means not importing or exporting diamonds without government-validated certificates. That is, each shipment of rough diamonds crossing an international border from one Kimberley Process participant to another must be accompanied by a uniquely numbered and government-validated KPCS certificate.
- Make a senior manager responsible for managing how you implement the KPCS and SoW, including any relevant internal policies and procedures, staff training and external reporting. This person should also be responsible for maintaining up-to-date information on national legislation relevant to implementing the KPCS in all jurisdictions where you operate.
- Make sure you have robust systems, including procedures, testing and training, to prevent transactions of diamonds that:
  - come from suspect sources, unknown suppliers or countries that are not part of the KPCS (check the Kimberley Process website, [www.kimberleyprocess.com](http://www.kimberleyprocess.com)); or
  - are from any sources that have officially failed to observe KPCS regulations prohibiting the trade in conflict diamonds.
- Any diamonds from a region or country that a duly authorised government agency has indicated is a source of conflict diamonds must have been exported in compliance with the KPCS.
- Doing a risk assessment appropriate to your business's circumstances might help you identify your vulnerability to involvement in the sale of conflict diamonds.

<sup>2</sup> KPCS, Kimberley Process Certification Scheme [www.kimberleyprocess.com/en/kpcs-core-document](http://www.kimberleyprocess.com/en/kpcs-core-document)

<sup>3</sup> KPCS, Administrative Decision on Improving Implementation of Internal Controls in the KPCS (2006) [www.kimberleyprocess.com/en/2006-administrative-decision-internal-controls](http://www.kimberleyprocess.com/en/2006-administrative-decision-internal-controls)

- If you want to re-export rough diamonds that have already been shipped with a KPCS certificate, you must be able to show, in a way that can be audited, that the stones in the shipment are covered by the necessary warranties.
- In all cases, you should help establish and participate in a national and international system of industry self-regulation to effectively co-operate with relevant authorities, fulfil the Kimberley Process objectives and facilitate diamond trade (see COP 29.3). Most countries where there is diamond trade already have representative groups that co-operate with Kimberley Process bodies: make sure you support and promote these.

### COP 29.3: System of warranties

**Members involved in buying and selling diamonds, whether rough, polished or set in jewellery, shall adopt the World Diamond Council System of Warranties (SoW).**

#### Points to consider:

##### SoW statement

- Each individual invoice you issue (and receive) for diamonds must carry the SoW warranty statement:

'The diamonds herein invoiced have been {sourced} purchased from legitimate sources not involved in the funding of conflict, in compliance with United Nations Resolutions and corresponding national laws {where the invoice is generated}. The seller hereby guarantees that these diamonds are conflict free and confirms adherence to the WDC SoW Guidelines.'

- Where national law prevents the SoW statement from being included in your invoice, you should include it in separate accompanying documents.
- Make sure you only trade with companies that include the SoW statement on their invoices.
- Put procedures in place to ensure that you do not accept shipments of diamonds if they do not come with the SoW statement, and document next steps should a supplier fail to provide an adequate warranty.

##### Keeping records and self-assessment

- If you are involved with the international trade of rough diamonds, integrate your record-keeping into your normal internal company procedures.
- **Keep records for at least three years.** Your records must include:
  - The daily buying, selling or exporting records listing the names of suppliers and/or buyers, their licence number and the amount and value of diamonds sold, exported or purchased. This is to ensure that all rough diamonds traded can be traced to imports and exports with valid KPCS certificates. If asked for by a duly authorised government agency, these records must be able to prove compliance with the Kimberley Process.
  - **All warranty invoices received and issued** as per the SoW when buying or selling diamonds. This is to check you have a system of controls that ensures all diamonds in and out are accompanied by the correct warranty statement and information.
- You must reconcile the warranties in and out every year as part of an internal self-assessment (the WDC is developing a tool to help with this, see box '2018 SoW reform'). If applicable under national law, make sure your reconciliation is externally audited every year too.
- Note that your internal self-assessments will be verified as part of the RJC audit every three years.

### 2018 SoW reform

In 2018, the WDC updated its SoW and adopted the SoW Guidelines<sup>4</sup> as its latest system of industry self-regulation for the whole diamond supply chain from rough to polished. The revised SoW now has an updated affirmative statement and references various international documents on universal standards on human rights, labour rights, anti-money laundering and anti-corruption practices.

A self-assessment tool is currently under development for use by adherents to the SoW. There is also a commitment to revise the guidelines after three years of using the self-assessment tool.

COP 29.3 is designed to align with the WDC SoW.

4 WDC, System of Warranties Guidelines (2018) [www.worlddiamondcouncil.org/downloads/WDC%20SoW%20Guidelines.pdf](http://www.worlddiamondcouncil.org/downloads/WDC%20SoW%20Guidelines.pdf)

## COP 29.4: Inform employees

Members shall ensure that all employees who buy or sell diamonds are well informed about trade association resolutions and government restrictions prohibiting the trade in conflict diamonds.

### Points to consider:

- Your responsible manager should keep a list of all employees that buy or sell diamonds along with a record of when each one was trained, and what training they received.
- All training should be appropriate to employees' role and responsibilities and should include training on the procedures to follow to ensure compliance with the KPCS and the SoW.

### Check:

- Do you have a system in place to prevent you buying conflict diamonds?
- Have all your employees that buy or sell diamonds been trained on the KPCS and SoW?
- Do you have a system of controls to ensure that all diamonds in and out are accompanied by the correct warranty statement and information? Do you check this through an annual self-assessment?

## E FURTHER INFORMATION

### Websites:

Diamond Development Initiative (DDI)  
[www.ddiglobal.org](http://www.ddiglobal.org)

European Union External Action, Sanctions Policy  
[https://eeas.europa.eu/topics/sanctions-policy\\_en](https://eeas.europa.eu/topics/sanctions-policy_en)

Global Witness, Conflict Diamonds  
[www.globalwitness.org/conflict-diamonds](http://www.globalwitness.org/conflict-diamonds)

IMPACT (formerly Partnership Africa Canada)  
<https://impacttransform.org>

Jewelers of America [US]  
[www.jewelers.org](http://www.jewelers.org)

Kimberley Process  
[www.kimberleyprocess.com](http://www.kimberleyprocess.com)

UN Security Council, Sanctions  
[www.un.org/securitycouncil/sanctions/information](http://www.un.org/securitycouncil/sanctions/information)

US Department of the Treasury, Sanctions Program and Country Information  
[www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)

World Diamond Council, Diamond Facts  
[www.diamondfacts.org](http://www.diamondfacts.org)

### Publications:

IMPACT (formerly Partnership Africa Canada), A Guide to the Kimberley Process (2015)  
<https://impacttransform.org/wp-content/uploads/2018/03/A-Guide-to-the-Kimberley-Process-2015.pdf>

UN General Assembly, The Role of Diamonds in Fuelling Conflict: Breaking the Link Between the Illicit Transaction of Rough Diamonds and Armed Conflict as a Contribution to Prevention and Settlement of Conflicts (2001)  
<https://undocs.org/en/A/RES/55/56>

World Diamond Council, System of Warranties Guidelines (2018)  
<https://www.worlddiamondcouncil.org/downloads/WDC%20SoW%20Guidelines.pdf>

# (COP 30) GRADING, ANALYSIS AND APPRAISAL

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members that generate independent reports on diamond grading, coloured gemstone analysis, coloured gemstone place of origin, and/or appraisal.

An **appraisal report** is the commonly used industry term for a documented opinion of the monetary value of a jewellery item. The opinion is based on the identity, composition, qualities and place of origin (where available) for coloured gemstones.

**Appraising** is generating an opinion of monetary value based on the identity, composition and qualities of a jewellery item.

A **coloured gemstone analysis report** identifies the species and variety of a coloured gemstone. The analysis states whether the stone is natural or synthetic and provides other data to describe its shape, cut, weight, measurements, colour, transparency and major characteristics.

**Diamond grading** is an activity to classify a diamond's characteristics, in terms of cut, colour, clarity and carat weight. Diamond grading can be carried out in independent laboratories or in-house. While a diamond can be weighed accurately and given an exact carat value (for example, 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 against the laboratory's grading system, 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.

A **place of origin report** contains an opinion on the geographical origin (for example, country or region) of the coloured gemstone(s).

**Treatment analysis** determines enhancements to coloured gemstones such as stone coating, heat treatment, diffusion treatment, clarity enhancement and impregnation.

## B ISSUE BACKGROUND

A diamond grading report or coloured gemstone analysis report normally includes the weight, colour, clarity and cut of an unmounted stone. The report may also include a statement regarding whether the diamond or coloured gemstone has been identified as natural and if it is treated or synthetic. Other information commonly found in reports includes the shape and measurements of the stone, its cut proportions and finish grade, its fluorescence, comments on any identification marks, and place and date of issue.

A place of origin report for coloured gemstones usually gives an opinion on the geographic origin of the coloured gemstone (except in the case of full documented traceability). Place of origin can affect the value of a gemstone, where certain origins can command a greater market value. Determining place of origin for coloured gemstones can be a complex and often subjective process and results may vary from one laboratory to the other, depending on the laboratory's expertise, knowledge and access to specialist equipment.

Appraising (or valuation) draws on the information generated by assaying and grading and assigns and documents a monetary value to a jewellery item applicable to either a particular trading area or geographic region. Appraisers use guides, price lists and expertise to identify a gemstone or piece of jewellery's composition and qualities, and to put a cash value on it.

Grading, analysis and appraisal involves expert judgement and opinion. In some cases, they may be undertaken by persons who are not independent (for example, some appraisers offer independent services while others may work in, or own, a retail environment). This makes it essential for graders, analysts and appraisers to disclose any vested interest in the item they are assessing. For example, appraisals can be generated for insurance, probate or market assessment.

Retailers in the jewellery industry often provide appraisals for insurance purposes. Applicable law and industry guidelines sometimes draw an important distinction between these appraisals (which are better described as 'insurance replacement cost estimates') and appraisals 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, STANDARDS AND INITIATIVES

### International standards

#### For diamond grading:

The **International Diamond Council (IDC)** ([www.internationaldiamondcouncil.org](http://www.internationaldiamondcouncil.org)) has established International Rules for Grading Polished Diamonds,<sup>1</sup> which were last updated in 2013. The IDC rules are recognised by the World Jewellery Confederation (CIBJO) and have become the reference point for clear diamond terminology.

The International Organization for Standardization (ISO) **ISO/IEC 17025:2017** standard<sup>2</sup> sets out general requirements for the competence to carry out tests and calibrations. It is used by laboratories to develop an effective management system for quality, administrative and technical operations.

The **CIBJO Gemmological Laboratories Book**<sup>3</sup> provides guidance for gemmological laboratories in developing their management system for quality, administrative and technical operations.

The **CIBJO Diamond Book**<sup>4</sup> is designed to help all those involved in buying or selling diamonds, treated diamonds, synthetic diamonds and imitation diamonds to ensure the use of proper nomenclature.

#### For coloured gemstones:

The **CIBJO Gemstone Book**<sup>5</sup> is designed to help all those involved in buying or selling coloured gemstones, treated gemstones, synthetic gemstones and imitation gemstones to ensure the use of proper nomenclature.

#### For appraisal:

The **International Valuation Standards Council** ([www.ivsc.org](http://www.ivsc.org)) develops technical and ethical standards for carrying out valuations.

The **Appraisal Foundation** ([www.appraisalfoundation.org](http://www.appraisalfoundation.org)) publishes the generally accepted standards of the valuation profession in the United States through the Uniform Standards of Professional Appraisal Practice.

### National law

Most countries have trading and consumer marketing laws that make it unlawful to wrongly describe any material aspect of a good, including jewellery products.

For example, in the United States, the Federal Trade Commission (FTC) Guides for the Jewelry, Precious Metals, and Pewter Industries 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.'<sup>6</sup>

In the European Union, the Misleading and Comparative Advertising Directive<sup>7</sup> aims to protect traders against 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, are likely to injure a competitor.

RJC members are expected to be aware of applicable law in all jurisdictions in which they operate.

## D IMPLEMENTATION GUIDANCE

As a starting point, use your approach to **COP 1 Legal compliance** to identify applicable law and any potential breaches of relevant international standards and regulatory requirements for grading and appraising.

1 IDC, IDC-Rules for Grading Polished Diamonds (2013)

[www.internationaldiamondcouncil.org/sites/default/files/downloads/IDC-Rules%20Version%202013%20%28July%29.pdf](http://www.internationaldiamondcouncil.org/sites/default/files/downloads/IDC-Rules%20Version%202013%20%28July%29.pdf)

2 ISO, ISO/IEC 17025:2017 General Requirements for the Competence of Testing and Calibration Laboratories (2017) [www.iso.org/standard/66912.html](http://www.iso.org/standard/66912.html)

3 CIBJO, The Gemmological Laboratories Book [www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

4 CIBJO, The Diamond Book [www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

5 CIBJO, The Gemstone Book [www.cibjo.org/introduction-to-the-blue-books](http://www.cibjo.org/introduction-to-the-blue-books)

6 FTC, Part 23—Guides for the Jewellery, Precious Metals, and Pewter Industries: §23.1 Deception (general) (2018)

[www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=e97e0a75f44266a15194edce9a243386&ty=HTML&h=L&mc=true&r=PART&n=pt16.1.23](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=e97e0a75f44266a15194edce9a243386&ty=HTML&h=L&mc=true&r=PART&n=pt16.1.23)

7 European Commission, Misleading and Comparative Advertising Directive

[https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en)

### COP 30.1: Systems to ensure consistency

Members that generate independent reports on grading, analysis and appraisal shall have systems in place, based on scientific methodology, that are sufficiently thorough and comprehensive to produce valid and reproducible results.

#### Points to consider:

- Establish documented systems and procedures to ensure you can maintain a consistent approach to grading, analysis and/or appraisal. These should:
  - be based on scientific methodology and, where applicable, appropriate verifiable standards; and
  - include a quality control process to ensure results are consistent with the applied standards.
- Note that you will have to show that these systems and procedures are in place during your RJC audit.
- The COP does not aim to provide detailed standards for appraisers of jewellery products. If you generate independent appraisal reports, do so in accordance with applicable law and professional standards. Most jurisdictions where RJC members operate have national professional organisations that provide codes of conduct and minimum standards for appraisal or valuation service provision.

### COP 30.2: Detection of synthetics or treatments

Members that generate independent diamond grading and/or coloured gemstone analysis reports shall identify whether detection of synthetics and/or any treatments are part of the assessment and whether this has been carried out for all stones.

#### Points to consider:

- Diamond grading and coloured gemstone analysis reports generally identify stones as natural, treated or synthetic. But this is not always the case, for example if laboratories only test the most valuable stones or only test on request.
- If you generate independent diamond grading reports or coloured gemstone analysis reports, put systems in place to ensure proper disclosure. In particular, your reports and analyses should:
  - explain whether or not your assessment includes the detection of synthetic or treated diamonds or coloured gemstones;
  - state whether testing has been carried out on all diamonds/coloured gemstones covered by the report, or only on a sample of them; and
  - specify whether or not the detection of treatments on coloured stones included detection of heating (to align with requirements of COP 28 [Product disclosure](#)).

### COP 30.3: Place of origin determination

Members that generate independent place of origin reports for coloured gemstones shall have systems in place, based on scientific methodology, to ensure consistency of the determination of origin. They shall also carry out detection of treatments and synthetics as part of the determination.

#### Points to consider:

- Clearly state on your place of origin report that the determination is based on your opinion at the time the report was prepared.
- Establish internal documented systems and procedures to ensure consistency in how you determine place of origin. These systems should be based on scientific methodology that is thorough and comprehensive enough to support your origin determination and produce results that can be reproduced. They should also include information on:
  - the methods and techniques used to determine the origin of coloured gemstones (for example, optical properties, inclusion features, chemical and spectral fingerprinting, etc.); and
  - the relevant reference samples or datasets used (to compare the properties of the unknown gemstone with those of samples with a known origin).
- Note that you will have to show these systems are in place during your RJC audit.
- Make sure any report on place of origin also includes the results of tests carried out to identify whether the gemstones are synthetic and/or have undergone any treatments.

## Demonstrating place of origin determination

The origin of gemstones can be understood in terms of geological setting, in a geographical location. An origin written on a gemstone report is an opinion, based on the present knowledge of a laboratory gemmologist.

Using a consensus approach to reach a conclusion is not unusual. For example, if two employees in a laboratory have slightly different views, they will typically ask a third for their opinion and go with the majority. This is nothing more than an educated guess or a consensus of educated guesses. The conclusions on place of origin for a specific stone may vary from laboratory to laboratory, or even within a single laboratory over time. Gemstone reports should distinguish between objective facts and the subjective interpretations derived from them. They should also provide an overview of the range of observations or tests that were significant in reaching their conclusions, worded in a way to show broadly how confident the laboratory is in its opinion.

Reports should clearly describe the conclusions on place of origin as *opinion* and briefly explain the nature of the observations and analyses on which their conclusions are based, where possible including relevant photomicrographs, analyses or statistical information.

Source:

- The Gemmological Association of Great Britain (Gem-A), Investigating the Opinion of Laboratory Reports and Geographic Origin of Gemstones  
<https://gem-a.com/news-publications/media-centre/news-blogs/journal-digests/journal/laboratory-reports-and-geographic-origin-of-gemstones>

### COP 30.4: Purpose of appraisal report

Members that generate independent reports for end consumers with an opinion on monetary value 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:

- Reports with opinion on the monetary value of jewellery items are commonly called appraisal reports by industry (though some trade members may use the term 'appraisal' to mean an assessment of the quality or condition of the item). Be clear whether your report includes an opinion on monetary value or not.
- If you generate independent appraisal (or valuation) reports for end consumers, include the name of the consumer to whom the report is given and a statement of the purpose of the appraisal or valuation.
- If you generate independent reports, or gemmological laboratory reports, you do not have to disclose your client's name.
- Make sure every report is signed by the appraiser.

### COP 30.5: Disclosure of any vested interest

Members that offer directly to end consumers diamond grading reports, coloured gemstone analysis and/or place of origin reports, or appraisal reports that might reasonably be construed to be independent shall disclose any relevant vested interests held by the grader, analyst or appraiser in the sale of the jewellery product.

#### Points to consider:

- This provision applies to circumstances where consumers are offered a diamond grading report, coloured gemstone analysis report or appraisal report as part of the sale of a jewellery product.
- Establish policies and procedures to ensure proper disclosure of vested interests in the relevant report.
- You will have a vested interest in a product if the content of your report gives you any opportunity for direct or indirect commercial or financial gain. For example, if you have generated the report rather than an independent third party, you must disclose this to the end consumer.

### COP 30.6: Misleading consumers

Members shall not mislead end consumers.

## Points to consider:

- Members engaged in selling diamonds, coloured gemstones, synthetic diamonds/coloured gemstones, gold, silver 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, for example by ensuring that the member's name is printed on the appraisal documentation.
- If you use independent appraisal reports when selling any material in RJC scope:
  - Put systems in place to ensure you comply with applicable law on misleading representations and deceptive marketing practices.
  - If the sale price is less than the independent appraisal, explain the reason for the difference to your consumer, in writing, in the sales documentation.
- Any reference made to the possible future value of stones in appraisal reports must clearly emphasise the uncertainty associated with such estimates and also include the actual valuation based on current market conditions.
- When preparing an appraisal report on monetary value, if appropriate, include the trading area or geographic region to which the value assigned applies.

## Check:

- If you generate independent diamond grading reports, or coloured gemstone analysis, treatment or place of origin reports, do you include an explanation of whether or not the assessment includes the detection of synthetics and/or treatments?
- If you generate independent reports with opinion on monetary value 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, coloured gemstone analysis 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.
- If you generate place of origin reports for coloured gemstones, do you have a system to ensure consistency in how this is determined?

## E FURTHER INFORMATION

### Websites:

The Appraisal Foundation  
[www.appraisalfoundation.org](http://www.appraisalfoundation.org)

European Commission, Misleading and Comparative Advertising Directive  
[https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/misleading-and-comparative-advertising-directive_en)

Government of Canada, Competition Bureau Canada  
[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home)

International Society of Appraisers (ISA)  
[www.isa-appraisers.org](http://www.isa-appraisers.org)

International Valuation Standards Council  
[www.ivsc.org](http://www.ivsc.org)

Jewelers of America [US]  
[www.jewelers.org](http://www.jewelers.org)

### Publications:

The Appraisal Foundation, 2016–2017 Uniform Standards of Professional Appraisal Practice (2016)  
[www.appraisertom.com/2016-17-eUSPAP+\(Final\)-bookmarks-retail.pdf](http://www.appraisertom.com/2016-17-eUSPAP+(Final)-bookmarks-retail.pdf)

CIBJO, Blue Books  
[www.cibjo.org/introduction-to-the-blue-books/](http://www.cibjo.org/introduction-to-the-blue-books/)

FTC, Guides for the Jewelry, Precious Metals, and Pewter Industries (2018)  
[www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=b1f571384aeb1aa8d885e767f121227&ty=HTML&h=L&mc=true&r=PART&n=pt16.1.23](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=b1f571384aeb1aa8d885e767f121227&ty=HTML&h=L&mc=true&r=PART&n=pt16.1.23)

# RESPONSIBLE MINING



# (COP 31) EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members in the mining sector.

The Extractive Industries Transparency Initiative (EITI) is the global standard to promote the open and accountable management of oil, gas and mineral resources.

Source:

- Extractive Industries Transparency Initiative  
<https://eiti.org>

## B ISSUE BACKGROUND

A country's natural resources, including metals and minerals, ultimately belong to its citizens. Mining companies that extract these resources pay revenues in the form of taxes, royalties, signature bonuses and various other payments. It is up to governments to ensure that these revenues benefit their citizens and lead to economic growth and social development. Poor governance can undermine this process and lead to corruption and conflict.

More openness and public scrutiny of how resource revenues are used and managed can help improve transparency and accountability in the extractives sector and ensure that natural resources benefit all. It is on this understanding that the Extractive Industries Transparency Initiative (EITI) was built. A multi-stakeholder initiative comprising governments, companies, civil society groups, investors and international organisations, the EITI sets a global standard for companies to publish what they pay to governments and for governments to disclose what they receive.

The basic concept is straightforward: in every EITI implementing country, mining companies declare 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 government's own separate declaration of the revenues it received. This two-pronged process of independent validation is the strength of the EITI, and makes its findings more reliable than one-sided reporting of company data or government data alone.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

The EITI (<https://eiti.org>) aims to promote the open and accountable management of oil, gas and mineral resources through revenue disclosure. The initiative was first announced at the World Summit on Sustainable Development in Johannesburg, September 2002. In 2008, a method for implementing it was agreed and in 2013 the current EITI standard, which is based on a three-step process, emerged (see Figure 31.1).



Figure 31.1. Implementing the EITI standard follows a three-step process

Last updated in 2016, the EITI is a voluntary initiative implemented by countries whose governments sign up to do so. Today, there are around 51 EITI implementing countries.<sup>1</sup> To become EITI compliant, countries must start an EITI validation within 18 months of joining the initiative, and then continue to be validated at least every three years.

While it is up to governments to implement the EITI, mining businesses can formally support the initiative by becoming an EITI supporting company. This involves publicly declaring their support for the EITI Principles,<sup>2</sup> submitting the EITI Supporting Company Form,<sup>3</sup> making an annual financial contribution to the EITI’s international management<sup>4</sup> and living up to a set of expectations for promoting the EITI nationally and globally.<sup>5</sup>

Beyond the EITI, transparency of mineral revenues is also addressed in the **Global Reporting Initiative (GRI) G4 Sustainability Reporting Guidelines** (<https://www2.globalreporting.org/standards/g4/Pages/default.aspx>), which require disclosure on payments to government (see COP 3 **Reporting**).

## D IMPLEMENTATION GUIDANCE

### COP 31.1: Supporting transparency in EITI countries

**Members in the mining sector shall support the implementation of the Extractive Industries Transparency Initiative (EITI) in EITI implementing countries.**

#### Points to consider:

- Find out if any of your operations are in EITI implementing countries (see <https://eiti.org/countries>).
- Establish a policy or management system for fulfilling the requirements of COP 31 and make it publicly available, for example through your company website.
- Make a senior manager responsible for implementing the policy.

1 EITI, Implementation Status <https://eiti.org/countries>

2 EITI, The EITI Principles <https://eiti.org/document/eiti-principles>

3 EITI, EITI Supporting Company Form <https://eiti.org/files/document/eiti-supporting-company-form>

4 Note that members of the International Council on Mining and Metals (ICMM) engage and support the EITI through ICMM.

5 EITI, Expectations for EITI Supporting Countries (2018) <https://eiti.org/document/expectations-for-eiti-supporting-companies>

- Make sure that all staff involved with external affairs, political risk analysis, public reporting and government revenues both understand their roles and responsibilities in implementing the policy, and are suitably equipped for the task. This includes providing staff with:
  - tailored training on key topics; and
  - regular communication on how the country is implementing the EITI.
- For every business or operation that you have in an EITI implementing country:
  - Make a senior manager responsible for disclosing payments to governments and co-operating with the EITI validation process. This will be your lead contact for the EITI at the country level.
  - Disclose all material payments in the form of taxes, royalties, signature bonuses or any other payment or benefit to governments. Adhere to any applicable reporting templates and country workplans and make sure the data you submit is based on company financial statements that have already been audited to international standards. (See the EITI Business Guide<sup>6</sup> for more information on EITI reporting requirements.)
  - Note that the EITI does not only 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 implementing countries.

## COP 31.2: Supporting transparency everywhere

### In all countries, members shall:

- Promote transparency throughout the mining industry, helping public debate and providing opportunities for sustainable development.
- As a guiding principle, aim to publicly disclose taxes and payments in all countries of operation. Where companies choose not to, they should state why not.
- Aim to publicly disclose beneficial owners.
- Engage in rigorous procurement processes, including due diligence in respect to partners and vendors.
- Support countries to put into practice their decisions to disclose future licences and contracts.
- Work with governments to deliver natural resources in a way that benefits societies and communities.
- Ensure that company processes are appropriate to deliver the data required for high standards of accountability.

### Points to consider:

- In every country that you operate, you should implement the requirements of COP31.2 in ways appropriate to your operation and the host country.
- These requirements are directly aligned with the expectations for EITI supporting companies (<https://eiti.org/document/expectations-for-eiti-supporting-companies>) and focus on supporting the mining industry's contribution to sustainable development and transparency. Specifically, they call on companies to:
  - Publicly declare support for the principles articulated in the EITI Principles and encourage public debate and awareness building.
  - Aim to publicly disclose taxes and payments on an annual basis. This can be done in a stand-alone report or as part of your annual reporting (see COP 3 **Reporting**). Either way, it should align with GRI requirements to disclose specific taxes (including corporate, income, property) and related penalties paid locally, nationally and internationally. If you cannot disclose all payments in your countries of operation, make sure you explain why.
  - Take steps to identify the beneficial owners of your direct business partners (including joint ventures and contractors) in alignment with COP 12 (**Know Your Counterparty: money laundering and finance of terrorism**). Aim to publicly disclose this information unless doing so goes against applicable law. If you are a listed company, remember to adhere to applicable regulations and listing requirements.
  - Make sure you have the processes in place for documenting the above information.
- Consider becoming an EITI supporting company. The benefits of doing so centre on mitigating political and reputational risks: transparent payments can help prevent conflict around mining activities and demonstrate the contribution that mining investment makes to a country. They can also lead to enhanced relations with stakeholders and local communities and better-informed discussions about the role of mining.

## Check:

- Are you applying the principles, approaches and actions articulated in the expectations for EITI supporting companies?
- Have you made a senior manager responsible for supporting the EITI and have you assigned lead contacts at the country level in EITI implementing countries?
- 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

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### Websites:

Extractive Industries Transparency Initiative (EITI)

[www.eiti.org](http://www.eiti.org)

Global Reporting Initiative (GRI), G4 Sustainability Reporting Guidelines

<https://www2.globalreporting.org/standards/g4/Pages/default.aspx>

Publish What You Pay

[www.publishwhatyoupay.org](http://www.publishwhatyoupay.org)

Transparency International

[www.transparency.org](http://www.transparency.org)

### Publications:

EITI, Advancing the EITI in the Mining Sector (2009)

[www.eiti.org/document/mining](http://www.eiti.org/document/mining)

EITI, Business Guide: How Companies Can Support Implementation (2013)

<https://eiti.org/sites/default/files/documents/business-guide-may-2013.pdf>

EITI, The EITI Standard 2016 (2016)

[https://eiti.org/sites/default/files/documents/the\\_eiti\\_standard\\_2016\\_-\\_english.pdf](https://eiti.org/sites/default/files/documents/the_eiti_standard_2016_-_english.pdf)

EITI, Expectations for EITI Supporting Companies (2018)

<https://eiti.org/document/expectations-for-eiti-supporting-companies>

International Council on Mining and Metals, EITI

[www.icmm.com/en-gb/society-and-the-economy/governance-and-transparency/eiti](http://www.icmm.com/en-gb/society-and-the-economy/governance-and-transparency/eiti)

International Monetary Fund, Code of Good Practices on Fiscal Transparency (2007)

[www.imf.org/external/np/pp/2007/eng/051507c.pdf](http://www.imf.org/external/np/pp/2007/eng/051507c.pdf)

# (COP 32) STAKEHOLDER ENGAGEMENT

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members in the mining sector.

**Active communication** means using appropriate methods and frequency for relaying information that enable the receptor to effectively understand and act on the information..

A **community** is a group of people that share the same geographical space or have a common interest that brings them together. Community members generally share some beliefs and values. For the purposes of this guidance, a community is any group of people that may experience positive or negative effects from an RJC member's operations.

**Community development** is a way of working, underpinned by a commitment to equity, social justice, participation and empowerment, that enables people to identify common concerns and that supports them in taking action related to them.

The **mining lifecycle** is the series of phases over the course of a mining project, going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

A **stakeholder** is a person who can affect, or be affected by, the outcome of a mining project. Stakeholders can be individuals, interest groups, government agencies or corporate organisations. They may include community groups, politicians, commercial and industrial enterprises, labour unions, academics, religious groups, national or international social and environmental groups, public sector agencies and the media.

**Stakeholder and community engagement** is a two-way process of information sharing and decision-making that aims to simultaneously address stakeholder issues and priorities (including the needs of disadvantaged and vulnerable groups) as well as the concerns and needs of the business. It is carried out in a manner that is inclusive and culturally sensitive: beyond listening, the aim of engagement is to ensure mutual understanding and responsiveness by all parties to enable them to discuss and manage matters with the potential to affect all concerned. Successful engagement requires a robust framework for regular discussion, consultation and interaction.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Source:

- International Council on Mining and Metals (ICMM), Community Development Toolkit (2012) [www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf](http://www.icmm.com/website/publications/pdfs/social-and-economic-development/4080.pdf)

## B ISSUE BACKGROUND

Effective stakeholder engagement is crucial to securing a 'social licence to operate' and ensuring sustainable, positive development in project-impacted areas. From governments to industry to civil society, a broad range of stakeholders expect to be able to participate in a dialogue about the risks, impacts and benefits of mining. And the potential benefits of successfully engaging these groups are high. They can include greater awareness and trust, reduced negotiating time, a better corporate risk profile, improved security, secure rights and rule of law, protection of mining investments, and potentially access to capital on more favourable terms.

In this way, investment in stakeholder engagement and community development can be viewed through the lens of risk and opportunity. But it is increasingly better viewed as a means of creating 'shared value' by aligning business goals and competencies with the concerns and development priorities of local stakeholders and communities.

Either way, stakeholder engagement is not about public relations or marketing, but about including key stakeholders and keeping local communities informed and involved, ultimately giving them an effective voice in the decisions that affect them.

From information sharing and consultation to active involvement in decision-making processes, stakeholder engagement covers various participation options across a continuum of increasing involvement (see Figure 32.1).

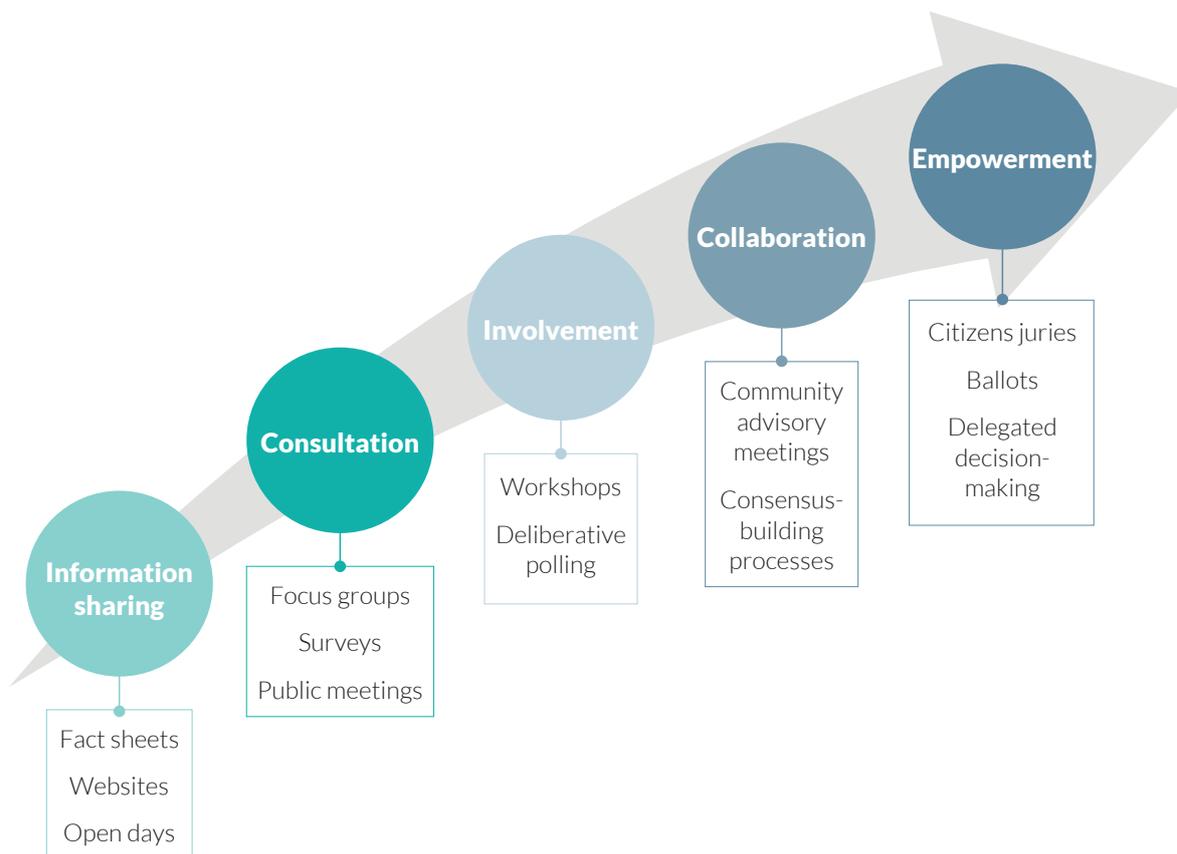


Figure 32.1. Continuum of stakeholder engagement

Multiple approaches can be taken as part of the overall stakeholder engagement. To be effective, the combination of approaches must be inclusive and respectful and allow for the consideration of communities and other stakeholders' interests and objectives throughout the full mining lifecycle (see box 'Effective engagement'). These should be used both to inform and shape the mining project decisions that might affect stakeholders (such as those related to water use or land-use changes) as well as for creating community development benefits (for example, through local procurement).

### Effective engagement

An effective stakeholder engagement process:

- is clearly scoped, influential and connected to decision-making;
- is simple, accessible and open;
- is inclusive, respectful and values the contributions of all;
- is informative, educational and contributes to continuous improvement;
- has clear and reasonable timeframes;
- builds relationships, collaboration and trust;
- provides feedback and accountability; and
- is regularly reviewed and evaluated.

Source:

- Next Generation, How Stakeholder Engagement Improves Community Development Projects and Programmes

Stakeholder engagement can be a complex and challenging exercise, depending on the diversity of stakeholders and extent of conflicting perspectives. It works best between parties with an established relationship based on trust and mutual respect. For an exploration or mining company, the process of building those relationships needs to begin long before construction of a mine starts. That makes having the systems and processes in place for early engagement—including things like stakeholder mapping, dedicated staff and regular review—a priority. Once positive relationships are formed, they need to be nurtured and maintained to minimise misunderstandings and ensure continued inclusiveness as new stakeholders emerge.

An effective, rights-compatible complaints and grievance mechanism is an essential tool in any company's approach to ongoing stakeholder engagement. Such a mechanism provides 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 for human rights. Having a good complaint and grievance mechanism can help stop disputes from escalating and facilitate a quicker resolution to problems. By enabling learning and enhancing relationships, it can also help prevent new disputes from emerging.

To work effectively, an operational level complaints and grievance mechanism should encourage early resolution of issues at the local level wherever possible. The RJC COP requirements apply to mechanisms that a company can credibly establish, ideally in co-operation with key stakeholders.<sup>1</sup> This kind of complaints and grievance mechanism should not stop stakeholders from being able to access other mechanisms, including 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. Rather, a company mechanism exists within a wider understanding of these vehicles for raising, resolving and remedying disputes.

For new mining projects or significant activities, stakeholder engagement is required in order to seek broad community support (for example, an agreement between the company and community, or expressions of support during community dialogue). Most communities are complex and dynamic, and broad community support may exist even if some individuals or groups object to the mining project.

If a company fails to obtain broad support, it can decide not to proceed with developments or exploration even if this is legally permitted. Where projects affect indigenous peoples, see COP 33 **Indigenous peoples and free, prior and informed consent**.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

In 2012, the International Council on Mining and Metals (ICMM) launched an updated **Community Development Toolkit**.<sup>2</sup> The toolkit includes 20 tools aimed at fostering constructive relationships among communities, companies and governments. The ICMM **Mining: Partnerships for Development Toolkit**<sup>3</sup> provides another resource for national and regional partners to systematically and objectively quantify and agree ways to enhance mining's economic and social contribution.

The Prospectors and Developers Association of Canada's (PDAC's) **e3Plus: A Framework for Responsible Exploration**<sup>4</sup> is designed to support exploration companies in continuously improving their social, environmental and health and safety performance. The framework includes guidance on community engagement and an accompanying toolkit that aims to reduce the risk of conflict at the community level.

**The International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, which includes guidance on community and stakeholder engagement. This covers a broad scope of topics such as stakeholder analysis and engagement planning, disclosure of information, consultation, informed consultation and participation, private sector responsibilities under government-led stakeholder engagement, external communications and grievance mechanisms, as well as ongoing reporting to affected communities.

The IFC Performance Standards are embedded in the **Equator Principles** (<http://equator-principles.com>); see COP 24 **Environmental management** for more information.

The **UN Guiding Principles on Business and Human Rights**<sup>5</sup> are the primary reference for the private sector's responsibility to respect human rights and include effectiveness criteria for rights-compatible grievance mechanisms (see COP 6 **Human rights**).

### National law

Stakeholder engagement is in most cases a voluntary but essential business activity and an accepted element of good industry practice. Some countries may have regulatory requirements around engaging with project-affected people and disclosing project documentation to stakeholders as part of development approvals for new or expanding industrial projects and for closure planning.

RJC members are expected to be aware of applicable law in all jurisdictions of operation.

1 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.

2 ICMM, Community Development Toolkit (2012) [www.icmm.com/en-gb/publications/mining-and-communities/community-development-toolkit](http://www.icmm.com/en-gb/publications/mining-and-communities/community-development-toolkit)

3 ICMM, Mining: Partnerships for Development Toolkit (2011) [www.icmm.com/mpd](http://www.icmm.com/mpd)

4 PDAC, e3Plus: A Framework for Responsible Exploration [www.pdac.ca/priorities/responsible-exploration/e3-plus](http://www.pdac.ca/priorities/responsible-exploration/e3-plus)

5 UN Human Rights, Guiding Principles on Business and Human Rights (2011) [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## D IMPLEMENTATION GUIDANCE

Through the mining lifecycle you will need to engage a diverse range of stakeholders for a diverse range of purposes, from risk management, procurement and emergency preparedness to community development and much more.

### COP 32.1: Affected communities

Members in the mining sector shall carry out stakeholder engagement. The engagement shall be used to identify community development priorities and support activities that contribute to lasting social and economic well-being. This includes considering the interests of affected communities in key mining decisions in the mining lifecycle and seeking broad community support for proposals.

#### Points to consider:

- Your stakeholder engagement should form the backbone of your involvement in community development programmes (see box 'Stakeholder engagement for community development'). Use it to inform how you maximise the positive social, economic and environmental impacts of your project on affected communities and avoid and minimise the negative ones.
- At certain key decision-making points in a mining lifecycle (for example, locating and designing waste sites or significantly changing infrastructure) you will need to focus your stakeholder engagement specifically on the related impacts and opportunities.

#### Stakeholder engagement for community development

A stakeholder-based approach to community development includes:

- building an understanding of the local context and stakeholder groups;
- building relationships based on trust and transparency;
- ensuring consistency in stakeholder engagement and communication;
- managing stakeholder expectations through a graduated, phased and appropriate engagement approach;
- establishing an early, accessible and responsive grievance mechanism;
- seeking 'win-win' scenarios for the company and stakeholder groups;
- avoiding and mitigating social risks; and
- maximising opportunities to create and protect value for the project and local communities.

Source:

- Next Generation, How Stakeholder Engagement Improves Community Development Projects and Programmes

- As outlined in IFC Performance Standard 1, you must carry out an informed consultation and participation process with affected communities. This is to ensure that their perspectives on the matters that affect them directly (such as your proposed mitigation measures, approach to benefit-sharing and implementation issues) are incorporated into your decision-making.
- Make local development priorities and needs part of an ongoing dialogue with affected communities (see also COP 10 **Community development**):
  - Set development priorities through community engagement rather than relying only on external assessment.
  - Develop priorities in partnership programmes to the extent possible.
  - Review development priorities regularly over the mining lifecycle as stakeholders, and their priorities and needs, will evolve over time.
- To help you gain broad-based community support for your project, you may want to:
  - Provide comprehensive information on proposed activities, including potential negative impacts and positive opportunities.
  - Help provide access to reliable independent advice.
  - Respect social values, carrying out consultations in good faith to develop mutually informed understanding of interests and activities.
  - Actively support local economic opportunity and development.

## COP 32.2: Engagement systems

**Members in the mining sector shall have systems for early and ongoing engagement with affected communities and other relevant stakeholders. These systems shall:**

- a. Draw on appropriate skills, resources and suitably experienced personnel.
- b. Apply throughout the mining lifecycle.
- c. Identify affected communities and the full diversity of relevant stakeholders including disadvantaged and vulnerable groups in relation to project risks, impacts and phase of development, and ensure these are effectively and meaningfully represented throughout the mining lifecycle.
- d. Establish effective communication channels to disseminate relevant project information and receive feedback in an inclusive, equitable, culturally appropriate and rights-compatible way.

### Points to consider:

- Make a senior management function responsible for stakeholder engagement. Draw on experienced and expert assistance to develop the necessary policies, training, strategies, plans and actions to implement effective stakeholder engagement.
- Establish your stakeholder engagement systems before you start mining.
  - Note that this does not apply retrospectively for new members and new projects, though in these cases stakeholder engagement systems should be developed immediately.
- You must consider the full range of stakeholders in your approach. This includes engaging affected communities such as employees, unions or workers' organisations, women, youth, the elderly, artisanal and small-scale miners, indigenous peoples and vulnerable groups. But it also includes engaging other relevant stakeholders such as:
  - local and national government (not just the ministry responsible for mining permits but also the ministries for environment, labour, education, development and others as appropriate);
  - other companies, industries and groups from the same landscape;
  - local, national and international civil society;
  - non-governmental organisations (NGOs);
  - the media;
  - industry associations; and
  - others.
- As outlined under COP 10 **Community development**, a first step is to undertake a mapping exercise to understand who your stakeholders are and assess current engagement and dispute resolution strategies.
  - Stakeholders change over time, so you may need to redo your mapping exercise periodically throughout the mining lifecycle.

### Plans, policies and procedures

- Outline the aims of your stakeholder engagement programme, along with the key principles to be followed, and the expectations of staff, communities and other stakeholders.
  - Consider how expectations and outcomes of stakeholder engagement approaches can be managed.
- Develop a stakeholder engagement plan and ensure that all stakeholder interactions are documented on an ongoing basis.
- Make your plan as inclusive, equitable, culturally appropriate and rights-compatible as possible (see Figure 32.2).



Figure 32.2. Four aspects of stakeholder engagement to consider when deciding which approach to take

- Make sure your engagement plan includes information disclosure and external reporting to all stakeholders as appropriate, as well as ongoing reporting to affected communities.
- If your stakeholders include indigenous peoples, think about how to embed culturally appropriate approaches into your engagement plan. Note that effective approaches will vary across stakeholders and social contexts: what works with one group may not be appropriate in another. (Also see guidance for COP 33 [Indigenous peoples and free, prior and informed consent](#)).
- Monitor the progress of your engagement plan (including approaches, grievance mechanisms, development projects and partnerships) and evaluate impacts in collaboration with key stakeholders, including disadvantaged and vulnerable groups.
- Seek to continually improve plans, policies and procedures based on evaluation outcomes.

### Skills and resources

- Good stakeholder engagement depends on having people with suitable skills and understanding to run effective programmes. Assess the resource requirements for your stakeholder and community engagement programme to ensure staff and external experts can carry out their roles effectively.
- Consider what training might be needed, for example on cultural awareness and gender, engagement processes and practices, dispute resolution and communication.
- In some cases, you may need to draw on external expertise, for example when dealing with indigenous peoples, resettlement or artisanal mining.
- You may also require extra support at different stages of the mining lifecycle, for example during an environmental and social impact assessment or during closure planning.
- In some situations, to ensure informed consultation, you may need to engage support organisations such as local NGOs or capacity-building groups to help affected communities understand their rights.

## Small mining companies and exploration

Stakeholder engagement (and community development) can be a challenge for smaller mining companies, particularly those involved in exploration and development. But it remains critical: poor engagement can lead to early miscommunications or inappropriate activities or commitments, which can result in confusion, unrealistic expectations and possible conflict later on. These circumstances create unnecessary costs for all stakeholders.

If you are a small company then, before starting field activities take care to gather relevant information about local conditions and make sure your project team has the information, direction and capacity to engage effectively with local communities and other stakeholders.

The PDAC's guide to community engagement is designed for explorers and offers good guidance for small companies on how to build strong and positive company–community relationships at the site level:

PDAC, *First Engagement: A Field Guide for Explorers* (2015)

[www.pdac.ca/priorities/responsible-exploration/e3-plus/community-engagement-guide/introduction](http://www.pdac.ca/priorities/responsible-exploration/e3-plus/community-engagement-guide/introduction)

### COP 32.3: Access to rights-compatible complaints and grievance mechanisms

Members in the mining sector shall ensure that affected communities have access to a rights-compatible complaints and grievance mechanism at the operational level for raising and resolving disputes, and shall actively communicate its availability to affected communities. The grievance mechanism shall be easily accessible, easily understood and transparent. Grievances shall be addressed within clear timelines, and records shall be kept of grievances raised, investigation processes completed and outcomes.

#### Points to consider:

- Your grievance mechanism should be the same one as (or closely aligned with) the one used to meet RJC requirements for COP 6 **Human rights** and COP 7 **Due diligence for responsible sourcing from conflict-affected and high-risk areas**. All the points to consider under COP 7 (about accessibility, transparency, record-keeping and time-bound actions) apply here.
  - Note that your grievance mechanism for external stakeholders is not the same as your internal procedures for workers to raise grievances, which may require a different approach not least because employee information may only be legally accessed by human resources (see COP 18 **Harassment, discipline, grievance procedures and non-retaliation**).
- Wherever possible, establish a complaints and grievance mechanism before any disputes arise, not in reaction to their occurrence.
- Ensure that grievances can be received through appropriate context-relevant channels (by telephone, email, face-to-face, via community representatives, etc.):
  - If they are received by other departments or project personnel, ensure they are passed to the relevant person or team to enable them to be addressed.
- When designing your grievance mechanism:
  - Consider using an external service provider to manage your grievance mechanism so that complaints can be presented to you anonymously. This may help encourage concerns to be raised by legitimate stakeholders who may otherwise remain silent in some circumstances.
  - You may need to consider funding for additional resources required when handling some grievances, for example to address gender issues or to enable access to independent advice or mediation.
- Analyse the frequency, patterns and causes of complaints and grievances frequently to identify where and how your policies, procedures or practices can be improved.
- Relationships between mine sites and stakeholders endure after a mine changes ownership and when a mine closes down. Make the continuation of a complaints and grievance mechanism an integral part of both handover planning and closure planning.

## Check:

- Do you have a comprehensive system for early and ongoing stakeholder engagement, including clear lines of 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, impacts and opportunities?
- Are effective engagement 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 key mining decisions?
- Is a rights-compatible complaints and grievance mechanism in place for all operations, are stakeholders aware of how to use it and how it works, and are appropriate records kept?

## E FURTHER INFORMATION

### Websites:

AccountAbility  
[www.accountability.org](http://www.accountability.org)

Anglo American, Community Engagement  
[www.angloamerican.com/development/social/community-engagement/engagement](http://www.angloamerican.com/development/social/community-engagement/engagement)

Anglo American, Speak Up Program—Independent Grievance Mechanism  
[www.anglospeakup.com](http://www.anglospeakup.com)

International Association of Public Participation (IAP2)  
[www.iap2.org](http://www.iap2.org)

PDAC, e3 Plus: A Framework for Responsible Exploration  
[www.pdac.ca/e3plus](http://www.pdac.ca/e3plus)

World Bank, Community Driven Development  
[web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html)

### Publications:

AccountAbility, AA1000 Stakeholder Engagement Standard (AA1000SES)(2015)  
[www.accountability.org/standards](http://www.accountability.org/standards)

Association for Mineral Exploration British Columbia, Mineral Exploration, Mining and Aboriginal Community Engagement [Canada] (2005)  
[https://cdn2.hubspot.net/hub/374848/file-1693652040-pdf/ACE\\_Guidebook\\_2006.pdf](https://cdn2.hubspot.net/hub/374848/file-1693652040-pdf/ACE_Guidebook_2006.pdf)

Australian Government, Community Engagement and Development (2006)  
<https://archive.industry.gov.au/resource/Programs/LPSD/Pages/LPSDhandbooks.aspx>

Australian Government, Working with Indigenous Communities (2007)  
<https://archive.industry.gov.au/resource/Programs/LPSD/Pages/LPSDhandbooks.aspx>

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](http://www.focal.ca/pdf/indigenous_FOCAL_sustainable%20communities%20mining%20indigenous%20governance_March%202008.pdf)

Harvard University, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders (2008)  
[www.unglobalcompact.org/library/57](http://www.unglobalcompact.org/library/57)

ICMM, Community Development Toolkit (2012)  
[www.icmm.com/en-gb/publications/mining-and-communities/community-development-toolkit](http://www.icmm.com/en-gb/publications/mining-and-communities/community-development-toolkit)

ICMM, Human Rights in the Mining and Metals Industry: Handling and Resolving Local Level Concerns and Grievances (2009)  
[www.icmm.com/en-gb/publications/mining-and-communities/handling-and-resolving-local-level-concerns-and-grievances](http://www.icmm.com/en-gb/publications/mining-and-communities/handling-and-resolving-local-level-concerns-and-grievances)

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# (COP 33) INDIGENOUS PEOPLES AND FREE, PRIOR AND INFORMED CONSENT

## A DEFINITIONS AND APPLICABILITY

This provision applies to all members in the mining sector working in regions where indigenous peoples are present.

There is no universally accepted definition of **free, prior and informed consent (FPIC)**. Within the COP, FPIC refers to a set of mutual engagement processes between RJC members and indigenous peoples that are culturally appropriate, are established through good faith negotiation and go beyond consultation to include clear agreement by affected indigenous peoples. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree. Through these processes, indigenous peoples are:

- able to freely make decisions without coercion, intimidation or manipulation;
- given enough time to be involved in project decision-making before key decisions are made and impacts occur; and
- fully informed about the project and its potential impacts and benefits.

**Good faith negotiation** is a documented process (and resulting outcomes) of negotiation, in which all parties:

- are willing to engage in the process and can meet at reasonable times and frequency;
- use mutually acceptable procedures for negotiation;
- know enough about the situation for informed negotiation;
- explore key issues of importance;
- are willing to change their initial position and modify offers where possible; and
- are given enough time to make decisions.

There is no universally accepted definition of **indigenous peoples**. The term is used in this guidance to refer to a distinct social and cultural group of people who, to varying degrees:

- identify themselves as members of a distinct indigenous cultural group and are recognised as such by others;
- are collectively attached to geographically distinct habitats or ancestral territories within the mining project area and to the natural resources in these habitats and territories;
- have customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture;
- share a distinct language or dialect that often differs from the official languages of the country or region in which they live; and
- may or may not be recognised by law.

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

Sources:

- International Council on Mining and Minerals (ICMM), Indigenous Peoples and Mining Position Statement (2013) [www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement](http://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement)
- International Finance Corporation (IFC), Performance Standard 7: Indigenous Peoples (2012) [www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps7](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7)

## B ISSUE BACKGROUND

Indigenous peoples, also called ‘aboriginal peoples’, ‘minority nationalities’, ‘first peoples’ and ‘tribal populations’, can be found all over the world. The International Labour Organization (ILO) estimates that these peoples make up five per cent of the world’s population, or nearly 370 million people, spread across more than 70 countries.<sup>1</sup> With no universally accepted definition, they are not always easy to identify, but they are generally understood to be communities whose members share a distinct cultural identity from the rest of the country and who descend from a region’s original inhabitants or have historically occupied certain regions.

Many indigenous peoples’ cultures and identities are inextricably linked to the lands on which they live and the natural resources on which they depend. This means that mining projects that impact lands, forests, water, wildlife and other natural resources on or near indigenous territories not only threaten these peoples’ livelihoods and economic development, they can also affect their institutions and their ability to maintain and develop their identities and cultures (see Table 33.1).

The International Council on Mining and Metals (ICMM) suggests that indigenous peoples are likely to be affected by mining projects if they:

- have, or claim, some form of legally recognised ownership or control over the project’s land or resources;
- are customary owners of the project’s land or resources (but are not legally recognised as such);
- live on or use the project’s land or resources;
- attach cultural, traditional or spiritual significance to sites, objects, resources or landscapes within the project area; or
- live in communities whose social, economic and physical environment are or will be affected by the project (including, for example, river-dependent communities).

Engagement and negotiation between mining companies and affected communities is an important vehicle for understanding indigenous peoples’ development aspirations, shaping positive contributions to their community and social development, and mitigating negative impacts.

Table 33.1. Potential negative and positive impacts of mining projects on indigenous peoples

Negative impacts	Positive impacts
Physical or economic displacement and resettlement.	Improved infrastructure and services (for example, access to clean water, sanitation, power, roads).
Loss of traditional livelihoods through lost access to land or damage to natural resources.	More effective health services, delivery and preventive measures (for example, spraying for malaria).
Destruction of, or damage to, culturally or spiritually significant sites and landscapes.	More support for education and better resources and facilities.
Social dislocation and erosion of cultural values through rapid economic and social change.	Enhanced employment and business opportunities in mining and ancillary industries.
Social conflicts over the distribution and value of mining-related benefits (for example royalties or jobs).	Increased income from royalty streams and compensation payments.
Increased risk of exposure to diseases, mental health disorders, accidents and injuries, and nutritional disorders.	Better living standards because of more wealth.
Further marginalisation of some groups, such as women.	Finance and resources to support community development, livelihood and cultural heritage conservation.
Increased competition and social tensions arising from large-scale, uncontrolled in-migration.	Environmental restoration and protection (for example, through reforestation or improved fire management).

Source: ICMM, Good Practice Guide: Indigenous Peoples and Mining (2015)

[www.icmm.com/website/publications/pdfs/social-and-economic-development/9520.pdf](http://www.icmm.com/website/publications/pdfs/social-and-economic-development/9520.pdf)

1 ILO, Indigenous and Tribal Peoples [www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm](http://www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm)

Mining projects depend on the broad support of communities—including indigenous peoples—to avoid conflict and minimise social, financial and reputational risk. In practice, such support is gained through a process of informed consultation and participation that fosters relationships, enables agreement and action on development projects and supports regular joint progress reviews.

Interactions between mining companies and indigenous peoples should occur in the context of broader stakeholder engagement (see COP 32 [Stakeholder engagement](#)) but should give special attention to the particular histories, capacities, priorities and interests of indigenous peoples. That includes recognising broad-based or collective decision-making processes used by indigenous peoples and documenting formal agreements in the form of written agreements or other types of records that are recognised by the appointed leaders, spokesperson or representatives of the community.

In some circumstances, and in line with best practices, there is an expectation among governments, investors and civil society that mining companies get the free, prior and informed consent (FPIC) of affected indigenous peoples before proceeding with a mining project (see Figure 33.1).

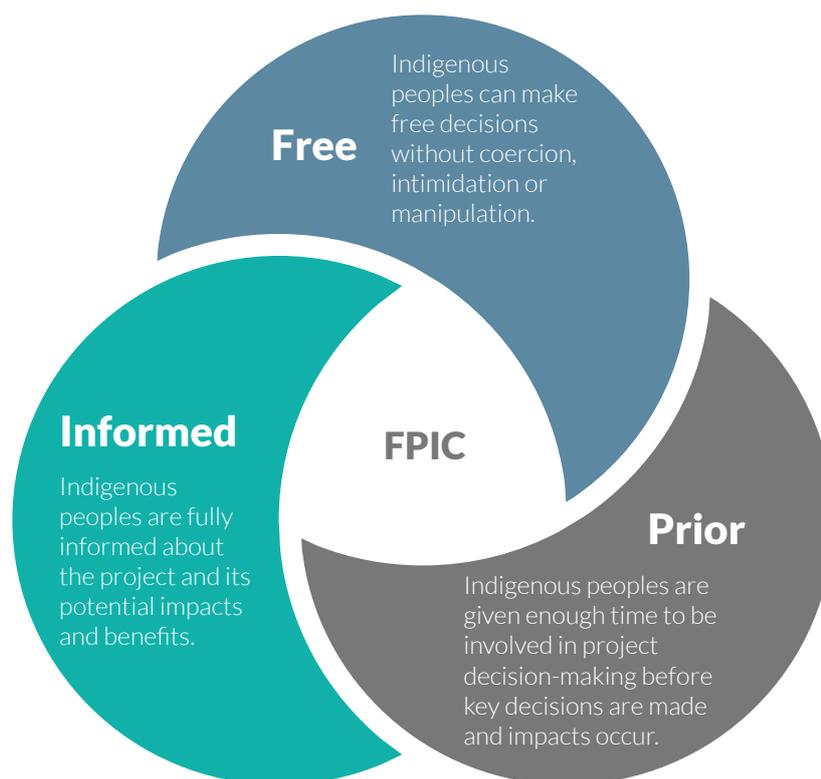


Figure 33.1. Fundamental characteristics of FPIC

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

The rights of indigenous peoples are protected under both national and international law, which together establish responsibilities for states. At the same time, private companies are increasingly expected to conduct their affairs in a way that upholds these rights.

### International instruments

Two landmark, mutually reinforcing, international instruments exist to recognise and protect the rights of indigenous peoples, including their right to FPIC:

- The **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**<sup>2</sup> 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, including their rights to culture, identity, language, employment, health, education and other issues. Although the declaration is not legally binding, it remains the strongest commitment to indigenous peoples' rights made by UN states.

2 UN, UN Declaration on the Rights of Indigenous Peoples (2007) [www.un.org/esa/socdev/unpfi/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf)

- The International Labour Organization (ILO) **Indigenous and Tribal Peoples Convention 2018 (C169)**<sup>3</sup> was adopted in 1989 and has been ratified by 23 countries as of 2018. ILO C169 outlines responsibilities for governments to overcome discrimination against indigenous peoples and enable them to participate in (but not veto) decisions that affect their lives (including, for example, the development of mining projects). It covers a wide range of issues, including land rights, employment, education, health and social security, customary law and traditional institutions and consultation and participation. Many states take issue with ILO C169 because it clashes with their constitutional provisions that require all ethnic groups to be treated equally before the law. This is particularly true in African states with diverse, ethnically heterogeneous national populations. While private companies do not have any direct obligations under ILO C169, the convention has clear implications for their activities and operations.

Both the UNDRIP and ILO C169 emphasise the state's responsibility to consult indigenous peoples whenever legislative or administrative measures may affect them directly.

## Industry standards

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 7: Indigenous Peoples, which offers the private sector a detailed standard and associated guidance for minimising negative impacts on and promoting development benefits for indigenous peoples. The standard is designed to ensure that companies:
  - fully respect the human rights, dignity, aspirations and natural resource-based livelihoods of indigenous peoples;
  - anticipate and avoid (or where unavoidable, minimise and compensate for) a project's adverse impacts on indigenous peoples;
  - 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 with affected indigenous peoples throughout the mining lifecycle;
  - ensure the FPIC of affected indigenous peoples in certain circumstances (including for mining projects involving resources that are traditionally owned or under customary use, as well as projects that impact critical cultural heritage); and
  - respect and preserve the culture, knowledge and practices of indigenous peoples.

The IFC Performance Standards (and through them, FPIC) are embedded in the Equator Principles (<http://equator-principles.com>); see COP 24 **Environmental management** for more information.

The International Council on Mining and Metals (ICMM) **Indigenous Peoples and Mining Position Statement**,<sup>4</sup> adopted in 2013, commits its members to engage and get FPIC of potentially affected indigenous peoples for any new project (or any change to an existing one). The position statement sets out ICMM's understanding of FPIC as defined in Section A. To help its members fulfil their commitments under the 2013 position statement, ICMM published a good practice guide on indigenous peoples and mining.<sup>5</sup> The guide, which was updated in 2015 to specifically support FPIC requirements, highlights practical approaches to engaging indigenous peoples that can be adapted by companies and communities to fit their own context. The guide draws on case studies of both good and poor practice in areas such as participation, agreement making, managing impacts and sharing benefits, and dealing with grievances.

In 2017, the Mining Association of Canada (MAC) adopted a Towards Sustainable Mining (TSM) **Aboriginal and Community Outreach Protocol**<sup>6</sup> to detail its members' commitments. It includes four indicators: community of interest (COI) identification; effective COI engagement; COI response mechanism; and reporting.

In the energy sector, **Equitable Origin's** Indigenous Peoples' Program, with the support of ISEAL and several indigenous peoples' associations and standard-setting groups, has developed a number of resources on FPIC<sup>7</sup> including the FPIC360 Tool to monitor and verify voluntary and regulatory FPIC requirements.

## National law

The legal framework for indigenous peoples varies significantly across countries, depending on the history of colonisation, migration and conflict. Some countries may not recognise indigeneity or ethnicity as an acceptable category for making distinctions in terms of relative entitlements, but national law continues to evolve.

3 ILO, C169—Indigenous and Tribal Peoples Convention (1989) [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

4 ICMM, Indigenous Peoples and Mining Position Statement (2013) [www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement](http://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement)

5 ICMM, Good Practice Guide: Indigenous Peoples and Mining (2015) [www.icmm.com/website/publications/pdfs/social-and-economic-development/9520.pdf](http://www.icmm.com/website/publications/pdfs/social-and-economic-development/9520.pdf)

6 <https://mining.ca/sites/default/files/Aboriginal%20and%20Community%20Outreach-EN%20-%20WITH%20TAILINGS%20CRITERIA.pdf>

7 Equitable Origin, Free, Prior and Informed Consent <https://www.equitableorigin.org/programs/free-prior-and-informed-consent/>

Legal requirements for consultation and FPIC similarly vary across countries. Some countries—including Australia, Canada, Papua New Guinea and Philippines—have national or state laws that govern how to involve indigenous peoples in development decisions that affect their customary rights or lands. In countries where there is no legislation on FPIC (including all of Africa), best practice dictates that companies must first negotiate the terms of the FPIC process with indigenous peoples before getting the consent itself.

RJC members are expected to maintain an understanding of, and act in accordance with, applicable law in all jurisdictions of operation.

## D IMPLEMENTATION GUIDANCE

### COP 33.1: Respect for rights of indigenous peoples

**Members in the mining sector that operate in regions where indigenous peoples are present shall respect the rights of indigenous peoples as articulated and defined in applicable local, national and international laws and their social, cultural, environmental and economic interests, including their connection with lands and waters.**

#### Points to consider:

- Give a senior manager overall responsibility for relationships with indigenous peoples; this will often be the same person responsible for your stakeholder engagement and community development programmes.
- Carefully consider the make-up of the team that develops and maintains relationships with indigenous peoples. Affected indigenous communities must know who the contact person is for all issues related to the mine's activities, and must have access to a rights-compatible grievance mechanism (see COP 32.2 [Stakeholder engagement](#)).
- Draw on experienced experts with relevant language, anthropological, cultural and social skills to help you develop policies, training, strategies, plans and actions that fully respect the rights of indigenous peoples.
- Establish a written policy and procedures to articulate your position and approach to indigenous peoples potentially affected by your business. These must cover your commitments to:

#### 1. Understand and respect rights, including to:

- respect the rights, interests, aspirations, culture and natural resource-based livelihoods of indigenous peoples;
- clearly identify and fully understand the interests and perspectives of indigenous peoples regarding a project and its potential impacts; and
- consider the influence of gender on indigenous peoples' rights and opportunities for engagement.

#### 2. Engage appropriately, including to:

- engage with and consult indigenous peoples in a fair, timely and culturally appropriate way throughout the mining lifecycle to seek broad-based support for its activities;
- get FPIC in applicable circumstances;
- consider using different approaches to engage with different indigenous peoples that may have different needs and realities; and
- monitor the progress of engagement approaches and agreements, and evaluate impacts with key stakeholders.

#### 3. Minimise adverse impacts, including to:

- jointly design projects to avoid adverse impacts on indigenous peoples, and to minimise, manage or fairly compensate for any unavoidable impacts; and
- arrange to protect cultural property or sites of religious significance for indigenous peoples.

#### 4. Deliver benefits, including to:

- negotiate partnerships or programmes that deliver development benefits to indigenous peoples;
- use affirmative action and partnerships to enable more indigenous people to work for the mine or associated businesses;
- try and build long-term partnerships with indigenous peoples to support self-empowered regional and community development (for example, through education, training, healthcare and business enterprise support); and
- support, where appropriate, governments or other institutions including civil society organisations (including NGOs) to help alleviate and resolve issues faced by indigenous peoples near mining operations.

- Support company policies and procedures with relevant training or education programmes to:
  - make sure that all staff who engage with indigenous peoples understand key principles of engagement, local issues and what is appropriate conduct; and
  - create employment opportunities for indigenous workers who might otherwise not meet usual employability criteria.
- If there are indigenous peoples in your workforce, consider whether or not all staff need cultural awareness training. The objective of such training should be to build 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 33.2: Free prior and informed consent (FPIC)

**Provision 33.2 applies to new mining facilities, or for changes to existing facilities, that are likely to have significant adverse impacts on indigenous peoples including, but not limited to, those associated with:**

- 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 indigenous peoples' identity and/or their cultures, ceremonies or spiritualities.
- Use of cultural heritage (including indigenous peoples' knowledge, innovations or practices) 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, through a process that is based on good faith negotiation and strives to be consistent with their traditional decision-making processes while respecting internationally recognised human rights.
- b. Document the mutually accepted process between the member, the affected indigenous peoples and relevant government authorities, and document the evidence of agreement between the parties and the outcome of the negotiations including compensation, if applicable.

### Points to consider:

- When engaging with indigenous peoples, check whether you need an FPIC process by reviewing the bulleted circumstances listed in COP 33.2. This provision does not apply retrospectively; it only applies to mining facilities where the bulleted circumstances arise after you joined the RJC or as a result of changes since your last verification assessment, whichever is most recent.
- Where you do need to get FPIC from indigenous groups, follow the three steps below to meet RJC expectations.

#### 1. Setting the rules

- Check whether applicable law defines a specific FPIC process for you to follow; if it does, follow it.
  - Note that governments may sometimes be responsible for managing the interests of indigenous peoples in a way that limits your company's involvement. If that is the case, work with the responsible authorities to achieve outcomes consistent with the principles of this provision.
- Where applicable law does not define a FPIC process, establish mutually agreed terms for such a process through good faith negotiation with affected communities.

#### 2. Engaging for FPIC

- In all cases, follow IFC guidance for Performance Standard 7 on Indigenous Peoples (2012) when seeking FPIC from affected indigenous peoples. In particular, make sure your approach:
  - is consistent with traditional decision-making structures;
  - involves traditional governing bodies and seeks the input of disadvantaged and vulnerable groups (exactly how you do that will vary across cultures and contexts);
  - is based on good faith negotiation, as defined in Section A; and
  - is fully documented, including the terms, activities and outcomes of engagement (see Figure 33.2).
- In cases where mining activities are likely to displace indigenous peoples—physically or economically—then your approach must also comply with COP 36 [Resettlement](#).

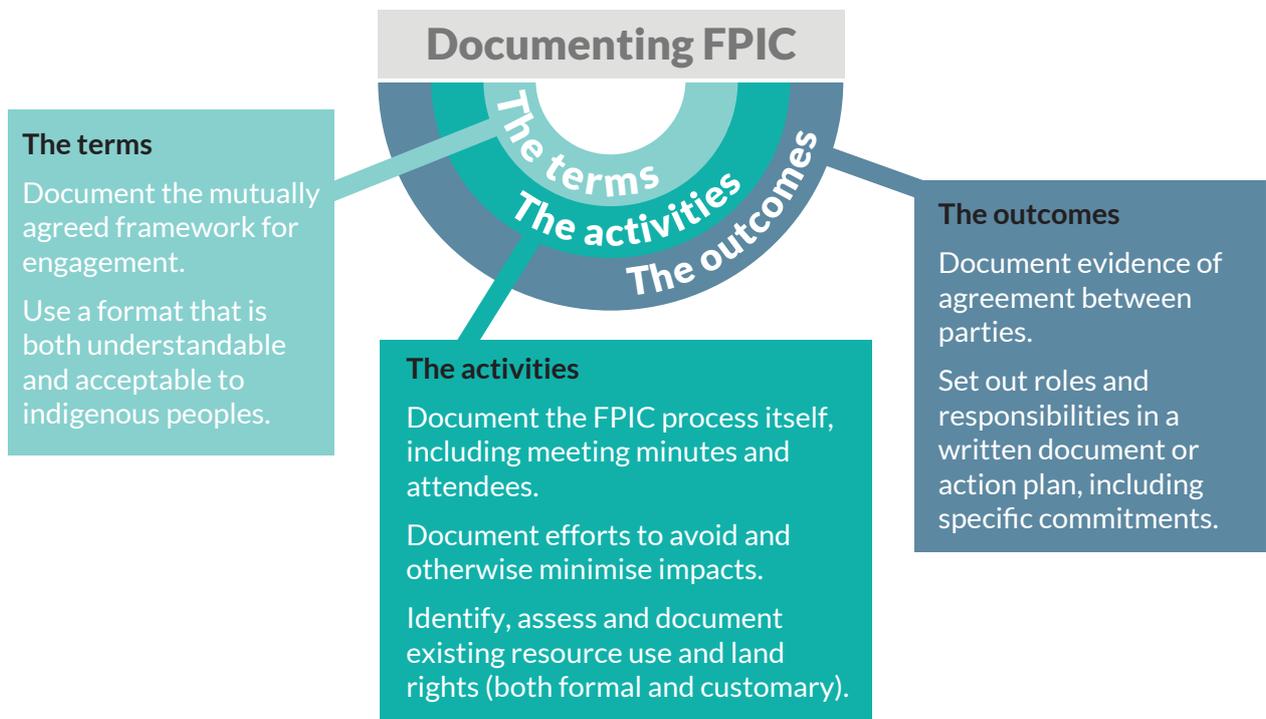


Figure 33.2. Different elements of documentation during the FPIC process

- As a process, FPIC should:
  - build on general principles for engaging affected groups (see COP 32 [Stakeholder engagement](#));
  - foster an ongoing respectful relationship based on trust that endures throughout the mining lifecycle; and
  - reflect a framework for consent that represents broad-based consent across affected groups, rather than the limited consent of a few individuals acting without the knowledge of the wider community.

### 3. Reaching agreement

- Indigenous peoples must be free to give or withhold their consent to a project.
- That means that even if you follow a legitimate process, you may not necessarily reach agreement. If consent is not forthcoming despite the best efforts of all parties, consider seeking mutually agreed third-party advice or mediation as a way of breaking the deadlock.
  - Note that in some cases where agreement cannot be reached, a government might step in and determine that a project can go ahead anyway, in which case it will usually specify the conditions under which you can proceed.
- Consent does not have to be unanimous to reach agreement: an agreement can still be reached, and FPIC can still be achieved, even if a few individuals or small groups within the community explicitly disagree.
- Once you have the community's consent to the project, document it in, for example, a memorandum of understanding, a letter of intent or a joint statement of principles to set out the agreed roles and responsibilities of both parties and list any specific commitments, which may include:
  - consent for specific project activities, impacts and mitigation measures;
  - the terms of ongoing engagement and consultation process;
  - governance arrangements;
  - strategies for managing environmental, social and cultural impacts (including land and resource management);
  - criteria for compensation, including what the compensation is and how it will be disbursed;
  - employment and contracting opportunities;
  - community development partnerships, programmes or initiatives;
  - continued access to land and natural resources; and
  - fair and equitable sharing of benefits associated with use of indigenous knowledge, land and culturally significant resources.

- The agreement should be valid for the duration of the project.
- Monitoring the actions and evolving context of the agreement is a best practice and the agreement should be flexible in adapting it as needed during the mining lifecycle.

### COP 33.3: Broad-based support

Where FPIC is found not to apply, members in the mining sector shall seek to obtain broad-based support of affected indigenous peoples before carrying out any new or expanded activities and seek to maintain it throughout the mining lifecycle. This support shall be formally documented before the project begins. The documentation shall include any compensation, partnerships and/or programmes to provide benefits and mitigate impacts.

Note that this provision applies in all cases where there are affected indigenous peoples (compared with the FPIC provision COP 33.2, which only applies under specific circumstances as noted).

#### Points to consider:

- Turn your policy and procedures into practice and use them to build broad-based support for mining operations among affected indigenous peoples.
- How you do this will vary depending on your operating context. The points below offer general guidance that may or may not be relevant to your situation.
- In most cases, building broad-based support requires a good understanding of the affected group's interests and development aspirations and a mutual trust that the mining activities will benefit, not harm, these groups. This, in practice, means ensuring robust assessment and effective engagement (see points below).
- In all cases, document the outcomes of your engagement activities as evidence of building broad-based support. In particular, document any formal agreements in the form of written impact-benefit agreements or other types of records that are recognised by the appointed leaders, spokespersons or representatives of the community.

#### Assessment

- Use qualified social scientists and other professionals to assess the potential impact of your business on indigenous peoples. This could, for example, include:
  - ethnographic and archival research;
  - participatory approaches with disadvantaged and vulnerable groups;
  - assessment of traditional institutions;
  - mapping of indigenous land use in and around proposed mining areas; and
  - review of all applicable national, regional and international laws and regulations, including customary laws and any relevant industry standards.

### Cross-check on COP requirements

The need to understand and engage affected groups, including indigenous peoples, is embedded throughout the COP.

For example, both environmental and social impact assessments (COP 34 [Impact assessment](#)) and mine closure plans (COP 42 [Mine rehabilitation and closure](#)) must include a consideration of the interests and perspectives of affected groups, including indigenous peoples. And both must be based on consultation with these groups and take their concerns into account as far as possible.

COP 32 [Stakeholder engagement](#) sets the standard for engaging affected groups in general, but also applies to indigenous groups in so far as it covers approaches to community development, engagement and operational-level grievance mechanisms. Engagement with affected indigenous peoples, wherever possible, should be done through traditional authorities within indigenous communities and with respect for traditional decision-making structures and processes.

If mining activities are likely to displace indigenous peoples—physically or economically—then COP 36 [Resettlement](#) also applies.

## Engagement

- Adhering to requirements of COP 32 **Stakeholder engagement**, establish a process for engaging indigenous peoples and make it inclusive, equitable, culturally appropriate and rights-compatible. The engagement process should be commensurate with the nature and scale of the potential adverse impacts.
- If engaging an indigenous group for the first time, or re-engaging after circumstances have changed, ensure that the engagement process is agreed from the outset; get agreement from the potentially affected group as well as all relevant government authorities.
- In all cases, when engaging affected indigenous peoples, consider how best to:
  - build your institutional capacity to identify and deal appropriately with their needs;
  - involve their representatives (for example, village elders or councils), as well as members of their communities (especially from disadvantaged and vulnerable groups);
  - provide enough time to accommodate their decision-making processes;
  - provide mechanisms to cope with any differences of opinion that may arise; and
  - where required, provide support to build community capacity for good faith negotiation.

### 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 your business on indigenous peoples?
- Do you have an engagement process that seeks to obtain broad-based support of affected indigenous peoples?
- Has this support been documented?
- Do you have programmes in place to provide benefits to indigenous peoples and mitigate impacts?
- Do you understand the conditions under which you should seek FPIC and the process that should be followed?
- Have the FPIC process and the outcomes of the negotiations, if concluded, been properly documented?

## Q&A: Indigenous peoples and FPIC

### 1. Does COP 33 apply if the communities affected are not indigenous peoples?

No. But it is not always easy to tell if a community is indigenous or not: use of the term 'indigenous' is controversial in some countries, unrecognised in others or unacknowledged in fear of discrimination. In line with best practice, RJC members are expected to apply the principles of FPIC to all groups exhibiting the commonly accepted characteristics of indigenous peoples, as outlined in Section A. If you are in any doubt as to whether a group is indigenous or not, seek the advice of competent professionals.

### 2. Does the FPIC provision apply to mines that are already operating or have already got development consent?

Not necessarily. The FPIC provision is not retrospective. It only applies to new activities and to activities that represent a significant change to existing facilities. You are, however, expected to engage affected indigenous communities throughout the mining lifecycle, in accordance with COP 32 **Stakeholder engagement** and COP 42 **Mine rehabilitation and closure**, and to respect their rights and get their broad-based support, in accordance with COP 33.1 and 33.3.

### 3. Is agreement-making, for example creating an impact-benefit agreement, a suitable FPIC process?

Yes, if it is carried out in good faith and with the informed consultation and participation of indigenous peoples. Consult the IFC guidance for more information on key principles of FPIC and how to account for varying social contexts and circumstances.

### 4. Is FPIC a right to veto?

Organisations that represent indigenous peoples, and civil society organisations (including NGOs) advocating for their rights, tend to consider FPIC as a right to veto any decision that may affect them. But many governments and companies do not share this view. The UNDRIP says that FPIC is about 'establishing consent as the objective of consultations with indigenous peoples' (rather than the end). The IFC takes a similar stance, saying that 'engagement processes should focus on achieving agreement while not conferring veto rights to individuals or sub-groups'. Neither does FPIC require unanimous support to be achieved under the IFC, as long as most of the affected groups agree.

## E FURTHER INFORMATION

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Indigenous Peoples Links (PIPLinks)

<http://int.piplinks.org>

Oxfam Australia, Free, Prior and Informed Consent

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### Publications:

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Forest Stewardship Council, FSC Guidelines for the Implementation of the Right to Free Prior Informed Consent (FPIC) (2012)

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[http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

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World Resources Institute, Development Without Conflict: The Business Case for Community Consent (2007)

[http://pdf.wri.org/development\\_without\\_conflict\\_fpic.pdf](http://pdf.wri.org/development_without_conflict_fpic.pdf)

# (COP 34) IMPACT ASSESSMENT

## A DEFINITIONS AND APPLICABILITY

**This provision applies to all RJC members in the mining sector and to mine infrastructure and related projects such as roads, rail lines, power lines and ports.** Note that this provision applies to new projects as well as any significant change to existing projects with the potential to affect local communities and the surrounding environment. Retrospective conformance is not expected.

**Impact assessment** is the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals before any major decision or commitment is made. Impact assessment is used to ensure that projects, programmes and policies are economically viable, socially equitable and environmentally sustainable.

A **landscape** is the visible features of an area of land, including physical elements such as landforms, living elements of flora and fauna, abstract elements such as lighting and weather conditions, and human elements, for example human activity or the built environment. Landscape means different things to different people. For the ecologist it may be the habitat of a certain species. For local households and communities, it may be the local forest, watershed or agricultural setting. For government agencies, it can mean an entire bioregion that crosses political boundaries and encompasses multiple watersheds, towns, villages, highways, flora, fauna, core protected areas, buffers and corridors.

**Landscape level planning**, whether done to guide conservation, sustainable land use or development, sets out to tackle issues that are not tractable at the very local scale by taking a multi-stakeholder perspective at a wider, landscape scale. It encompasses a diverse range of practices that seek to link local community-based action to the broader landscape or ecosystem, taking into consideration national and regional perspectives.

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

*Sources:*

- Forest Trends, Business and Biodiversity Offsets Programme (BBOP): Glossary (2009)  
[www.forest-trends.org/wp-content/uploads/imported/Glossary.pdf](http://www.forest-trends.org/wp-content/uploads/imported/Glossary.pdf)
- International Association for Impact Assessment (IAIA)  
[www.iaia.org](http://www.iaia.org)

## B ISSUE BACKGROUND

Impact assessments focus on the potential consequences of a project—positive and negative, intended or unintended—and are used to remove, reduce and manage the negative impacts and maximise the positive ones.

Environmental and social impacts are usually inextricably linked and communities often bear the impacts of a change in, for example, air and water quality, noise levels, biodiversity and ecosystem services, or of land take and its relationship to local livelihoods. Most companies therefore carry out a combined environmental and social impact assessment (ESIA) to simultaneously evaluate a broad range of both environmental and social risks (see figure 34.1). Some topics require more detailed assessments than others. ESIA's are often made up of multiple topic-specific impact assessments on, for example, human rights, health or biodiversity.

In all cases, the scale and detail of an impact assessment should be proportional to the project and its potential impacts. ESIA's are always required for new mining projects or significant changes to existing projects. When it's unclear whether a change to an existing project is significant or not, an initial screening analysis can help to determine whether a full ESIA is needed or not.

## Landscape level planning

Assessments that take a landscape level planning approach look at the impacts of an individual project within the context of its surrounding landscape. They consider the effects of indirect and cumulative impacts across the full mining lifecycle. They also work across different stakeholders, understanding that companies, governments and local communities all have an active role in shaping the social and environmental landscape.

Landscape level planning can help to harmonise disparate goals while balancing economic development and conservation initiatives within the same geographic area. In short, landscape level planning helps situate individual plans and land units within their larger economic, social and ecological context to create optimum solutions that maximise environmental and social benefits. Impact assessments that take a landscape level planning approach have the potential to deliver a significant net positive impact on sustainable development.

Impact assessments usually start with a scoping study, which identifies which environmental and social aspects of the project's location are relevant and will require studying. Scoping also identifies data availability and gaps, identifies what baseline studies are needed as a reference point for assessing future changes, establishes the spatial and temporal scopes for the assessment, and suggests suitable survey and research methods. Baseline studies may need to be carried out for a year or more to capture any variable, seasonal or transient characteristics of the local environment or social context.

Similarly, engaging affected communities and other stakeholders is critical and must be done over enough time for communities, companies, government officials and civil society organisations to fully understand, evaluate and discuss concerns through their own processes. Using a landscape level approach means working in an integrated way with all the parties that play a role in the landscape. Adequate timeframes can be very different for different stakeholders and are easily underestimated.

Impact assessments should take place at the earliest possible stage of a new mining-related project and should be appropriately tailored to the project. They are a key input to project design and must be done far enough in advance to be able to realistically minimise and mitigate negative impacts (in particular, to consider the mitigation options of a series of alternative designs, locations, technologies and operations).

Impacts are managed, and mitigation measures implemented, through an environmental and social management system (ESMS), which brings together all the risk-specific management plans under a single implementation framework.

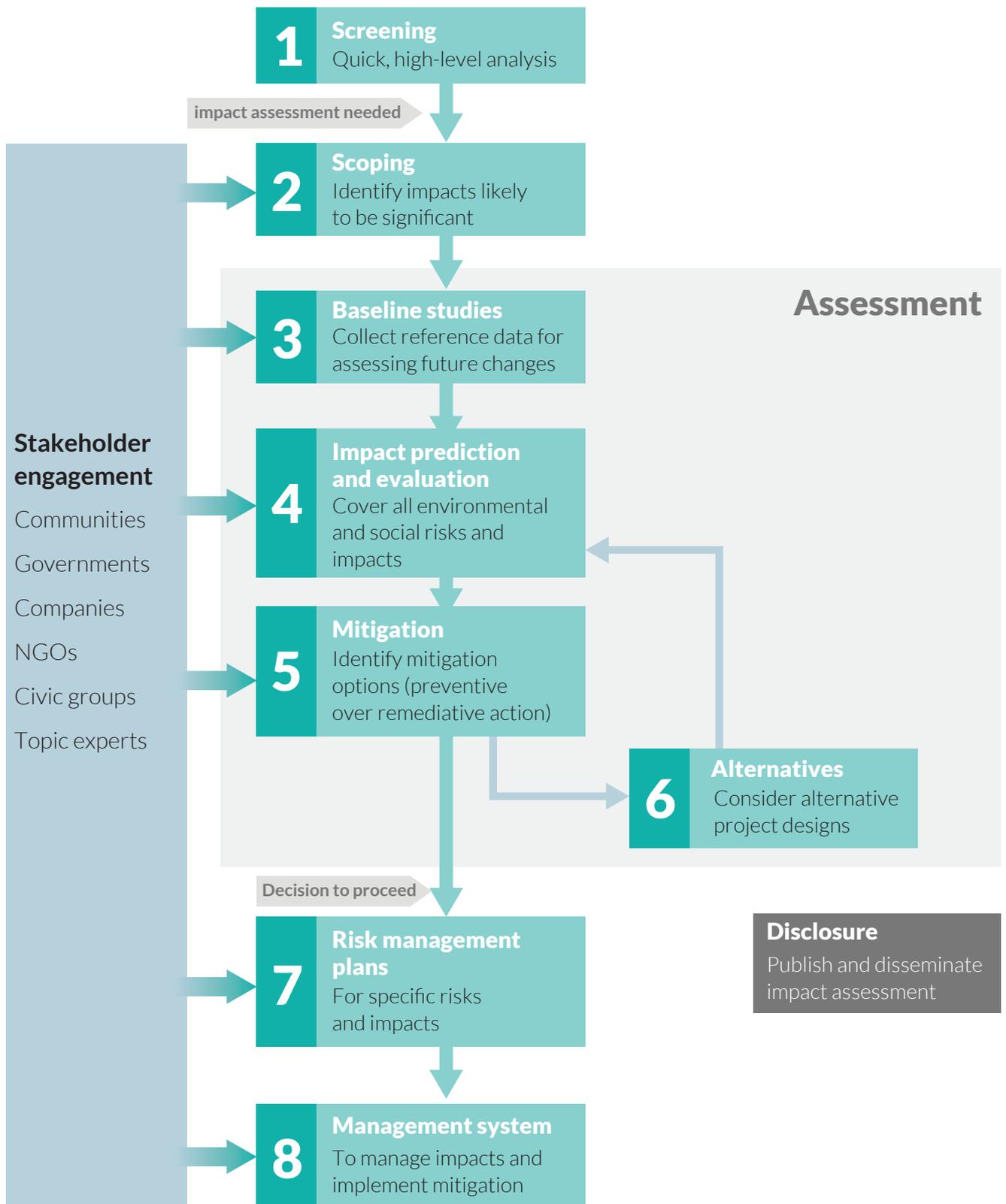


Figure 34.1. The impact assessment process

Source: IFC, A Guide to Biodiversity for the Private Sector

[www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES)

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The International Finance Corporation (IFC) Environmental and Social Performance Standards ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, which describes the requirements for a good environmental and social management system and is particularly relevant to this provision. (See guidance for COP 24 [Environmental Management](#) for more information on IFC Environmental and Social Performance Standards.)

The IFC Performance Standards are embedded in the Equator Principles (<http://equator-principles.com>); see COP 24 [Environmental management](#) for more information.

### National and local law

Most countries have national, state and/or local legislation about ESIA. To get development approval, mining projects will usually have to do a full and formal ESIA. National and international requirements can differ significantly and, in many cases, two sets of documents may be needed (including one in a local language) to fulfil project ESIA requirements.

RJC members must be aware of applicable law and regulation in all jurisdictions in which they operate.

## D IMPLEMENTATION GUIDANCE

### COP 34.1: Impact assessment and plans

**When planning and approving new mining projects or significant changes to existing projects, members in the mining sector shall complete an environmental and social (including human rights) impact assessment (ESIA), and develop an associated environmental and social management system.**

#### Points to consider:

- Establish a process to screen any new expansion, acquisition or other investment in mining facilities (including significant exploration activities) to determine if there are potential environmental and social risks and impacts that require an ESIA.
- If an ESIA is required, make sure it considers all the risks and impacts within your project's area of influence, which is defined under IFC Performance Standard 1 as being the area that is:
  - directly owned, operated or managed (including by contractors) by your company and is likely to be affected;
  - impacted from unplanned but predictable developments caused by your project that may occur later or at a different location; and/or
  - subject to impacts on biodiversity or ecosystem services upon which affected communities' livelihoods depend.
- Consider using a landscape level approach when assessing impacts, identifying the landscape in which the mining project will be situated and all the different stakeholders with an active role in shaping and using that landscape (for example, communities, government officials, civic groups and non-governmental organisations, and other companies, at local, national and international levels).
- In all cases, begin your impact assessment as early possible and make sure that it:
  - includes, where relevant, mine closure planning to account for the project's long-term impacts (see COP 42 [Mine rehabilitation and closure](#));
  - adheres to any timing and format requirements defined by applicable law or financing institutions; and
  - is carried out by appropriately qualified and experienced experts. Specialists are often needed to do 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.
- Impact assessments are the first step for developing an ESMS to manage environmental and social risks and mitigate impacts. Your ESMS must be developed and implemented before construction at the latest, which is when many of the significant impacts of a mining project first occur. It 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 programmes that address specific risks and impacts;
  - defined roles, responsibilities and authorities to implement the management system; and
  - processes for stakeholder engagement, monitoring and review, and for addressing grievances.
- Establish and implement documented action plans and procedures as part of your ESMS to ensure compliance with applicable laws, regulations and licences.
  - Make the environmental and social performance requirements of the project part of your bidding packages for construction contracts. And when evaluating bids, consider the contractors' approach to environmental and social aspects as well as technical and financial aspects.
  - Explicitly include performance requirements in contracts, with penalties for non-conformance where appropriate. Your engineering, procurement, construction and management contractor may use a special 'construction phase' ESMS during the project build to better control the activities of the many subcontractors typically involved in building a mine.

## COP 34.2: Baseline conditions, impacts and design options

**Impact assessments shall be comprehensive, appropriate to the nature and scale of the project, and shall collectively assess:**

- a. Baseline conditions.
- b. Environmental, social and human rights impacts, including but not limited to impacts on biodiversity and ecosystem services, labour and employment, gender, health and conflict. This includes cumulative and indirect impacts.
- c. Design options to avoid and minimise negative impacts where applicable.

### Points to consider:

- Your impact assessment should identify all relevant environmental and social risks and impacts. Consider using a scoping study to identify those impacts that are most relevant to your project and to establish the full scope of your ESIA (what studies to carry out, what time and expertise is needed, etc.). Note that you will need to gather both site-specific and broader background information on, for example, economic context, governance, regional water use and food security.
- In all cases, identify risks and impacts using the recent environmental and social baseline data, at a level of detail that is appropriate to the nature, scale and risks of your project. What might be appropriate for an initial exploration will be different from that required for a large-scale mining project.
- Key issues to cover in your ESIA include (see box 'Key topics for your ESIA'):
  - **Land rights:** how local communities understand their past and present rights to access land and resources is important contextual information. Many mine sites have had multiple owners before they are developed, which can lead to inconsistent engagement with communities and misunderstandings on land and resource access. An effective engagement process on this topic as part of an impact assessment can greatly help manage potential issues.
  - **Infrastructure:** consider the potential impact of any infrastructure, such as roads, power stations, ports, employee housing, etc., that may be created to support mining operations. These may in themselves require separate ESIA processes, depending on their proposed location or timing of construction. In all cases, consider potential synergies with community and regional development plans and priorities.
  - **Human rights:** human rights may need its own ESIA. Use international human rights law as your framework for this, and make sure you take into account differential impacts on men and women, boys and girls, the elderly and the vulnerable. You can assess human rights impacts as part of a broader social, environmental or combined impact assessment, or as a stand-alone assessment. If you identify risks of adverse human rights impacts, use your ESMS to outline how you will provide for or co-operate in remedy.
  - **Artisanal and small-scale mining (ASM):** ASM may need its own ESIA. If it is present on or near your proposed project site, consider the impacts you may have on ASM communities, the impacts that ASM will have on your project and how ASM might affect other identified impacts—for example, how ASM operations might affect water management (through changing water use), waste rock stability (through re-mining) or resettlement (through ASM in-migration). See COP 8 [Sourcing directly from artisanal and small-scale mining](#) and COP 35 [Artisanal and small-scale mining and large-scale mining](#) for more information.
- Where appropriate, include an analysis of alternative project designs in your assessment to identify the least damaging option. When considering mitigation options in these, follow the mitigation hierarchy that favours preventive over remediative action (see Figure 24.2 Environmental management).
- In all cases, use a participatory approach that empowers affected communities to assess risks and design and implement effective mitigation measures and potential benefits.

## Key topics for your ESIA

Some of the topics that might be particularly relevant to an ESIA for mining projects include:

- Artisanal and small-scale mining.
- Biodiversity and ecosystem services.
- Conflict.
- Economic displacement.
- Food security.
- Gender.
- Health.
- Human rights.
- Labour and employment.
- Land and customary rights.
- Livelihoods.
- Mine waste.
- Physical displacement.
- Water use.

Use a scoping study to identify which of these are likely to be significant and include them in your efforts to understand existing circumstances, collect baseline data and engage stakeholders in considering environmental and social risks and impacts.

### COP 34.3: Engagement

**Environmental and social impact assessments and management systems shall engage affected communities and stakeholders, including disadvantaged and vulnerable groups. A report on the ESIA shall be publicly disclosed in a format and language appropriate to affected communities and key stakeholders.**

#### Points to consider:

- Stakeholder engagement is an ongoing process involving stakeholder analysis, external communications, consultation and reporting (see guidance for COP 32 [Stakeholder engagement](#)). It should form a pillar of your environmental and social management system to ensure an appropriate ongoing two-way flow of information and an extra level of communication when there are any incidents or changes with potential environmental and social impacts.
- Where relevant, be sure to allocate adequate resources for working with landscape level partners.
- Engagement programmes vary in nature and complexity: they should be commensurate with the project's status, risks and potential adverse impacts.
- Your engagement programme should also reflect the characteristics and interests of the affected communities (as identified in COP 32 [Stakeholder engagement](#)). And it should enable the meaningful participation of disadvantaged and vulnerable groups who may require extra help and attention to participate in consultation, data collection or dialogue.
- Make the findings of your impact assessment publicly available and easily accessible and understandable by affected communities and stakeholders.

#### Check:

- Do you have an overall system in place for managing environmental and social risks and impacts that includes doing ESIA's?
- Does the system include the establishment of management plans and procedures to address all identified risks and impacts?
- Does your impact assessment process begin as early as possible for all new mining projects or significant changes to existing operations under your control?
- Does the process allow for engagement with project engineers to integrate aspects of concern into project design and implementation plans?
- Do you adopt, where appropriate, an integrated approach that combines social and environmental impact assessments?
- Do you follow the mitigation hierarchy, favouring preventive over remediative action?
- Are construction and other relevant contractors informed of ESIA requirements and management plans?
- How do you engage affected communities, stakeholders and relevant experts in your impact assessments?

## E FURTHER INFORMATION

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### Websites:

CommDev: The Oil, Gas and Mining Sustainable Community Development Fund  
[www.commdev.org](http://www.commdev.org)

Equator Principles  
<http://equator-principles.com/>

IFC, Performance Standards  
[www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)

International Association for Impact Assessment  
<https://www.iaia.org/>

### Publications:

Anglo American, Socio-Economic Assessment Toolbox (SEAT)  
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IFC, A Guide to Biodiversity for the Private Sector  
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# (COP 35) ARTISANAL AND SMALL-SCALE MINING AND LARGE-SCALE MINING

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC-certified mines with ASM outside their control on or near their area of operations. If the ASM is under your control, it falls within your RJC certification scope and must conform with the COP. If you source gold, silver, PGM, diamonds or coloured gemstones directly from ASM producers, COP 8 [Sourcing directly from artisanal and small-scale mining](#) also applies.

**Artisanal and small-scale mining (ASM)** refers to formal or informal operations by individuals, groups, families or co-operatives that can involve up to hundreds of thousands of miners. ASM usually uses little capital and a lot of labour and is carried out with minimal or no mechanisation (although it can involve small, fully mechanised operations). The exact definition of 'artisanal' and 'small' mining may be stated by national legislation and categorised according to, for instance, a mining organisation's volume of production of ore or mineral, the size of its concession or the level of mechanisation.

Source:

- OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016)  
[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

## B ISSUE BACKGROUND

See COP 8 [Sourcing directly from artisanal and small-scale mining](#) for general information on ASM.

This COP 35 provision is specifically aimed at encouraging approaches to facilitate the coexistence of ASM and large-scale mining (LSM) operations, and to promote the development of legal, orderly and viable ASM sectors in collaboration with host communities and governments. These approaches can be led by governments, non-governmental organisations (NGOs), development agencies or LSM companies; in all cases, they should be participatory and inclusive of local communities and ASM workers.

The relationships between LSM and ASM operators can be complex and fragile. Each operator can pose a risk to the other (see box 'Hostile relations: influencing factors'), and relations can often descend into hostility and conflict, particularly when both parties lay claim to the same resource and see the other's claim as illegitimate.

### Hostile relations: influencing factors

Many factors influence the risk of hostile relations between LSM and ASM, including the perception of who has the right to mine the deposit and who was first on the ground, as well as whether or not the deposit is of marginal or central interest to the LSM operator.

The type of ASM at hand is an important influencing factor—in particular, whether the ASM:

- is adhoc or organised;
- is seasonal or permanent;
- is the result of a mineral rush or a traditional activity, strongly grounded in local communities;
- has ties to criminals or others with access to the means of violence or coercion; or
- has suffered economic displacement.

The extent to which others are involved in supporting LSM–ASM relations, and how, can also influence the risk of hostility. Peaceful relations, for example, are more likely where supportive and neutral third parties, such as NGOs, are involved, where governments are seen as fair and active mediators and where legal frameworks exist for both LSM and ASM and allow for constructive engagement.

Companies ignore ASM at their own peril. Experience has shown that paying insufficient attention to ASM on or around LSM can damage a mine's social licence to operate and end up costing a lot of money. It can also increase the risks of:

- poor community relations;
- conflict between LSM and miners and communities;
- disruption to LSM and ASM operations;
- allegations of abuses and legal action;
- human rights violations (both against ASM producers or by some members of the ASM sector against workers and other community members); and
- protection economies and entrenched corruption, including at different levels of government.

All of this poses a potential threat to mining operations and assets that needs to be understood and appropriately managed by large-scale companies using a human rights-based approach.

Wherever possible, companies should try and turn competition over resources or land into relationships that are mutually beneficial. Many international stakeholders agree that the first step to a peaceful coexistence lies in formalising the ASM sector. And while it is up to government to implement policy, large mining companies can also play a big part in supporting reforms to formalise ASM—for example, supporting appropriate forms of workforce organisation or tackling other key issues such as fair market access or improved environmental practices. In truth, responsible engagement with ASM generally involves a mix of efforts to professionalise and formalise ASM along with strong engagement and consultation, joint planning and sensitive operations that can support local economic development (see Figure 35.1).

All in all, it is not an easy task to transform ASM into a positive force for socio-economic development that can comfortably coexist with LSM. But ultimately, large companies bear the consequences of the relationship if they cannot work with local miners and affected communities.

These consequences can last beyond a mine's lifetime. ASM can increase after a large-scale mine closes, ex-employees can turn to ASM, existing artisanal miners expand their operations or new artisanal miners arrive. These miners may rework tailings that were left behind, work lower grade areas that were deemed uneconomic for LSM operations or work downstream waterways. By engaging with ASM producers before closure, and involving them in the closure-planning process, departing companies may be able to identify innovative approaches to rehabilitation that both benefit the company's legacy and strengthen the livelihood base for local miners and communities.



Figure 35.1. Different types of responsible LSM engagement with ASM

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

For a summary of international initiatives that support ASM, see 'Key regulations, standards and initiatives' under the guidance for COP 8 [Sourcing directly from artisanal and small-scale mining](#).

### National law

Many (but not all) countries have legislative or regulatory frameworks to govern domestic ASM. RJC members are expected to be aware of, and comply with, all applicable laws and regulations affecting both large- and small-scale prospecting and mining in all jurisdictions of operation.

## D IMPLEMENTATION GUIDANCE

### COP 35.1A: [Engagement](#)

**Members in the mining sector shall, where artisanal and small-scale mining (ASM) not under their control occurs within or nearby their areas of operation:**

- a. Engage directly with the ASM community as appropriate and seek to maintain a continuous dialogue with them as a distinct group within the stakeholder engagement programme (COP 32 [Stakeholder engagement](#)), social and environmental impact assessment and ongoing risk management activities (COP 34 [Impact assessment](#)).

### Points to consider:

- Make a relevant manager responsible for relationships with ASM. This will often be the person responsible for broader community engagement and development programmes.
- See guidance for COP 32 [Stakeholder engagement](#) for general information on engaging communities. ASM communities will have different risks and opportunities for development and may need to be engaged and assessed as a distinct group. You should be incorporating ASM into your ongoing risk management activities by, for example:
  - including ASM as a specific topic in your impact assessment (see COP 34 [Impact assessment](#));
  - determining the significance of ASM as a risk to the mine and vice versa, and what risk controls may be necessary;
  - articulating an ASM policy and management plan wherever you identify a significant risk—this can be a stand-alone policy and plan or part of a broader framework; and
  - establishing, where necessary, an ASM task force and action plan, typically involving staff from security, community development, sustainability and corporate affairs.
- Be aware that you may need experienced and expert external help—for example, from private experts or specialist non-profit organisations—to develop the right policies, training, strategies, plans and actions.
- Include ASM considerations in your mine closure planning (see COP 42 [Mine rehabilitation and closure](#)) and involve ASM producers in the process of planning for post-closure rehabilitation, community development and local livelihoods so that it benefits your legacy.
- Adopt a conflict avoidance and resolution approach to mine security that is effective but sensitive to local communities and ASM groups. For example, ensure that the presence of security forces who are there to minimise 'ASM theft' don't actually profit from theft through corruption, or resort to inappropriate use of force or firearms, or otherwise create conflict (see COP 13 [Security](#)).
- Where legal restrictions prevent or limit your direct or indirect engagement with ASM, work with the appropriate authorities to assess and define routes to maintain a dialogue with local ASM communities.

## COP 35.1B: Professionalisation and formalisation

**Members in the mining sector shall, where artisanal and small-scale mining (ASM) not under their control occurs within or nearby their areas of operation:**

- b. Actively participate in initiatives, including multi-stakeholder ones, that enable the professionalisation, formalisation and certification of ASM, as appropriate to the situation.

### Points to consider:

- If ASM is not recognised as a legal activity, try to work with governments on approaches to formalise ASM, recognising that this may not always be possible.
- Focus on initiatives that help to organise, formalise, professionalise and legalise ASM. And make sure these are designed in consultation with key stakeholders, including ASM producers themselves (see box 'Inclusive initiatives').
- Consider entering into an agreement (local law permitting) with the ASM producers operating in your area to give them legal access to your land. Include the ASM producers themselves in drawing up this agreement, and make sure it includes the conditions and practices for both parties, allowance for remedial actions, and conditions under which either you or the ASM producer may withdraw from the relationship.

### Inclusive initiatives

There are many different ways for you to establish a collaborative, inclusive initiative that can help organise, formalise, professionalise and legalise ASM. Some examples are listed below.

- Establish a formal partnership with ASM producers working on or near your area of operations.
- Work with regulatory authorities to identify zones where the legal mining title can be passed over to legal and organised ASM producers.
- Provide ASM financing (loans) for technical and other improvements.
- Advise and train ASM producers on key issues, such as occupational health, reclamation, processing methods, business and financial management or explosives management.
- Help ASM producers determine mineral reserves; then support access to financing for them to mine them.
- Provide emergency response training and support for ASM operations.
- Make processing services available to ASM producers, or build their capacity to do their own processing with improved technology.
- Liaise with government departments, NGOs, trade unions and international agencies to get additional support.
- Offer ASM producers guidance on marketing and commercialisation, including fair trade arrangements.
- Support the establishment of traceability and/or chain of custody systems that ensure security of shipments and enable data collection on ASM gold.
- Proactively support alternative livelihoods, economic development and other improvements in local ASM communities. This can include reusing closed ASM sites for other activities.
- Support the wider community by locally sourcing as many goods and services as possible.
- Make the elimination of the worst forms of child labour a condition of engagement.
- Support gender awareness and empowerment programmes to improve women's conditions in ASM communities.

Appendix 1 of the Supplement on Gold to the OECD Due Diligence Guidance provides further examples.

#### Sources:

- IFC, Working Together: How Large-Scale Mining Can Engage with Artisanal and Small-Scale Miners (2008) [www.commddev.org/wp-content/uploads/2015/06/Working-together-How-large-scale-mining-can-engage-with-artisanal-and-small-scale-miners.pdf](http://www.commddev.org/wp-content/uploads/2015/06/Working-together-How-large-scale-mining-can-engage-with-artisanal-and-small-scale-miners.pdf)
- OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016) [www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

- Be careful not to create perverse incentives that can exacerbate rather than solve a problem. For example, incentives to backfill abandoned ASM pits can end up driving the digging of new pits simply to collect the benefits for backfilling them afterwards.
- It can be useful to calculate in monetary terms the potential benefits for all parties involved that can come from the professionalisation and formalisation of ASM miners. This can be used to help to identify win-win scenarios. For instance, initiatives to process ASM ore can result in greater recovery rates and therefore profits for ASM miners, while simultaneously eliminating mercury use and reducing your liability for future clean-up bills, and also generating fair pricing for ASM gold sales.
- Consider supporting the certification of ASM through existing schemes like the Fairmined or Fairtrade standards for gold or the Maendeleo Diamond Standards; if appropriate, support COP certification (for example, in the case of small- and medium-scale enterprises).
- Note that the CRAFT Code or the Swiss Better Gold Association's Better Gold Initiative can also be used as a framework to show progressive compliance for those ASM producers who are not yet able to achieve certification.

### Check:

- Do you know if there is any ASM in or near your areas of operation?
- Do you have a responsible manager in charge of your relationships with ASM?
- If there is ASM, can you show how you engage with the ASM producers and how well you understand their operations and relationships with the community?
- What initiatives to support the professionalisation and formalisation of ASM producers have you been involved with, and how?

## E FURTHER INFORMATION

### Websites:

Alliance for Responsible Mining (ARM)

[www.responsiblemines.org](http://www.responsiblemines.org)

ARM, CRAFT Code

[www.craftmines.org](http://www.craftmines.org)

The Artisanal and Small-Scale Mining Knowledge Sharing Archive (including the online resources previously available through the Communities and Small-Scale Mining (CASM) initiative)

[www.artisanalmining.org](http://www.artisanalmining.org)

Artisanal Gold Council (AGC)

[www.artisanalgold.org/home](http://www.artisanalgold.org/home)

Coloured Gemstones Working Group (CGWG)

<https://coloured-gems.org>

CommDev, Artisanal and Small-Scale Mining (ASM)

<https://www.commdev.org/topics/artisanal-and-small-scale-mining/>

Diamond Development Initiative (DDI), Artisanal Mining

[www.ddiglobal.org/artisanal-mining/issues](http://www.ddiglobal.org/artisanal-mining/issues)

Solidaridad Gold Programme

[www.solidaridadnetwork.org/supply-chains/gold](http://www.solidaridadnetwork.org/supply-chains/gold)

Swiss Better Gold Association (SBGA)

[www.swissbettergold.ch](http://www.swissbettergold.ch)

## Publications:

ARM, Legalization Guide for Artisanal and Small-Scale Mining (ASM): Draft for Discussion (2011)  
[www.responsiblemines.org/wp-content/uploads/2018/05/ARM\\_Series5\\_Legalisation\\_guide\\_ASM.pdf](http://www.responsiblemines.org/wp-content/uploads/2018/05/ARM_Series5_Legalisation_guide_ASM.pdf)

ARM, Rock-Solid Changes for Responsible Mining (2011)  
[www.responsiblemines.org/wp-content/uploads/2017/10/RSC\\_FINAL\\_web\\_low.pdf](http://www.responsiblemines.org/wp-content/uploads/2017/10/RSC_FINAL_web_low.pdf)

DDI, Mechanisation of Artisanal Alluvial Diamond Mining: Barriers and Success Factors (2010)  
[www.ddiglobal.org/login/resources/mechanisation-alluvial-artisanal-diamond-mining.pdf](http://www.ddiglobal.org/login/resources/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](http://www.hrw.org/sites/default/files/reports/mali1211_forinsertWebUpload_0.pdf)

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](http://pubs.iied.org/16532IIED.html?c=energy/mining)

Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, Global Trends in Artisanal and Small-Scale Mining (ASM): A Review of Key Numbers and Issues (2017)  
[www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf](http://www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf)

International Finance Corporation, Working Together: How Large-Scale Mining Can Engage with Artisanal and Small-Scale Miners (2008)  
[www.commddev.org/wp-content/uploads/2015/06/Working-together-How-large-scale-mining-can-engage-with-artisanal-and-small-scale-miners.pdf](http://www.commddev.org/wp-content/uploads/2015/06/Working-together-How-large-scale-mining-can-engage-with-artisanal-and-small-scale-miners.pdf)

International Labour Organization, Facts on Small-Scale Mining  
[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_067582.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067582.pdf)

OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition (2016)  
[www.oecd.org/fr/daf/inv/mne/mining.htm](http://www.oecd.org/fr/daf/inv/mne/mining.htm)

OECD, Responsible Supply Chains in Artisanal and Small-Scale Gold Mining: FAQ (2016)  
[www.oecd.org/daf/inv/investment-policy/FAQ\\_Sourcing-Gold-from-ASM-Miners.pdf](http://www.oecd.org/daf/inv/investment-policy/FAQ_Sourcing-Gold-from-ASM-Miners.pdf)

Solidaridad South America, Minera Yanaquihua (MYSAC)  
[www.solidaridadnetwork.org/content/minera-yanaquihua-mysac](http://www.solidaridadnetwork.org/content/minera-yanaquihua-mysac)

UNEP, Analysis of Formalization Approaches in the Artisanal and Small-Scale Gold Mining Sector Based on Experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda (2012)  
[https://wedocs.unep.org/bitstream/handle/20.500.11822/11357/Formalization\\_Document\\_Final\\_June\\_2012.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/11357/Formalization_Document_Final_June_2012.pdf?sequence=1&isAllowed=y)

The World Bank, Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit (2012)  
[commdev.org/userfiles/Gender\\_and\\_ASM\\_Toolkit.pdf](http://commdev.org/userfiles/Gender_and_ASM_Toolkit.pdf)

# (COP 36) RESETTLEMENT

## A DEFINITIONS AND APPLICABILITY

**This provision applies to members in the mining sector where resettlement is planned or occurring.** This includes situations where resettlement has been planned or started since you joined the RJC or since your last verification assessment, whichever is most recent. The COP does not require retrospective conformance.

Note: resettlement of indigenous peoples may also trigger the requirement for a free, prior and informed consent (FPIC) process (see COP 33 [Indigenous peoples and free, prior and informed consent](#)).

**Expropriation** is the action by the state or an authority of taking property from its owner for public use or benefit.

**Involuntary resettlement** refers to situations when affected people or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This happens in cases of lawful expropriation or temporary or permanent restrictions on land use. It can also happen during negotiated settlements if negotiations fail.

**Resettlement** refers both to physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) that happens when an RJC member acquires land or places new restrictions on land use.

**Vulnerable groups** are characterised by their higher risk and reduced ability to cope with shock or negative impacts. Their vulnerability may be based on socio-economic condition, gender, age, disability, ethnicity or other criteria that influence people's ability to access resources and development opportunities. It is always specific to the particular location and time.

Source:

- 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](http://www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES)

## B ISSUE BACKGROUND

Mines operate where economically viable mineral deposits are physically located and are sometimes developed under land that is already being used (for example, for growing crops, grazing animals, collecting natural resources, providing housing, among other uses). In these cases, developing a mine will require the resettlement of local households, communities, business, commercial property, or other economic or cultural activities. If such resettlement is involuntary, and improperly managed, it can result in long-term hardship for those affected, as well as environmental damage and social stress in areas to which they have been displaced. That is why most mining standards, including the COP, demand that companies avoid involuntary resettlement altogether or, in exceptional circumstances where it is unavoidable, take appropriate measures to both mitigate adverse impacts on displaced persons and host communities and to restore the livelihoods of those affected.

Negotiated settlements to acquire land rights or access can help avoid expropriation at mining projects and eliminate the need for a state authority to remove people forcibly. Such settlements can usually be achieved by offering affected people fair and appropriate compensation and other incentives or benefits. In-kind compensation should always be considered in lieu of cash, for example land-for-land compensation for communities whose livelihoods are land-based. In all cases, resettlement should at least restore, and preferably improve, the livelihoods and economic well-being of those affected.

A 2015 study by the International Council on Mining and Metals (ICMM) underscores the importance of the planning and negotiating process, stating that 'resettlement and land acquisition ... remains a very challenging area for companies. Many projects do not begin planning resettlement activities early enough. Nor do they invest enough human or financial resources in ensuring impacts are assessed and mitigated, and that benefits are shared in a sustainable way.'<sup>1</sup>

Negotiations will also need to include diverse measures to allow the effective participation of disadvantaged or vulnerable groups, including all those using the land whether they have a legal right to do so or otherwise (for example, artisanal and small-scale miners). The resettlement negotiations should be based on a resettlement plan that includes a full impact assessment, and which should be shared in an open and transparent way.

1 ICMM, Land acquisition and resettlement: Lessons learned (2015)

Key issues to consider beyond compensation, livelihoods and economic well-being include housing and living conditions at new sites, as well as social and cultural continuity of the community. In some cases, resettlement includes developing agreed strategies to protect or safely move sites or objects of special historical, spiritual or cultural significance. Sometimes it is possible for people to return to the land after the mining project is closed; considering this option should form part of the negotiations.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

The **International Finance Corporation (IFC) Environmental and Social Performance Standards** ('IFC Performance Standards', [www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 5: Land Acquisition and Involuntary Resettlement, which provides the definitive international standard for resettlement. Explicitly referenced in the COP, the IFC standard aims to:
  - avoid forced eviction;
  - avoid or minimise involuntary resettlement wherever possible by exploring alternative project designs;
  - anticipate and avoid (and, where unavoidable, minimise) the adverse social and economic impacts of resettlement by compensating loss of assets and implementing resettlement activities 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; and
  - improve the living conditions of physically displaced persons by providing adequate housing with secure tenure at resettlement sites.

An IFC guidance note<sup>2</sup> offers companies further guidance on implementing the standard, including guidance on what to do if resettlement is a government-led activity.

Note that the IFC standard does not apply to resettlement resulting from voluntary land transactions (that is, 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).

Beyond IFC Performance Standard 5, companies and states are also required to avoid forced evictions through a range of international legal instruments that protect the right to adequate housing (for example, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child).

In 2007, UN Human Rights published a set of guidelines (the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement)<sup>3</sup> to address the human rights implications of development-linked evictions and related displacement and help countries develop policies and legislations to prevent forced evictions. These guidelines identify a series of measures and procedures that should be taken to ensure development-based evictions do not contravene international human rights.

## D IMPLEMENTATION GUIDANCE

### COP 36.1: Resettlement

**Members in the mining sector shall avoid involuntary resettlement. Where resettlement is unavoidable, it shall be minimised and appropriate measures to mitigate adverse impacts shall be carefully planned and implemented, consistent with International Finance Corporation (IFC) Performance Standard 5. This includes consideration of disadvantaged and vulnerable groups.**

### Points to consider:

- Establish a resettlement policy and procedures, consistent with IFC Performance Standard 5 (this must be in place before you negotiate any resettlements).

2 IFC, Guidance Note 5: Land Acquisition and Involuntary Resettlement (2012) [www.ifc.org/wps/wcm/connect/4b976700498008d3a417f63336b93d75f/Updated\\_GN5-2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/4b976700498008d3a417f63336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES)

3 UN Human Rights, UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007) [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

- Given the complexity of resettlement and potential for long-term hardship and impoverishment for affected communities and persons, consider working with experts for your planning and implementation.
- Before starting resettlement negotiations, consider all feasible alternative project designs that could avoid (or where unavoidable, minimise) physical and economic displacement, while balancing environmental, social and financial costs and benefits.
- Resettlement usually involves three phases of activities: planning, negotiation and resettlement, which are all underpinned by stakeholder engagement and monitoring and evaluation throughout (see Figure 36.1).

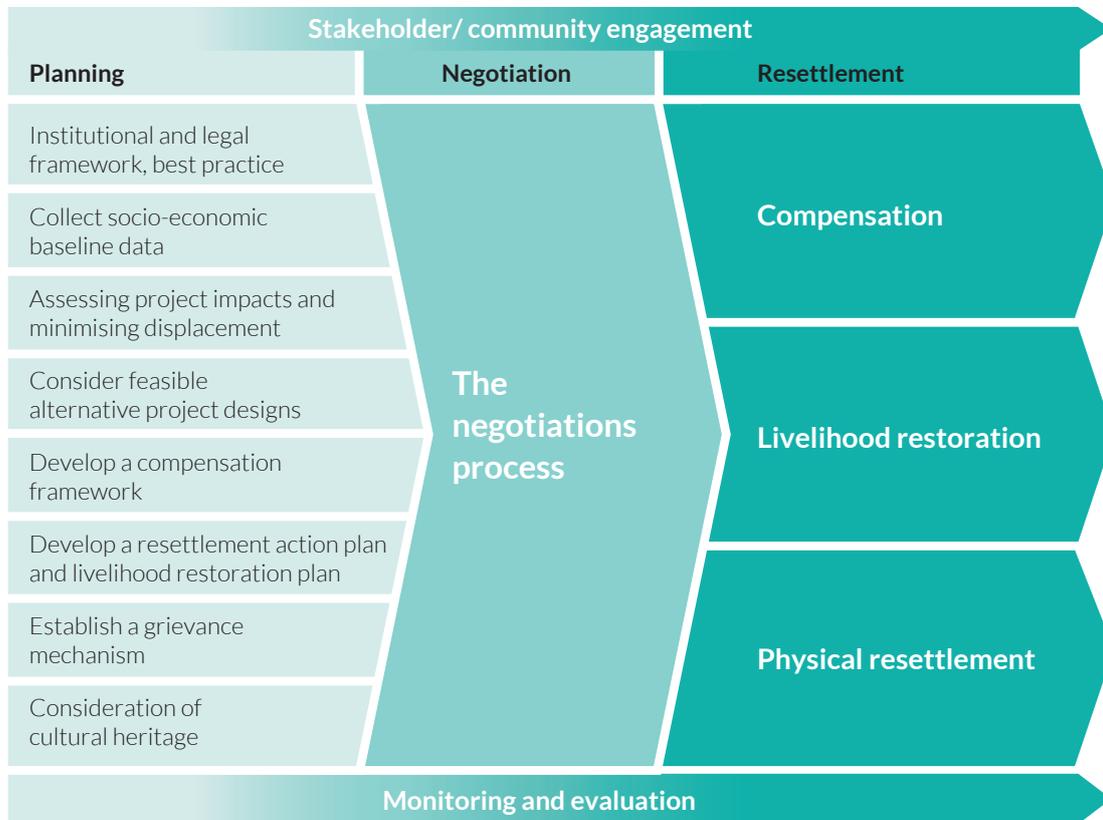


Figure 36.1. The land access and resettlement process

Source: International Council on Mining and Metals (ICMM), Land Acquisition and Resettlement: Lessons Learned (2015) [www.icmm.com/en-gb/publications/mining-and-communities/land-acquisition-and-resettlement-lessons-learned](http://www.icmm.com/en-gb/publications/mining-and-communities/land-acquisition-and-resettlement-lessons-learned)

- During the planning phase:
  - Collect the information you need as outlined in Figure 36.1 and in alignment with COP 34 **Impact assessment**. This should include a full census and socio-economic baseline to identify all those who will be displaced by the project and determine who will be eligible for compensation and assistance.
  - The most complex resettlement issues can be related to displacement of economic activities, such as raising crops, grazing livestock, gathering of natural resources, or artisanal and small-scale mining. Ensure that this is adequately considered in your planning and subsequent phases.
  - Establish effective engagement with all affected persons, groups and communities, including disadvantaged and vulnerable groups, including those who don't hold formal legal land rights, whether or not they have a claim to land that is recognised under national law.
  - Create an accessible complaints or grievance mechanism for affected stakeholders to raise concerns, challenge the eviction and seek redress. This will need to remain in place throughout the negotiation and resettlement phases, as well as afterwards as part of the monitoring process.
- During the negotiation phase, consult with affected communities to:
  - Agree on a resettlement action plan (for physical displacement) or livelihood restoration plan (for economic displacement).
  - Establish the eligibility criteria for the various forms of resettlement assistance and compensation. Set out the compensation payments in accordance with national guidelines or, if there are none, set out the methodology that you will use. This should include cut-off dates for establishing eligibility.
  - Note that adequate compensation, social infrastructure and all relevant conditions for resettlement should be ready before the actual resettlement takes place and the mining company relinquishes control/ownership of the land.

- During the resettlement:
  - Communicate agreed compensation criteria, and apply these consistently, to all those affected.
  - Where appropriate, get local government officials and independent observers to be present during the resettlement.
- After the move:
  - Establish monitoring and evaluation procedures commensurate with the project's risks and impacts.
- Throughout all three phases of resettlement:
  - **Be transparent and inclusive.** In practice, that means making sure you inform, consult and involve all those affected before, during and after the move; and document all engagement processes and outcomes.
  - **Seek improvement opportunities.** Look for any opportunity to use resettlement as a way for displaced groups to derive development benefits.
  - **Adhere to IFC Performance Standard 5.** This includes ensuring that each type of affected stakeholder (including host communities) is appropriately considered and compensated, according to the type of displacement and whether or not they hold formal land rights. (See IFC Performance Standard 5 and its accompanying guidance for more information: [www.ifc.org/ps5](http://www.ifc.org/ps5).)

### 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 IFC Performance Standard 5, including appropriate disclosure, compensation standards, census data, monitoring procedures, etc.?

## E FURTHER INFORMATION

### Websites:

The University of Queensland, [MiningResettlement.org](http://MiningResettlement.org)  
[www.miningresettlement.org](http://www.miningresettlement.org)

### Publications:

ICMM, Land Acquisition and Resettlement: Lessons Learned (2015)

[www.icmm.com/en-gb/publications/mining-and-communities/land-acquisition-and-resettlement-lessons-learned](http://www.icmm.com/en-gb/publications/mining-and-communities/land-acquisition-and-resettlement-lessons-learned)

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# (COP 37) EMERGENCY RESPONSE

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members in the mining sector.

An **emergency** is an abnormal occurrence that poses a threat to the safety or health of employees, contractors, visitors, customers or local communities, or that can damage assets or the environment.

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

## B ISSUE BACKGROUND

No industry is completely free of risk when it comes to emergencies and natural disasters. In mining, emergencies can be operational, environmental or social (see Figure 37.1).



Figure 37.1. Three types of mining emergencies

Emergencies can arise at active mines as well as those that have been closed or rehabilitated. In all cases, a fast and effective response can be the most important factor in limiting injury to people as well as damage to property and the environment. That makes emergency preparedness—including ensuring the ability to reduce impacts should any incident happen—a critical component of any business.

In part, preparedness involves establishing the internal mechanisms and procedures needed to effectively plan and implement emergency response. It also means working with local communities to improve awareness of the potential risks of emergencies and strengthen community preparedness.

Experience shows that a well-informed, well-prepared community is better able to orchestrate a fast and effective response to an incident, and to deal with the aftermath too.

### International standards

Since 1988, UN Environment (formerly UNEP) has led the **Awareness and Preparedness for Emergencies at Local Level (APELL)** programme ([www.unenvironment.org/explore-topics/disasters-conflicts/what-we-do/preparedness-and-response/awareness-and-preparedness](http://www.unenvironment.org/explore-topics/disasters-conflicts/what-we-do/preparedness-and-response/awareness-and-preparedness)) to help people prevent, prepare for and respond appropriately to accidents and emergencies.

APELL is essentially a 10-step process for developing emergency response plans that involves local communities, companies, governments, emergency responders and others. This process creates awareness of hazards in communities close to industrial facilities, encourages risk reduction and mitigation and develops preparedness for emergency response.

In 2001, working with the International Council on Metals and the Environment (ICME), UN Environment published its APELL for Mining guidance to describe how the APELL process can be applied to the mining industry.<sup>1</sup>

**APELL for Mining** (<http://wedocs.unep.org/handle/20.500.11822/8093>) offers companies a structured approach for engaging local communities and authorities in emergency planning that can help them better identify risk reduction measures and organise overall emergency response. It is particularly useful in thinking about emergencies with the potential for off-site impacts, which require joint planning and preparedness.

In 2005, to strengthen use of APELL within the mining industry, ICME's successor, the International Council on Mining and Metals (ICMM) and UN Environment published the Good Practice in Emergency Preparedness and Response.<sup>2</sup> This publication goes through each step of the APELL process, outlining key tasks and using diverse case studies to illustrate how these can be done.

Beyond the APELL process, the International Organization for Standardization (ISO) includes requirements on emergency preparedness and response in its **ISO 14001:2015 standard on environmental management systems** ([www.iso.org/iso-14001-environmental-management.html](http://www.iso.org/iso-14001-environmental-management.html)). The standard, which was updated in 2015, now specifically requires certified companies to:

- establish action plans to remove or mitigate risks relating to emergencies that are commensurate with the type of risk involved and level of potential impact;
- establish action plans to respond to emergency situations themselves; and
- review plans periodically and revise them accordingly.

Other international instruments that include requirements on emergency preparedness and response include:

- the **International Cyanide Management Code for the Gold Mining Industry** ([www.cyanidecode.org](http://www.cyanidecode.org)), which focuses on emergencies involving cyanide and includes requirements for developing emergency response strategies and capabilities, including informing and consulting the public on these (see COP 40 **Cyanide**); and
- the **Mining Association of Canada (MAC)** (<http://mining.ca>), which requires its members to develop, maintain and test emergency preparedness plans, and to engage employees and the public on these issues. This is through the Towards Sustainable Mining (TSM) Crisis Management and Communications Planning Protocol.<sup>3</sup>

### National law

Most countries have legislation that caters for preparedness and response to emergency situations within an industrial setting. This often includes requirements for emergency plans to be in place before issuing a permit for a new facility, for example as part of the environmental impact assessment requirements.

In some cases, governments or other regional authorities also make community consultation a compulsory component of emergency planning. For example, the European Commission's Seveso Directive (last updated in 2012) covers all establishments using high levels of dangerous substances and requires these to, among other things, create emergency plans and involve the public in decision-making.

1 UN Environment, APELL for Mining: Guidance for the Mining Industry in Raising Awareness and Preparedness for Emergencies at Local Level (2001) <http://wedocs.unep.org/handle/20.500.11822/8093>

2 ICMM and UN Environment, Good Practice in Emergency Preparedness and Response (2005) [www.icmm.com/website/publications/pdfs/health-and-safety/good-practice-emergency-preparedness-and-response](http://www.icmm.com/website/publications/pdfs/health-and-safety/good-practice-emergency-preparedness-and-response)

3 <https://mining.ca/sites/default/files/Crisis%20Management-EN%20%28Nov%202018%29.pdf>

## D IMPLEMENTATION GUIDANCE

### COP 37.1: 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, in accordance with UN Environment guidance on Awareness and Preparedness for Emergencies at Local Level (APELL) for Mining. This shall be developed with COP 23.2 (Health and safety) and should include due consideration of any emergencies arising within the facility that have the potential to impact off-site areas.

#### Points to consider:

- Implementing the APELL process starts with establishing a formal co-ordinating group as a mechanism for managing the interaction between all those involved in preventing or responding to emergencies and ensuring a collaborative, co-ordinated and inclusive approach to emergency response planning.
- Make sure your co-ordinating group includes members of the mine's management team, as well as representatives of local authorities and emergency response agencies, community leaders and workers' representatives (see Figure 37.2).



Figure 37.2. Local emergency planning co-ordinating group

Source: ICMM and UN Environment, Good Practice in Emergency Preparedness and Response (2005)

[www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response](http://www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response)

- Focusing on emergencies with the potential for off-site impacts, follow the 10 steps of the APELL process, as outlined in the 2001 APELL for Mining handbook (<http://wedocs.unep.org/handle/20.500.11822/8093>), and summarised in Table 37.1.

Table 37.1. Ten steps to implement the APELL process

Step			
<b>Communicate, inform and educate community members throughout</b>	<b>1</b>	Identify the emergency response participants and establish their roles, resources and concerns.	<b>Phase I</b> Engaging stakeholders
	<b>2</b>	Evaluate the risks and hazards that may result in emergency situations in the community and define options for risk reduction.	<b>Phase II</b> Understanding hazards and risks
	<b>3</b>	Have participants review their own emergency plan for adequacy relative to a coordinated response, including the adequacy of communication plans.	<b>Phase III</b> Preparedness planning
	<b>4</b>	Identify the required response tasks not covered by the existing plans.	
	<b>5</b>	Match these tasks to the resources available from the identified participants.	
	<b>6</b>	Make the changes necessary to improve existing plans, integrate them into an overall emergency response and communication plan and gain agreement.	
	<b>7</b>	Commit the integrated plan to writing and obtain approvals from local governments.	<b>Phase IV</b>
	<b>8</b>	Communicate the integrated plan to participating groups and ensure that all emergency responders are trained.	Implementing, disseminating and testing
	<b>9</b>	Establish procedures for periodic testing, review and updating of the plan.	
	<b>10</b>	Communicate the integrated plan to the general community.	<b>Phase V</b> Maintaining APELL

Source: ICME and UN Environment. APELL for Mining. (2001)

### Check:

- Have you identified all potential emergencies that could have off-site impacts?
- Have you established one or more emergency response plans in collaboration with key stakeholders?
- Do your plans follow the guidance provided by the APELL for Mining handbook?
- Has a formal co-ordinating group been established to implement the APELL process?
- Are procedures in place for testing the plan?
- Has the plan been communicated to local communities?

## E FURTHER INFORMATION

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### Websites:

UN Environment, Resource Efficiency  
[www.unep.org/resourceefficiency](http://www.unep.org/resourceefficiency)

### Publications

ICMM and UN Environment, Good Practice in Emergency Preparedness and Response (2005)  
[www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response](http://www.icmm.com/en-gb/publications/health-and-safety/good-practice-in-emergency-preparedness-and-response)

MAC, Towards Sustainable Mining: Crisis Management and Communications Planning Protocol (2017)  
<http://mining.ca/sites/default/files/documents/TSM-Crisis-Management-and-Communications-Planning-Protocol-March-2017.pdf>

Mining Association of Canada (MAC), Crisis Management and Communications Planning Reference Guide (2016)  
<http://mining.ca/documents/crisis-management-and-communications-planning-reference-guide>

UN Environment, APELL for Mining: Guidance for the Mining Industry in Raising Awareness and Preparedness for Emergencies at Local Level (2001)  
<https://wedocs.unep.org/handle/20.500.11822/8093>

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members in the mining sector and to mines, mining and related infrastructure such as roads, rail lines, power lines and ports.

**Biodiversity** is the variability among living organisms from all sources including, among others, terrestrial, marine and 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. It also includes the genetic material within individual species.

**Critical habitats** are areas with high biodiversity value, including habitats of significant importance to critically endangered or endangered species or endemic or restricted-range species, as well as habitats supporting globally significant concentrations of migratory or congregatory species, highly threatened or unique ecosystems and areas associated with key evolutionary processes.

**Ecosystem services** are the benefits people get from ecosystems. They include provisioning services, such as food and water; regulating services, such as regulation of floods, drought, land degradation, and disease; supporting services, such as soil formation and nutrient cycling; and cultural services, such as recreational, spiritual, religious and other non-material benefits.

**Key Biodiversity Areas (KBAs)** are sites contributing significantly to the global persistence of biodiversity. They represent the world's most important sites for biodiversity conservation and are identified nationally using standard criteria and thresholds set by the International Union for Conservation of Nature (IUCN). KBAs typically include areas of critical habitat (see below).

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

**Mitigation hierarchy** involves prioritising options in a sequential way, starting with action to avoid impacts, followed by action to minimise them. If the negative environmental impacts are significant, it can also be appropriate to restore and, finally, offset them (see Figure 24.2 Environmental management).

A **protected area** is a geographically defined area that is legally designated or regulated and managed to achieve specific conservation objectives.

**World Heritage sites** are sites established under the World Heritage Convention of 1972.

Sources:

- Biodiversity A to Z  
[www.biodiversitya-z.org](http://www.biodiversitya-z.org)
- Convention on Biological Diversity  
[www.cbd.int/](http://www.cbd.int/)
- International Finance Corporation (IFC), Guidance Note 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources (2018)  
[www.ifc.org/wps/wcm/connect/a359a380498007e9a1b7f3336b93d75f/GN6\\_November+20+2018+.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/a359a380498007e9a1b7f3336b93d75f/GN6_November+20+2018+.pdf?MOD=AJPERES)
- 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](http://www1.ifc.org/wps/wcm/connect/bff0a28049a790d6b835faa8c6a8312a/PS6_English_2012.pdf?MOD=AJPERES)
- International Union for Conservation of Nature (IUCN)  
[www.iucn.org](http://www.iucn.org)

## B ISSUE BACKGROUND

Mining is one of a small number of industries with little or no control over where to locate its operations for it can only succeed commercially where economically viable mineral deposits exist. Sometimes, such deposits lie in relatively highly populated areas, industrial settings or regions that have been intensively farmed for many decades, where biodiversity is limited. But sometimes, viable deposits lie in environmentally sensitive areas, including remote, previously unexplored or undeveloped areas that are rich in biodiversity. Without careful planning, mining projects in these areas can have significant adverse impacts on biodiversity.

In some cases, there is no way to reconcile mining activities with local biodiversity conservation. But in other cases, good environmental management can help the development of a mine which supports conservation. Mining baseline studies in unexplored areas can help collect data on the presence and distribution of species and habitats. There are a few examples of companies partnering with non-governmental organisations (NGOs) to conserve species or ecosystems. Applying these types of approaches more systematically across the sector could bring much needed resources to conservation.

In all cases, opportunities for mitigating biodiversity impacts vary significantly from one operation to another and depend not only on the mine itself but also on its associated infrastructure, including roads, rail lines, power lines, ports, in-migration and resettlement. The mitigation hierarchy (avoid, minimise, restore, offset) has been developed as a tool for achieving 'no net loss' or a 'net gain' in biodiversity. Yet to be widely adopted by the mining industry, there are some companies that have been at the forefront of voluntarily applying offsets and other good practices associated with the mitigation hierarchy.

The extent to which biodiversity impacts need to be addressed ultimately depends on the presence and significance of local biodiversity. Some of the criteria to determine whether a site is of local, regional, national or international importance include the species endemism, rarity, population size and fragility, as well as their importance in the local and social context. The size of habitats and value of ecosystem services are other criteria. Applying these criteria is a matter of professional judgement and requires the involvement of a trained ecologist. Evaluation can be very complex in some countries or in new areas such as deep seas, where there is little information to evaluate biodiversity comparatively. In such circumstances, extensive fieldwork may be needed to better understand the relative value of operational sites.

Several systems exist for designating areas of biodiversity importance and understanding these is essential to any mining project. Five of the most important are summarised below.

### 1. Protected areas

Protected areas remain the fundamental building blocks of virtually all national and international conservation strategies, supported by governments and international frameworks alike. They are used to ensure that ecosystems, habitats and species are protected from damage and loss and have a formal status within countries, which often comes with consequential limitations on economic activities.

World Heritage sites are specific protected areas designated by the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) as areas with outstanding universal value, meaning that they have cultural 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. In 2014, nine of the world's leading conservation NGOs united their voices in calling for World Heritage sites to be 'no-go' areas for extractive industries.<sup>1</sup>

### 2. Key Biodiversity Areas (KBAs)

KBAs are intended to represent the world's most important sites for biodiversity conservation. Critical for maintaining effective ecological networks, KBAs are the starting point for conservation planning at a landscape level. They are used by governments, intergovernmental and non-governmental organisations, the private sector and many other stakeholders as a tool for identifying national networks of internationally important sites for conservation.

KBAs and protected areas are not necessarily interchangeable. Some protected areas (or parts of protected areas) do not count as KBAs, and some KBAs extend beyond or lie outside existing protected areas. There are five types of KBA to distinguish areas of threatened biodiversity, geographically restricted biodiversity, ecological integrity, biological processes and irreplaceability. In 2018, more than 15,000 sites were listed on the World Database of Key Biodiversity Areas.

## High conservation value areas (HCVAs)

While KBAs identify sites that are important for biodiversity to survive at a global level, HCVAs tend to reflect locally important biodiversity. Identified site by site, as the need arises, HCVAs are designated using six qualitative criteria, covering environmental, social and cultural issues.

They often have particularly high ecological or social values and are most commonly used as part of voluntary certification schemes (for example, the Forest Stewardship Council). KBAs conversely focus solely on biodiversity values and are identified through quantitative thresholds, independent of development plans or certification schemes.

Source:

- World Database of Key Biodiversity Areas  
[www.keybiodiversityareas.org/business-guidelines/q-and-a#qa-07](http://www.keybiodiversityareas.org/business-guidelines/q-and-a#qa-07)

1 Joint NGO Statement on No-Go and No-Impact Measures for Extractive Activities in Natural and Mixed World Heritage Sites (2014)  
[http://assets.wwf.org.uk/downloads/ngo\\_whs\\_no\\_go\\_statement\\_final\\_with\\_logos\\_1.pdf](http://assets.wwf.org.uk/downloads/ngo_whs_no_go_statement_final_with_logos_1.pdf)

### 3. Habitats for threatened species

Threatened species are any species (including plant, animal or fungus, etc.) that are in danger of extinction. Their habitats are high conservation priorities because there is limited time to act before they disappear. The International Union for Conservation of Nature (IUCN) is the recognised authority on threatened species and groups them into categories of near-threatened, threatened, vulnerable, endangered and critically endangered through its Red List (the additional category of 'data-deficient' is used where inadequate data exists for assessment). Although only a small proportion of the world's plant and animal species have been assessed, in 2018 more than 26,500 species were identified as being threatened with extinction (more than 27 per cent of all assessed species).<sup>2</sup>

### 4. Forests

Many KBAs are forests, and it is estimated that mining accounts for up to seven per cent of forest loss in low- and middle-income countries.<sup>3</sup> 'Forest smart mining' is a development approach applied to mining activities that recognises forests' twin role in protecting conservation and sustaining growth across many sectors and seeks out opportunities for mutual benefit. It is sustainable and inclusive in nature, emphasising that forests are part of a broader landscape and that changes in forest cover affect other land uses as well as the people living in that landscape.<sup>4</sup>

### 5. Deep seas

Deep sea 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.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International conventions

At the 1992 Earth Summit in Rio de Janeiro, the UN Convention on Biological Diversity (CBD, [www.cbd.int](http://www.cbd.int)) was signed by 157 governments; it has since been signed and 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 to share the benefits arising from the commercial and other use of genetic resources in a fair and equitable manner. The CBD is an instrument for governments and is implemented through national legislation.

World Heritage sites are established under the 1972 **World Heritage Convention** (<https://whc.unesco.org/en/convention>), which is administered by UNESCO. World Heritage status relates to cultural and/or natural heritage considered to be of outstanding universal value. In 2018, there were 1,092 World Heritage sites listed across 167 countries, including 209 designated for natural value.

The **Global Standard for the Identification of Key Biodiversity Areas** (<https://portals.iucn.org/library/node/46259>) was adopted by the IUCN in 2016. The standard builds on the organisation's more than 30 years of experience identifying Important Bird and Biodiversity Areas (IBAs) and other sites of international importance, and expands it to all wildlife, plants and ecosystems.

The 1971 Convention on Wetlands of International Importance, called the **Ramsar Convention** ([www.ramsar.org](http://www.ramsar.org)), is an intergovernmental treaty that provides the framework for national action and international co-operation in the conservation and wise use of wetlands and their resources. Areas listed on the Ramsar List of Wetlands of International Importance are recognised as wetlands of international importance.

The **UN Convention on the Law of the Sea** ([www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm)) came into force in November 1994 to regulate sea and ocean resources. It enshrines the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole.

The **New York Declaration on Forests** (NYDF, <https://nydfglobalplatform.org>) is a voluntary partnership of more than 190 governments, multinational companies, civil society and indigenous peoples working together to halve deforestation by 2020 and end it by 2030. The NYDF outlines 10 global targets to protect and restore forests and reduce carbon emissions, including, for example, restoring 350 million hectares of degraded landscapes and forestlands.

2 IUCN, IUCN Red List of Threatened Species (2019) [www.iucnredlist.org](http://www.iucnredlist.org)

3 PROFOR, Does Mining Need a Forest-Smart Approach? You Bet it Does! (2018) [www.profor.info/keywords/mining](http://www.profor.info/keywords/mining)

4 Biodiversity A-Z, Forest Smart Mining [www.biodiversitya-z.org/content/forest-smart-mining](http://www.biodiversitya-z.org/content/forest-smart-mining)

## The IUCN Red List of Threatened Species

([www.iucnredlist.org](http://www.iucnredlist.org)) provides taxonomic, conservation status and distribution information on plants and animals that have been globally evaluated, including those listed as critically endangered, endangered and vulnerable.

## International standards

### The International Finance Corporation (IFC) Environmental and Social Performance Standards

([www.ifc.org/performancestandards](http://www.ifc.org/performancestandards)) define IFC clients' responsibilities for managing environmental and social risks. A global benchmark on good practice, these comprise eight standards, including:

- Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources, which sets out requirements according to the nature of the potentially affected habitat (modified, natural or critical), and the presence of legally protected and internationally recognised areas.

The IFC Performance Standards are embedded in the **Equator Principles** (<http://equator-principles.com>). See COP 24 **Environmental management** for more information.

### The International Council on Mining and Metals (ICMM) Mining and Protected Areas Position Statement

([www.icmm.com/en-gb/members/member-commitments/position-statements/mining-and-protected-areas-position-statement](http://www.icmm.com/en-gb/members/member-commitments/position-statements/mining-and-protected-areas-position-statement)) outlines a commitment to not mine or explore in World Heritage sites. ICMM's Good Practice Guidance for Mining and Biodiversity describes steps required to improve biodiversity management throughout the mining lifecycle.

In 1994, the IUCN published the **Protected Area Categories system** ([www.iucn.org/theme/protected-areas/about/protected-area-categories](http://www.iucn.org/theme/protected-areas/about/protected-area-categories)) as a global standard for planning, establishing and managing protected areas. It identifies seven categories of protected area:

- 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

In 2015, the Mining Association of Canada (MAC) adopted a Towards Sustainable Mining (TSM) **Biodiversity Conservation Management Protocol** (<https://mining.ca/sites/default/files/Biodiversity%20Conservation%20Management-EN.pdf>) setting out performance expectations for members on biodiversity conservation management.

## International partnerships

The **Business and Biodiversity Offsets Programme** (BBOP, <http://bbop.forest-trends.org>) was a partnership from 2004 to 2018 between companies, governments and conservation experts to explore and promote best practice for biodiversity offsets. As a tool it provides comprehensive guidance on how to implement the mitigation hierarchy and the resulting requirement for biodiversity offsets. In 2012, the programme published its Biodiversity Offsets Standard, which provides an auditable approach for project developers to manage biodiversity-related risks for no net loss. The standard also allows auditors and assessors to determine whether an offset has been designed and subsequently implemented in accordance with the 10BBOP Principles. Some companies have also found the standard to be a useful early stage risk assessment tool.

The **Integrated Biodiversity Assessment Tool** (IBAT, [www.ibatforbusiness.org/login](http://www.ibatforbusiness.org/login)) is designed to facilitate access to up-to-date and accurate biodiversity information to support critical business decisions. It acts as a central database for globally recognised biodiversity information, including on KBAs and legally protected areas. IBAT is the result of a partnership between BirdLife International, Conservation International and UN Environment World Conservation Monitoring Centre (WCMC).

The **Cross-Sector Biodiversity Initiative** (CSBI, [www.csbi.org.uk](http://www.csbi.org.uk)) involving mining, oil and gas, and banks was launched in February 2013. It aims to explore and develop practical tools and share good practices for the effective application of the mitigation hierarchy.

The **Program on Forests** (PROFOR, [www.profor.info](http://www.profor.info)) is a multi-donor partnership under a World Bank secretariat working on extractive industries in forest landscapes. Among its activities, PROFOR is helping to develop practical tools and policy recommendations that promote the sustainable growth of mining and other sectors, without destroying the public good provided by forests (forest-smart mining).<sup>5</sup>

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5 PROFOR, Does Mining Need a Forest-Smart Approach? You Bet it Does! (2018) [www.profor.info/keywords/mining](http://www.profor.info/keywords/mining)

## National law

Nearly all jurisdictions have a legal and regulatory framework for environmental protection. Many of the signatory nations to the Convention on Biological Diversity have introduced specific laws protecting their country's biodiversity.

Offsets are part of the legal framework in some countries and regions, including, for example, Brazil, Canada, Europe, Switzerland and the United States.

RJC members are expected to be familiar with applicable law and understand the legislative and regulatory framework for biodiversity in all areas of operation.

## D IMPLEMENTATION GUIDANCE

The systems you need to implement this provision include:

- **Management responsibility:** Make a suitably qualified person(s) accountable for incorporating biodiversity management into impact assessment, planning and operations.
- **Written policy, plans and procedures:** Address biodiversity management in corporate or site-specific sustainability (or equivalent) policy and documentation. Consider implementing a biodiversity action plan at the site level to detail how you will achieve biodiversity objectives and targets.
- **Record-keeping and reporting:** Monitor changes in biodiversity to evaluate the success of your management plans, rehabilitation trials and research projects, and to track any general changes in the biodiversity that may be influenced by non-mine factors.
- **Training and communication:** Train employees and contractors to make sure they have adequate competency and knowledge of biodiversity policies, plans and procedures.

### COP 38.1 and 38.2: World heritage sites and protected areas

**38.1 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.**

**38.2 Members in the mining sector shall respect legally designated protected areas by ensuring that they:**

- a. Have a process to identify nearby legally designated protected areas.
- b. Comply with any regulations, covenants or commitments attributed to these areas.
- c. Take impacts on legally designated protected areas into account when making decisions throughout the mining lifecycle.

### Points to consider:

- Make sure your policy prohibits exploration and development in, and impact on, World Heritage sites.
- As early as possible in the mining lifecycle, map protected areas (including World Heritage sites) in and around the project site. Use competent personnel to carry out the mapping, and repeat the exercise periodically as protected areas can change, and you are expected to stay aware of developments.
- Carry out an impact assessment (see Figure 34.1 Impact assessment) to assess the risks and impacts on relevant World Heritage sites and protected areas.
  - Note that your impact assessment should also cover risks and impacts for KBAs (COP 38.3), threatened species (COP 38.4) and deep sea areas (COP 38.5).
- Use your mapping to confirm whether you have any existing or planned infrastructure and activities in or adjacent to a World Heritage site (these are listed on the UNESCO website), or in or near a protected area.
  - Note that 'adjacent' in this context means geographically connected, either by borders, mine transit roads or upstream waterways.
- If your mining operation is in or adjacent to a World Heritage site:
  - Establish controls to ensure activities will not cause adverse impacts on World Heritage sites.
  - Check whether your mining operation pre-exists World Heritage designation: if so, you may have to comply with grandfathering legislation.

- If your mining operation is in or near to a protected area:
  - Maintain a register of the legal and other requirements that apply to each relevant protected area. The register should nominate personnel responsible for compliance with these requirements. Where there is doubt as to legal restrictions, respect environmental protection law.
- Consider whether there are any unprotected areas in or around your site that have been identified by governments or other stakeholders as priority conservation areas for biodiversity.
- In all cases, make management aware of this provision's requirements and ensure that they are taken into account in any decisions to proceed with exploration, development, operation and closure activities.

### COP 38.3: Key biodiversity areas

#### Members in the mining sector shall identify Key Biodiversity Areas affected by their operations and:

- Use the mitigation hierarchy to avoid, minimise and rehabilitate impacts on biodiversity and ecosystem services. Offsets to address the residual impact shall only be employed after these steps are applied.
- Implement action plans to deliver measurable biodiversity benefits that are at least commensurate with the level of adverse impacts and ideally provide a net gain.
- In areas of critical habitat, ensure there are no measurable adverse impacts (no net loss) on the criteria for which the habitat was designated or on the ecological processes supporting those criteria, and provide an overall net gain in biodiversity benefits for the area.

#### Points to consider:

- Identify relevant KBAs through, for example, IBAT (<https://www.ibat-alliance.org/>).
- Your impact assessment should include detailed research to identify and assess risks and impacts to relevant KBAs and any critical habitat. As outlined in COP 34 **Impact assessment**, you should consider a landscape level approach. It may also be appropriate to identify HCVAs, for example if other landscape level organisations or agencies are working with HCVAs. Either way, your impact assessment may require extensive fieldwork in regions with limited biodiversity information.
- Ensure policies, plans and procedures apply the mitigation hierarchy when addressing biodiversity risks and impacts (see Figure 24.2 Environmental management). This involves prioritising options in a sequential way, as follows:
  - **Avoid:** design or modify a proposed mine or existing operation to prevent potential biodiversity impact.
  - **Minimise:** take measures to reduce the duration, intensity and/or extent of biodiversity impacts.
  - **Restore or rehabilitate:** take measures to improve degraded or removed ecosystems.
  - **Offset:** take measures to compensate for any residual biodiversity impact left after the previous three steps have been taken.
  - **Additional conservation actions:** take other compensatory measures, such as research grants or education scholarships, that do not offset residual losses but support biodiversity conservation.
- Note that you should only choose to offset biodiversity impacts as a last resort to tackle residual impacts. In these cases, understanding stakeholder perspectives is key to ensuring that offsets are credible and can deliver tangible conservation benefits. And residual impacts must be permitted under applicable national law.
- Use a documented action plan to mitigate impacts and deliver positive biodiversity outcomes. This should include, for example, on-site programmes to enhance habitat and protect and conserve biodiversity, or, after adequate avoidance, minimisation and restoration measures, biodiversity offsets.
- Design your plan so as to ensure a fair exchange in the balance of losses and gains. This requires exchanging similar types and amounts of biodiversity, including quantitative measurement of losses and gains to biodiversity.
- Wherever possible, aim to deliver a biodiversity benefit or net gain. You can demonstrate biodiversity benefits by:
  - improving existing or creating new habitats for species impacted by your mining activities;
  - reducing threats to species and their habitat; or
  - averting the local loss of a species or its habitat by securing its future use for conservation.
- As outlined in IFC Performance Standard 6, the specific features of critical habitats must not suffer a measurable adverse impact and the area should have an overall measurable biodiversity benefit. For example, if the area is critical because of the presence of an endangered frog, there should be no net decline in frog numbers or the wetland habitats that they depend on. Additionally, the overall area should benefit from improved conservation of the critical habitat values in question.

## COP 38.4: No net loss to species threatened with extinction

Members in the mining sector shall implement controls to ensure that their operations will not lead to the significant decline (no net loss) of a threatened species, as listed by the IUCN, or create adverse impacts on the habitat critical to supporting their survival.

### Points to consider:

- Make use of databases maintained by conservation groups, such as the IUCN, to access information about species that are threatened with extinction (see box 'Biodiversity databases').

### Biodiversity databases

A number of databases maintained by conservation organisations provide details on nationally or internationally significant protected areas or KBAs, and on species that are threatened or endangered. These include:

- UNEP-WCMC World Database on Protected Areas [www.unep-wcmc.org/resources-and-data/wdpa](http://www.unep-wcmc.org/resources-and-data/wdpa)
- World Database of Key Biodiversity Areas [www.keybiodiversityareas.org/home](http://www.keybiodiversityareas.org/home)
- Alliance for Zero Extinction <http://zeroextinction.org>
- BirdLife International, Important Bird and Biodiversity Areas [www.birdlife.org/worldwide/programme-additional-info/important-bird-and-biodiversity-areas-ibas](http://www.birdlife.org/worldwide/programme-additional-info/important-bird-and-biodiversity-areas-ibas)
- Plantlife, Important Plant Areas [www.plantlife.org.uk/international/important-plant-areas-international](http://www.plantlife.org.uk/international/important-plant-areas-international)
- Fauna and Flora International [www.fauna-flora.org](http://www.fauna-flora.org)
- Tropicos [Missouri Botanical Garden] [www.tropicos.org](http://www.tropicos.org)
- Conservation International [www.conservation.org](http://www.conservation.org)
- Natura 2000 [European Union] [http://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/index_en.htm)
- High Conservation Value Areas [www.biodiversitya-z.org/content/high-conservation-value-areas-hcva](http://www.biodiversitya-z.org/content/high-conservation-value-areas-hcva)

Many countries also maintain their own databases of nationally threatened species and habitats, and these need to be considered in meeting national biodiversity priorities with respect to threatened species and habitats.

- Your impact assessment should identify the presence of any species threatened with extinction (categories critically endangered, endangered and vulnerable) and any of their critical habitats.
- Your policies, plans and procedures must ensure that activities do not create a significant decline in species numbers or have adverse impacts on habitats critical to their survival.

## COP 38.5: Undersea mining activities outside of national government jurisdictions

Members in the mining sector shall not carry out exploration or mining activities, including tailings disposal, in deep sea areas until they have sufficient scientific knowledge of potential impacts of their activities, and evidence that controls can be implemented to mitigate adverse impacts.

### Points to consider:

- Deep sea is the lowest layer in the ocean. The Commission on the Limits of the Continental Shelf (under the UN Division of Ocean Affairs and the Law of the Sea) distinguishes the deep ocean floor from the continental shelf, defining the latter as the part 'between the shoreline and the shelf break or, where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 and 200 metres'.<sup>6</sup> The IUCN refers to deep sea as the area of the ocean below 200 metres;<sup>7</sup> however, other references are for even deeper depths.
- Your impact assessment should identify and document biodiversity values in these marine ecosystems. Use competent personnel who can assess that the status of the scientific knowledge of potential impacts is sufficient and that the controls planned to manage them are adequate.
- Assess the severity of any impacts to the marine ecosystem and communicate results to management before making any decision to proceed with undersea mining activities. Document all management decisions.

6 UN Division for Ocean Affairs and the Law of the Sea, The Continental Shelf [http://www.un.org/Depts/los/clcs\\_new/continental\\_shelf\\_description.htm](http://www.un.org/Depts/los/clcs_new/continental_shelf_description.htm)

7 IUCN, Deep-Sea Mining <https://www.iucn.org/resources/issues-briefs/deep-sea-mining>

- See also the requirements of COP 39.4 **Tailings and waste rock**.
- Use the mitigation hierarchy when designing and implementing controls to mitigate residual biodiversity impacts in deep sea areas.
- Avoid operating in areas where the biodiversity values of potentially impacted undersea ecosystems are scientifically uncertain or where there is a threat of serious and irreversible damage.

### Check:

- Do you have a policy that prohibits exploration, development in or impact on World Heritage sites?
- Have you confirmed whether you have any existing or planned activities that are next to World Heritage sites? If so, what measures are in place to ensure these will not be adversely impacted?
- Have you identified overlapping or nearby protected areas, and is this accounted for in your decision-making?
- Are you aware of all legal and other requirements applying to any relevant legally protected areas?
- Have you identified KBAs or HCVAAs affected by your operations?
- Do your policies and procedures apply the mitigation hierarchy to 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

### Websites:

Artisanal and Small-Scale Mining in Protected Areas and Critical Ecosystems Programme (ASM-PACE)

[www.levinsources.com/projects/asm-pace-artisanal-small-scale-mining-protected-areas-and-critical-ecosystems](http://www.levinsources.com/projects/asm-pace-artisanal-small-scale-mining-protected-areas-and-critical-ecosystems)

The Biodiversity Consultancy

[www.thebiodiversityconsultancy.com/approaches/mitigation-hierarchy](http://www.thebiodiversityconsultancy.com/approaches/mitigation-hierarchy)

Business and Biodiversity Offsets Programme

<http://bbop.forest-trends.org>

Convention on Biological Diversity

[www.cbd.int](http://www.cbd.int)

Convention on Wetlands of International Importance: Ramsar Convention

[www.ramsar.org](http://www.ramsar.org)

Global Biodiversity Information Facility (GBIF)

[www.gbif.org](http://www.gbif.org)

High Conservation Value (HCV) Resource Network

[www.hcvnetwork.org](http://www.hcvnetwork.org)

The Integrated Biodiversity Assessment Tool (IBAT) for Business

[www.ibatforbusiness.org](http://www.ibatforbusiness.org)

IUCN, IUCN Red List of Threatened Species (2019)

[www.iucnredlist.org](http://www.iucnredlist.org)

IUCN, Rio Tinto Relationship

[www.iucn.org/theme/business-and-biodiversity/our-work/business-partnerships/rio-tinto](http://www.iucn.org/theme/business-and-biodiversity/our-work/business-partnerships/rio-tinto)

The Program on Forests (PROFOR)

[www.profor.info](http://www.profor.info)

Prospectors and Developers Association of Canada (PDAC), e3 Plus: A Framework for Responsible Exploration

[www.pdac.ca/e3plus/toolkits](http://www.pdac.ca/e3plus/toolkits)

Society for Ecological Restoration International (SER)

[www.ser.org](http://www.ser.org)

UN Convention on the Law of the Sea

[www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm)

UN Environment [formerly UNEP], World Conservation Monitoring Centre (WCMC)

[www.unep-wcmc.org](http://www.unep-wcmc.org)

University of Queensland [Australia], Centre for Mined Land Rehabilitation

[www.cmlr.uq.edu.au](http://www.cmlr.uq.edu.au)

WCMC, World Database on Protected Areas

[www.unep-wcmc.org/resources-and-data/wdpa](http://www.unep-wcmc.org/resources-and-data/wdpa)

## **Publications:**

Australian Government, Environment Protection and Biodiversity Conservation Act 1999: Offsets Policy (2012)

[www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy\\_2.pdf](http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy_2.pdf)

ICMM, Biodiversity Offsets: A Briefing Paper for the Mining Industry (2005)

[www.ecosystemmarketplace.com/wp-content/uploads/archive/documents/Doc\\_417.pdf](http://www.ecosystemmarketplace.com/wp-content/uploads/archive/documents/Doc_417.pdf)

ICMM, Mining and Biodiversity: A Collection of Case Studies (2010)

[www.icmm.com/en-gb/publications/biodiversity/mining-and-biodiversity-a-collection-of-case-studies\\_2010-edition](http://www.icmm.com/en-gb/publications/biodiversity/mining-and-biodiversity-a-collection-of-case-studies_2010-edition)

ICMM, Mining and Biodiversity Good Practice Guidance (2006)

[www.icmm.com/page/1182/good-practice-guidance-for-mining-and-biodiversity](http://www.icmm.com/page/1182/good-practice-guidance-for-mining-and-biodiversity)

ICMM, Mining and Protected Areas Position Statement (2003)

[www.icmm.com/en-gb/members/member-commitments/position-statements/mining-and-protected-areas-position-statement](http://www.icmm.com/en-gb/members/member-commitments/position-statements/mining-and-protected-areas-position-statement)

ICMM and IUCN, Independent Report on Biodiversity Offsets (2012)

[www.icmm.com/en-gb/publications/biodiversity/independent-report-on-biodiversity-offsets](http://www.icmm.com/en-gb/publications/biodiversity/independent-report-on-biodiversity-offsets)

IFC, Guidance Note 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012)

[https://www1.ifc.org/wps/wcm/connect/a359a380498007e9a1b7f3336b93d75f/Updated\\_GN6-2012.pdf?MOD=AJPERES](https://www1.ifc.org/wps/wcm/connect/a359a380498007e9a1b7f3336b93d75f/Updated_GN6-2012.pdf?MOD=AJPERES)

IFC, Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources (2012)

[https://www1.ifc.org/wps/wcm/connect/bff0a28049a790d6b835faa8c6a8312a/PS6\\_English\\_2012.pdf?MOD=AJPERES](https://www1.ifc.org/wps/wcm/connect/bff0a28049a790d6b835faa8c6a8312a/PS6_English_2012.pdf?MOD=AJPERES)

IUCN, A Global Standard for the Identification of Key Biodiversity Areas (2016)

<https://portals.iucn.org/library/node/46259>

IUCN, Guidelines for Applying Protected Area Categories (2008)

[data.iucn.org/dbtw-wpd/edocs/PAPS-016.pdf](http://data.iucn.org/dbtw-wpd/edocs/PAPS-016.pdf)

IUCN, Guidelines on Business and Key Biodiversity Areas (2018)

<https://portals.iucn.org/library/node/47660/>

IUCN, Identification and Gap Analysis of Key Biodiversity Areas (2007)

<http://data.iucn.org/dbtw-wpd/edocs/PAG-015.pdf>

IUCN, IUCN Policy on Biodiversity Offsets

[https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC\\_2016\\_RES\\_059\\_EN.pdf](https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2016_RES_059_EN.pdf)

World Bank, Precautionary Management of Deep Sea Mining Potential in Pacific Island Countries

<http://pubdocs.worldbank.org/en/125321460949939983/Pacific-Possible-Deep-Sea-Mining.pdf>

World Heritage Committee, Operational Guidelines for Implementation of the World Heritage Convention (2012)

<http://whc.unesco.org/en/guidelines>

World Heritage Convention, World Heritage List (2016)

<http://whc.unesco.org/en/list>

# (COP 39) TAILINGS AND WASTE ROCK

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members in the mining sector.

**Lifecycle** is the interlinked stages of a product (or service) system, from raw material acquisition or natural resources to final disposal. The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

**Mining wastes** are wastes generated during the extraction, beneficiation and processing of ore.

**Tailings** are the ground rock and effluents created when the mined ore is processed into a concentrate or final product through 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 safe, stable and economical storage that protects human health and the environment.

**Waste rock** and **overburden** are the materials that are removed to access the ore. These may even contain very low grades of ore, but only at levels that cannot be processed profitably.

**Waste rock management** involves the removal and storage of waste rock, which may be temporary or for the long term.

## B ISSUE BACKGROUND

Tailings and waste rock are found in all mining operations. Removing and storing them safely remains one of the mining industry's biggest hurdles to better environmental performance. Because the mining of gold, silver, PGM, diamonds and coloured stones involves different processes across diverse environments, there is no one-size-fits-all approach. Each site will need to develop its own management system to protect human health and the environment.

Tailings and waste rock can have three main types of negative impacts:

- **Footprint:** The storage of large volumes of tailings and waste rock creates a physical footprint on the landscape that has unavoidable environmental and social impacts.
- **Catastrophic failure:** Geotechnical failure (landslides or collapse of tailings or waste rock structures) rarely happens, but when it does it can have a catastrophic impact on people and ecosystems because of the sheer and immediate volume of material it releases into the environment. When the Córrego de Feijão mine and the Samarco's Fundão tailings dams collapsed in Brazil respectively in 2019 and 2015, they killed 179 and 19 people, polluted the water supply for hundreds of thousands more and destroyed wildlife for kilometres. The disasters also carry a high cost for the firms in fines and in clean-up and relief.
- **Acid rock drainage (ARD):** Tailings and waste rock can contain sulphide minerals which, when exposed to air and water, create an outflow of acidic water known as ARD.<sup>1</sup> This can seep into groundwater or emerge in surface streams, with ecological impacts. Without effective prevention and management, ARD can continue to contaminate waterways and aquatic environments for decades or centuries after mining has stopped.

Tailings and waste rock can be managed in different ways, depending on their physical and chemical nature, national regulation and the mining or processing site's topography, climate and socio-economic context.

Waste rock is often piled up into heaps (called waste rock facilities, impoundments or dumps). Depending on its physical characteristics, waste rock is sometimes used to backfill the voids in active or closed mines. It can also be used in land forming, as road base aggregate, footings or for landscape restoration.

Tailings storage and disposal methods tend to fall into one of five categories (see Figure 39.1):

- **Terrestrial storage** is the most common type of storage and includes:
  - **Impoundments or dams:** Tailings are discharged into an impounding structure as a slurry and the excess water is removed through 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 filtered out using vacuum or pressure filters and then stacked into a dense and stable structure.
  - **Backfilling:** Tailings are thickened into a paste-like substance using waste aggregate and cement and used to fill voids in active, abandoned or closed underground or open-pit mines.

<sup>1</sup> In some cases, sulphide minerals can leach out as neutral drainage containing various elements. This guidance document refers to ARD as including both neutral and acidic drainage.

- **Thickened tailings dams:** The same paste-like product used in backfilling is used to build new tailings dams, or to extend the life of existing ones.
- **Permanent heap leach pads and heap leach spoils:** Mined ore is crushed into small pieces and heaped onto an impermeable 'leach pad' where it is irrigated with a leach solution to dissolve the valuable metals and minerals. After leaching, the heap is typically 'rinsed', covered with an impermeable cap and left insitu.
- **Sub-aqueous storage:** Tailings are kept under water in perpetuity, either in a purpose-built structure or in dams or diversion structures around existing water bodies. A good way of preventing ARD, sub-aqueous storage is only really a viable option in countries where rainfall outstrips evaporation; for example, it is used in Canada and Norway.
- **Submarine tailings disposal:** Tailings are treated and dumped into the sea through a submerged pipe. This type of disposal is generally only used if land-based disposal is not an option—for example, if local conditions carry a high risk of ARD or catastrophic failure, or if the surrounding area is a biodiversity hotspot or has high economic or cultural value.
- **Surface marine tailings disposal:** Tailings that are not chemically active—for example, sorted seabed material—are dumped overboard from a marine mining vessel or platform.
- **Riverine tailings disposal:** Tailings are dumped into, and dispersed by, active rivers. Riverine disposal is rare and is not considered good practice. It is currently only used at three sites in Indonesia and Papua New Guinea where high rainfall, mountainous terrain and seismic activity rule out other storage or disposal options.

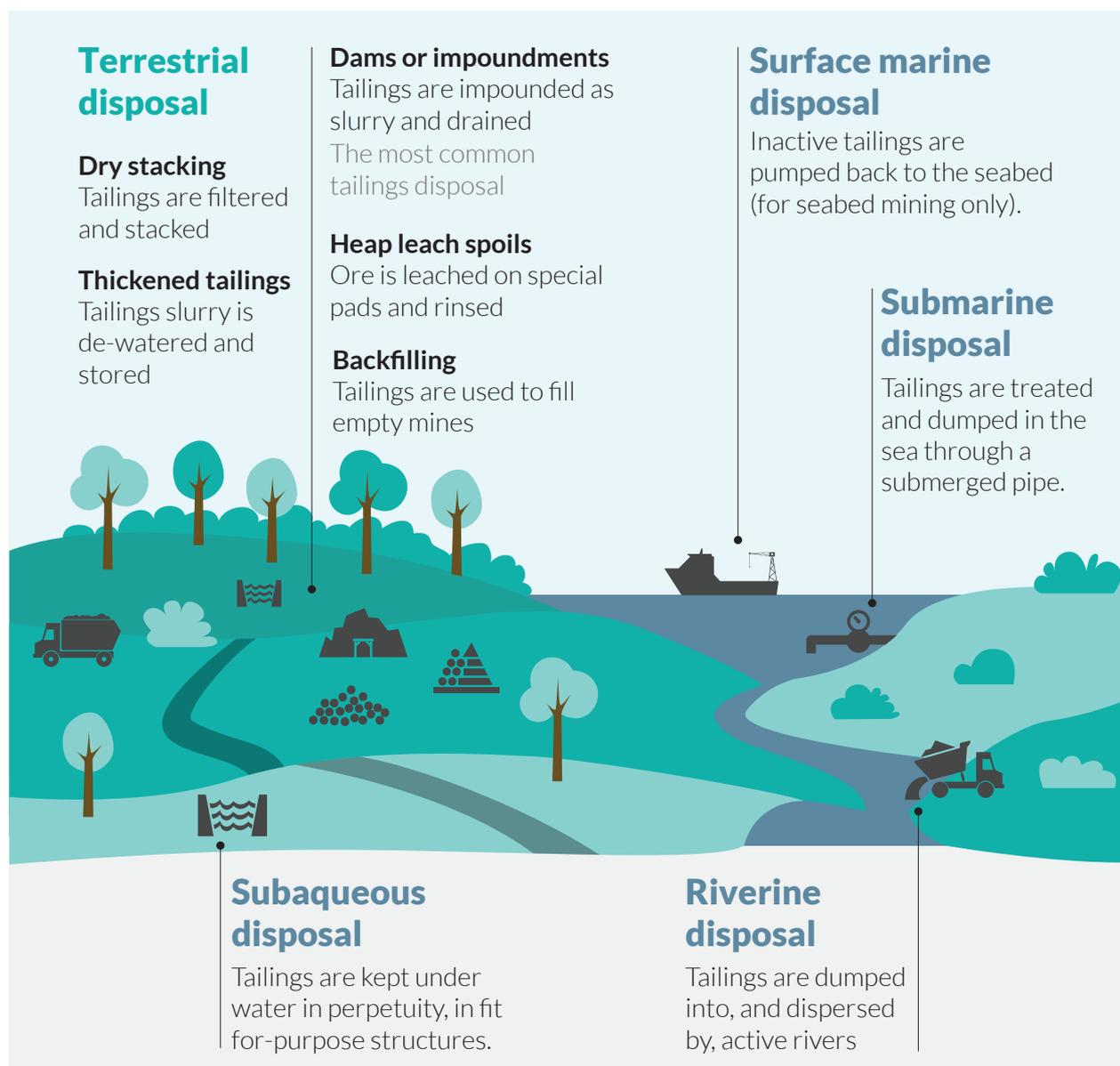


Figure 39.1. Different types of tailings disposal

Tailings disposal lies at the forefront of the debate about the trade-off between the potential costs and benefits of mining. Decisions on mine waste management are most commonly reached through an environmental and social impact assessment (ESIA) that is completed before a mine gets 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, environmental and social management and monitoring plans.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **Global Acid Rock Drainage Guide**,<sup>2</sup> published by the International Network for Acid Prevention (INAP), offers a state-of-the-art summary of good practices and technology on the prediction, prevention and management of ARD. INAP also brings together a consortium of national ARD research groups under a Global Alliance, including MEND from Canada, the US Acid Drainage Technology Initiative, the South African Water Research Commission and the Partnership for Acid Drainage Remediation in Europe. Each group provides a useful national network and reference body for ARD.

The **International Commission on Large Dams (ICOLD)**, ([www.icold-cigb.net](http://www.icold-cigb.net)) is an international non-governmental organisation that 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. It offers extensive guidance to designers, owners and operators of large dams, including tailings dams.

The **International Council on Mining and Metals (ICMM)** has a position statement on preventing catastrophic failure of tailings storage facilities that all its members are required to uphold.<sup>3</sup> The statement outlines a tailings governance framework based on accountability, long-term planning and resourcing, thorough risk and change management, and regular review and assurance.

### National law

Each jurisdiction has its own legislative or regulatory framework on tailings storage and management of other mine wastes that governs how storage facilities are designed, licensed, monitored, reported and closed. It is essential that you comply with applicable law.

### National initiatives

The **Mining Association of Canada (MAC)** Towards Sustainable Mining initiative includes a Tailings Management Protocol,<sup>4</sup> supported by a Guide to the Management of Tailings Facilities. While developed for the Canadian context, these resources are useful to any mine planning for effective tailings management.

The **Mine Environment Neutral Drainage (MEND)**, (<http://mend-nedem.org>) programme in Canada aims to develop and apply new technologies to prevent and control ARD.

## D IMPLEMENTATION GUIDANCE

Make sure you have a comprehensive system in place for managing tailings and waste rock. Your system should, as per MAC guidance, include four key components:

- **A risk-based approach**, including regular, rigorous risk assessment and transparent decision-making to choose the most appropriate site-specific approach to disposal, using the best available technology.
- **Critical controls** to identify, implement and monitor actions for managing high risks.
- **An engineer-of-record** to provide technical direction for waste management.
- **Independent review** and evaluation by a competent, objective third party. This review should cover all aspects of the planning, design, construction, operation and maintenance of waste facilities.

2 INAP, Global Acid Rock Drainage Guide (2009) [www.gardguide.com/index.php?title=Main\\_Page](http://www.gardguide.com/index.php?title=Main_Page)

3 ICMM, Preventing Catastrophic Failure of Tailings Storage Facilities (2016) [www.icmm.com/tailings-ps](http://www.icmm.com/tailings-ps)

4 MAC, Tailings Management Protocol (2019) [http://mining.ca/sites/default/files/Tailings-Management-Protocol\\_2019%20final.pdf](http://mining.ca/sites/default/files/Tailings-Management-Protocol_2019%20final.pdf)

Your management system will need to establish documented processes for all aspects of handling, containing and controlling materials at tailings and waste rock facilities. This includes processes to maintain a safe and stable structure, address contamination, engage stakeholders and train personnel (see Figure 39.2).

You will also need to keep records that identify, for each facility:

- roles and responsibilities of personnel and the minimum knowledge and competency requirements for each position;
- characteristics and properties of the tailings and waste rock;
- records of inspections and geotechnical assessments of the facility's integrity and stability;
- the key components and location of tailings and mine waste storage;
- procedures and processes for managing change;
- requirements for analysing and documenting performance of the tailings and mine waste storage; and
- reporting requirements (statutory and stakeholder).

## 1 Storage facility structure

You must locate, design, build, operate, monitor, maintain and close facilities such that their structures are stable, their contents are managed in compliance with applicable law, and their surrounding water and air quality is protected. This should include the four key components from MAC guidance.

## 4 Training

You must train all personnel at the facility so that they understand the waste management plan and what their roles and responsibilities are in implementing it. Training must also cover visual indicators of storage performance.



## 2 Contamination

You must be able to show how you identify, assess, manage and remediate contaminated sites, which should include active monitoring throughout the watershed.

## 3 Stakeholder engagement

You must consult with affected communities, emergency agencies and any other stakeholders in identifying, assessing and managing any significant economic, health and safety, social or environmental risk associated with the facility.

Figure 39.2. Processes for tailings and waste rock facilities

### COP 39.1: 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:

- Understanding the physical and geochemical characteristics of tailings and waste rock—and predicting their behaviour over time—is critical to design safe and stable storage facilities. The most important characteristic to know is perhaps the shear strength; you may need to do stability and strength tests to determine it. Other important characteristics to know include, at a minimum:
  - particle size and distribution;
  - moisture content;
  - density, consolidation and porosity; and
  - plasticity and permeability.
- When you are doing your ESIA for a new waste facility, make sure you think about ARD. There’s a significant body of work on predicting and managing ARD that you can use to help you establish a good testing programme during the ESIA phase, which should include predictive modelling as well as field and lab-based tests of waste rock, such as static tests (for example, acid base accounting), kinetic lab tests (for example, humidity cells) and field kinetic tests.
- In characterising waste materials and predicting their behaviour over time, make sure you consider how particular characteristics of the tailings and waste rock may change over the mining period. Different facilities may need to handle different rock types at different times.
- Keep your records of material characterisations up to date for all tailings and waste rock sites. Make sure that this record-keeping is done by competent personnel; this may involve using external expertise.

### COP 39.2: 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:**

- Ensure structural stability and take measures to prevent catastrophic failures.
- Ensure controlled discharge and protect the surrounding environment and local communities from potential impacts of acidification, metal leaching, loss of containment or contamination, including contamination of groundwater during the mine’s operation and post-closure.
- Implement appropriate mitigation or treatment if impacts are identified.

## Points to consider:

- Use the ICMM governance framework for tailings storage facilities to ensure structural stability and avoid catastrophic failure. This framework includes six components, ranging from accountability and risk management to review and assurance (see Table 39.1).

Table 39.1. The six components of the ICMM governance framework for tailings storage facilities. Source: ICMM. Preventing Catastrophic Failure of Tailings Storage Facilities. (2016)

Framework component	Notes
1 Accountability, responsibility and competency	Storing mine waste requires engineered solutions over the long term. The governance of their design and management needs to be clearly defined and competently implemented. The MAC guide further defines that mine owners are responsible for identifying and appointing an ‘engineer-of-record’ to provide technical direction.
2 Planning and resourcing	Financial and human resources need to be in place to manage mine waste facilities over their entire lifecycle.
3 Risk management	Risk assessments, appropriate controls (using both technology and best practices) and verification of performance are all required.
4 Change management	The changing risks associated with mine waste storage sites over their lifecycle mean sites need to be continually managed.
5 Emergency preparedness and response	In the event of failure, mitigation controls should be used to minimise impacts on the well-being of workers, local communities and the surrounding environment.
6 Review and assurance	Internal performance monitoring, as well as internal and external reviews and assurance, is needed. The MAC guide further states that this should include regular independent review carried out by a third party.

- Before building a tailings or waste rock storage facility, do a risk assessment to identify, prioritise and improve your engineering design and management controls. This risk assessment should be regularly updated and should, at a minimum, consider:
  - **location and proximity** of tailings and waste rock storage facilities to sensitive environments, including groundwater, and affected communities;
  - **the storage capacity** of tailings and waste rock facilities, compared with the likely volume of waste to be managed over the mining lifecycle;
  - **potential impact of extreme events**, such as earthquakes or floods;
  - **effectiveness of erosion control**, including dust entrainment, sediment run-off and loss of topsoil; and
  - **potential mobility** of waste materials in the case of discharge—the use of techniques such as isolating acid-generating material should be incorporated.
- When designing a tailings dam or storage facility, you must take into account:
  - foreseeable extreme flooding, based on statistics such as the probable maximum flood or a ‘one in a thousand year’ 24-hour storm event (see the Finnish Dam Safety Code of Practice<sup>5</sup> for information on flood events); and
  - potential seepage to groundwater and surface water—make sure you incorporate features like cut-off drains, drainage layers, interception trenches and grout curtains to stop waste materials seeping into groundwater and surface water.
- When building tailings embankments and liners, make sure all construction is closely supervised and independently verified before it is used, to confirm that the ‘as built’ structure matches your design specifications.
- Once you start using the tailings and waste rock facility, carry out periodic inspections and assessments to confirm it remains safe and structurally stable. At a minimum, you should be doing:
  - **daily or weekly visual inspections** for evidence of instability, including erosion, corrosion, cracks or loss of containment;
  - **periodic geotechnical assessments** based on local geology and meteorological conditions, as well as current and planned mining activities; and
  - **annual independent inspections** of structural stability, operation and maintenance.
- In addition to these inspections, you will also need to ensure ongoing geochemical field monitoring, including:
  - active monitoring of water across the full catchment area, with due consideration for water used by local communities and in sensitive ecosystems; and
  - testing of both surface and subsurface water, for example through upstream and downstream groundwater monitoring boreholes that can detect seepage and contamination.
- In the event that your controls fail, take measures to address impacts (and prevent reoccurrence) quickly and effectively. This may include treating contaminated groundwater.

### COP 39.3: Riverine disposal

**Members in the mining sector shall not use riverine disposal of tailings or waste rock.**

#### Points to consider:

- This provision does not apply to the disposal of tailings and waste rock in conventional waste rock dumps or tailings dams, which may be built within the catchments of a river system as long as they are designed to store the waste materials in a way that prevents contamination of the river system.
- River diversion structures around any waste rock or tailings storage facilities should be designed to the same flood capacity as the structures themselves, to avoid flood damage.

<sup>5</sup> Finland National Board of Waters and the Environment, Dam Safety Code of Practice (1994)  
<https://helda.helsinki.fi/bitstream/handle/10138/157603/Vesi-%20ja%20ymp%C3%A4rist%C3%B6hallinnon%20julkaisu%20B%209E.pdf?sequence=1>

## COP 39.4: Marine disposal

**Members in the mining sector shall not use marine or lake disposal of tailings and waste rock from land-based mining facilities unless:**

- a. a thorough environmental and social analysis of alternatives, using scientifically valid data, was conducted that showed marine or lake tailings disposal creates less environmental and social impact and risk than a land-based tailings facility; and
- b. it can be scientifically demonstrated that there will be no significant adverse effect on coastal or marine species and habitats; and
- c. there is long-term impact monitoring, including for cumulative impacts, and provision made for a mitigation plan.

### Points to consider:

- This provision is linked to COP 38.5 **Biodiversity**.
- The general requirements for tailings and waste rock disposal under COP 39.2 still apply to marine disposal.
- You can decide to use marine disposal of tailings and waste rock if there are high safety and environmental risks associated to waste disposal on land. You will need to show that the impacts to local marine environments are less detrimental than those associated with disposal on land. A thorough risk assessment is needed which:
  - characterises the tailings and waste rock for marine disposal;
  - identifies all marine resources that may be impacted, including marine life and habitat, fishing resources, deep and shallow corals, sponge and vent communities, seabeds and coastal features;
  - accounts for seasonal effects, socio-economic factors and cumulative impacts associated with the marine disposal;
  - compares the risks and impacts of marine disposal against land-based disposal; and
  - establishes controls to prevent and mitigate any short- or long-term impact associated with the marine disposal.
- In all cases, shallow marine disposal is not considered good practice because it can pose exposure risks to human health and shallow marine environments.
- If your risk assessment finds that conditions are inappropriate for this form of tailings disposal, or if there is not enough data to do the analysis, then you should not proceed.

### Check:

- Do you have a comprehensive system for managing tailings and waste rock? Is it understood by all relevant personnel? And do you consult stakeholders about it?
- Do you have up-to-date records on the physical and geochemical properties of your tailings and waste rock?
- Can you give the auditor evidence to show that your tailings and waste rock facilities are structurally stable, and do not threaten local environments and communities? Have you done a risk assessment?
- If your land-based mine uses marine or lake tailings and waste rock disposal, can you show that it will cause fewer risks and negative impacts than land-based disposal, and that it will not cause significant adverse impacts on coastal or marine resources?

## E FURTHER INFORMATION

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### Websites:

Acid Drainage Technology Initiative (ADTI)  
[www.osmre.gov/programs/tdt/addti.shtm](http://www.osmre.gov/programs/tdt/addti.shtm)

International Commission on Large Dams  
[www.icold-cigb.net](http://www.icold-cigb.net)

International Council on Mining and Metals (ICMM), Tailings Management  
[www.icmm.com/en-gb/environment/tailings](http://www.icmm.com/en-gb/environment/tailings)

International Network for Acid Prevention (INAP)  
[www.inap.com.au](http://www.inap.com.au)

Mine Environment Neutral Drainage (MEND) Canada  
[www.mend-nedem.org](http://www.mend-nedem.org)

Minerals Council of Australia, Enduring Value Framework  
<https://www.minerals.org.au/enduring-value-framework>

The Mining Association of Canada (MAC)  
<http://mining.ca>

Nevada Division of Environment Protection: Statutes and Regulations  
<https://ndep.nv.gov/water/water-pollution-control/resources/statutes-regulations>

Partnership for Acid Drainage Remediation in Europe (PADRE)  
[www.padre.imwa.info](http://www.padre.imwa.info)

South African Water Research Commission  
[www.wrc.org.za](http://www.wrc.org.za)

### Publications

Australia, Tailings Management: Leading Practice Sustainable Development Program for the Mining Industry (2016)  
[www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/tailings-management.pdf](http://www.industry.gov.au/sites/g/files/net3906/f/July%202018/document/pdf/tailings-management.pdf)

European Commission, Management of Tailings and Waste Rock In Mining (2009)  
[http://eippcb.jrc.ec.europa.eu/reference/BREF/mmr\\_adopted\\_0109.pdf](http://eippcb.jrc.ec.europa.eu/reference/BREF/mmr_adopted_0109.pdf)

Finland National Board of Waters and the Environment, Dam Safety Code of Practice (1994)  
<https://helda.helsinki.fi/bitstream/handle/10138/157603/Vesi-%20ja%20ymp%C3%A4rist%C3%B6hallinnon%20julkaisu%20B%209E.pdf?sequence=1>

ICMM, Good Practice Guidance for Mining and Biodiversity (2006)  
[www.icmm.com/en-gb/publications/biodiversity/mining-and-biodiversity-good-practice-guidance](http://www.icmm.com/en-gb/publications/biodiversity/mining-and-biodiversity-good-practice-guidance)

ICMM, Preventing Catastrophic Failures of Tailings Storage Facilities (2016)  
[www.icmm.com/tailings-ps](http://www.icmm.com/tailings-ps)

INAP, Global Acid Rock Drainage Guide (2012)  
[www.gardguide.com/index.php/Main\\_Page](http://www.gardguide.com/index.php/Main_Page)

International Finance Corporation (IFC), Environmental Health and Safety Guidelines for Mining (2007)  
[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/ehs-guidelines](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines)

MAC, A Guide to the Management of Tailings Facilities, Third Edition (2017)  
<http://mining.ca/sites/default/files/documents/MAC-Guide-to-the-Management-of-Tailings-Facilities-2017.pdf>

MAC, Tailings Management Protocol (2017)  
<http://mining.ca/towards-sustainable-mining/protocols-frameworks/tailings-management-protocol>

# (COP 40) CYANIDE

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members in the mining sector using cyanide.

The term **cyanide** for the purposes of the COP includes cyanide ion and hydrogen cyanide, as well as salts and complexes of cyanide with a variety of metals in solids and solutions.

Source:

- International Cyanide Management Code  
[www.cyanidecode.org](http://www.cyanidecode.org)

## B ISSUE BACKGROUND

Cyanide effectively and efficiently extracts gold and silver from ore. While a number of other chemicals are available to do the job, they form less stable complexes and so require more aggressive conditions and oxidants to dissolve the gold or silver. The alternatives are generally more expensive to use and also pose health and environmental risks that may be similar to or greater than those presented by cyanide.

Cyanide is known to be acutely toxic to humans. Liquid or gaseous hydrogen cyanide and alkali salts of cyanide can enter the body through inhalation, ingestion or absorption through the eyes and skin. The rate of skin absorption is enhanced when the skin is cut, abraded or moist. Unlike mercury, cyanide does not persist in the environment; it is, however, toxic to many living organisms at very low concentrations.

Sodium cyanide has been used in the gold mining industry since the late 1800s and it remains the primary reagent for gold processing today. There have been a number of high-profile incidents in the gold mining industry involving cyanide over the years, including the failure of a tailings dam at the Baia Mare mine in Romania in 2000, which caused cyanide to leak into the Somes River, killing large numbers of fish and other aquatic life in Hungary and Yugoslavia. It was after this event that the International Cyanide Management Code was created.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

The **International Cyanide Management Code for the Manufacture, Transport and Use of Cyanide in the Production of Gold** (the 'Cyanide Code')<sup>1</sup> is a voluntary industry programme designed to help improve cyanide management practices among the global gold and silver mining industry, including the producers and transporters of cyanide. Administered by the International Cyanide Management Institute (ICMI), the Cyanide Code aims 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. The scope of the Cyanide Code was extended in 2016 to include the production of silver from primary silver mines using cyanide in the production process.

The Cyanide Code is intended to complement a company's existing regulatory requirements, and addresses cyanide management issues 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 and silver, 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 Cyanide Code commit to follow its principles and standards in their use of cyanide. That includes meeting a range of specific performance goals and objectives to be certified as compliant.

<sup>1</sup> ICMI, The Cyanide Code [www.cyanidecode.org/about-cyanide-code/cyanide-code](http://www.cyanidecode.org/about-cyanide-code/cyanide-code)

## D IMPLEMENTATION GUIDANCE

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### COP 40.1: Cyanide

Members in the mining sector using cyanide in the recovery of gold and silver 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.
- If you use cyanide to recover gold and silver, you must adopt the Cyanide Code by becoming a signatory (the name of all signatory companies and their operations are listed on the ICMI website).
  - Note that while the ICMI provides a three-year period in which to achieve compliance, to conform with the RJC COP you will need to achieve compliance with the Cyanide Code (and be audited) **within two years** of joining the RJC.
- Remember that Cyanide Code certification applies to the level of the certified operation, not the signatory company. Make sure that all your facilities and operations within the scope of your RJC membership, to which the Cyanide Code applies, have been certified (or become certified before the RJC audit).
- If your operations are found in substantial but not full compliance with the Cyanide Code, they will be 'conditionally' certified; you will then need to 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 COP.

#### Check:

- Do any of your operations use cyanide in the recovery of gold or silver?
- If so, are you a signatory to the International Cyanide Management Code, and are the relevant operations certified to the code?

## E FURTHER INFORMATION

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#### Websites:

- Centers for Disease Control and Prevention, Cyanide  
<https://emergency.cdc.gov/agent/cyanide/index.asp>
- ICMI, International Cyanide Management Code for the Gold Mining Industry [the Cyanide Code]  
[www.cyanidecode.org](http://www.cyanidecode.org)

#### Publications:

- Australian Government, Cyanide Management Handbook (2008)  
<https://archive.industry.gov.au/resource/Documents/LPSDP/LPSDP-CyanideHandbook.pdf>

# (COP 41) MERCURY

## A DEFINITIONS AND APPLICABILITY

This provision applies to RJC members in the mining sector who use mercury in processing or have it in saleable products, by-products or wastes.

**Mercury**, also known as quicksilver, is a naturally occurring element found in rocks in the earth's crust. It is a heavy, silvery-white metal which is liquid at room temperature and evaporates easily. It exists in several forms: elemental (metallic) mercury, methylmercury and organic compounds, and inorganic mercury compounds. Mercury has been recognised as a chemical of global concern owing to its potential to travel long distances through the air, its persistence in the environment once put there by people, its ability to concentrate as it rises up the food chain and its significant negative effects on human health and the environment.

Source:

- UN Environment Programme (UNEP), Mercury General Information [www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/mercury/mercury-general-information](http://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/mercury/mercury-general-information)

## B ISSUE BACKGROUND

Over the past 50 years, mercury's toxicity has been well documented and many countries have taken steps to reduce its use and release, and to protect their citizens from exposure to it. Mercury has been used in many products that can eventually end up releasing it into the atmosphere or in global waters. Once released, mercury can persist in the environment where it circulates between air, water, sediments, soil and living organisms in various forms. Atmospheric mercury can travel long distances through the air and be incorporated (and transformed into its more toxic form, methylmercury) by micro-organisms, where it can 'bio-accumulate' as it progresses up the food chain. In people, mercury can cause damage to the nervous system, thyroid, kidneys, lungs, immune system, eyes, gums and skin. The unborn and young are the most susceptible and neurological damage to the brain caused by mercury cannot be reversed.

Mercury is not used for processing in large-scale mining, but at some gold mines it is produced as a by-product because it occurs naturally in the ore body, usually in the form of a stable compound of mercury sulphide. In the artisanal and small-scale mining (ASM) sector, metallic mercury is commonly used for gold recovery, in many cases by means of illegal supply chains as countries move to ban its use. For artisanal miners, constrained by poverty and few alternatives, mercury amalgamation often offers the best technology available. In most cases, it produces a higher gold recovery rate than the mercury-free techniques available, such as gravimetry.

High prices of gold trigger significant growth in ASM and, consequently, mercury use. The United Nations Environment Programme (UNEP) 2013 Global Mercury Assessment<sup>1</sup> estimates that artisanal and small-scale gold mining is now the largest sector demand for mercury, and 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 when heating amalgam to vaporise the mercury. ASM can also release mercury into river systems, where it contaminates by concentrating along the food chain and so poisoning people and communities downstream.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International standards

After some years of negotiation, the **Minamata Convention on Mercury** ([www.mercuryconvention.org](http://www.mercuryconvention.org)) was finally adopted in October 2013 and entered into force on 16 August 2017. A global treaty signed by 101 countries, the Minamata Convention addresses permitted uses of mercury as a means of reducing releases to the environment. Elements of the convention for the mining and metals sector include:

- controls on the supply of and trade in mercury, notably mercury recovered as a by-product in non-ferrous metals production;
- measures to reduce emissions from power plants and non-ferrous metals facilities producing copper, gold, lead and zinc;
- measures to reduce emissions from ASM for gold; and
- the environmentally sound management of wastes containing mercury.

1 UNEP, Global Mercury Assessment (2013) <http://wedocs.unep.org/bitstream/handle/20.500.11822/7984/-Global%20Mercury%20Assessment-201367.pdf?sequence=3&isAllowed=y>

The Minamata Convention also calls on all signatory countries to develop national action plans that include:

- efforts to help formalise or regulate ASM for gold (see box 'Formalising ASM to tackle mercury use');
- baseline assessments to estimate the quantities and uses of mercury in ASM for gold;
- support for mercury-free alternatives and strategies to reduce emissions and exposure to mercury;
- development of public health strategies and public awareness campaigns for affected communities (including strategies for involving stakeholders in national action plan development);
- measures to manage trade and prevent the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small-scale gold mining and processing;
- the elimination of 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; and
- a defined implementation schedule.

The Alliance for Responsible Mining (ARM) ([www.responsiblemines.org](http://www.responsiblemines.org)) actively promotes mercury-free ASM as the best available technology under its Fairmined Standard.<sup>2</sup> At the same time, the alliance acknowledges that mercury plays an important role in current ASM processing methods and that any effort to reduce or eliminate its use must be accompanied by capacity building and technical support for the miners. This approach is implemented on the ground through ARM's producer support initiatives for certification against the Fairmined Standard.

For example, ARM requires artisanal miners seeking certification to use a concentration process (gravimetry, flotation, handsorting, etc.) before amalgamation, make it obligatory to use retorts or other mercury recovery devices during amalgam decomposition, recycle mercury by reactivation and separate mercury in tailings. All of these requirements serve to drastically reduce mercury emissions without jeopardising the rights of artisanal miners and their families to continue operating.

### Formalising ASM to tackle mercury use

ARM believes that the national action plans called for by Annex C of the Minamata Convention offer a great opportunity for formalising ASM in the gold sector, and has committed to implementing these in collaboration with miners, governments, civil society and the mining industry. In doing so, it hopes to ensure that national mercury reduction programmes have the intended positive impact on the thousands of communities that depend on ASM for gold to survive.

ARM stresses that implementing Annex C requires governments to invest in formalisation processes through appropriate mechanisms and direct support that will guarantee miners' access to training, credit and cleaner technologies. ARM also emphasises the need to raise awareness of health-related impacts of mercury among rural mining communities.

### International initiatives

The **Artisanal Gold Council (AGC)** ([www.artisanalgold.org](http://www.artisanalgold.org)) actively develops practical solutions to reduce mercury use and emissions and identify appropriate solutions that conserve or eliminate the need for mercury and other reagents.

**Mercury Watch** (<http://www.artisanalgold.org/our-projects/mercurywatch-org/>) is an interactive monitoring system for global mercury use in artisanal and small-scale gold mining. Maintained by the AGC, Mercury Watch maps and illustrates mercury use estimates in ASM globally while providing information on individual projects related to mercury and ASM for gold. The database is based on the most recent Arctic Monitoring and Assessment Programme (AMAP) and UNEP estimates<sup>3</sup> and updated data from researchers and other stakeholders.

Under the auspices of the UNEP Governing Council, the **UNEP Global Mercury Partnership** (<https://web.unep.org/globalmercurypartnership>) was established to further long-term international action to address mercury release. The partnership's overall goal is to protect human health and the global environment from the release of mercury and its compounds by minimising and, where feasible, ultimately eliminating global, anthropogenic mercury releases to air, water and land.

2 ARM, Fairmined Standard for Gold from Artisanal and Small-Scale Mining, Including Associated Precious Metals (2014) [www.responsiblemines.org/images/sampled/EstandarFairmined/Fairmined%20Stnd%202020%200\\_2014\\_.pdf](http://www.responsiblemines.org/images/sampled/EstandarFairmined/Fairmined%20Stnd%202020%200_2014_.pdf)

3 AMAP/UNEP, Technical Background Report for the Global Mercury Assessment 2013 (2013) [www.amap.no/documents/doc/technical-background-report-for-the-global-mercury-assessment-2013/848](http://www.amap.no/documents/doc/technical-background-report-for-the-global-mercury-assessment-2013/848)

The **Mercury Free Mining Challenge** ([www.mercuryfreemining.org](http://www.mercuryfreemining.org)) has been established to replace the use of mercury in ASM mining. The challenge is offering a US\$1,000,000 prize to the team or individual that discovers an environmentally friendly, affordable means of separating crushed, finely divided gold from its ore.

## National law

Many jurisdictions already have a legal and regulatory framework for mercury controls and management, so it is essential that members are familiar with applicable law in all areas of operation.

# D IMPLEMENTATION GUIDANCE

## COP 41.1: 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 to control and reduce mercury emissions using best available techniques or best environmental practices that take into account technical and economic considerations. At minimum, this shall be in accordance with applicable law and in line with the Minamata Convention.**

### Points to consider:

- Identify and quantify all sources and emissions of mercury and mercury compounds from your operations and establish appropriate controls using cost-effective, best available technologies.
- A risk-based approach can be used to assess and prioritise your options, which could include acting to:
  - reduce or eliminate sources and emissions of mercury;
  - substitute mercury and mercury compounds with less hazardous alternatives, where available; and
  - mitigate any impacts associated with handling and discharging mercury and its compounds by using pollution abatement technologies such as mercury vapour recovery systems—in particular, these technologies should be used to tackle air emissions, tailings and wastewater discharges so as to minimise mercury emissions to the environment.
- Each mine with more than trace amounts of mercury should have a mercury recovery system. This should be based on a mercury mass balance that assesses the amount of organic and inorganic mercury in the waste rock and ore, and documents (or estimates, if measurements are not available) how much organic and inorganic mercury is released to air and water during or after processing. This includes recording how much is produced as by-product, and how much remains in tailings ponds, waste rock dumps, etc.
- Make sure that any mercury recovered from primary emission controls is not:
  - stored on site (unless a regulated repository elsewhere is not available);
  - disposed of with tailings; or
  - sold or given away either directly or indirectly to an entity engaged in ASM for gold (mercury can only be sold for an end use listed in Annex A (Products) or Annex B (Processes) of the Minamata Convention).<sup>4</sup>
- Stay aware of relevant legislation and regulation controlling mercury. These will evolve over the coming years as countries implement the Minamata Convention, so it will be important to stay up to date with applicable changes and to monitor legal compliance.
- While production of mercury as a by-product is allowed under the Minamata Convention, you must make sure that this is managed in compliance with applicable laws and regulations. For example, in the European Union, mercury produced from non-ferrous mining is considered waste and must be disposed of without endangering human health or harming the environment.<sup>5</sup>

<sup>4</sup> Minamata Convention on Mercury [www.mercuryconvention.org/Portals/11/documents/conventionText/Minamata%20Convention%20on%20Mercury\\_e.pdf](http://www.mercuryconvention.org/Portals/11/documents/conventionText/Minamata%20Convention%20on%20Mercury_e.pdf)

<sup>5</sup> European Union, Regulation (EU) 2017/852 on Mercury (2017) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0852&from=EN>

## COP 41.2: Mercury in mining and associated processing

**Members using mercury in mining or processing activities shall take steps to control, reduce and, where feasible, eliminate their use of mercury and mercury compounds, and their emissions and releases to the environment of mercury. They shall use time-bound action plans for doing so.**

- a. Members shall not practise whole ore amalgamation or open burning of amalgam (or processed amalgam) under any circumstances; in residential areas they shall not practise the burning of amalgam. They shall not practise cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.
- b. Members shall take steps to prevent vulnerable groups being exposed to mercury, particularly children, women of childbearing age and pregnant women.

### Points to consider:

- This provision applies to RJC members that use mercury in their mining and processing activities.
- While mercury alternatives are preferred, they may not always be available for use, or technically or economically viable (for example in ASM). Even so, the RJC COP supports the Minamata Convention in requiring the elimination of:
  - 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.
- If you use mercury in any mining activities, make sure you have controls to prevent children, women of childbearing age and pregnant women from being exposed to it.
- Develop and implement documented time-bound plans for reducing and, where feasible, eliminating the use of mercury in mining and processing operations under your ownership or control. Consider alternatives such as:
  - gravity concentration methods;
  - direct smelting (generally only suitable for smaller masses of high-grade concentrate); and
  - chemical leaching (see COP 40 [Cyanide](#)).
- Review mercury elimination plans regularly to ensure measurable improvement.
- Within the socio-economic and political complexities of ASM enterprises, you may find opportunities to support the transfer of technology that improves productivity and reduces reliance on mercury, particularly in the context of sourcing relationships (see guidance on COP 8 [Sourcing directly from artisanal and small-scale mining](#)).
- If mercury continues to be used in ASM under your ownership or control, establish controls to minimise mercury emissions.<sup>6</sup> Practical measures for reducing mercury use include:
  - using more effective and efficient concentration processes that reduce the amount of mercury needed for amalgamation—for example, sluices, centrifuges, spiral concentrators, vortexes, shaking tables and flotation.
  - using a retort or fume hood to capture and recycle mercury during the processing and refining stage—this can reduce mercury emissions by 75 to 95 per cent.

### Check:

- Do your operations produce mercury products, by-products or emissions?
- If so, have you carried out a mass balance to assess the occurrence of organic and inorganic mercury across the site?
- Do you have practices in place to control, reduce and, where feasible, eliminate mercury emissions?
- Are you aware of, and in compliance with, applicable law concerning the use and control of mercury?
- If you are a producer and use mercury amalgamation, have you sought alternatives, and have you taken steps to eliminate the activities specified in COP 41.2a?
- If you are a producer, have you taken steps to ensure that vulnerable groups are not exposed to mercury?
- If you are a producer, have you developed and implemented a time-bound plan to reduce and, where feasible, eliminate the use of mercury in your operations?

<sup>6</sup> UNEP, A Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012) [http://wedocs.unep.org/bitstream/handle/20.500.11822/11524/reducing\\_mercury\\_artisanal\\_gold\\_mining.pdf?sequence=1&isAllowed=y](http://wedocs.unep.org/bitstream/handle/20.500.11822/11524/reducing_mercury_artisanal_gold_mining.pdf?sequence=1&isAllowed=y)

## E FURTHER INFORMATION

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### Websites:

Alliance for Responsible Mining (ARM)  
[www.responsiblemines.org/en/](http://www.responsiblemines.org/en/)

Artisanal Gold Council (AGC)  
[www.artisanalgold.org](http://www.artisanalgold.org)

Mercury Watch, Charting the Improvement of Artisanal and Small-Scale Gold Mining  
<http://www.artisanalgold.org/our-projects/mercurywatch-org/>

Minamata Convention on Mercury  
[www.mercuryconvention.org](http://www.mercuryconvention.org)

UNEP, Global Mercury Partnership  
<https://web.unep.org/globalmercurypartnership>

### Publications:

Global Mercury Project, Global Impacts of Mercury Supply and Demand in Small-Scale Gold Mining (2007)  
[http://archive.iwlearn.net/globalmercuryproject.org/documents/non\\_country%20specific/2006%20GMP%20Report%20to%20UNEP%20GC24.pdf](http://archive.iwlearn.net/globalmercuryproject.org/documents/non_country%20specific/2006%20GMP%20Report%20to%20UNEP%20GC24.pdf)

International Council on Mining and Metals, Mercury Risk Management Position Statement (2009)  
<https://www.icmm.com/en-gb/members/member-commitments/position-statements/mercury-risk-management-position-statement>

UNEP, Analysis of Formalization Approaches in the Artisanal and Small-Scale Gold Mining Sector Based on Experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda (2012)  
[https://wedocs.unep.org/bitstream/handle/20.500.11822/11357/Formalization\\_Document\\_Final\\_June\\_2012.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/11357/Formalization_Document_Final_June_2012.pdf?sequence=1&isAllowed=y)

UNEP, Global Mercury Partnership Resources  
[http://web.unep.org/globalmercurypartnership/publication\\_resources](http://web.unep.org/globalmercurypartnership/publication_resources)

UNEP, Global Mercury: Supply, Trade and Demand (2017)  
[wedocs.unep.org/bitstream/handle/20.500.11822/21725/global\\_mercury.pdf?sequence=1&isAllowed=y](http://wedocs.unep.org/bitstream/handle/20.500.11822/21725/global_mercury.pdf?sequence=1&isAllowed=y)

UNEP, A Practical Guide: Reducing Mercury Use in Artisanal and Small-Scale Gold Mining (2012)  
[http://wedocs.unep.org/bitstream/handle/20.500.11822/11524/reducing\\_mercury\\_artisanal\\_gold\\_mining.pdf?sequence=1&isAllowed=y](http://wedocs.unep.org/bitstream/handle/20.500.11822/11524/reducing_mercury_artisanal_gold_mining.pdf?sequence=1&isAllowed=y)

US Agency for International Development, USAID Global Environmental Management Support (GEMS), Sector Environmental Guideline: Artisanal and Small-Scale Mining (2017)  
[www.usaidgems.org/Documents/SectorGuidelines/Mining\\_Guidelines\\_20170630\\_Final.pdf](http://www.usaidgems.org/Documents/SectorGuidelines/Mining_Guidelines_20170630_Final.pdf)

US Environmental Protection Agency, Final Rule Concerning Mercury Emissions from Gold Mine Ore Processing and Production Sources (2010)  
[www.epa.gov/ttn/atw/area/gold\\_mines\\_fs\\_121610.pdf](http://www.epa.gov/ttn/atw/area/gold_mines_fs_121610.pdf)

# (COP 42) MINE REHABILITATION AND CLOSURE

## A DEFINITIONS AND APPLICABILITY

This provision applies to all RJC members in the mining sector and to mine infrastructure and related projects such as roads, rail lines, power lines and ports.

**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 underway.

Mine rehabilitation is the restoration of the post-mined landscape to the intended post-mining land use.

The **mining lifecycle** is the series of phases over the course of a mining project going from exploration, feasibility studies and construction through production to mine closure, rehabilitation and post-closure.

## 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 the mining lifecycle. Fundamental to this approach is the need to consider closure as a core part of the business.

The social and economic impacts of mine closure are usually significant and underline the importance of early preparation. 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. Community participation is particularly important when developing and implementing a mine closure plan.

Most mines close because the resource has been depleted and closure can be anticipated. Mines can, however, also close prematurely, for example through low commodity prices, regulatory changes, technical challenges or social conflict.

Closure costs are most often substantially incurred after the mine is no longer generating revenue, so financial provisions for closure must either be set aside by the company before or during active operations, provided by other revenue streams or made available through security of other assets.

Historically, one of the biggest problems governments have had is who pays for closure activities when there is no clear responsible party, for example if the mining company goes bankrupt or no longer exists. For this reason, many countries have requirements for mining companies to provide financial assurance.

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.

## Closing mines in areas with significant biodiversity

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 COP 38 [Biodiversity](#)). Achievable objectives and targets for biodiversity re-establishment are essential to give the operation a framework on which to base its rehabilitation programme. These should be developed through a dynamic and iterative process involving mining stakeholders and should take into account:

- Relevant regulatory requirements and other guidelines.
- Effective consultation with key stakeholders.
- Competing interests to be understood and reconciled.
- All available information on biodiversity.
- Technical limitations.
- Pre-mining land uses and the extent of biodiversity degradation.
- Post-mining land tenure and land uses.
- Integration into whole-of-lease biodiversity management.
- Minimising 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 cover the mining lifecycle, 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:

- deliver more consistent and transparent engagement with affected and interested parties;
- help communities participate in planning and implementing actions that underpin successful closure;
- ensure closure decisions are better supported by stakeholders;
- make it easier to manage the closure;
- improve the accuracy of closure cost estimates;
- minimise the risk of regulatory non-compliance;
- identify potential problems in a timely manner;
- progressively reduce potential liabilities; and
- identify, and plan for, opportunities for lasting benefits.

## C KEY REGULATIONS, STANDARDS AND INITIATIVES

### International initiatives

The **International Council on Mining and Metals (ICMM)** 2019 guidance on integrated mine closure ([www.icmm.com/en-gb/environment/mine-closure/integrated-mining-closure](http://www.icmm.com/en-gb/environment/mine-closure/integrated-mining-closure)) emphasises closure as an integral part of a mine's core business. It offers companies guidance on delivering key elements of mine closure planning and implementation, including:

- establishing a knowledge base;
- defining closure vision, principles and objectives;
- ensuring ongoing stakeholder engagement;
- identifying risks and opportunities;
- designing closure activities;
- estimating closure costs;
- agreeing success criteria;
- resourcing and implementing closure;
- monitoring and managing closure; and
- returning ownership.

## National law

Many jurisdictions regulate specific requirements for closure, including what infrastructure is required to be left or transferred to the state, and associated financial assurance mechanisms. It is essential that members are aware of applicable law and regulation in all jurisdictions of operation.

The state of Nevada has developed a reclamation cost calculator,<sup>1</sup> which is reasonably widely used to estimate closure costs.

## D IMPLEMENTATION GUIDANCE

### COP 42.1: Closure plan

Members in the mining sector shall prepare and regularly review a mine rehabilitation and closure plan for each mining facility. New facilities shall have a closure plan from start-up, and existing facilities shall establish a comprehensive plan as early as possible.

#### Points to consider:

- Start closure planning as early as possible to ensure risks and unknowns can be identified and reduced over time.
- Your closure and rehabilitation plan should:
  - include closure targets and goals;
  - consider maintenance and surveillance programmes for temporary closure of operations;
  - consider residual impacts from infrastructure, subsidence or acid-generating material;
  - be referenced in corporate or site sustainability (or equivalent) documentation; and
  - be used and updated throughout the mining lifecycle.
- Make a suitably qualified person responsible for maintaining the rehabilitation and closure plan throughout the mining lifecycle.
- Review your closure plan regularly: at least once a year and every time there is a significant change in the mine development, for example new waste facilities, infrastructure or change in anticipated mine life.

### COP 42.2: Engagement

For each mining facility, members in the mining sector shall engage regularly with local stakeholders, including indigenous peoples, communities, artisanal and small-scale miners, employees and regulators, about mine closure and rehabilitation plans.

#### Points to consider:

- Make closure planning an integral component of your stakeholder engagement programme (see COP 32 [Stakeholder engagement](#)).
- Include key stakeholders (including affected communities, workers and regulators) in your regular reviews of the closure plan. This engagement should enable a good understanding of any changes involving stakeholders that could impact closure planning (for example, changing demographics or the development of other livelihoods).

<sup>1</sup> Nevada Standardized Reclamation Cost Estimator <https://nrbond.org/>

### COP 42.3: Financial provisions

Members in the mining sector shall estimate the cost for implementing the mine rehabilitation and closure plan for each mining facility, and shall establish financial provisions to ensure availability of adequate resources to meet closure requirements. Closure funding estimates shall be reviewed periodically during the mining lifecycle.

#### Points to consider:

- Start estimating costs as early as possible and update these regularly. In particular, make sure you:
  - Increase the detail of cost estimates as the closure of the site approaches and more engineering detail becomes available.
  - Note that, 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.
  - Adjust funding arrangements to reflect any changes that arise during the annual reviews of closure plans required under COP 42.1.
  - Take into account considerations such as post-mining land use, stakeholder objectives and regulatory requirements.
- Minimum considerations for appropriate financial instruments should include the availability of all necessary funds to cover the cost of closure at any stage in the mining lifecycle, including provision for early or temporary closure.
- 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. Financial mechanisms managed by a third party may also be appropriate, particularly after closure has taken place. These include, for example, fully funded escrow accounts (including government-managed arrangements) or sinking funds. Any acceptable form of financial guarantee must be provided by a reputable financial institution.
- Third-party review of closure plans and closure funding estimates can be used to strengthen your process. This kind of review needs to cover both technical and financial aspects and can be carried out by any qualified third party.
- In all cases, comply with applicable law, relying on internal reviews and any regulatory processes.

### COP 42.4: Good practice rehabilitation

Members in the mining sector shall adopt good practice techniques for rehabilitating environments disturbed or occupied by mining facilities. They shall seek to establish an appropriate self-sustaining ecosystem, or other post-mining use agreed through stakeholder engagement during mine closure planning.

#### Points to consider:

- Wherever possible, implement rehabilitation and closure progressively as individual sites within a mining facility are decommissioned or exhausted and are no longer operational.
- In all cases, consider the risks and residual impacts from infrastructure, subsidence, acid-generating material, etc.
- Monitor the performance results for these sites and incorporate them into regular reviews of the mine rehabilitation and closure plan.
- Make sure that rehabilitation adheres to the mine closure plan, noting that it may involve very different landscapes and infrastructure to pre-mine scenarios.
- Remember that native ecosystems may not always be the most appropriate and resilient options for rehabilitating land disturbed by mining. For example, in areas where foreign species are already a part of local ecosystems, they may allow for better self-sustaining ecosystems.

## 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 self-sustaining ecosystem, or other post-mining use developed through engagement with key stakeholders?

## E FURTHER INFORMATION

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### Websites:

Australian Centre for Geomechanics, Mine Closure  
<https://acg.uwa.edu.au/mine-closure>

ICMM, Integrated Mine Closure  
[www.icmm.com/en-gb/environment/mine-closure/integrated-mining-closure](http://www.icmm.com/en-gb/environment/mine-closure/integrated-mining-closure)

Nevada Standardized Reclamation Cost Estimator  
<https://nrbond.org/>

### Publications:

Anglo American, Mine Closure Toolbox, Version 2 (2013)  
[www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/approach-and-policies/environment/toolbox-main-brochure-lr.PDF](http://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/approach-and-policies/environment/toolbox-main-brochure-lr.PDF)

Australian Government, Mine Closure and Completion (2006)  
[https://nt.gov.au/\\_data/assets/pdf\\_file/0015/203415/mine-closure-and-completion.pdf](https://nt.gov.au/_data/assets/pdf_file/0015/203415/mine-closure-and-completion.pdf)

ICMM, Integrated Mine Closure: Good Practice Guide, Second Edition (2019)  
[www.icmm.com/website/publications/pdfs/closure/190107\\_good\\_practice\\_guide\\_web.pdf](http://www.icmm.com/website/publications/pdfs/closure/190107_good_practice_guide_web.pdf)

ICMM, Planning for Integrated Mine Closure: Toolkit (2008)  
[www.ibram.org.br/sites/700/784/00001524.pdf](http://www.ibram.org.br/sites/700/784/00001524.pdf)

Mining Association of Canada (MAC), Towards Sustainable Mining: Tailings Management Protocol  
<http://mining.ca/towards-sustainable-mining/protocols-frameworks/tailings-management-protocol>

# ACKNOWLEDGEMENTS

## STANDARDS COMMITTEE

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The revision of the COP was overseen by the RJC Standards Committee, co-chaired by Ainsley Butler (for non-industry members) and Charles Chaussepied (industry members) and comprised of: Anouchka Didier, Assheton Stewart Carter, Cecilia Gardner, Claire Piroddi, Diana Cuilillas, Didier Backaert, Eleonora Rizzuto, Estelle Levin-Nally, Ian Rowe, Inga Van Nuffel, Hiren Vepari, Jean-Baptiste Andrieu, Jenny Hillard, Joelle Ponnelle, Jonathan Hobbs, Marijke Achten, Michael Geelhand de Merxem, Michele Bruelhart, PhaedonStamatopoulos, Purvi Shah, Stephane Fischler, Tehmasp Printer, Tim Carter, Tuesday Reitano, Yves Bertran

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