

A satellite image of the Earth, showing North America and parts of Europe and Africa. A large, irregular red overlay covers much of the landmasses, possibly representing a specific region or data set. The text "OECD GUIDELINES" is prominently displayed in white, bold, sans-serif font over the red area.

OECD GUIDELINES

**FOR RESPONSIBLE
BUSINESS CONDUCT
& SECTOR-SPECIFIC
GUIDANCE**

A MANUAL FOR CANADA



Global Compact
Network Canada

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Statement from the Global Compact Network Canada Working Group

THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (“OECD”) Guidelines for Multinational Enterprises (“**Guidelines**”) are among the leading global principles for responsible business conduct. Endorsed and administered by OECD member states, as well as several non-member states, the Guidelines cover a range of practices and subject matters, promoting sustainable development, responsible practices and non-adversarial dispute mechanisms. The OECD has recently developed detailed guidance documents for five industry sectors: (i) mineral supply chains from conflict-affected and high-risk areas; (ii) extractive sector stakeholder engagement; (iii) agricultural supply chains; (iv) textile and garment supply chains; and (v) financial sector due diligence (collectively, the “**Sector-specific Guidance**”)¹. The OECD is also launching general due diligence guidance for responsible business conduct to support companies to understand and put into practice the due diligence provisions in the Guidelines, and is developing a guidance on corporate lending.

The OECD Guidelines and Sector-specific Guidance are particularly pertinent in Canada. The Government of Canada has been an adhering party since the OECD first adopted the Guidelines in 1976 and has been active in the development of the Sector-specific Guidance documents. This is part of Canada’s broader and ongoing commitment to advance responsible business conduct globally.

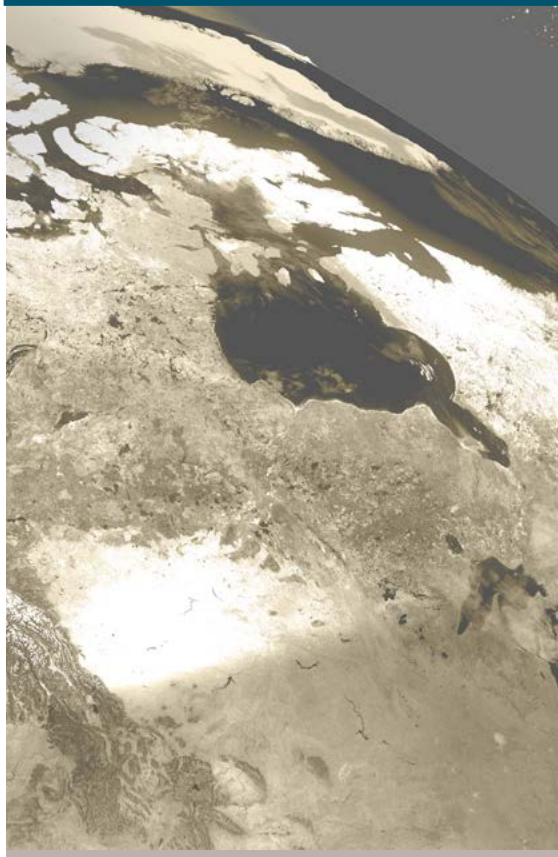
The objective of this Manual is to facilitate the understanding and implementation of the recommendations set out in the Guidelines and each Sector-specific Guidance by Canadian businesses and relevant stakeholders. While the Guidelines focus on multi-national enterprises, this Manual targets Canadian enterprises of all sizes and types – encompassing those that operate at home and abroad, whether they are large multi-nationals or small domestic operators.

This Manual has been prepared by a Working Group² formed by the Global Compact Network Canada, after obtaining input from businesses in diverse industry sectors across the country.

The Working Group hopes that with this Manual and other related activities by the government, business associations, and responsible business actors, Canadian industry can continue to thrive, the Canadian brand can continue to grow, and responsible commercial practices can continue to become embedded in operations domestically and throughout the world.

A number of good practice aids developed by Canadian industry are showcased throughout this manual. These good practices are not exclusive or exhaustive, nor are they to be considered an endorsement by GCNC or the Government of Canada.

This Manual has been prepared by a Working Group, formed by the Global Compact Network Canada, after obtaining input from businesses in diverse industry sectors across the country.



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McKenzie.**


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Executive Summary

THE CANADIAN ECONOMY IS VIBRANT AND diverse, is among the largest in the world, and continues to grow. Expectations and demands for responsible business conduct for Canadian industry also continue to grow, and the Canadian government has responded actively. Nonetheless, challenges for Canadian industry persist, and further work to engage in responsible practices is warranted.

The OECD Guidelines consist of recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Currently, 48 countries have committed to follow the Guidelines. The Guidelines provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards, and aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide. They contain detailed descriptions of general principles pursuant to which companies should operate, and more specific detail regarding nine substantive areas. They are designed to be aligned with other international instruments, such as the UN Guiding Principles on Business and Human Rights.

A country that commits to the Guidelines also commits to establishing a National Contact Point (“**NCP**”), which undertakes promotional activities, handles enquiries, and contributes to the resolution of issues that arise relating to the implementation of the Guidelines in a non-adversarial manner. Canada’s NCP is an interdepartmental committee chaired by Global Affairs Canada. A Canadian company that chooses not to engage meaningfully with the NCP in the context of an enquiry or resolution process could face denial or withdrawal of Government of Canada’s trade advocacy and export credit support in foreign markets.

Two of the concepts in the Guidelines’ general policies are due diligence and meaningful stakeholder

engagement. The OECD has elaborated on those two principles in five detailed sector-specific guidance materials. The five industry areas relate to: conflict minerals, which run through business lines in scores of sectors; the extractive sector (focusing on meaningful stakeholder engagement); the agriculture sector; the garment and footwear sector, and institutional investors.

The guidance materials define due diligence as a continuous process to “identify, prevent, mitigate and account for how they address their actual and potential adverse impacts.” The five steps of due diligence are: (1) preparation to assess risks, (2) assessing risks, (3) managing risks identified, (4) verifying effectiveness of how risks are managed, and (5) external reporting. Due diligence should be prioritized by risk and the nature and extent of due diligence will be affected by a number of different factors and can be conducted in collaboration with various external stakeholders. Due diligence should be applied to an enterprise’s own operations, and those in its value chain. Additional considerations should be given to gender in the due diligence process, given the differing risks that may be applicable to men and women, and the frequent negative impacts on women in the labour force.

Where enterprises cause or contribute to adverse impacts, they are expected to address those impacts and where they are linked to adverse impacts through relationships in their value chain, they are expected to use their leverage to have such impacts addressed. Enterprises are encouraged to engage with relevant stakeholders and take their views into account in planning and decision-making for projects or other activities that may impact them. As the Guidelines make clear, stakeholder engagement is an interactive process, and should be two-way and conducted in good faith.

1. Introduction

THE CANADIAN ECONOMY IS VIBRANT AND diverse, and among the largest in the world. Canada's Gross National Product (**GNP**) now exceeds \$1.5 trillion, and the Toronto Stock Exchange maintains more than 4000 listed companies. Over fifty percent of the world's leading mining companies are based in Canada, and it is generally considered an "energy superpower." Food and agriculture contribute over \$100 billion to Canada's GNP, there is a large manufacturing sector, and Canada hosts a major global banking industry. The reach of Canadian businesses is vast as operations and supply chains extend across the globe.

Over the past decade, there have been growing expectations and demands for responsible business conduct for Canadian industry. The Canadian government has been active in this regard. This has included advancing new regulatory requirements such as the *Extractive Sector Transparency Measures Act*, designed to increase revenue transparency in the extractive sector, and enhancements to Canada's *Corruption of Foreign Public Officials Act*. The Royal Canadian Mounted Police has actively pursued corruption and bribery at home and abroad. Canada also instituted an Integrity Regime requiring that the government conduct business only with ethical suppliers in Canada and abroad.³

The government's Corporate Social Responsibility (**CSR**) Strategy clearly sets the expectation that Canadian extractive sector companies reflect Canadian values, and respect human rights and all applicable laws in all their activities abroad.⁴ The Strategy focuses on fostering networks and

partnerships through more than 160 Canadian trade offices abroad, strengthening the environment affecting responsible business practice in host countries, and promoting implementation of recognized standards including the UN Guiding Principles on Business and Human Rights, and the International Finance Corporation's Performance Standards on Social and Environmental Sustainability. The government also has a dispute resolution mechanism, Canada's NCP under the OECD Guidelines for Multinational Enterprises, and announced, in January 2018, that it will establish a Canadian Ombudsperson for Corporate Responsibility to address complaints related to allegations of human rights abuses arising from Canadian corporate activity abroad. In addition and consistent with Canada's progressive trade agenda, references to the Guidelines appear in the recent *Canada-European Union Comprehensive Economic and Trade Agreement* and the modernized *Canada-Chile Free Trade Agreement*.

While these initiatives continue to bolster responsible business practices by Canadian enterprises, challenges nonetheless persist. Numerous allegations of overseas wrongdoing have emerged in the past years, whether by Canadian businesses themselves or in their value chains. These include claims of slave labour and sweatshop working conditions, abuses by security forces, tainted foods, bribery and corruption, and environmental degradation. We have witnessed several high-profile lawsuits, regulatory actions, and reputational harms in recent years that extend across entire sectors.

II. Background on the OECD Guidelines

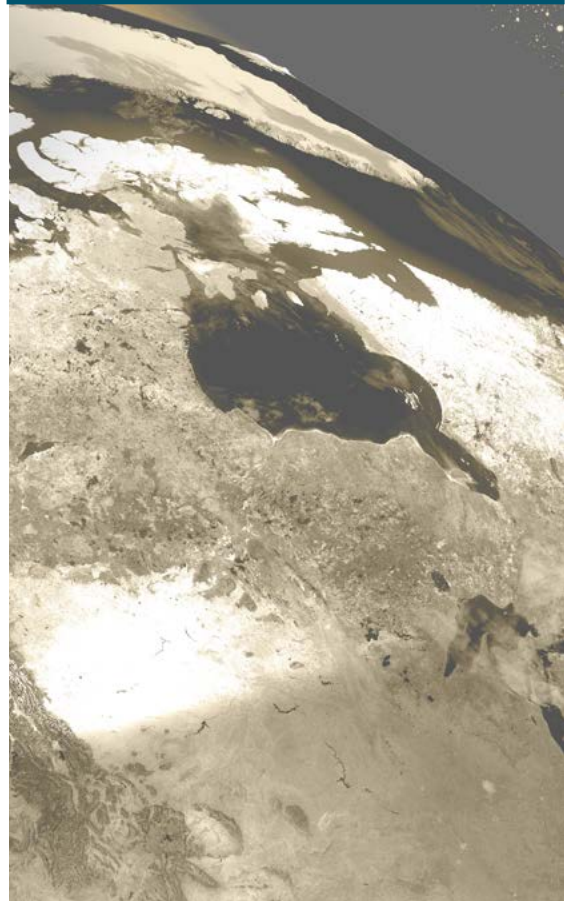
What are the OECD Guidelines?

The Guidelines are one of four parts of the 1976 OECD Declaration on International Investment and Multinational Enterprises and consist of recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Currently, 48 countries (OECD member countries and several non-member countries) have committed to follow the Guidelines.

The Guidelines provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards, and aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide. In practice, they both complement and reinforce private efforts to define and implement responsible business conduct. Over the years, the Guidelines have been revised and updated to respond to changes in society and the global marketplace. The most recent update was in 2011 to incorporate recommendations related to human rights and meaningful stakeholder consultations and to address the fact that services and products are increasingly delivered through complex value chains. Businesses are not only expected to address and manage their own conduct but also have certain responsibilities for entities in their value chains.

The Guidelines are applicable to all multinational business enterprises, and are not a substitute for domestic laws and regulation. Indeed, obeying domestic laws is the first obligation of enterprises. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. In countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

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What do they cover?

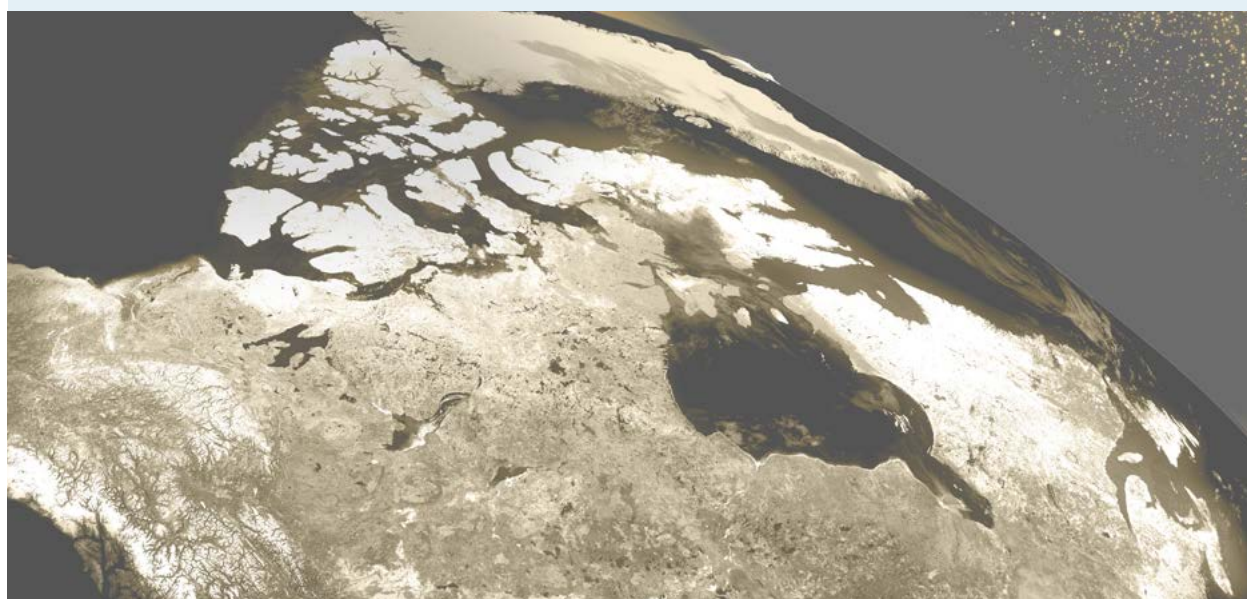
The Guidelines contain detailed discussions of general principles to which companies should operate, and more specific detail on nine substantive areas. They also

incorporate principles from other international instruments such as the responsibility to respect human rights outlined in the UN Guiding Principles on Business and Human Rights.

General Principles:

Under the Guidelines, enterprises are expected to:

- Contribute to economic, environmental and social progress
- Respect human rights
- Encourage local capacity building
- Encourage human capital formation
- Refrain from seeking or accepting unjustified legal exemptions
- Support and uphold good corporate governance principles
- Develop and apply effective self-regulatory practices and management systems
- Promote awareness of and compliance by workers with company policies
- Refrain from retaliating against workers who raise concerns in good faith
- Carry out risk-based due diligence to identify, prevent and mitigate adverse impacts
- Avoid causing or contributing to adverse impacts on matters covered by the Guidelines
- Seek to prevent or mitigate adverse impacts to which they are directly linked
- Encourage entities in the value chain to apply principles of responsible business conduct
- Engage in effective stakeholder engagement regarding business activities
- Abstain from any improper involvement in local political activities
- Support or promote internet freedom
- Engage in or support private or multi-stakeholder initiatives



Specific Principles: Enterprises are also expected to:

- Ensure timely and accurate disclosures
- Respect human rights
- Respect the rights of workers and working conditions, avoid improper discriminatory conduct, and contribute to the abolition of child labour and all forms of forced or compulsory labour
- Develop management systems that take due account of the need to protect the environment
- Avoid corruption and bribery in all forms
- Engage in fair business practices with consumers
- Adhere to the science and technology policies and plans of the countries in which they operate
- Avoid anti-competitive behavior
- Comply with the letter and spirit of relevant tax laws and regulations

What are National Contact Points (“NCPs”)?

A country that commits to the Guidelines also commits to establishing a NCP. NCPs further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that arise relating to the implementation of the Guidelines. Specifically, NCPs offer their good offices to help the parties involved resolve issues in a non-adversarial manner, often through mediation and conciliation, and make the results of the process publicly available upon their conclusion. Canada’s NCP was created in 2000 and is an interdepartmental committee of seven federal departments, chaired by Global Affairs Canada (GAC). In cases where there has been alleged non-observance of the Guidelines by a Canadian company or a foreign multinational operating in Canada, Canada’s NCP works as lead NCP or with partner

NCPs to evaluate the issues raised and, if warranted, offers to facilitate a constructive dialogue between the parties with the goal of helping them find solutions. More information on Canada’s NCP or another NCP including the procedure for requesting a review, final statements, and annual reports can be found on the government’s website:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng>

Finally, a Canadian company that chooses not to engage meaningfully and in good faith with Canada’s NCP could face denial or withdrawal of Government of Canada trade advocacy in foreign markets and future export credit support from Export Development Canada.

III. Due Diligence and Stakeholder Engagement under the OECD Guidelines

Two of the concepts in the Guidelines' general policies are risk-based due diligence and engaging with relevant stakeholders to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities. The OECD has

taken those two principles and created five detailed sector-specific guidance documents. After setting out the OECD's perspectives on due diligence and stakeholder engagement, this section will summarize the key points in each of the five Sector-specific Guidance documents.

A. What is “due diligence” under the Guidelines and why undertake it?

Due diligence is understood as the process through which businesses can “*identify, prevent, mitigate and account*” for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems”.

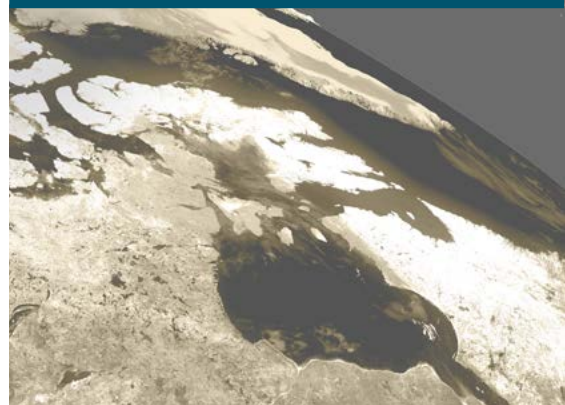
Due diligence enables businesses to “know and show” that they are acting responsibly under the Guidelines. Due diligence can help enterprises and their business partners observe international law and responsible business standards and comply with domestic laws. By undertaking risk-based due diligence, enterprises identify the factual circumstances of their activities and business relationships and assess risk by evaluating those facts against:

- applicable rights and duties under national and international law and standards;
- responsible business conduct recommendations of international organizations;
- government-backed tools;
- private voluntary initiatives; and
- their own internal policies and systems.

Identified risks are then avoided or mitigated by adopting and implementing a risk management plan.

To maximize the benefits of due diligence, it is important to understand the steps involved, how due diligence can be risk-prioritized, how third parties and business relationships are treated, and the importance of remediation processes.

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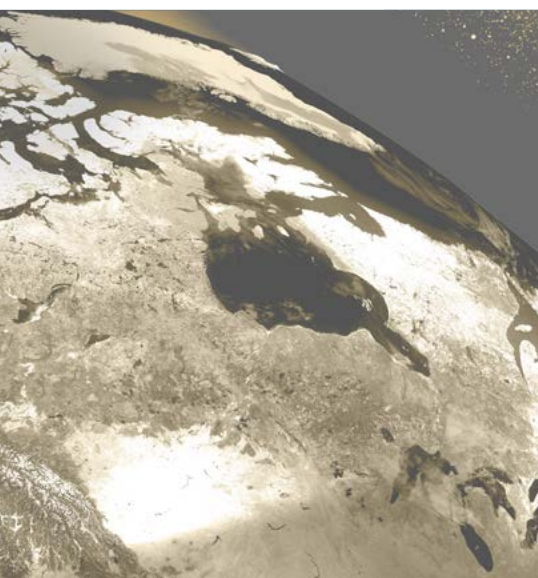


How do you carry out due diligence under the Guidelines?

The due diligence approach set out under the OECD Guidelines has five basic steps.



Due diligence is an on-going, proactive and reactive, and process-oriented set of activities; it is to be carried out throughout the entire life-cycle of operations, products and services because circumstances change and so will adverse impacts.



This means that due diligence should not be limited to an initial inquiry, but should also be applied through systematic measures to identify responsible business conduct risk and prevent or mitigate potential adverse impacts, and through on-going monitoring of activities and relationships.

Under the Guidelines, “the nature and extent of due diligence, such as the specific steps to be taken, should be appropriate to a particular situation and will be affected by factors such as the size of the enterprise, the context of its operations, the specific recommendations in the Guidelines, and the severity of its adverse impacts.” While there are many ways of carrying out due diligence, enterprises can collaborate with various external stakeholders to ensure that the process is mutually reinforcing and reduce costs through:

- Industry-wide co-operation, including to build capacity to conduct due diligence;
- Cost-sharing within industry for specific due diligence tasks;
- Co-ordination between industry members who share the same suppliers;
- Co-operation between different segments of the supply chain, such as upstream and downstream enterprises;
- Partnerships with international and civil society organizations.

Finally, it is important for companies to communicate how they conduct due diligence. Given the flexibility for companies to adapt and tailor Guideline recommendations, companies should publicly report on how they have addressed their adverse impacts – i.e. “showing” what they are doing.

What is risk prioritization and how should it be integrated into due diligence?

Since it may not be possible for enterprises to identify and respond to all adverse impacts associated with their activities or relationships immediately, the Guidelines make clear that enterprises are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritize responsive action. Of note, “risk,” in this context, means the risk of impacts to local communities and the environment; it does not mean risks to the enterprise itself, whether reputational, financial or otherwise. The significance, or severity, of a risk or adverse impact is understood as a function of three characteristics:

“Risk,” in this context, means the risk of impacts to local communities and the environment; it does not mean risks to the enterprise itself, whether reputational, financial or otherwise.

1. Scale,
or the gravity of the
adverse impact.

2. Scope,
or the reach of the impact for
example the number of individuals
that are or will be affected or the
extent of damage.

3. Irremediable character
or any limits on the ability to restore
the individuals or environment affected
to a situation equivalent to their
situation before the adverse impact.

What might constitute the most “severe” impacts will be specific to the enterprise, its sector and its business relationships, although it is often the case that the greater the scale or the scope of an impact, the less it is ‘remediable’. While an enterprise should prioritize its due diligence based on significance of risk, how it responds to identified risks will depend on the nature of a given issue.

What is a “business relationship” under the Guidelines and how are impacts considered?

It is important to remember that the Guidelines – like the UN Guiding Principles on Business and Human Rights – do not limit the responsibility of a business to its own activities. While they state that enterprises should avoid causing or contributing to adverse impacts through their own activities and address those impacts where they do occur, they also state that enterprises should seek to prevent or mitigate adverse impacts when the impact is directly linked to their operations, products or services by a business relationship. Business relationships are characterized broadly and would include, for example, suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services.

Much of the discussion in the OECD’s Sector-specific Guidance documents focuses on due diligence in the business relationship context.

The expectation that enterprises seek to prevent or mitigate impacts directly linked to their operations, products or services through business relationships obviously increases the scope of business responsibility. The Guidelines note that this does not shift responsibility from the entity causing or contributing to an adverse impact to the enterprise with which it has a business relationship. Instead, they recognize that enterprises may not be able to directly address adverse

It is important to remember that the Guidelines -- like the UN Guiding Principles on Business and Human Rights – do not limit business responsibilities to their own activities.

impacts caused or contributed to by another entity, and thus the Guidelines indicate that entities should seek to influence or encourage that third party entity to prevent or mitigate the adverse impacts. Specifically, the Guidelines recommend enterprises, “acting alone or in co-operation with other entities, as appropriate, to use their leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.” Leverage is considered to exist “where the enterprise has the ability to effect change in the wrongful practices of the entity that causes harm.” In practice, this includes a broad range of practical measures that enterprises may undertake themselves or together with others. In applying the above risk prioritization analysis to third parties, key factors in assessing how to respond to identified risks include the ability of the enterprise to change behaviour, the severity and probability of adverse impacts, and how crucial that third party is to the enterprise.

What additional considerations should be given to gender in the due diligence process?

Women account for much of the labour force in many of the sectors covered; in the garment and footwear supply chain, they are a majority of the workforce. Risks of harm often differ for men and women. For example, women are more likely to be paid lower wages than men; women are more often linked to precarious or informal/irregular employment; and women workers are particularly vulnerable to harassment in the workplace. Women can also be impacted negatively by the presence of a business, especially of businesses like extractives. Due diligence includes looking at the impacts to women in the communities in which the enterprise operates. The unique position of women within a particular context should therefore be systematically considered at all stages of due diligence.

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As such, due diligence efforts should:

- Consider how women may be disproportionately affected by impacts (e.g. migrant workers, minorities, young women, etc.). For example, sexual harassment and sexual-and-gender based violence predominantly affect women in most sectors.
- Consider whether a program or policy could have unintended negative consequences for women.
- Include women in the design of monitoring and evaluation measures.
- Assess whether grievance mechanisms are equally accessible to all affected parties (e.g. women, men, migrant workers, etc.).
- Ensure that the individual serving as the access point for a grievance mechanism is approachable regardless of the complainant's gender, religion, etc. Special attention should be paid to women from vulnerable groups.

What are the basic principles of remediation, and how do they relate to due diligence?

As a general proposition, where enterprises cause or contribute to adverse impacts, they are expected to address those impacts by, for instance, fixing the problem, ensuring it does not re-occur and providing remediation or rehabilitation for those people or the environment who have suffered harm. Remediation approaches may include cooperation with judicial or State-based non-judicial mechanisms, and may be undertaken with operational-level grievance mechanisms based on dialogue and engagement with a view to seeking agreed solutions.

Having processes in place, such as grievance mechanisms, to enable remediation serves another important function. They are also necessary to enable and complement due diligence. The information gleaned from engagement around the receipt, analysis and processing of grievances provides meaningful insights into business activities and its effectiveness and impacts, and helps inform operations going forward.

What is meaningful stakeholder engagement?

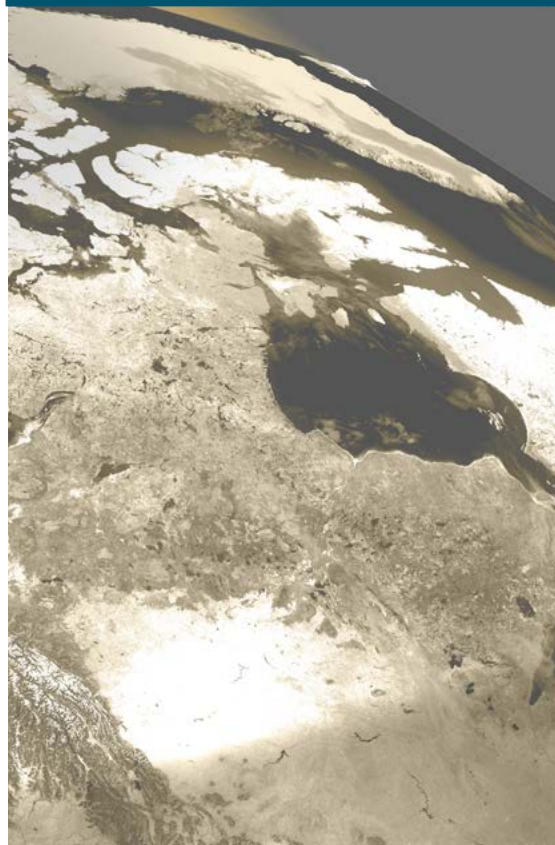
It is important to remember that the Guidelines – like the Another important means of due diligence, and an expectation of responsible business conduct, is meaningful stakeholder engagement. Enterprises are encouraged to engage with relevant stakeholders, and to take their views into account in planning and decision-making for projects or other activities that may impact them. Stakeholder

engagement is an interactive process, and can involve, for instance, meetings, hearings or consultation proceedings.

Meaningful stakeholder engagement, as distinguished from poor stakeholder engagement, is a two-way process, conducted in good faith, and which is responsive and ongoing.

- Two-way engagement means that parties freely express opinions, share perspectives and listen to alternative viewpoints to reach mutual understanding. That often involves some sharing of decision-making power and that stakeholders are actively involved in driving engagement activities themselves.
- “Good faith” engagement depends on the participants of both sides of engagement. It means that the parties engage with the genuine intention to understand how stakeholder interests are affected by enterprise activities. It means that the enterprise is prepared to address its adverse impacts and that stakeholders honestly represent their interests, intentions and concerns.
- Responsive engagement means that there is follow-through on outcomes of stakeholder engagement activities through implementation of commitments agreed to by the parties, ensuring that adverse impacts to stakeholders are appropriately addressed including through provision of remedies when enterprises have caused or contributed to the impact(s), and that stakeholder views are taken into account in project decisions.
- Ongoing engagement means that stakeholder engagement activities continue throughout the lifecycle of an operation and are not a one-off endeavour.

Meaningful stakeholder engagement, as distinguished from poor stakeholder engagement, is a two-way process, conducted in good faith, and which is responsive and ongoing.



Similar to risk-based due diligence, stakeholder engagement activities may be proportional to the risks and impacts that an operation may cause or contribute to. In particular, in prioritizing risks, it is useful to remember two concepts. First, while a variety of stakeholders may have an interest in projects or activities, it is important to identify those stakeholders whose rights are put at risk or impacted by business activities. Such potentially impacted stakeholders are “rights-holders” in the context of engagement activities, and should be prioritized. Second, priority also should be given to those stakeholders for whom the risk of adverse impacts is greatest or the potential adverse impact is severe or could become irremediable.

Finally, as effective stakeholder engagement considers the perspectives of those most affected, strategies may need to be developed to capture the views of vulnerable populations. Women may not be vocal when group consultations are conducted and men are present, or the gender dynamics of a community may discourage women from attending such consultations at all. Migrant workers may be reluctant to speak at all. The impacts of industries and operations on children and youths may not be explicit or represented when consultations take place with unmarried workers or heads of households but not primary caregivers. Developing an approach that takes into account the perspectives of vulnerable populations – those often most impacted by businesses or within a global supply chain – is an important part of this process.

Rights-Holders

For example, individuals living in a community whose only local water source may be polluted by an extractive operation may be rights-holders. Workers facing discrimination in the workplace are also rights-holders. In addition to individual human rights, certain groups such as indigenous and tribal peoples can have collective rights and, consequently, the group itself may be considered a rights-holder.

B. Sector Specific Guidance

The OECD has applied these principles of due diligence and meaningful stakeholder engagement in depth in the five Sector-specific Guidance :

A. Conflict Minerals⁵

B. Extractive Sector⁶

C. Agriculture Sector⁷

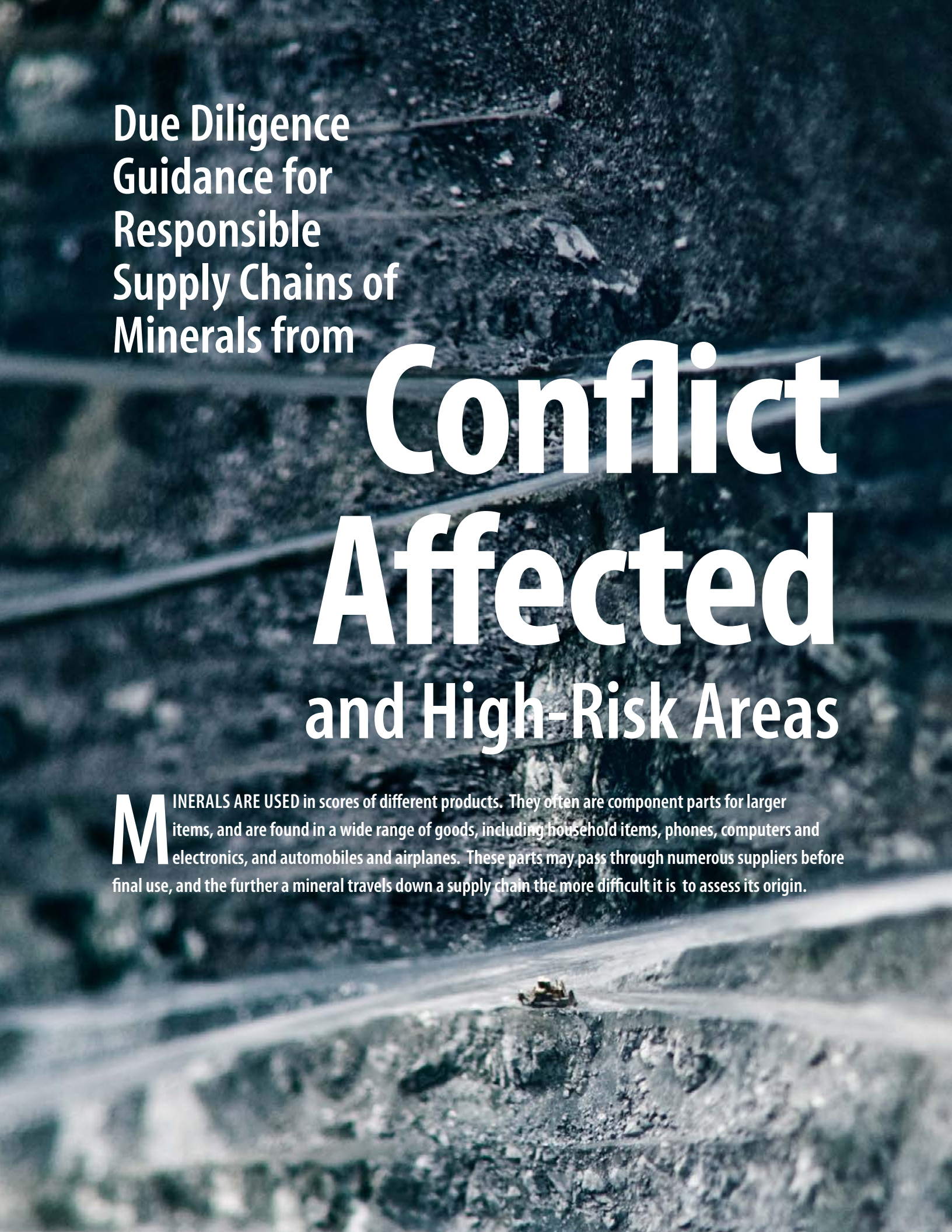
D. Garment and Footwear Sector⁸, and

E. Institutional Investors⁹

Each of the Sector-specific Guidance was developed by different OECD working groups and the formats and structures are, thus, quite different. However, as they cover principles of due diligence and stakeholder engagement, there is also substantial overlap in some of the bedrock advice, such as the importance of developing a relevant enterprise policy, building strong management systems, conducting audits and assessments, and communicating outcomes and progress.

There is overlap in advice among the Sector-specific Guidance consistent with the recommendations set out in the Guidelines. This enables each Sector-specific Guidance to be largely self-contained and useable on a stand-alone basis.

The key principles in these Sector-specific Guidance are reflected below.



Due Diligence
Guidance for
Responsible
Supply Chains of
Minerals from

Conflict Affected and High-Risk Areas

MINERALS ARE USED in scores of different products. They often are component parts for larger items, and are found in a wide range of goods, including household items, phones, computers and electronics, and automobiles and airplanes. These parts may pass through numerous suppliers before final use, and the further a mineral travels down a supply chain the more difficult it is to assess its origin.

MINERALS MAY ORIGINATE FROM all over the globe. However, mineral extraction often occurs in conflict-affected and high-risk areas. Companies involved in mining and trade in minerals in these areas have the potential to generate income, growth and prosperity, sustain livelihoods and foster local development, and bring stability to places where it may most be needed. At the same time, in these areas, armed groups may compel local workers, including children, to engage in mining activities in horrendous conditions amounting to slave labor. Minerals from conflict-affected and high-risk areas may also be sold to help fund weaponry and war efforts, and thus contribute to

ongoing conflicts. Companies operating in these areas may be at risk of contributing to or being associated with these impacts. Companies that source or use products originating from these areas may be directly linked to the impacts through the entities in their value chain.

In light of the risks presented, and the opportunities to contribute to sustainable development in challenging areas, the OECD dedicated a specific guidance (<http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>) to due diligence in the global supply chain management of minerals.

Specific considerations related to conflict minerals

Companies may face risks in their mineral supply chains because of circumstances of mineral extraction, trade or handling which by their nature have higher risks of significant adverse impacts, such as financing conflict or fueling, facilitating or exacerbating conditions of conflict. In spite of the fragmented production process in the supply chain, and independent from their position or leverage over suppliers, companies are not insulated from the risk of contributing to or being associated with adverse impacts occurring at various points in the mineral supply chain. While a company's location in the supply chain will impact the nature of the diligence activities it undertakes, as a general matter, companies should take reasonable steps and make good faith efforts to conduct due diligence to identify and prevent or mitigate any risks of adverse impacts associated with the conditions of mineral extraction and the relationships of suppliers operating in conflict-affected or high-risk areas.

WHAT IS A CONFLICT-AFFECTED AND HIGH-RISK AREA?

Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, 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.

Identify

Identify and assess,

Prevent or mitigate

In practice, the relevant due diligence generally involves a three step process: **identify** the factual circumstances involved in the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing or selling of products that contain minerals originating from conflict-affected and high-risk areas; **identify and assess** any actual or potential risks by evaluating the factual circumstances against standards set out in the company's supply chain policy; and **prevent or mitigate** the identified

risks by adopting and implementing a risk management plan. These may result in a decision to continue trade throughout the course of risk mitigation efforts, temporarily suspend trade while pursuing ongoing risk mitigation, or disengage with a supplier either after failed attempts at mitigation or where the company deems mitigation not feasible or the risks unacceptable. Reporting on efforts and remediation, as discussed above, play an additional role in responsible business conduct.

Of course, due diligence in conflict-affected and high risk areas presents obvious practical challenges. Flexibility is needed, as challenges may be met in a variety of ways. These include through industry-wide cooperation in building capacity to conduct due diligence, cost-sharing within industry for specific due diligence tasks, participation in initiatives on responsible supply chain management,

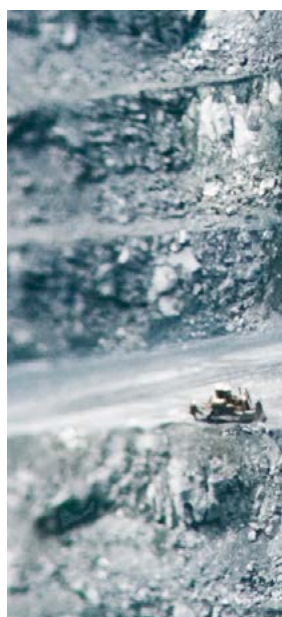
coordination between industry members who share suppliers, cooperation between upstream and downstream companies, building partnerships with international and civil society organisations, and integrating a supply chain policy and due diligence into existing policies and management systems and company due diligence practices.

What does risk-based due diligence in the mineral supply chain look like?

Specific due diligence requirements and processes will differ depending on the mineral and the position of the company in the supply chain. As a general proposition companies should review their choice of suppliers and sourcing decisions and integrate into their management systems the below five-step framework for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.

WHAT IS THE MINERAL SUPPLY CHAIN?

The process of bringing a raw mineral to the consumer market involves multiple actors and generally includes the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing and sale of end product. The term supply chain refers to the system of all the activities, organisations, actors, technology, information, resources and services involved in moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers.



GOOD PRACTICE AIDS

Natural Resources Canada has published a list of mining company practices to address the challenges linked to conflict minerals

<https://www.nrcan.gc.ca/mining-materials/mining/corporate-social-responsibility/17248>

For an upstream approach, Acklands-Grainger, a Canadian supplier of industrial goods, has a clear policy regarding conflict-free minerals in its products. It includes a statement of its commitment, a supplier code, clear consequences of supplier non-compliance, and details on its grievance mechanism.

<https://www.acklandsgrainger.com/en/content/policies/conflict-minerals-policy>

Establish strong company management systems.

- 1) Adopt, and clearly communicate to suppliers and the public, a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas. This policy should incorporate the standards against which due diligence is to be conducted.
- 2) Structure internal management to support supply chain due diligence.
- 3) Establish a system of controls and transparency over the mineral supply chain. This includes a chain of custody or a traceability system or the identification of upstream actors in the supply chain. This may be implemented through participation in industry-driven programs.
- 4) Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts and/or agreements with suppliers. Where possible, assist suppliers in building capacities with a view to improving due diligence performance.
- 5) Establish a company-level or industry-wide grievance mechanism as an early-warning risk- awareness system.

Identify and assess risk in the supply chain.

- 1) Identify risks in a company's own supply chain.
- 2) Assess the risks of adverse impacts in light of the standards of the company supply chain policy.

Design and implement a strategy to respond to identified risks.

- 1) Report findings of the supply chain risk assessment to the designated senior management of the company.
- 2) Devise and adopt a risk management plan. Devise a strategy for risk management by either
 - a) continuing trade throughout the course of measurable risk mitigation efforts
 - b) temporarily suspending trade while pursuing ongoing measurable risk mitigation
 - c) disengaging with a supplier after failed attempts at mitigation or where a company deems risk mitigation not feasible or unacceptable.
- 3) To determine the correct strategy, companies should consider their ability to influence, and where necessary take steps to build leverage, over suppliers who can most effectively prevent or mitigate the identified risk.
 - a) If companies pursue risk mitigation efforts while continuing trade or temporarily suspending trade, they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan.
- 4) Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management.
 - a) This may be done in cooperation and/or consultation with local and central government authorities, upstream companies, international or civil society organisations and affected third-parties where the risk management plan is implemented and monitored in conflict-affected and high-risk areas.
- 5) Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain.

- 1) Companies at identified points in the supply chain should have their due diligence practices audited by independent third parties.
- 2) Such audits may be verified by an independent institutionalized mechanism.

Report on supply chain due diligence.

- 1) Companies should publicly report on their supply chain due diligence policies and practices.
 - a) Reporting is often done in sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence.



GOOD PRACTICE AIDS

The World Gold Council has created a “Conflict-Free Gold Standard,” to help companies provide assurance that their gold is not contributing to conflict. Developed by NGOs, refiners, industry groups and the UK Government, the intent is to help operationalize the OECD’s sector-specific guidance for mining companies and others who source gold from external suppliers. The Standard includes a step-by-step approach for companies, and detailed guidance for assurance providers.

Although the Standard focuses on gold, it is applicable to any mineral.

https://www.gold.org/sites/default/files/documents/Conflict_Free_Gold_Standard_English.pdf

What are the additional consideration for tin, tantalum, and tungsten?

The OECD guidance applies these principles in detail to tin, tantalum, and tungsten. These are prominent minerals within small mines in conflict-affected areas, such as locations in and around the Democratic Republic of Congo, and make their way into a wide variety of products and goods. To avoid fueling conflicts directly and indirectly, particular care and attention is appropriate for these minerals.

For these minerals, many of the above general steps apply. Where minerals may have originated from or been transported through a high-risk area, or a company's suppliers source minerals from or transport minerals through red flag locations, additional steps may be warranted. Different recommendations apply to entities depending on where they sit within the supply chain, and in particular whether they are upstream (from the mine to smelters/refiners), or downstream (from smelters/refiners to retailers).

- 1) For upstream companies, establish a system of internal controls over the minerals in their possession (chain of custody or traceability) and establish on-the-ground assessment teams, which may be set up jointly through cooperation among upstream companies while retaining individual responsibility, for generating and sharing verifiable, reliable, up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas. Provide the results of risk assessments to their downstream purchasers and have the smelters/refiners' due diligence practices audited by independent third parties, including through an institutionalized mechanism.
- 2) For downstream companies, identify, to the best of their efforts, and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to reasonable due diligence measures. Downstream companies may participate in industry-wide schemes that assess smelters/refiners' compliance and may draw on the information these schemes provide to help them fulfil responsible business conduct expectations.
 - a) The differential treatment between upstream and downstream companies reflects the fact that internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after smelting, with refined metals entering the consumer market as small parts of various components in end products.
 - b) By virtue of these practical difficulties, downstream companies should establish internal controls over their immediate suppliers and may coordinate efforts through industry-wide initiatives to build leverage over sub-suppliers, overcome practical challenges and effectively discharge the due diligence responsibilities.

What are the additional considerations for gold

As with tin, tantalum, and tungsten, the OECD guidance contains a detailed discussion of gold, focusing on steps upstream and downstream companies can take to avoid contributing to conflict and serious abuses of human rights in the supply chain of gold potentially sourced from conflict-affected and high-risk areas. Similar to tin, tantalum and tungsten, to determine the applicability of the recommendations, all companies in the gold supply

chain should carry out the general Steps 1 (establish strong company management systems) and the start of Step 2 (identify and assess risks in the supply chain) to determine whether they actually or potentially source gold from conflict-affected and high-risk areas. If so, additional steps in the guidance then become applicable, which may differ depending on where they sit within the supply chain.



GOOD PRACTICE AIDS

Kinross has adopted the World Gold Council's Conflict Free Gold Standard. Adherence to the Standard is assured by KPMG, and the company's program is overseen by its Vice President of Safety and Sustainability. Kinross publishes its report on compliance with the standard on its website.

https://s2.q4cdn.com/496390694/files/doc_downloads/corp-responsibility/2016/Conflict-Free-Gold-Report-for-KGC.pdf

Establish strong company management systems

- 1) In addition to the general steps identified above:
 - a) Medium and large-scale mining companies, and artisanal and small-scale enterprises should assign unique reference numbers to each output, and adopt appropriate physical security practices.
 - b) Local exporters, recyclers and international traders also should assign unique reference numbers to each output and input, coordinate physical security practices of upstream companies, and inspect all shipments for conformity to the information provided by the supplier.
 - i) Refiners should take the same approach, and record and render all outputs with information about the refiner and date of refining/production.
 - ii) Bullion banks should create inventory lists for all gold held, be able to provide diligence practices and maintain records for inspection.
 - iii) All other downstream companies should request suppliers identify the refiner(s), request verification of due diligence and share information with other downstream companies.

Identify and assess risks in the supply chain

- 1) For mining enterprises of all sizes, determine whether the gold producer mines, transports or purchases gold in conflict-affected or high-risk areas. If not, no further due diligence is needed.
 - a) If no determination can be made, or if there are red flags, map the factual circumstances of the gold producer's red flagged operations through an in-depth review of their context and due diligence practices.
 - b) Assess the information collected and learned through the mapping exercise for risks of inconsistencies with company policy, applicable national laws and legal instruments, and relevant international instruments.
- 2) For exporters, recyclers, and international traders, determine the origin of gold supply, whether it is the location of the mine or the point when it becomes recyclable. Based on this information and that gathered in Step 1, assess red flags and relevant risks, including whether there is a suspicion that the gold may have originated from or been transported through a conflict-affected or high risk area.
 - a) If no red flags are identified, no additional diligence is warranted.
 - b) If red flags are present (or cannot be excluded), similar to mining enterprises
 - i) map the factual circumstances of red flagged suppliers and supply chains through an in-depth review of the context of red flagged locations and due diligence practices of such suppliers, and
 - ii) assess the information collected and learned through the mapping exercise for risks of inconsistencies with company policy, applicable national laws and legal instruments, and relevant international instruments.
 - iii) For downstream companies, identify where possible the refiner(s) of gold in supply chains. Obtain 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.
 - c) If it can reasonably be determined that red flags do not arise in the refiner's supply chain, no further diligence is required.
 - d) If red flags cannot be excluded or are identified, assess whether refiners have carried out the relevant aspects due diligence reflected in the OECD's guidance, including whether diligence practices have been audited.

Design and implement a strategy to respond to identified risks

1) Risk management for upstream companies

- a) Report findings of potential risks to designated senior management, and enhance engagement with suppliers.
- b) Also enhance the internal systems of transparency, information and collection over the gold supply chain. That includes:
 - i) Establishing a chain of custody, enhancing physical security practices, segregating shipments where there is a risk of association with conflict and serious human rights abuses, and incorporating into agreements the right to conduct unannounced spot-check on suppliers and access their written documents.
 - ii) Share throughout the upstream supply chain relevant information about the mine of origin, the method of extraction, the identity of suppliers, all fees to government, all payments to security forces, and how gold is transported.
 - Refiners should make information generated through due diligence processes available to auditors.
 - iii) Devise and adopt a risk management plan by reviewing relevant policies and procedures, and continuing to trade with reasonable risk mitigation efforts, temporarily suspending trade while pursuing such measures, or disengaging with a supplier.
 - iv) Implement the risk management plan, monitor and track performance, report back to senior management, and continue to assess risk mitigation efforts and relationships with suppliers. Continue risk assessment efforts, including after a change of circumstances.

2) Risk management for downstream companies

- a) As with upstream companies, report findings of potential risks to designated senior management, enhance engagement with suppliers, and enhance the internal systems of transparency, information and collection over the gold supply chain.
- b) Devise and adopt a risk management plan.
 - i) If a company is unable to identify refiners in their supply chain, they should adopt a risk mitigation plan that allows them to do so, including through engagement with and requirements for suppliers, and cooperation with other industry members.
 - ii) If a company identifies a refiner with identified red flags in their supply chain manage the risk by continuing to trade with reasonable risk mitigation efforts, temporarily suspending trade while pursuing such measures, or disengaging with the refiner.
 - Disengage if the refiner does not suspend engagement with suppliers where there are reasonable risk of abuses or there is direct or indirect support to non-state armed groups.
 - Seek to build leverage over refiners through performance criteria in contracts, or joint action with others, focusing on improving the refiners due diligence efforts.
- c) Implement the risk management plan, monitor and track performance, report back to senior management, and continue to assess risk mitigation efforts and relationships with refiners. Continue risk assessment efforts, including after a change of circumstances.

Carry out an independent third-party audit of refiner's due diligence practices

- 1) Plan and implement an independent third-party audit to verify the implementation of refiner's due diligence practices for responsible supply chains of gold from conflict-affected and high-risk areas.

Report annually on supply chain due diligence.

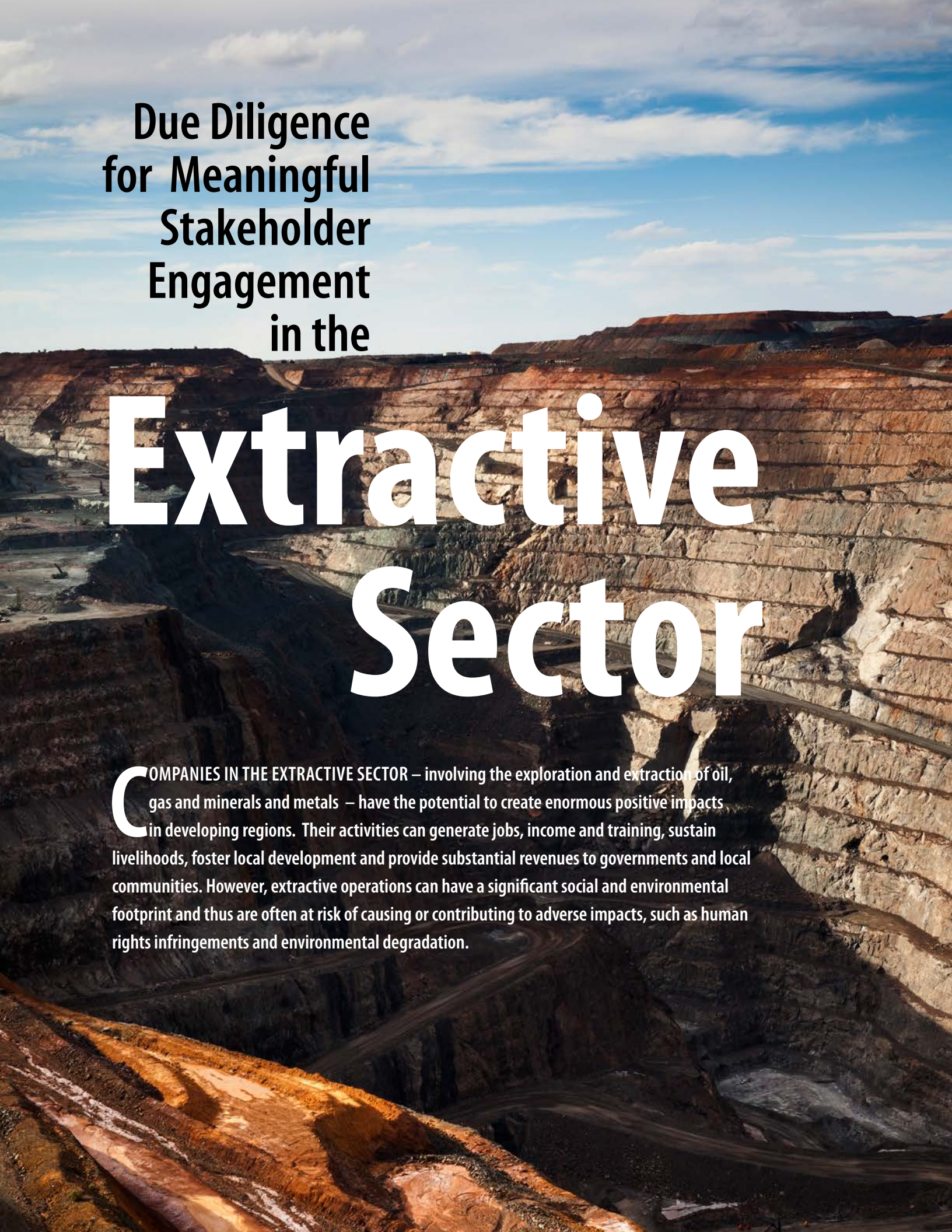
- 1) Annually report or integrate into annual sustainability or corporate responsibility reports additional information on due diligence for responsible supply chains of gold from conflict-affected and high-risk areas, with due regard taken for business confidentiality and other competitive or security concerns.



The OECD Alignment Assessment of industry programmes with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Information can be found at:

<http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>



Due Diligence
for Meaningful
Stakeholder
Engagement
in the

Extractive Sector

COMPANIES IN THE EXTRACTIVE SECTOR – involving the exploration and extraction of oil, gas and minerals and metals – have the potential to create enormous positive impacts in developing regions. Their activities can generate jobs, income and training, sustain livelihoods, foster local development and provide substantial revenues to governments and local communities. However, extractive operations can have a significant social and environmental footprint and thus are often at risk of causing or contributing to adverse impacts, such as human rights infringements and environmental degradation.

STAKEHOLDER ENGAGEMENT CAN CONTRIBUTE TO:

- attaining and retaining a “social licence to operate” facilitating current and potential future operations and expansions
- early identification of risks of adverse impacts either at the site of extractive operations or along in-country supply chains
- avoiding reputational risks for the enterprise and costs through identifying emerging community issues at an early stage and dealing with them proactively rather than reactively
- reducing time in obtaining approvals and negotiating agreements
- avoiding the costs of conflict arising from lost productivity due to temporary shutdowns and senior personnel time being diverted to manage grievances
- improving corporate risk profile used by investors and, potentially, the ability to secure access to capital on more favourable terms
- attracting and retaining employees, particularly in the context of recurring skills shortages

CANADA IS THE LEADING COUNTRY IN THE WORLD for mining, oil and gas exploration and extraction. Indeed, over 50% of the world’s publicly listed exploration and mining companies are headquartered in Canada, and Canada is one of the world’s leading energy economies.¹⁰ Within Canada alone, more than 650,000 workers are directly or indirectly employed in the extractive sector, which accounts for some 15% of Canada’s Gross Domestic Product.¹¹ Extractive companies invested about \$105 billion in Canada a year (in 2017) with roughly 470 projects and \$680 billion in expenditures anticipated over the next 10 years.¹² Canadian companies have operations in 124 countries, with assets worth more than \$225 billion.¹³ Mining also is the largest private sector employer of Aboriginal peoples in Canada.¹⁴

At the same time, extractive operations within and outside of Canada have faced numerous high profile controversies, from the Mount Polley tailings breach in British Columbia, to domestic concerns around environmental and climate impacts associated with oil extraction, to claims of forced labour in Africa, to allegations or findings of abuse by security personnel in South America, Africa and the Pacific Islands, to disputes around the free, prior and informed consent of indigenous populations at home and abroad. In light of such issues, the Canadian government, lending institutions, industry associations, civil society and others have focused on driving responsible business conduct throughout the Canadian extractive sector.

A key aspect of that responsible business conduct is meaningful stakeholder engagement, and the OECD dedicated one of its in-depth due diligence guides to that topic for the extractive sector (<https://www.oecd.org/daf/inv/mne/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf>).

Are there sector specific differences?

While this Guide focuses on oil and gas extraction and which share numerous characteristics, there are important differences that have implications for stakeholder engagement at the site level. For example: methods used to extract resources, such as open-cut mining versus drilling for oil or gas, have a range of “footprint” types, and can raise different sets of concerns among stakeholder groups; the location of resources often determines the number and type of communities affected, as well as the nature of the adverse impacts and their likelihood. For instance, there can be a marked difference between off-shore oil and gas extraction and onshore extraction, where most mining takes place. Also, processing and transport methods vary, as onshore oil and gas extraction often brings with it overland pipelines, whereas other oil and gas products and minerals tend to be transported by road or rail. Differences in the life-span of projects exist and mining licensing processes and contracts between the state and the private sector often differ in form from those of oil and gas. In addition, within oil, gas and mining, exploration enterprises are different from project-based enterprises, as the presence of exploration enterprises or prospectors can raise expectations or fears, even if prospecting has a low impact and despite the fact that few prospects result in production.

What is the difference between stakeholders and rights-holders?

In prioritizing engagement activities, rights -holders who may face the greatest risk of adverse impacts in the context of extractive operations, with whom engagement activities might be focused, could include:

- potentially impacted local communities
- indigenous peoples
- farmers
- workers (including local and migrant workers)
- artisanal miners
- host governments (local, regional and national)
- local civil society organisations (CSOs), community-based organisations and local human rights defenders

External stakeholders that may be considered for meaningful engagement may include:

- NGOs
- industry peers
- investors/shareholders
- business partners
- the media

Specific Recommendations

What are the responsibilities for corporate personnel or management?

Position stakeholder engagement strategically and internalize at all levels of the organization

- 1) Establish and clearly communicate an enterprise policy or commitment on stakeholder engagement, (including: focus on building relationships, anti-corruption and coercion, inclusion of vulnerable groups, transparency, and remedy).
- 2) Integrate stakeholder engagement into core management systems, (including: training and awareness programs for employees and contractors, linkage with risk assessment and other relevant studies, and systems for measuring and recording data).
- 3) Take into account stakeholder engagement issues when forming business relationships (including: training and educating key partners in company policies and procedures to avoid potential problems; use positive influence to head off anticipated issues and practice avoidance where risk is too high).
- 4) Establish a feedback loop to integrate stakeholder views into project decision making (including: ensure close internal alignment on project decisions so that stakeholders can be informed; obtain management approval for external commitments and keep an updated register; provide feedback to stakeholders on all questions and concerns raised)..

What are the recommendations for on-the-ground personnel?

Take adequate steps so that personnel undertaking stakeholder engagement activities have a strong understanding of the local and operating context

- 1) Consult with technical personnel, local sources and relevant documents.
 - a) Consult technical personnel and where relevant participate in conducting and designing impact assessments.
 - b) Where possible involve stakeholders in designing and conducting impact assessments.
 - c) Conduct preliminary field research (such as: perception surveys with households, key stakeholder groups; studies to obtain other data which may not be publicly available).
- 2) Vet information for accuracy (such as: for 3rd party studies check their reputation, credibility, objectivity, capacity, relevance, and history)
- 3) Continuously update understanding

Ensure that stakeholders and their interlocutors are appropriately identified and prioritised

- 1) Identify and prioritise most severely impacted stakeholders.
 - a) Identify all impacted stakeholders and rights-holders and conduct this process through involvement of a broad group of functional areas.
 - b) Prioritise vulnerable and most severely impacted stakeholders for engagement but avoid prioritising those stakeholders with the most power or influence. Prioritisation for engagement should consider identified impacts and which stakeholder groups will be affected, noting that issues and impacts vary according to stage of project lifecycle but usually affect marginalized groups the most while these also have the least opportunity to benefit from the project.
 - c) Verify and update findings through regular team review and update of stakeholder maps and prioritisations
- 2) Verify stakeholder representatives or interlocutors.
 - a) Verify views of constituents are being represented (including: diversity of stakeholder group is represented, representative selected through appropriate means personal agendas and conflicts of interest considered).
 - b) Re-evaluate representatives as relevant (eg: awareness of changes in local leadership).



GOOD PRACTICE AIDS

Barrick's Community Relations Management System includes a Community Relations Policy, standard, and procedures, guidelines, toolkits and audits. It includes explicit requirements related to stakeholder engagement, including stakeholder engagement plans, and an approach designed to provide accessible information about operations, including social, economic and environmental impacts, and access to company officials who will listen and act on community concerns. Similarly, ConocoPhillips Canada has an express Canadian Stakeholder Engagement Policy, focusing on meaningful engagement within Canada

<http://www.conocophillips.ca/Documents/StakeholderEngagementPolicy.pdf>

Establish the necessary support system for meaningful stakeholder engagement

- 1) Set aims and objectives that provide the correct framework for stakeholder engagement activities (this should be: long-term perspective focused on building good relationships as neighbours and partners)
- 2) Develop systems to ensure all personnel treat stakeholders with respect (such as: induction for new hires and ongoing training of employees as company ambassadors, including cultural awareness programs where needed).
- 3) Provide the support and information necessary for stakeholders to represent their perspectives and interests.
 - a) Share material information with stakeholders (such as: company information and policies, project description with impacts and risks, stakeholder engagement and grievance processes, projected benefits to the country, other available studies).
 - b) Balance transparency and privacy concerns.
 - c) Consult stakeholders to inform information sharing
 - d) Obtain and use stakeholder feedback to determine what works most effectively to share information and obtain valued stakeholder input (many projects have seen significant design improvements and cost savings in this way).
 - e) Provide the necessary training or resources to stakeholders (including: provision of materials in first language of stakeholders, training in negotiation or technical areas, compensation for time invested where relevant).
- 4) Optimise resources (human and financial) for engagement activities.
 - a) Identify and request resources in advance (including: right-sized community engagement team depending on project context, correct budget and logistical resources for engagement activities).
 - b) Advocate for additional resources and streamline resources in the face of resource constraints (including: promote awareness that stakeholder issues do not go away while a project is not in production; leverage internal resources to support engagement; work to achieve company being seen as one more partner at the table in the community but not the central resource; from the very beginning avoid use of resources as a problem-solving mechanism; use 3rd parties to support company team as and when appropriate).

Design appropriate and effective stakeholder engagement activities and processes

- 1) Plan appropriate timelines for stakeholder engagement activities
 - a) engagement should start as early as possible and be ongoing, giving stakeholders the right amount of time for them to deliberate, question, and provide feedback;
 - b) the concept of the “right time” will evolve and change during project lifecycle as relationships and level of understanding develop and grow).
- 2) Identify which mode of engagement is needed or required (considerations include: asking stakeholders what channels and type of information works best for them; understand legal framework around consultation; negotiation may form part of the engagement, for example on community benefit agreements; understanding how consent may be obtained both in structured form through Government approvals but also from local stakeholders; developing method for ongoing stakeholder involvement in realization of commitments; developing and communicate a grievance mechanism to deal with adverse impacts).
- 3) Identify and apply best practices (such as: use the Guidelines plus peer group examples to strive for continuous improvement in engagement).
- 4) Identify and respond to external challenges to engagement (consider social and cultural norms, power dynamics and politics, logistical issues, oppression, legislative bounds, personal interests, management of expectations, inherited historical issues).
- 5) Establish clear and functional processes to respond to grievances and enable remediation of adverse impacts.
- 6) Engage with stakeholders to ensure remediation is perceived as appropriate.



GOOD PRACTICE AIDS

Teck has identified specific targets and commitments related to stakeholder engagement, describes its approach, and includes a list of annual highlights as part of its public reporting

<http://www.teck.com/responsibility/approach-to-responsibility/sustainability-report/material-topics/community-engagement/>

Ensure follow-through

- 1) Establish a process for tracking follow-through on agreements, commitments and remedies (eg: timeline, responsible owner, validation in case of inherited commitments from previous project owner, status, agreement with stakeholders on completion, communication of results).
- 2) Regularly report back to stakeholders on follow-through for agreements, commitments and remedies (eg: use formal meetings plus local communications tools to provide results and feedback; roll-up into Corporate reporting where relevant).

Monitor and evaluate stakeholder engagement activities and respond to identified shortcomings

- 1) Establish indicators and assessment criteria that evaluate the effectiveness of stakeholder engagement activity (such as: meeting records and qualification of feedback received; independent perception surveys; suggestion boxes; informal surveys).
- 2) Establish participatory monitoring and evaluation processes (ideally developing a process and indicators together with stakeholders, rather than just from company perspective).
- 3) Solicit independent external review of stakeholder engagement activities (such as a university or civil society organization).
- 4) Respond to identified shortcomings as relevant.

How does a company monitor and evaluate?

It is important to monitor and evaluate stakeholder engagement activities, and enterprises are encouraged to adopt indicators and assessment criteria throughout their monitoring and evaluating processes. The OECD Guidance provides a detailed annex that provides samples and guidance in this respect.

Additional Considerations for Certain Groups

What are additional engagement considerations with First Nations and Indigenous peoples?

Certain characteristics of Indigenous peoples require special consideration, including: their governance institutions, practices and any associated right to self-determination; their relationship with land; their spiritual and cultural heritage; historical discrimination they have suffered; their unique and often vulnerable position in society; their recognition under international law, as well as at times special legal status under national legislation and policy. It is incumbent on the company to develop a specific engagement plan for Indigenous peoples which considers the above elements. It is particularly important that this starts early and is ongoing, allowing

time to build relationships and thereby develop mutual understanding of expectations and outcomes, along with processes for sharing of information, consultations, working as neighbours and partners, and obtaining consent. Significant time will be required for internal work with functional areas (for instance: cultural awareness training and activities; obtaining support from Supply Chain to develop local business opportunities; developing guidelines with Human Resources for employability of indigenous persons; buy-in from Environment and Site Management to have Indigenous representatives trained as community environmental monitors).

What are additional engagement considerations with women?

It is particularly important to apply a gender perspective throughout impact analysis and stakeholder engagement to allow enterprises to account for the often unequal power relationships between men and women. Far too frequently, meaningful stakeholder engagement does not adequately account for the genuine perspectives of women, whether because of a gender imbalance in consultations, or because of social dynamics when women are consulted. Impacts commonly identified as having a disproportionate effect on women include increased

domestic and community work when men are away on shift work; male-dominated in-migration seeking jobs, with disruption to community stability; domestic violence and alcohol abuse; household finance and benefits controlled by the male. Engagement plans need to involve women in a way which helps build cultural acceptance and should be closely coordinated with an on-site gender equality strategy, since the Company can set a strong example by training and promoting women, plus ensuring equal compensation.



GOOD PRACTICE AIDS

BCHydro maintains an extensive and detailed stakeholder engagement plan specifically geared toward interactions with first nations

https://www.bchydro.com/content/dam/hydro/medialib/internet/documents/info/pdf/iep_first_nations_and_stakeholder_engagement_plan.pdf

What are additional engagement considerations with workers and trade unions?

Workers employed by extractive enterprises have a legal relationship with the enterprise. The OECD recognizes that social dialogue, including the recognition of trade unions and collective bargaining, is the preferred and most important form of stakeholder engagement where an employment relationship exists. It is important that employment matters are managed separately from community issues, even though many employees will be from local communities. At the same time, employees are the company's most important ambassadors so

ensuring that company values and principles are lived out in practice and that employees are well informed is essential. In addition, holding site tours for families and other stakeholders is a very valuable method to build trust. Workers not directly employed by the enterprise such as service providers and subcontractors must also be considered stakeholders. Close engagement with contractors is essential on multiple fronts – compliance with company policy and standards, plus commitment to local hiring and training.

What are additional engagement considerations with artisanal and small-scale miners?

Although artisanal and small-scale mining (**ASM**) is often associated with negative impacts such as environmental degradation, dangerous working conditions and organised crime, it can also be a tremendous driver for economic growth in rural areas of developing countries. ASM can provide employment, increase local purchasing power, stimulate local economic growth and slow urban migration. The often unclear legal status of ASM, and the serious risks and impacts that large-scale mining operations can have on ASM activity, and vice versa, make

artisanal and small-scale miners and the government authorities regulating ASM activity unique and important stakeholder groups to engage with. It is important to work with internal stakeholders to build up a full understanding of the context of ASM activity on or near a project site and use this information to determine the site strategy for dealing with the issue. While there are numerous parallels from one ASM occurrence to another, the local context is unique as are the potential solutions or risk mitigation actions.





Guidance for
Responsible

Agricultural Supply Chains

AS THE DEMAND FOR FOOD INCREASES driven by growing populations, higher incomes, and changing diets, long term prices for both crop and livestock products are likely to rise. The demand for non-food agricultural products and services is also increasing. Agriculture should thus continue attracting further investment, particularly in developing countries where investment stocks in agriculture are relatively low.

ENTERPRISES OPERATING ALONG agricultural supply chains can create employment and bring expertise, technology and financing capacities for increasing agricultural production sustainably and upgrading in supply chains, which can enhance food and nutritional security. At the same time, as new actors, such as institutional investors, are increasingly involved in agricultural supply chains and as a growing number of investors target frontier markets with weak governance frameworks, the risks of failing to observe internationally agreed principles of responsible business conduct may be exacerbated.

These issues have prominence in Canada. Net cash income from the Canadian agricultural market is roughly \$15 billion per year, livestock receipts are roughly \$24 billion per year, and crop receipts are some \$32 billion per year. The agriculture and agri-food system encompasses more than 6% of the Gross Domestic Product. At the same time, agribusiness has been hit with a variety of scandals and criticisms, from tainted meats and contaminated food products, to forced labor, child labor, trafficking and modern slavery, to bribery, to environmental harms and climate change.

In this context, providing guidance to enterprises involved in agricultural supply chains on how to observe existing responsible business conduct standards is essential to prevent adverse impacts and help agricultural investments benefit enterprises, governments and communities and contribute to economic development, poverty reduction and food security. To assist in that endeavor, the OECD has created a sector specific guidance for agricultural supply chains (<http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf>). The focus is on assisting enterprises directly involved in agricultural production, including small-scale producers,

SUPPLY CHAINS

The term “supply chain” refers to the system encompassing all the activities, organizations, actors, technology, information, resources and services involved in producing agricultural products for consumer markets. It covers agricultural upstream and downstream sectors from the supply of agricultural inputs (such as seeds, fertilizers, feeds, medicines, or equipment), to production, post-harvest handling, processing, transportation, marketing and distribution. As such, it consists of interrelated actors, such as input suppliers, producers, and processors, trading companies and retailers, as well as other actors supplying a particular end market such as technical, business and financial service providers. Various stages of agricultural supply chains and actors

and other actors involved through business relationships, such as investment funds or sovereign wealth funds. It also encompasses domestic and foreign, private and public, small, medium and large-scale enterprises, and covers agricultural upstream and downstream sectors from input supply to production, post-harvest handling, processing, transportation, marketing, distribution and retailing.

Sector Specific Considerations

New actors have entered agricultural supply chains in recent years. A wide range of enterprises are now involved, ranging from smallholders, farmers’ organizations, co-operatives and start-up companies to multinational enterprises through parent companies or local affiliates, state-owned enterprises and funds, private financial actors, such as commercial banks and investment funds, and private foundations.

These actors invest in agricultural supply chains through diverse relationships and arrangements. For instance,

enterprises in downstream stages of agricultural supply chains can engage in various types of relationships to secure access to agricultural products. They can impose standards and specifications on producers with little involvement beyond a buying contract. But they can also be more actively involved, in particular through contract farming, as a way to co-ordinate production and ensure quality.

What does risk-based due diligence look like in the agriculture sector?

In the agricultural sector, risk-based due diligence should differ across commodities and geographies. While specific due diligence requirements and processes will differ depending on the sub-sector, the position of enterprises and

their type of involvement in the supply chain, as well as their size and capacities, enterprises should integrate into their management systems the following five-step framework for risk-based due diligence along agricultural supply chains.



GOOD PRACTICE AIDS

To promote responsible sourcing, Loblaw has adopted a Supplier Code of Conduct. The Code strives to help suppliers uphold the same values and principles of business conduct as Loblaws, and compliance may be verified through self-evaluations or audits by or at Loblaws direction.

<http://www.loblaw.ca/content/dam/lc/corp/pdfs/Responsibility/SupplierCodeOfConduct/Supplier%20Code%20of%20Conduct%20-LCL-2016.pdf>

Establish strong management systems for responsible agricultural supply chains

- 1) Adopt an enterprise policy for responsible conduct along the agricultural supply chain, that incorporates the standards against which due diligence is to be conducted. The policy should:
 - a) be approved at the most senior level and appoint senior level responsibility for its implementation;
 - b) be informed by relevant internal and external expertise;
 - c) stipulate the enterprise's expectations of personnel, business partners and other parties directly linked to its operations, products or services;
 - d) be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
 - e) be reflected in operational policies and procedures necessary to embed it throughout the enterprise.
- 2) Structure internal management to support supply chain due diligence.
 - a) Senior management should be visibly and actively involved in implementing the enterprise policy, and employees and business partners should be trained and provided incentives to comply with responsible conduct and relevant laws and standards.
 - b) An individual with relevant technical and cultural skills should be designated to be responsible for due diligence with the necessary support team, and adequate financial resources should be made available.
 - c) An internal reporting structure for risk management should be set, maintained and communicated within the enterprise at key junctures.
 - d) The enterprise practices should be aligned throughout its operations.

- 3) Establish a system of controls and transparency along the agricultural supply chain, as monitoring the implementation of the enterprise policy for responsible conduct is critical to the credibility and effectiveness of the policy and to good relationships with stakeholders.
 - a) Create internal audit procedures to undertake regular independent and transparent reviews of compliance with the policy as well as the execution and follow-up of environmental, social and human rights impact assessments.
 - b) Maintain systems of business relations to promote a continual flow of information.
 - c) Establish a chain of custody or a traceability system should be established, including: creating internal documentation of due diligence processes, findings and resulting decisions; maintaining internal inventory and transaction documentation that can be used retrospectively to identify actors in the supply chain; making and receiving payments through official banking and ensuring that all unavoidable cash purchases are supported by verifiable documentation; and maintaining the information collected for a period of several years.
 - d) Participate in industry-driven programs to promote traceability, tailored to the capacities of various suppliers (including, in particular, small-scale farmers).
 - e) Create channels for communicating with employees and other stakeholders to warn of possible deviations from the policy and relevant standards, in collaboration with stakeholders or through industry-driven programs.
- 4) Strengthen engagement with business partners.
 - a) A supply chain policy should be incorporated into contracts and/or agreements with business partners, and expectations should be made clear.
 - b) Strive to establish long-term relationships with business partners to help build leverage to encourage the adoption of the enterprise policy for responsible conduct.
 - c) Measurable improvement plans can be designed in co-ordination with them and involve, if relevant and where appropriate, local and central governments, international organisations, and civil society.
 - d) Engage in training and capacity building with business partners based on their needs, strategic values, or the risks they entail, based on the risk assessments.
- 5) Establish, in consultation and collaboration with relevant stakeholders, an operational-level grievance mechanism.
 - a) Use the mechanism as an early-warning risk-awareness system and as a mechanism to prevent conflicts and provide redress.
 - b) Make the mechanism easily accessible by workers and all those actually or potentially affected by the negative impacts.
 - c) Publicize the existence and modalities of access to grievance mechanisms, actively encourage their use, and guarantee that their users remain anonymous.
 - d) Incorporate lessons learnt through grievance mechanisms in the enterprise policy for responsible conduct, its relations with business partners and its monitoring systems.



GOOD PRACTICE AIDS

McCain Foods' Supplier Code of Conduct expressly incorporates multiple international norms into its expectations for suppliers, including the UN Guiding Principles on Business and Human Rights and the Core Conventions of the International Labor Organization, and explicitly includes information for stakeholders to report concerns regarding suppliers.

[http://www.mccain.com/InformationHub/PoliciesAndPledges/McCain Supplier Code of Conduct.pdf](http://www.mccain.com/InformationHub/PoliciesAndPledges/McCain%20Supplier%20Code%20of%20Conduct.pdf)

Identify and assess risks in the supply chain

- 1) Map out the supply chain by identifying the various actors involved, including the names of the immediate suppliers and business partners, and the sites of operations.
- 2) Assess the risks raised by the enterprise's operations and those of its business partners by identifying:
 - a) relevant rights holders, affected stakeholders and other stakeholders likely to be affected by the operations on an ongoing basis;
 - b) any business partner that may not undertake proper due diligence;
 - c) any red flags. In such situations, heightened managerial care is warranted and additional due diligence may be needed, which could include on-the ground verification of qualitative circumstances for red flag areas, suppliers, or products;
 - d) any reasonable inconsistency between the factual circumstances of the operations and the enterprise policy for responsible conduct.
- 3) Assess the potential adverse environmental, social and human rights impacts of the enterprise's operations, processes, goods and services and those of its business partners over their full life cycle. In addition to formal audits, adverse impacts can be identified by
 - a) undertaking stakeholder consultations
 - b) monitoring by a third party, such as civil society organizations, and
 - c) organizing field visits of the factories and processing facilities

EXAMPLES OF SITUATIONS THAT WARRANT HEIGHTENED MANAGERIAL CARE

- **RED FLAG LOCATIONS** - Operations are planned in or agricultural products originate from areas: that are affected by conflicts or considered as high-risk areas, or which are considered as weak governance areas; where national or local governments do not observe some of these standards or do not provide support to the enterprise to ensure the observance of these standards, such as by proposing agricultural land on which local communities have legitimate tenure rights and have not been consulted, or which is located in protected areas; where violations to human rights and/or labour rights have been reported; where tenure rights are weakly defined and/or are contested; where some communities are food insecure or face water shortages; that are affected by environmental degradation.
- **BUSINESS PARTNER RED FLAG** - The enterprise's business partners are known not to have observed responsible business conduct standards; they operate in one of the above-mentioned locations; they are known to have sourced agricultural products from one of the above-mentioned locations in the last 12 months; they have shareholder or other interest in enterprises that supply agricultural products from or operate in one of the above-mentioned red flag locations.
- **PRODUCT RED FLAG** - Production of the agricultural product is known to have adverse environmental, social or human rights impacts.

Design and implement a strategy to respond to identified risks

- 1) Report the findings of the risk assessment to the designated senior management, and provide affected stakeholders and business partners with clear, accurate and timely information on the risk factors identified and on the measures taken to prevent or mitigate such risks.
- 2) Adopt a risk management plan, which could include risk prevention and mitigation measures. That may include continuing the operations throughout the course of measurable risk mitigation efforts; temporarily suspending the operations while pursuing ongoing measurable risk mitigation; or disengaging with a supplier after failed attempts at mitigation or when an enterprise deems risk mitigation not feasible or unacceptable.
- 3) Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to the designated senior management. This entails:
 - a) consulting with affected stakeholders and business partners to clarify concerns and agree on the strategy for mitigating risk;
 - b) taking the necessary steps to prevent or cease adverse impacts caused by the operations, or use leverage to mitigate any remaining adverse impact to the greatest extent possible if business partners contribute to the impact;
 - c) undertaking contingency planning for preventing, mitigating and controlling serious damage from operations, including accidents and emergencies, and reporting to competent authorities.
- 4) Undertake additional fact and risk assessments for risks requiring mitigation or after a change of circumstances.

Commission an audit of supply chain due diligence

- 1) Due diligence practices and the observance of relevant standards should be audited by independent third parties at identified points in the supply chain. These audits:
 - a) should determine the conformity of the due diligence processes with relevant national laws and international standards.
 - b) may include on-site investigations, including consultations with government authorities, local civil society, and members of the affected community, and the generation of recommendations to improve due diligence practices.
 - c) should aim at preventing and mitigating risks and support efforts for improvement by presenting not only an assessment of the situation but also a dynamic approach of the progress made.
 - d) should consider the capacities of various enterprises, including more affordable mechanisms for small enterprises, such as locally-driven social compliance initiatives.
 - e) should be conducted by neutral and impartial auditors, who are competent and accountable.
 - f) may be coordinated with other audit activities for efficiencies, and focus on 'choke points' or leverage points to focus their audits - as opposed to every enterprise in the supply chain being audited.

Report on supply chain due diligence

- 1) Enterprises should publicly report on their supply chain due diligence policies and practices, with due regard taken of business confidentiality and other competitive concerns. Public reports should be relevant to all stakeholders and may include:
 - a) information on the enterprise management systems
 - b) the risks assessments it has carried out
 - c) the steps taken to manage risks, and
 - d) audit reports of due diligence practices.



Responsible
Supply Chains
in the

Garment and Footwear Sector

THE GARMENT AND FOOTWEAR SECTOR employs millions of low-skilled workers on a global basis, many of whom are women, and acts as an entry point into the formal economy in many countries. As such, enterprises operating in the sector generate growth, employment and skill development through their own operations and sourcing.

WITHIN CANADA, THE GARMENT and footwear sector maintains an active and visible presence. From brands recognized across the globe to boutique fashion labels, and from major department stores to individual retailers, the Canadian apparel industry remains a significant economic driver. While the apparel manufacturing industry exhibited negative growth in gross domestic product and shipments in recent years, domestic demand for apparel goods has increased. Local Canadian-made products have decreased while imports are on the rise. Based on recent available statistics (2015), approximately 20,000 employees were employed in the garment sector.¹⁵ Some Canadian firms have off-shored their apparel production to control costs while certain non-manufacturing, high value-added activities, such as design, merchandising, marketing, logistics, and distribution remain in Canada.

Garment and footwear supply chains have been beset by issues concerning human rights, labour abuses and harm to the environment. These include scandals involving children's

rights, forced labour, and modern slavery. They include hazardous working conditions, including exposure to chemicals and shoddy factories that collapse, as epitomized by the Rana Plaza disaster in Bangladesh. Corruption and bribery is also prevalent, and are gateway crimes to many of the other harms in the sector.

While such negative impacts are not new to the industry, the characteristics of modern global supply chains - such as stages of the production process spread across diverse countries, short lead times, and short-term buyer-supplier relationships - can reduce visibility and control over an enterprise's supply chain and can make and create challenges for enterprises to meet their responsibilities. Within this context, the risks of negative impacts should be managed throughout the supply chain to maximize the positive impacts. The OECD dedicated one of its five sector-specific guidance tools (<https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Garment-Footwear.pdf>) to do just that.

Sector Specific Considerations

A wide range of actors play a role in the garment and footwear industry. This includes most obviously enterprises whose primary function is the manufacturing or sale of apparel or footwear. This industry also includes a wide range of entities that produce or source raw material and fiber, who manufacture and process materials, and who manufacture components. It also includes brands who enter licensing arrangements, as well as retailers and their intermediaries, such as merchandisers, buying agents, and distributors.

The actors in the industry also vary widely demographically. There are numerous large enterprises in the sector, but many more small and medium ones where due diligence and engagement efforts may differ in light of resources, position in the supply chain and leverage. Many in the industry are privately owned, while others are state-owned or controlled, which also may create differing approaches to due diligence.

What does risk-based due diligence look like in responsible supply chains for the garment and footwear sectors?

Adopt a strong enterprise policy and embed responsible business conduct in enterprise policy and management systems.

- 1) An enterprise policy should
 - a) be developed in consultation with relevant internal and external expertise,
 - b) articulate the enterprise's commitments to responsible business conduct in its own operations and in its supply chain,
 - c) cover the enterprise's expectations regarding homeworkers and subcontractors,
 - d) include a commitment to meaningful engagement and to hearing and addressing complaints
 - e) be made public and communicated to all employees, suppliers and other business partners and other relevant parties.
- 2) Establish strong oversight and governance mechanisms, including assigning responsibility to senior staff.
- 3) Embed due diligence into decision-making processes related to the business, such as new product lines or expanding operations.
- 4) Strive to achieve functional alignment between differing operating units through sharing of information or expanding internal groups involved in the decision-making or consultation processes.
- 5) Develop information management systems that are accurate and current and are capable of storing the full extent of information necessary to conduct due diligence.



GOOD PRACTICE AIDS

Canada Goose has adopted a Traceability Standard, to help the company meet its goal of ethically sourced down, fur, wool and shearling. The Standard is designed to create traceability throughout the supply chain, and includes a commitment tracking the source of materials from farm to factory, as assured through an independent third-party audit program.

<https://www.canadagoose.com/us/en/fur-and-down-policy/fur-and-down-policy.html>



GOOD PRACTICE AIDS

On its website, Mountain Equipment Coop (MEC) includes a specific discussion of the factories it works with, its approach to audits, and how it considers and addresses situations where factories do not meet its standards. As MEC notes, it wants “to see issues corrected and offer training and support to help solve problems; automatically leaving a factory that has a problem doesn’t improve workers’ lives overall. However, if we can’t reach an agreement on remediation with the factory, then we move our business to a place that can meet our workplace standards.”

<https://www.mec.ca/en/explore/factories>.

Identify potential and actual harm in the enterprise’s own operation and in its supply chain.

- 1) Conduct a scoping exercise to identify the most significant risks, both in the enterprise’s operations and in its supply chain. The exercise should be periodic, informed, and documented.
- 2) The exercise may rely on desktop reviews, and where gaps exist, engage with stakeholders and experts. Issues that arise through early warning systems and grievance mechanisms also may provide patterns of information. Update the assessments periodically, as business activities and the regulatory environment are not static.
- 3) Consider in particular the human rights risks specific to the sector, product and relevant geography. Business model risks, such as the number of product lines, also may be relevant, as may sourcing model risks.
- 4) Prioritize the most significant risks that are identified.
- 5) For risks identified within a company’s own operations, assess the extent of the risk and actual impacts on the ground.
 - a) Engagement with potentially affected stakeholders is particularly important, and review existing policies and systems to assess the extent to which the risks are being mitigated or prevented. Consider external assistance in cases where impacts are potentially severe and expertise does not exist in house.
- 6) For risks identified in the supply chain, prioritize among those where the risks of negative impacts are most severe.
 - a) Assessments may be conducted in different ways with differing types of experts, but substantively, it is useful to the measures the supplier is taking to address the risk, actual impacts, and the extent to which affected individuals are aware of their rights.
 - b) Enterprises should take into account assessment fatigue in the sector, and are encouraged to share information and collaborate.
- 7) Assess the enterprise’s relationship to impacts (cause, contribute, directly linked), which will help guide appropriate follow-up activities.

Cease, prevent or mitigate harm in the enterprise's own operations and in its supply chain.

- 1) For a company's own operations, develop a corrective action plan. The action plan should:
 - a) should have a clear timeline for implementation and follow-up
 - b) identify internal responsibilities and accountabilities for actions
 - c) include a combination of adjustments to policy, training, facilities and management systems, as appropriate to the situation
 - d) be developed in consultation with internal and external stakeholders, including workers and trade unions.
- 2) Within a supply chain, develop and implement a plan to prevent or mitigate future harm. If the enterprise has contributed to the harm, it should
 - a) provide for or cooperate in remediation efforts.
 - b) institute internal measures to mitigate risks, such as through prequalification of suppliers, supplier consolidation, maintaining and fostering longer term supplier relationships, and supplier incentive systems.
- 3) If the enterprise has not contributed to the harm, but it is directly linked to the harm because of the activities in its supply chain, it should:
 - a) use its leverage to influence the supplier to prevent or mitigate the impact, and support the supplier's efforts.
 - i) Leverage is likely to be greatest with direct suppliers, but it may extend in different ways to sub-tier suppliers.
 - ii) If leverage does not exist, efforts should be made to increase it, and leverage can be pooled among enterprises
 - b) disengage from suppliers where impacts cannot be avoided, the supplier refuses to mitigate risks, and where severe harms have been identified.
 - c) consider engaging government where needed to help it fulfill its duty to protect against abuses.



GOOD PRACTICE AIDS

In its annual responsibility report, Hudson's Bay provides extensive details on its due diligence processes, including its audit standards, the results of its factory screening process, and how it addresses non-compliant factories. It also discusses the company's commitment to capacity building, to help producers to identify and fix the key issues contributing to violations and improve their long-term performance.

http://www3.hbc.com/wp-content/uploads/2017/07/2016-CSR-Report_FINAL_ENG_RED.pdf



GOOD PRACTICE AIDS

Innovation, Science and Economic Development Canada (ISED) engages with the domestic Canadian industry (including the retail and garment industries), promoting the business case for the voluntary integration of CSR practices and principles into core business strategy and daily operations, including supply chains. It has published guidance on “Purchasing for Sustainability” in its CSR tool kit and in ISED’s *CSR Implementation Guide for Canadian Business*, which includes information on sustainable global supply chains.

Verify, monitor and validate progress on due diligence and its effectiveness.

- 1) Take steps to provide assurance that its actions are preventing and mitigating harm in its own operations.
 - a) use qualitative and quantitative indicators to track that progress, and consider data from all available sources.
 - b) consider external support for validating that impacts have been prevented where there are potentially severe impacts and where additional technical expertise is required
 - c) monitor the effectiveness of instituted processes
- 2) Where negative impacts have not been fully prevented or mitigated, understand the reasons and seek to alter corrective action plans accordingly.
- 3) Monitor and assess the progress internally and for suppliers. In general, the greater the potential severity of the impact, the greater assurance is required. Consider using:
 - a) monitoring indicators to validate the impacts have been mitigated or prevented, including through collaboration and worker engagement
 - ib) external experts to verify that corrective action measures are pursued where impacts are potentially severe and the technical expertise is needed.

Communicate

- 1) Communicate publicly on the enterprise's due diligence processes, including how the enterprise has addressed potential and actual harms. Communication can take place in different forms, but it should be clear, accurate and user friendly. Include:
 - a) relevant policies and management systems
 - b) the most salient risks in the enterprise and its supply chain
 - c) plans to prevent or mitigate harms
 - d) relevant remediation processes and approaches
 - e) steps to engage meaningfully with stakeholders
 - f) increasingly for companies, a list of direct suppliers, assessment findings and correction action plans, and the nature of grievances and how they were addressed.
- 2) For affected stakeholders, communicate how negative impacts are being addressed in a form and frequency appropriate to the situation. The communication should be accessible to its intended audiences and sufficient to evaluate the adequacy of an enterprise's response.

Provide for or cooperate in remediation where appropriate.

- 1) Establish processes to enable remediation in the company's own operations. These often are accomplished through operational level grievance mechanisms.
- 2) Commit to hearing and addressing complaints raised through legitimate processes, such as
 - a) multi-party mediation processes
 - b) processes established through multi-stakeholder initiatives
 - c) processes established through agreements with unions
 - d) the NCP process.
- 3) Determine the appropriate form of remedy, which can take many forms. It is important to understand what remedy may be effective in local context, taking into account the views of those affected, as well as the views of the enterprise and potentially external experts. The goal of remedy is to restore the affected person or persons to the situation they would be in had the harm not occurred.

Additional sector specific risks and guidance

There are additional potential salient risks within the garment and footwear sector that, depending on the enterprise, its operations, and its supply chain, may warrant particular attention. The OECD guidance includes detailed recommendations to prevent and mitigate these risks, and address impacts then they occur. These risks include:

- Child labour
- Sexual harassment and sexual and gender-based violence in the workplace
- Forced labour
- Working time
- Occupational health and safety
- Trade unions and collective bargaining
- Wages and living wage
- Bribery and corruption
- Responsible sourcing from homeworkers
- Environmental conditions, including hazardous chemicals, water, and greenhouse gas emissions





Responsible
Business
Conduct for

Institutional Investors:

Key Considerations
for Due Diligence

UNDER THE GUIDELINES, institutional investors are expected to implement due diligence to prevent or address adverse impacts related to human and labour rights, the environment, and corruption in their investment portfolios. In the investment sector, due diligence helps prevent negative impacts, avoid financial and reputational risks, respond to expectations of their clients and beneficiaries and contribute to global goals on climate and sustainable development.

INCREASINGLY, FAILING TO CONSIDER LONG-TERM investment value drivers, which include environmental, social and governance issues, in investment practice is seen to be a failure of a fiduciary duty. Since the introduction of the Paris Climate Agreement in 2015, and the release in 2017 of recommendations by the Task Force on Climate Related Financial Disclosures, investors have been facing increasing expectations to report on and manage climate risks in their portfolios. International financial institutions have also signaled plans to mobilize USD 400 billion towards achieving the Sustainable Development Goals (SDGs). Strong due diligence processes can help ensure that investments are put towards projects and companies that behave responsibly and ultimately help achieve the objectives of the SDGs.

These issues are highly germane in Canada. The financial sector spans a wide variety of business lines within and outside Canada, including personal and commercial banking, capital markets, and wealth management and insurance. Finance and insurance contributes more than \$100 billion per year to Canada's Gross Domestic Product, and net income for Canada's six largest banks is roughly \$35 billion per year. Banks and their subsidiaries employ 280,000 people in Canada, and make purchase from outside suppliers of roughly \$20 billion per year. Investments for Canadian banks span the globe.

At the same time, there has been increasing scrutiny, and expectations, for the financial services sector in making investment decisions that are aligned with responsible business conduct. It is for that reason that the OECD published one of its sector specific guidances on due diligence for institutional investors (<http://mneguidelines.oecd.org/rbc-financial-sector.htm>), explaining how the key aspects of due diligence under the OECD connects to investors. The focus is on institutional investment managers and asset owners, and carrying out due diligence with respect to adverse impacts associated with investee companies (as opposed to causing or contributing to impacts through their own activities).

In the investment space, due diligence helps prevent negative impacts, avoid financial and reputational risks, respond to expectations of their clients and beneficiaries and contribute to global goals on climate and sustainable development.



GOOD PRACTICE AIDS

Ontario Teachers' Pension Plan (OTPP) has established a set of five responsible investing principles that guide OTPP's actions and investment decision. These principles are:

- (1) integrating environmental, social and governance (ESG) factors into investment decisions;
- (2) engaged ownership;
- (3) continuous learning;
- (4) seeking disclosure; and
- (5) collaboration.

For details on these principles: <https://www.otpp.com/investments/responsible-investing/our-principled-approach>

What does risk-based due diligence look like for investors?

“Business relationships” in the investment context

- 1) Investors are not generally responsible for the actions of the entity with which they have a business relationship, but rather for their own conduct, including their efforts to influence or encourage that entity.
- 2) However, even investors with minority shareholdings may be directly linked to adverse impacts caused or contributed to by investee companies as a result of their ownership in, or management of, shares in the company causing or contributing to certain social or environmental impacts.
 - a) In other words, the existence of potential or actual negative impacts in an investor’s own portfolio means, in the majority of cases there is a “direct linkage” to its operations, products or services through this “business relationship” with the investee company.
 - b) As a result, investors are expected to consider responsible business conduct risks throughout their investment process and to use their leverage with companies they invest in to influence those investee companies to prevent or mitigate adverse impacts. However, investors are not responsible for addressing those adverse impacts themselves.
- 3) In some jurisdictions, investors may not be permitted to formally “influence” the boards or management of their investee companies due to anti-trust concerns.
 - a) Even in these cases investors can nevertheless promote responsible business conduct through engagement with their investee companies to express issues and concerns regarding responsible business conduct risks, as is already common practice.
- 4) The approaches investors can employ to use their leverage to influence companies they invest in are broad in scope.
 - a) These are not limited to direct engagement with investee companies but could also involve, as appropriate, directing capital towards responsible investee companies over time, involvement in industry initiatives targeting certain responsible business conduct risks, or collective action on specific geographic or company-specific issues.
 - b) What is appropriate will vary according to the characteristics of an investor, the investment strategy (e.g. active vs. passive investments) and relevant regulatory obligations. It is important that such leverage is also exerted within the framework of good corporate governance.

Carrying out due diligence in the investment context

- 1) Embedding responsible business conduct into relevant enterprise or investment policies and management systems helps to ensure that due diligence processes are effective and credible. Getting this right is an important pre-cursor to carrying out due diligence.
- 2) Due diligence should not be limited to an initial investigation of a potential business relationship or transaction, but should also be applied proactively through establishment of systematic measures to identify responsible business conduct risk and prevent or mitigate potential adverse impacts, as well as through on-going monitoring of business relationships and related operations.
 - a) The nature and extent of due diligence may depend on the nature of an investment entity, the size and nature of its investment portfolio and relationship to specific investments (e.g. the ownership share in the company, tenure of investment, access to relevant information and the likelihood that meaningful influence may be exercised).
 - b) Due diligence approaches may vary according to the type of institutional investor in question as well as the type of asset class and investment strategy in question.



GOOD PRACTICE AIDS

CDPQ has implemented an investment strategy to address climate change. The strategy covers its entire portfolio and sets out targets and actions for CDPQ to make a constructive contribution, as an investor, to transitioning toward a low carbon global economy. The strategy includes factoring climate change into investment decisions, as part of overall risk analyses, increasing low carbon investments and reducing carbon footprint per dollar invested.

<https://www.cdpq.com/en/news/pressreleases/cdpq-announces-investment-strategy-to-address-climate-change>

Risk prioritization in the investment context

- 1) Investors will often have large numbers of investee companies in their portfolios, or be assessing a wide range of companies for investment and as such, will find prioritization crucial to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritize investee companies for further due diligence.
- 2) Investor policy on responsible business conduct will be important in shaping and communicating a strategy on which risks are prioritized and why.
 - a) Investors should prioritize investee companies for due diligence, taking into account the severity or significance of adverse impacts, to the extent that such an approach complies with domestic legal obligations, for example on fiduciary duty.
 - b) When considering how to respond to identified risks, investors may take into account the importance of the investee company to the investor and potential limitations on leverage over investee companies, in addition to the significance of the adverse impact.

Engagement with relevant stakeholders in the investment context

- 1) Engagement with stakeholders is considered a critical aspect of responsible business conduct.
 - a) Direct stakeholders of institutional investors include their beneficiaries. These entities should be involved to the extent possible in shaping due diligence approaches.
 - b) Stakeholders may include those most impacted by the behaviour of investee companies, although the extent of an investor's engagement with these stakeholders will depend on how due diligence is prioritized.
 - c) Where appropriate, and where there are significant risk of severe adverse impacts, investors may engage with these stakeholders to help shape their response to the risk.

Remediation in the investment context

- 1) Investors may be contributing to impacts caused by their investee companies and may be responsible for remediation.
 - a) These situations could arise where investors wield significant managerial control over a company, for example, in certain General Partnerships.
- 2) In the context of adverse impacts arising from investee companies, it may be more common that investors will be directly linked to the adverse impact, but not cause or contribute to it.
 - a) In directly linked situations, investors should seek to encourage the investee company to do provide remediation, based on prioritization.

End Notes

- 1 “Responsible Business Conduct,” *OECD* (2018): <mneguidelines.oecd.org/sectors/>
- 2 The members of the Working Group are:

Lead: **Jonathan Drimmer**, Vice President and Deputy General Counsel at Barrick Gold Corporation;
Dominic Channer, VP Community Relations, Kinross Gold Corporation;
Anne Drost, Partner, Blake, Cassels and Graydon LLP;
Ian Y Chan, Principal, Professional Learning and Development, CPA Canada;
Mauricio Villalobos Renjifo, Social Development and Sustainability Manager, Fontera Energy;
Kris Frederickson / Eric Westrum, Manager, Sustainability Disclosure & Stakeholder Engagement, Suncor Energy Inc.;

Caroline Elie, Senior Advisor, Stakeholder Relations, Export Development Canada.
- 3 <https://www.tpsgc-pwgsc.gc.ca/ci-if/ci-if-eng.html>
- 4 Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad,” *Global Affairs Canada* (updated January 17, 2018): <international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>
- 5 Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected High-Risk Areas <http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>
- 6 Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector <http://www.oecd-ilibrary.org/docserver/download/2016031e.pdf?expires=1521591798&id=id&accname=guest&checksum=48EABDC9AF7B37C49A1E7A93E7DA4CBB>
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