

Responsible Supply Chains in Artisanal and Small-Scale Gold Mining

Implementing the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas





About this booklet

This booklet provides practical guidance and answers frequently asked questions relating to sourcing gold from artisanal and small-scale mining (ASM), globally. It clarifies expectations embodied in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter Due Diligence Guidance) which provides detailed recommendations and a practical five-step due diligence framework to help companies respect human rights and avoid contributing to conflict through their mineral production and sourcing practices. The Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

The Due Diligence Guidance recognises that due diligence in conflict-affected and high-risk areas presents practical challenges. While flexibility is needed in the application of due diligence, companies are nevertheless always expected to take reasonable action and make good faith efforts to implement the OECD's five-step due diligence framework individually and through collaborative efforts. Through reasonable due diligence, the Due Diligence Guidance seeks to cultivate responsible investment and trade in minerals from conflict-affected and high-risk areas; companies considering disengagement from conflict-affected and high-risk areas need to consider the negative impact of disengagement.

The following FAQs do not represent new or additional guidance but aim to explain in simple terms expectations already set out in the OECD Due Diligence Guidance for Minerals, and in particular in its Appendix to the Gold Supplement that sets our measures to create economic and development opportunities for artisanal and small-scale miners. As such, the clarifications in this document are applicable to sourcing artisanal and small-scale gold, although the principles and approaches outlined herein may also be relevant for sourcing any minerals from artisanal and small-scale miners. As specified in the supplement on gold, all upstream and downstream companies should carry out due diligence regardless of whether they own, lease or loan the gold.



Key principles underpinning the OECD Due Diligence Guidance:

- Due diligence is an on-going, proactive and reactive process. Information and due diligence systems should be progressively built on and improved over time.
- Adequate due diligence should be risk-based: the higher the identified risk, the more intensive the due diligence and monitoring that is expected. Companies should furthermore document their decision-making about risk levels to be able to explain their due diligence choices.
- Identifying, assessing, reporting and mitigating risks can demonstrate and support reasonable and good faith due diligence efforts; constructive engagement with suppliers will enable companies to progressively improve due diligence practices.
- Due diligence is not intended to provide 100% certainty on the conflict-free status of minerals, but rather focus on the processes to identify, prevent and mitigate risk based on available information, and making improvements over time. Companies should work with their suppliers to cut off the harmful parts of the trade.
- Industry and multi-stakeholder initiatives are encouraged to take on activities that help members to assess the circumstances of their supply chains while sharing costs and lessening the burden of data collection. While collaboration, including with local partners, is hence encouraged, ultimate responsibility that appropriate due diligence on supply chains has been carried out lies with the company itself.

FREQUENTLY ASKED QUESTIONS

Why should I consider buying responsible artisanally-mined gold?

There may be commercial reasons, such as securing diverse and new sources of supply and responding to increasing consumer interest in materials and products that benefit producer communities. Companies sourcing ASM gold and carrying out adequate due diligence also help drive positive change in global supply chains. In producing countries, responsible production and sourcing of ASM gold has the potential to foster sustainable economic development in mining communities, increase public revenues, reduce the share of gold that finances conflict, human rights abuses and illicit activities of armed groups, criminal networks and terrorist organisations, and promote broad-based development.

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Am I allowed to buy ASM gold?

While legislation across countries varies, the Due Diligence Guidance encourages buying ASM gold, provided that ASM activities are legitimate and that adequate due diligence is carried out and risks identified and managed accordingly. The Guidance defines legitimacy of ASM using a number of criteria, including that it must be consistent with applicable national laws, and/or that miners should demonstrate good faith efforts to operate within the legal framework and that they engage in opportunities for formalization. Mining activities cannot be considered legitimate when they contribute to conflict and serious abuses associated with the extraction, transport or trade of minerals as defined in Annex II of the Due Diligence Guidance.

In many producing countries the legal framework stipulates that ASM activities are either outright illegal or that miner have to be registered and/or mine in areas that are designated for ASM activities. Given the particular due diligence challenges of assessing largely informal, often illegal ASM activities and the large number of actors, the Due Diligence Guidance proposes a range of measures to work towards formalization and legalisation and to create economic and development opportunities for artisanal and small-scale miners in its Appendix.

3 According to the Due Diligence Guidance, can I buy from artisanal miners that are not legally registered in their own country?

Most of global ASM gold production takes place outside of the legal framework but is at the very least tolerated by many governments. Legislation varies across producer countries but artisanal miners generally should have some form of registration and/or identification and should ideally be organised in some form of legal entity (this could be a cooperative or ASM enterprise for example). Notwithstanding, the ultimate objective of the Due Diligence Guidance is to cultivate responsible investment and trade in producing countries. In this perspective, when dealing with artisanal miners that are not legally registered, companies sourcing ASM gold are encouraged to:

- work with artisanal miners that are not associated with the most severe forms of risks as described in the Annex II of the Due Diligence Guidance and willing to engage in credible legalisation processes; this in particular implies that artisanal miners need to show genuine commitment to cooperate and engage in such a process. This could be demonstrated by for example oral communication of ASM representatives; attending meetings and willingness to provide information on their activities;
- use their leverage – jointly with local partners - to engage local authorities and convince them to tolerate and support responsible ASM production and export by allowing for formalization and legalisation. Companies are expected to explain and document their sourcing decisions, particularly as they relate to such grey areas as sourcing from informal ASM sites, and indicate clear timelines and benchmarks for expected improvements.
- engage with local stakeholders and local partners to advance formalization but also to identify and assess risks and improvements relating to measures implemented to support ASM communities mitigate the risks identified.

To save time and cost, companies are furthermore encouraged to work collaboratively, for example through industry initiatives.

4 What happens if the artisanal miners are operating on a large-scale mining concession?

Companies sourcing the material should carry out sufficient due diligence to be able to determine if the ASM gold originates from an area that is part of a large-scale mining concession and whether any agreement between the ASM enterprise and the concession holder exists; for example local authorities, mining services, title holders and community representatives can be sources of information in this regard.

Artisanal and small-scale miners that operate on large-scale miners' concessions should indeed have an official and written agreement with the concession holder (i.e. the large-scale mining company) allowing them to mine on the site. If such an agreement is not available, companies should enquire if a process for coming to an agreement is in place and, if necessary, actively support it by engaging with representatives of the mining communities and the concession title holder. If no such process is in place, a company can also consider using its leverage, in cooperation with other interested parties (local authorities, donors, civil society organisations, etc.) to work towards an agreement.

However, in practice, this type of agreement is rare. Some producing countries have taken the approach of designating specific areas for ASM activities outside of concessions to avoid conflict between concession holders and artisanal and small-scale miners; however, these areas are often not considered attractive by artisanal miners, for example because of the quality of the deposit or the cost of exploiting it.

5 Do I personally need to assess mining sites, transportation routes and trading hubs?

The type of due diligence companies need to carry out depends on their position in the supply chain (upstream or downstream); due diligence expectations differ for gold producers, exporters, recyclers, traders, refiners (upstream companies) and bullion banks, jewellers, manufacturers (downstream companies), etc.:

International companies sourcing non-refined gold and refiners (upstream companies) are expected to determine the origin of ASM gold through engagement with their suppliers and identifying red flags (location, supplier or circumstances) in the supply chain. They should individually or collaboratively map the factual circumstances of the company's red flagged supply chains and establish on-the-ground assessment teams, covering mining sites, transportation routes and trading hubs. On-the-ground assessments, including site visits, can be carried out by a local partner or collaborative initiatives, but under all circumstances it is essential that upstream companies ensure that the on-the-ground assessment is credible and robust. It is considered good practice for refiners to visit red-flagged sites.

Downstream companies (beyond the refining stage) are expected to identify the refiner in their supply chain, assess and obtain evidence of the refiner's due diligence practices to see whether it identified or reasonably should have identified red flags in its supply chain.

In addition, all companies in the artisanal gold supply chain (upstream and downstream) as well as other relevant stakeholders, including local governments, donors and relevant civil society organisations, are encouraged to create economic and development opportunities for artisanal miners, including through support for legalisation and formalisation efforts, in order to build secure, transparent and verifiable gold supply chains from mine to market.

6 Is a traceability scheme the only option to support due diligence for ASM material, and particularly gold?

A traceability scheme is not the only option for obtaining reliable information on supply sources of ASM material and should be considered as a tool for doing due diligence, not as an end in itself. The Due Diligence Guidance recommends that companies establish a system of transparency, information collection and control over their gold supply chain, namely traceability (such as a bag and tag or electronic system to physically trace minerals) or a chain of custody system (a range of documents that identify the provenance of minerals and their transport routes), to be able to identify where material originates from.

The Gold supplement of the Due Diligence Guidance recommends that companies create an internal inventory and transaction documentation system (see Supplement on Gold, Step 1, C, 2 a-e for information that should be included). The Due Diligence Guidance encourages the collection of documentation on the origin of minerals, transport, transformation and payment of official fees, royalties and taxes. The idea is a progressive, bottom-up approach of information collection; companies may choose to start with basic chain of custody information collection, risk assessment and due diligence on suppliers to determine the best method for identifying the origin of minerals. If information is missing, adopt a clear plan and timeline for improvements.

Full traceability programmes can furthermore be costly and tend to limit responsible sourcing to those areas and mining sites where formal programmes already exist. To expand responsible sourcing of artisanal mined minerals to broader areas, chain of custody documentation systems for establishing the origin of minerals are considered satisfactory as long as they provide sufficient assurance with regards to the integrity and credibility of the mechanism. It is important for companies to carry out meaningful and risk-based due diligence and document their choices and decisions; whether this is done by using a traceability scheme or a documentation-based (meaning, a chain of custody) approach is less important than the quality and commitment of the company to carry out meaningful due diligence based on thorough risk assessments.

7 When sourcing ASM gold, can I take a mass balance approach or am I expected to physically trace the provenance of all the gold I am buying?

A mass balance approach means that a process accounts for the volume of minerals entering a refiner / smelter and the volume leaving the facility, but it does not allow tracing specific minerals. Mass balance generally carries greater risk because of the risk of contamination, compared to traceable segregated materials.

If an upstream company buying ASM gold opts for a mass balance approach before refining stage, it should carry out due diligence on the exporter, and a general context risk assessment of its actual or likely sources of supply.

If any red flags are identified in this process, it is advised to request evidence from suppliers of their due diligence efforts, and risk assessment findings. If necessary, the company sourcing the material and the supplier should agree on a plan for mitigation and / or progressive improvements of their due diligence efforts, specifically the chain of custody information and risk assessments on all sources of supply. If parties agree to a mitigation plan, timelines and criteria for assessing improvements should be set and documented. In addition the company should monitor progress and inspect a sample of suppliers and produce additional evidence through spot checks and random samples (prioritize which checks and samples by level of risks).

However, if a risk assessment reveals that a supplier is buying partly from sources that provide direct or indirect support to non-state armed groups or has links to serious abuses and the supplier, then it should disengage and/or mitigate those risks (backed with stringent mitigation strategies and rigorous monitoring mechanisms) as set forth in the Due Diligence Guidance.

8 Should I identify every digger involved in the extraction of the gold I am sourcing?

A particular concern has been the identification of suppliers to the level of individual diggers. The Due Diligence Guidance foresees that international traders and refiners are not necessarily expected to identify individual diggers, but that they should identify the:

- supplier of ASM gold to the local gold exporter (and their government, political or military affiliations including any reported instances of affiliation with non-state armed groups and/or public or private security forces and the geographic sourcing areas of those suppliers);
- the local artisanal mining team, association or cooperative and an assessment of whether they can be considered to be involved in legitimate ASM (see Supplement on Gold, Section II 3b and question 2 above on the definition of legitimacy of ASM).

To progressively collect better information on risks in the supply chain, companies should engage in bottom-up capacity building, for example of artisanal and small-scale miners or local civil society organisations to improve their awareness of risks and ability to share relevant information in an attempt to build secure, transparent and verifiable gold supply chains.

9

Should I gather information on the government, political or military affiliations of my ASM Gold suppliers?

Yes. This is part of the risk identification process to establish if Annex II risks are prevalent in the supply chain and applicable to all suppliers (prioritizing those with red flags by using a risk-based approach). It should be noted that, initially, documentation is not systematically required in this perspective, and that information gathering can be achieved including through oral communication with local stakeholders (in which case triangulation – e.g. through 3 independent sources - should be considered).

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Should I exercise due diligence on actors providing services to the upstream supply chains, such as transport companies? Should I obtain the transportation route of the gold I am sourcing?

Due diligence cannot be reasonably carried out on every individual service provider given the multitude of actors involved in the extraction and transport and trade of minerals, particularly when artisanal mining sites are remote and minerals are being carried or transported on wheelbarrows, bicycles or motorcycles, or even by individuals using public transport. When no individual assessment is possible, a general risk assessment of the security context in the area of production and transport should suffice to identify red flags related to service providers and the mode of transport. Should red flags be identified, please refer to question 5.

However, companies in the supply chain are expected to carry out due diligence on formal service providers, such as registered transportation companies, for example truck, shipping or air companies transporting minerals from the point of extraction to the exporter and onwards from the local exporter internationally.

In cases where transporters do not wish to disclose information for security concerns, upstream companies should ensure that transporters carry out a risk assessment on their transport routes and report findings and potential mitigation measures to companies further downstream.



How can I collect information on taxes, fees and royalties paid to government officials on export?

As a first step, companies are encouraged to engage with their suppliers and request documentation on taxes, fees and royalties paid to government officials to be passed along with other relevant information on mineral shipments. The primary objective is to ensure that taxes are paid in accordance with domestic regulations.

In addition, at key points in the supply chain, information should be collected over time in order to be able to eventually assess the purpose of all payments made to government officials (so as to be able to identify instances of bribery for example). In many contexts, it is practical to focus the documentation collection on the point of export.

When dealing with direct suppliers, clauses for providing this type of information should be included in commercial contracts with the supplier. As part of the risk assessment, it is furthermore useful for companies to establish which documents in the country they source from attest to the payment of all taxes, fees and royalties in order to be able to ask for specific documents from their suppliers. If the supplier is unable or unwilling to provide the requested documents, it is possible to engage with the producing country's authorities to enquire if a company is paying all taxes, fees and royalties; however not all producer country authorities have the capacity to respond in a timely and comprehensive manner. When information is not readily accessible, companies are encouraged to draw up a plan for how to collect this information better in future and progressively work towards improved information collection.

Auditors will access company policies, due diligence files, supplier contracts, invoices, payment and shipping information, onsite visit reports and see findings of risk assessment and mitigation measures. For the latter it is important to document agreed improvement plans, criteria for assessing progressive improvements, track performance and set timelines for significant and measurable improvements. Auditors will also want to establish if companies are keeping abreast of relevant developments, for example in producer regions and/or participating in industry or international efforts to promote responsible supply chains. For companies sourcing from high-risk areas, demonstrating this could for example include physically assembling in the office copies of reports on the regions the company sources from.

Another way to show to an auditor that even in regions with an oral business culture you carry out due diligence is to draw up a minimal paper trail, such as creating a brief written note/record of conversations or sending a brief follow up email with key points that were discussed on the phone. Demonstrating good faith efforts can be achieved by keeping records of email and phone exchanges with suppliers (in particular when those are not answered), timesheets of hours spent on due diligence efforts, company's expenses to gather information and analyse it, etc.

Similar to the approach in the UK Bribery Act where company policies and procedures to prevent bribery can be used as a defence when bribery cases are discovered, documenting (including by collecting evidence) proactive and regular due diligence and supplier engagement will showcase to an auditor that due diligence and risk assessment is taken seriously and integrated into every day company activities.



When sourcing ASM Gold, how do I demonstrate compliance with the Due Diligence Guidance to my auditors?

The key to a successful audit on supply chain due diligence is to extensively document how due diligence is being carried out. While many companies believe that supply chain due diligence requires significant extra time and resources, companies actually often already carry out many of the steps expected as part of the Due Diligence Guidance. This is the case for example in terms of supplier engagement or risk assessment.



How can I demonstrate to my auditor how I deal with the progressive nature and risk-based approach of the Guidance when assessing individual company conformance with the Guidance?

Both the progressive nature and risk-based approach are open to interpretation and not as clear cut as other components of an audit. The assessment of progressive improvements in a company's due diligence practice can be established in two ways: First, the company can demonstrate to the auditor how progressive improvements have been made in the company's due diligence practices in a defined timeframe (e.g. 12 or 18 months prior to the audit) by for

example showcasing that staff capacity has been increased, that policies have been refined or better communicated or that risk assessments have become more thorough (for instance by monitoring the number of suppliers assessed). The second (and often easier) way for the auditor to assess progressive improvements is at the time of a repeat audit in which the auditors can assess themselves if progressive improvements have taken place between the previous and current audit and if for example audit recommendations have been addressed.

It is important for the auditor to strike a balance between auditing against the defined audit criteria while at the same time taking into account the capacity and capability of the company undergoing an audit. The risk-based approach is furthermore difficult to audit given the different cultures of companies when it comes to assessing risks; while one company might originate from a conflict-affected and high-risk area and be used to occasional outbreaks of violence or reports of human rights abuses, another company might not be comfortable sourcing from a country that has a region in which conflict or human rights abuses occur. When auditing risk assessment efforts, the auditor should hence consider the type of activities the company undertakes and focus on the methodology (however formal or informal) for prioritizing risks in the supply chain. Companies should work towards formalizing their risk assessment methodology (including specifically the identification of red flags) in order to clarify the company's strategy for risk prioritization and risk-based due diligence and to facilitate audits. In addition, companies should also ensure they monitor the implementation of the mitigation strategies that have been developed to address identified risks in their supply chains. Companies should always be able to demonstrate progress and improvements within a reasonable timeframe, as defined in the Guidance.

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About the OECD Due Diligence Guidance

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The OECD Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas. It is one of the international frameworks available to help companies meet their due diligence reporting requirements.

For more information visit: mneguidelines.oecd.org/mining.htm

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The full text of the Due Diligence Guidance can be found here: mneguidelines.oecd.org/mining.htm

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