FAQ: COMPANY DUE DILIGENCE RESPONSIBILITIES, INDUSTRY SCHEMES, OECD ALIGNMENT AND OTHER RECOGNITION

Disclaimer: The views expressed in this document are for general information purposes and do not necessarily represent the views of any other individual, company or organization. Due to the ever-changing and complex interpretations of underlying information, we cannot guarantee the continued completeness or accuracy of any content and it should not be relied on as such.

1. Can joint industry schemes replace company responsibility?

The OECD **Due Diligence Guidance**[1] recommends how companies should manage sourcing of materials that may come from conflict-affected and high-risk areas (CAHRA) by implementing supply chain due diligence. Some companies may prefer to carry out the recommendations individually, while other companies may prefer to cooperate on some activities, for example, for on-the-ground assessments or audits. The OECD Guidance supports cooperation and explains that companies can **work jointly** to generate and share verifiable, reliable and up-to-date information - but - OECD also emphasises that companies should make sure that any joint work relates to their individual circumstances and that each company **retains individual responsibility** for their due diligence. Good faith efforts rather than 100% assurance are expected.

Industry programmes, joint initiatives or **schemes** that apply the OECD's due diligence principles enable cooperation between companies by providing information, tools or guidance to facilitate responsible supply chain management. Companies who find it useful to use schemes should understand how schemes operate and what they provide. Companies should also fully **participate in,** and **review information** from the schemes when making company due diligence decisions and actions for which the company remains responsible.

2. What support can schemes provide?

Every company should carry out all relevant OECD recommended due diligence steps individually, by cooperating with other companies, or, by making use of joint schemes to obtain some of the required information and support. Some due diligence steps are less likely to be activities that can be supported by joint schemes, for example, drafting company policies and risk assessments. These, as well as company decisions on purchases, and including due diligence requirements in supplier contracts, are actions each company will need to take individually.

Other due diligence steps can be facilitated by joint schemes. For example, upstream schemes provide valuable information from on-the-ground assessment teams in CAHRA which can be used by multiple companies. Audits of smelter due diligence processes can also be arranged through smelter schemes. **Annex 1** provides examples of support that schemes might provide, as well as how upstream and/or downstream companies can actively use the available information.

3. How to evaluate schemes using Alignment Assessments?

The OECD provides an **Alignment Assessment** methodology and tool[2] that can be used to evaluate the scope, standards and implementation of any scheme. Alignment Assessments carried out with adequate independence, quality and credibility provide an expert view of any scheme's processes, strengths and areas of improvement and therefore **help companies to understand how such schemes operate and what information they provide**.
The OECD strongly encourages publication of detailed Alignment Assessments for credibility and to reduce the need for every company who uses and participates in a scheme to repeat their own detailed evaluation of that scheme. Every

[1] OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2016: Third Edition
[2] Alignment assessment with the OECD minerals guidance available from here

company should review each Alignment Assessment to assess whether the scheme is relevant to its own supply chain, risk strategy and standards. Companies using schemes should also regularly review information from the scheme for their on-going company due diligence.

4. How is due diligence different if using a scheme?

Annex 2 explains in general terms how a company might approach due diligence when choosing to use a joint scheme or not. A company **not using a scheme** will need to individually work to obtain information for all due diligence steps, including on-the-ground, and evaluate the relevance, credibility and quality of all information sources prior to using that information for company review and decision making [left side of diagram]. A company **jointly implementing some steps** by using an Aligned scheme will already be able to use scheme information for company review and decision making [right side of diagram]. As explained in section 3, the purpose of Alignment Assessment is to ease the evaluation work of companies and provide confidence in schemes. If the Alignment Assessment reports gaps in scheme activities the company may decide to do some further work to fill only those specific gaps.

Companies may use all kinds of information sources for their due diligence, from government, suppliers, whistle-blowers, media or other publications as well as potentially from joint schemes and will **always need to consider the quality and independence of this information** and evaluate which may be outdated or impacted by conflict of interest, bias or other issues. Information from a scheme that has been Alignment Assessed by an independent and credible assessor free of conflict of interest is likely to be more credible and reliable to use for company due diligence than information from public or other sources that have no formal external evaluation.

5. What is recognition?

Implementation of the OECD Guidance is voluntary unless referenced in law and its incorporation into law is becoming common. Recognition of schemes by an appropriate and credible authority in a robust, reliable and consistent manner, based on transparent Alignment Assessment reports may help provide confidence that Alignment Assessments of schemes are of adequate quality and veracity. An example of recognition by an authority is discussed with regard to the EU in section 6. Such recognition can bring benefits by easing company compliance with laws.

Recognition may also be discussed between schemes. The OECD Guidance does not include any recommendations on recognition or cross-recognition between schemes although it is mentioned in the Alignment Assessment tool. It may be considered useful if recognition can reduce duplication of activities and increase efficiency such as of company audit/assessments. The mandate, qualifications and processes for such recognition are not defined nor widely agreed.

Whether a scheme is **recognised by a third-party or not, a company using the scheme should still always evaluate the scheme's Alignment Assessment and review information** from the scheme as described in sections 2 and 3. In addition, if relying on recognition, companies should also understand the recognition processes used as this may be more or less formal or defined. Recognition may only add value to the Alignment Assessment and be helpful to a company if the body implementing recognition is more qualified to make Alignment Assessments than the Alignment Assessor themselves.

6. How does recognition help with compliance?

National or market authorities or regulators may aim to recognise schemes to assist company compliance with laws or rules. For example, the EU 2017/821 Responsible Mineral Regulation[3] Article 8(2) expects the European Commission (EC)

[3] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas

to use defined methodology and criteria[4] to assess whether schemes facilitate company compliance and should therefore be EC recognised. The EC methodology is closely associated with, and uses, the Alignment Assessment approach.

Smelter audits undertaken by an EC recognised scheme would potentially reduce the need for EU importers of metals to be audited, although national EU enforcement bodies would, in any case, closely examine the due diligence of those EU importers[5]. Several schemes have applied for EC recognition, but none have yet been successful. Recognition of a scheme is not necessary for companies using the scheme to achieve regulatory compliance which depends on company actions.

In another example, the London Metal Exchange (LME)[6] recognises standards for smelter's responsible sourcing by qualifying alignment assessors and approving Track A schemes on the basis of Alignment Assessment results. Companies may instead use individual/internal due diligence standards under different Tracks if choosing to individually work to show those standards are Aligned.

7. What does recognition between schemes bring?

One scheme may wish to recognise a second scheme, or schemes may mutually cross-recognise. Recognition may be horizontal (at the same tier of the supply chain) or vertical (up or down tiers of the supply chain). The different scenarios are described in **Annex 3**.

Recognition **may aid efficiency by reducing potential repetition** of activities in situations where two schemes each perform the same work. For example, two schemes that perform audits at the smelter level may cross-recognise each other horizontally to enable cross-acceptance of audit results and avoiding repeat auditing of one company by two schemes. In another scenario, one scheme at the smelter level may wish to vertically recognise a scheme operating upstream. These schemes do not undertake the same activities and there is no reduction of repeat activity.

Any cross-recognition depends on schemes having equivalent standards and confidence in their implementation as evaluated in Alignment Assessments. It is important that detailed Alignment Assessment reports are public.

8. How might schemes and recognition lead to 'over-reliance?'

There is often misunderstanding of the role of schemes. Some companies may believe schemes 'certify conflict-free' minerals and that checking 'conformance' is sufficient, some companies might 'over-rely' on schemes believing they do not need to review information the scheme provides to perform their own due diligence. Neither of these approaches reflect OECD recommended company due diligence. Recognition of schemes **increases the tendency of companies to believe that 'everything is taken care of'** and reduce their efforts to understand their supply chain, any scheme, Alignment Assessments and recognition processes further. 'Over-relying' on schemes and/or recognition is a risk when this leads to insufficient individual company responsibility for their own due diligence.

Note that, in the same way that schemes themselves cannot replace company responsibility for due diligence, recognition by any third-party cannot replace;

- Independent Alignment Assessment of schemes,
- Evaluation by the company of the Alignment Assessment of the scheme it has decided to participate in and use,
- Regular evaluation by the company of the information the Aligned scheme provides.

[4] Defined in the EC Delegated Regulation EU 2019/429 known as the 'Delegated Act'
[5] For example, DEKSOR German Control Body EU Due Diligence Obligations in Raw Material Supply Chains
[6] LME Responsible Sourcing Policy website

The company will always need to understand the scope and activities of the scheme to confirm that it is relevant to its own supply chain and reviewing an Alignment Assessment is the optimum method to do so.

For more information, get in touch at tincode@internationaltin.org

Reference Definitions

Joint initiative: An industry-wide initiative enabling cooperation between companies, on responsible supply chain management meeting the due diligence principles, standards and processes of the OECD Guidance which may assist in establishing a system of controls over the supply chain to build leverage, overcome practical challenges and effectively discharge the due diligence recommendations contained in the OECD Guidance. The joint initiative may establish suitably qualified and independent on-the-ground assessment teams, including to report on risks, recommend risk management, engage stakeholders and measure progress as well as having information systems jointly accessible by companies.

Aligned/alignment: Confirmation by a third-party assessment that the activities of a joint initiative or institutionalized mechanism are, at a minimum, 80% 'Fully Aligned' for standards, 80% 'Fully Aligned' for implementation, and without any criteria 'Not Aligned', according to the OECD Alignment Assessment Methodology and Tool 2018 Section B 'Alignment of programme requirements with the five-step due diligence framework'.

EU Regulation: Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas

Institutionalized mechanism: A body established at the industry's initiative, supported by governments, and in cooperation with relevant stakeholders with the mandate to collect and process information on minerals from conflict-affected and high-risk areas. The institutionalized mechanism may implement or oversee audits.

OECD Guidance: General term for the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains on Minerals from Conflict-affected and high-risk areas, and the Supplement on Tin, Tantalum and Tungsten Edition 3.

ANNEX 1: SCHEME SUPPORT TO COMPANY DUE DILIGENCE

1: SCHEME SUPPORT TO COMPANY DUE DILIGENCE
Use of scheme information

Examples of support that can be provided by **smelter scheme**;
- Ensure smelter auditors are qualified & competent
- Ensure smelter audit is well prepared & independent
- Publish audit reports on smelters
- Provision of advice & training on due diligence expectations & laws
- Etc

Example outputs;
- Basic summary audit report
- List of conformant smelters
- Non-public performance gaps & indicators

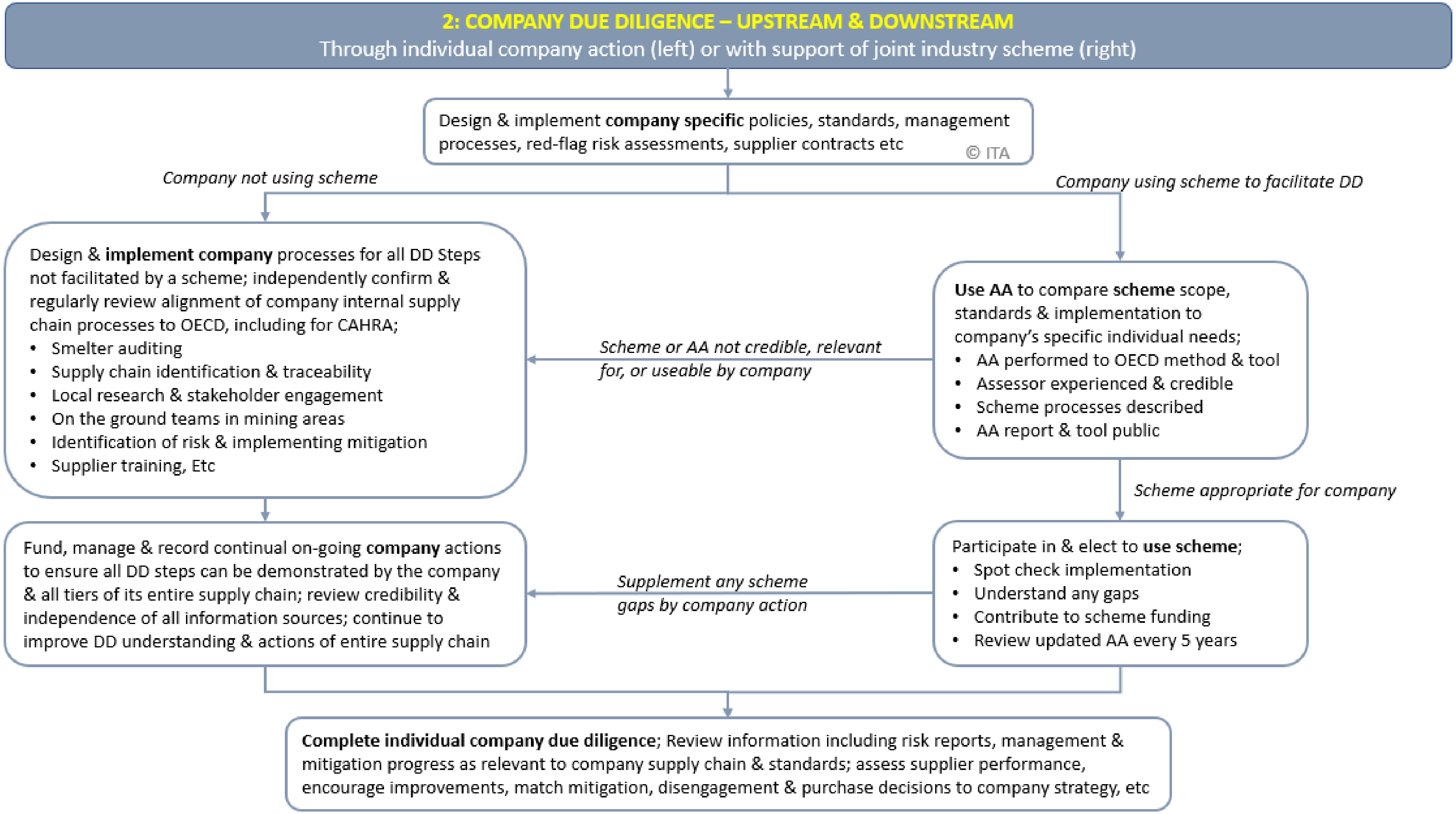
Outputs used by **downstream companies** if sufficient detail;
- To understand smelter DD processes
- To understand country of origin & macro level info
- To make sourcing decisions

Examples of support that can be provided by **upstream scheme**;
- Evaluate participating companies, including ownership, policies and procedures
- Collate information on supply chain actors & mineral sources & locations
- Provide or support traceability & plausibility assessment
- Establish an expert, independent and reliable on-the-ground team to continually report local context
- Receive reports of risks, discuss with local stakeholders, recommend and agree mitigation actions
- Track & report the success of mitigation
- Provide or support grievance & whistle blowing mechanisms
- Facilitate community networks to assist in managing risks
- Share commercial information across the supply chain with appropriate confidentiality
- Publish methodology & information on risks for participant's reference in Step 5 reporting
- Assist in reviewing supplier records & reporting DD performance
- Provision of advice & training on due diligence expectations & laws
- Etc

Example outputs;
- Detail on participating companies
- Traceability to mine & other aggregated data
- Updates on local context
- Record of risks, mitigation action & results
- Info on DD performance of all actors

Outputs used by **upstream & downstream companies** if sufficient detail;
- To understand DD processes of all actors
- To be informed of risks & mitigation
- To make sourcing decisions

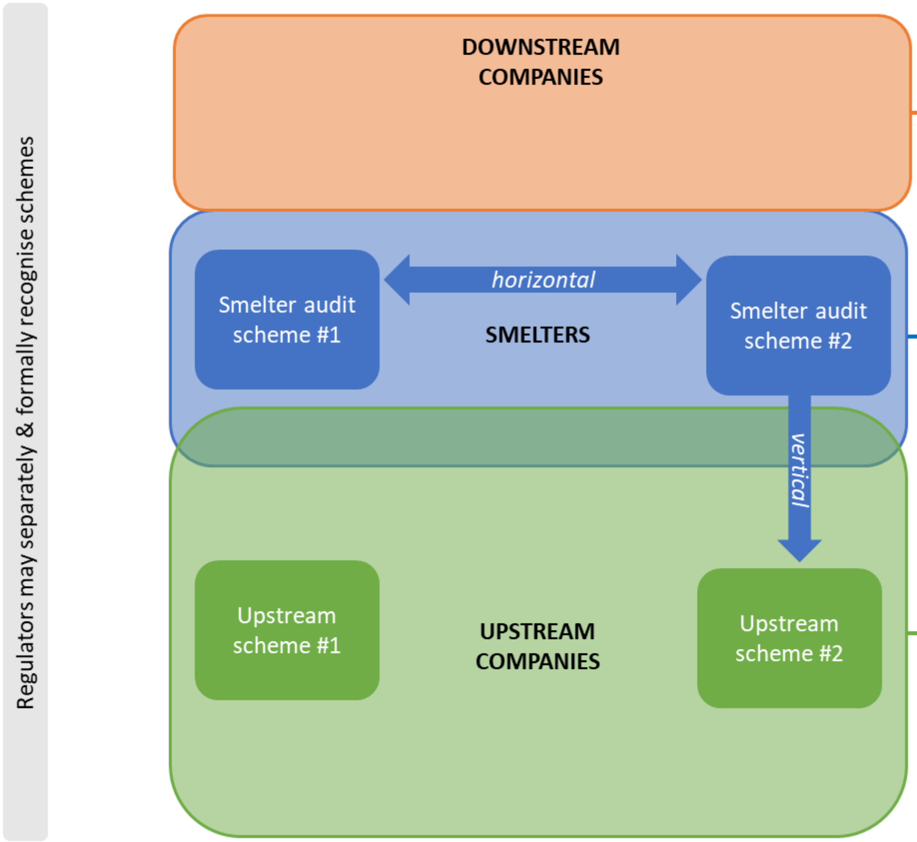
ANNEX 2: COMPANY DUE DILIGENCE – UPSTREAM & DOWNSTREAM



ANNEX 3: RELATIONSHPS BETWEEN SCHEMES

3: RELATIONSHIP BETWEEN SCHEMES

Horizontal at same supply chain tier – Vertical between supply chain tiers



Downstream due diligence

- Downstream should review smelter performance & macro level upstream info for their individual due diligence & Step 5 report

Cross recognition – horizontal - mutual

- Schemes at the same tier of the supply chain
- Schemes with similar scope & activities
- Results from one scheme are used in place of results from a second scheme & repeat activity is avoided
- There is mutual benefit and efficiency
- Schemes need to mutually understand & have a review process of their AA's, standards & on-going implementation

Recognition – vertical – one direction only

- Schemes at different tiers of the supply chain
- Schemes with different scope & activities
- There is no avoidance of repeat activity or mutual benefit
- Information from upstream scheme is used by participants
- Smelter's processes & use of upstream info is audited by smelter scheme
- Continual review of upstream scheme information by both smelters & smelter scheme would be repeat activity