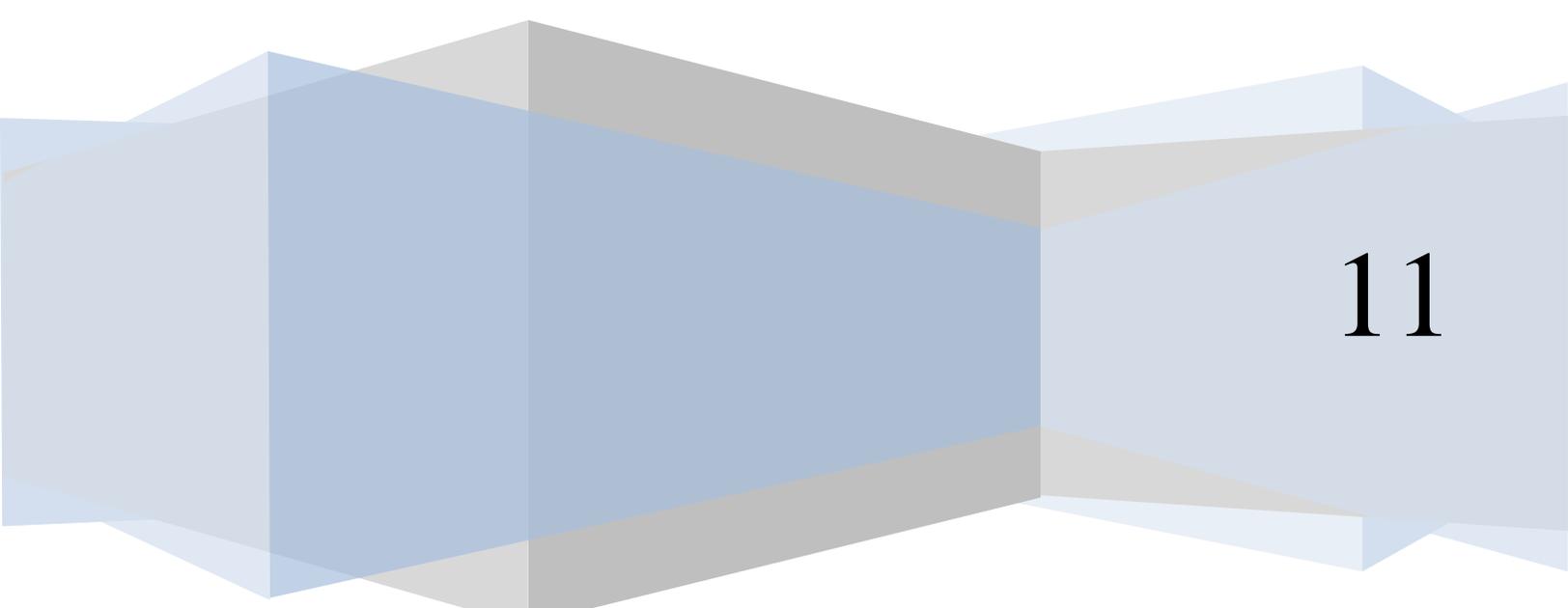


Master of Engineering and Public Policy

# **A Market Approach to Sustainability in the Gold Mining Industry**

**Inquiry-driven Thesis**

**Adam Hempstock**



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## **Abstract**

Socially and environmentally sustainable development is a goal of most major gold mining companies. A major obstacle in attaining this goal is the lack of a concrete business case for gold mining companies to adhere to sustainable practices. This paper first seeks to create a business case for sustainability in gold mining through proposing a credits market in which companies following a set of sustainability standards are able to sell credits to buyers of gold. The credits will give buyers assurance that for every ounce of gold they purchase, an ounce of gold is being sustainably mined. As demand for sustainability credits is uncertain, this paper will then establish a market for the credits by outlining efforts already underway by gold jewellery retailers. Finally, this paper will combine sets of established mining sustainability standards to propose a set of practices which mining companies would be required to follow to participate in the credits market.

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## Introduction

Sustainable development is one of the biggest challenges facing the mining industry. As such, it has been the focus of much of the modern discussion surrounding mining and has become a priority for mining companies (Mines, Minerals and Sustainable Development (MMSD) Project, 2002), the financial sector (World Bank, 2003), governments (Foreign Affairs and International Trade Canada, 2011), and non-governmental organizations (MiningWatch Canada, 2010).

In 2000, nine of the largest mining companies in the world initiated a two year project, “Mining, Minerals, and Sustainable Development” to examine “the role of the minerals sector in contributing to sustainable development and how that contribution could be increased” (Mines, Minerals and Sustainable Development (MMSD) Project, 2002, p. xiv). While this effort was criticized as being tailored to the industry’s agenda, and thus, ineffective, by non-governmental organizations, mine-affected communities, and indigenous peoples organizations (Whitmore, 2006), it achieved its goal of raising awareness and dialogue regarding the range of challenges face by the extractive sector (Mines, Minerals and Sustainable Development (MMSD) Project, 2002).

This paper will draw on one of the conclusions of the MMSD project – that incentives are needed to encourage sustainable behaviour (Mines, Minerals and Sustainable Development (MMSD) Project, 2002). In particular, MMSD (2002, p. xxiii) states “voluntary approaches alone are insufficient where there is compelling priority but little or no business case to justify additional expenditures...” and that “at present the discussion is couched in terms of the management of risk, increasing shareholder value, and the occasional marketing advantage.” Thus, this paper proposes a means to create a business case to justify sustainable practices.

The approach proposed by this paper is to incentivise the adoption by gold mining companies of sustainability standards as a condition of participation in a credit market which enables mining companies to benefit financially. The selected standards are geared towards ensuring the best practises in social and environmental sustainability are followed and were created with input from companies, NGO's, and governments affected by the gold mining industry.

This paper will focus on a market for sustainably produced gold, the proposed credits market approach and the base standard selected will have broad application, while more specific standards will account for sustainability challenges specific to gold.

## Key Definitions

The following is a list of definitions of key terms to be used throughout this paper:

*Sustainable Development*: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development, 1987).

*Free, Prior and Informed Consent (FPIC)*: Consent that is “obtained free of coercion or manipulation; secured prior to commencement of activities affecting Indigenous Peoples’ lands, territories and resources; informed by meaningful participation and consultation, and based on the full disclosure of relevant aspects of the proposed project in a form that is understandable and accessible; and enabled by Indigenous Peoples participating through their own freely chosen representatives and customary or other institutions” (Responsible Jewellery Council, 2009c, p. 62).

*Precautionary Principle:* “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (United Nations Environmental Programme, 1992)

## **Proposed Approach**

The proposed market approach to sustainable development in the gold mining industry is to develop a credits market in which customers pay extra for gold produced by sustainable practices. The credits market would run in parallel to the bullion exchange, such that all gold would be traded as currently practiced, while credits would be traded and purchased separately; to purchase sustainably produced gold, a buyer would buy gold as usual (whether through the bullion exchange or not) and then purchase credits through the credits market. Prices for credits would be set by supply and demand laws of the market and payment for credits will provide financial reward for responsible mining.

For the proposed approach, the sustainability standards are outlined later in this paper. Mines following all of the standards are entitled to participate in the credits exchange, while others are not entitled to participate. The credits supplied to the market represent the quantity of gold produced by the standards and are priced based on the market willingness to pay for sustainable production practices.

Purchasers of the credits receive assurance that for the amount of gold for which they purchase sustainable production credits, an equivalent amount was produced following sustainable practices - the actual atoms of gold delivered may not have been sustainably produced. The buyer is buying the production practices through the credits exchange from gold

mines adhering to the standards outlined later, while buying gold through the general gold exchange. The market for sustainably produced gold is discussed later in this paper.

Figure 1, below, demonstrates the market system as a diagram and serves as an example to help clarify the proposed approach.

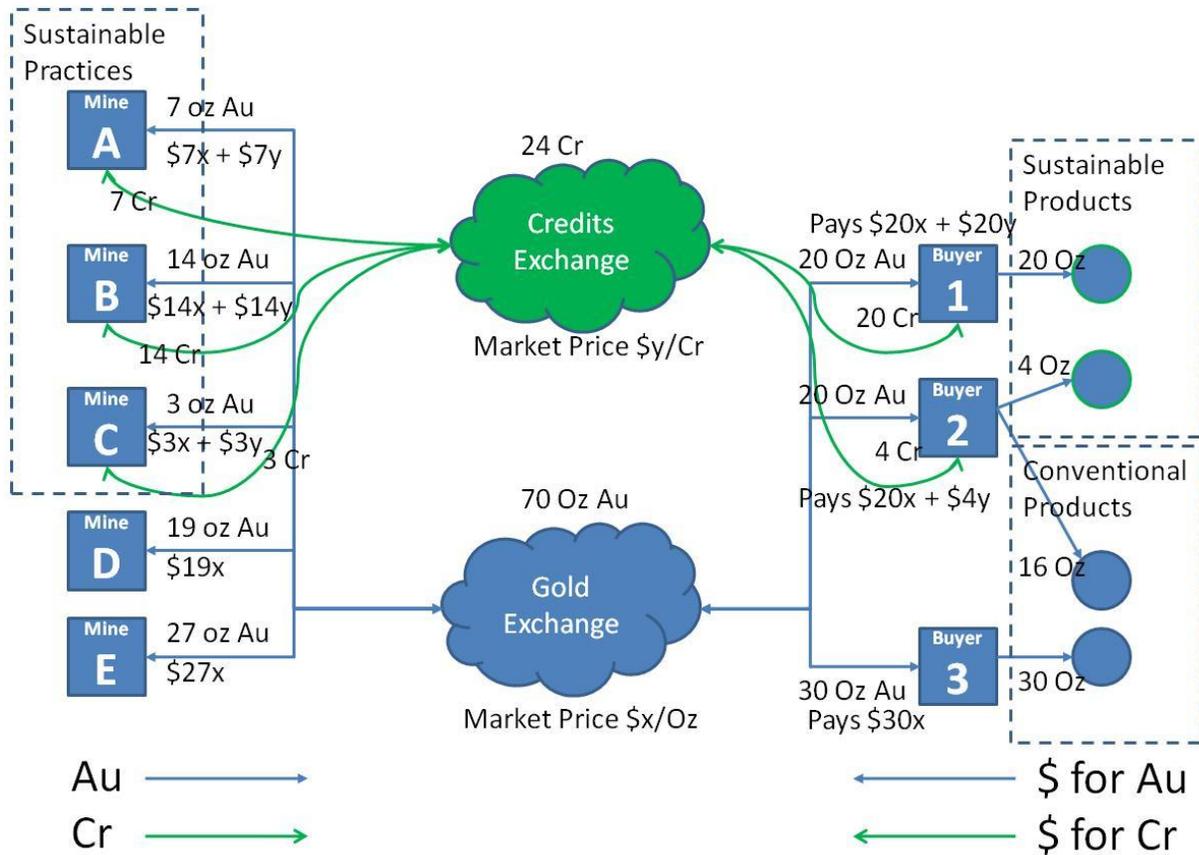


Figure 1 - The Credits and Gold Exchanges

The exchange of gold and money is displayed in blue in Figure 1. In this example, all five mines are producing gold, and all five mines sell gold by the same market exchange. The three buyers purchase gold through the exchange and may receive gold from any of the five mines. In total, 70 oz of gold are produced and 70 oz of gold are purchased. For the purposes of

Figure 1, the gold exchange may be the London Bullion exchange or any other existing mechanism through which gold is traded.

The exchange of credits in Figure 1 (displayed in green) is limited to the mines following sustainable mining practices (A, B and C) and the buyers desiring sustainably produced gold (1 and 2). The credits serve as a purchasable representation of the sustainable practices employed by Mines A, B, and C. In order to purchase sustainably produced gold, Buyer 1 purchases gold through the gold exchange (20 oz) and then purchases 20 credits through the credits exchange. While Buyer 1 may receive the purchased gold from any of the five mines, he/she will receive the purchased credits for sustainable production practices from mines participating in the credits market (A, B and C). Of the 70 oz of gold produced and purchased, 24 oz were produced sustainably. Therefore, only 24 credits were produced and are able to be sold.

Buyer 2 has agreed to purchase a total of 20 oz of gold for resale as jewellery; 16 oz without regard to production practices and 4 oz sustainably produced. Thus, Buyer 2 buys 20 oz of gold through the gold exchange, and 4 credits for sustainable production. Buyer 2 would then be entitled to sell 4 oz of gold contained in jewellery as sustainably produced, and would be required to pass on the credits certificates to the final buyers, while selling the remaining 16 oz of the gold contained in jewellery without verifiable claim to sustainable production.

### **Other Market-oriented Approaches**

Currently, other market oriented approaches are underway to limit anthropogenic environmental impacts. I will explore two of these approaches – the European Union’s Emissions Trading System and Bullfrog Power Inc’s green electricity product. As an in-depth review or critique of the two approaches is beyond the scope of this paper, I will limit analysis to

an overview of each approach and some key differences between the proposed approach and the other approaches.

### **European Union Emissions Trading System (ETS)**

The EU's ETS is a market system to reduce greenhouse gases. It operates on a cap and trade principle in which allowances for greenhouse gases are allocated (or auctioned) to companies by governments. Companies may exchange allowances over a given time period such that companies successfully reducing greenhouse gas emissions are rewarded financially, while companies unsuccessful in their efforts may continue to operate albeit at a higher cost. Greenhouse gas emissions credits are traded over a market exchange in which the price is set on a per tonne CO<sub>2</sub> equivalent basis by supply and demand (European Commission, 2010).

While the ETS and the approach proposed by this paper differ in their objectives (the ETS is attempting to limit emissions of greenhouse gases; the proposed approach is attempting to encourage sustainable development), the utilization of a credits market to facilitate these objectives is similar. The key difference is that supply of credits to the market in the proposed approach is driven entirely by production, while the supply in the ETS approach is partially driven by government allocation of credits, which expire after a pre-determined time period (European Commission, 2010). Demand in the proposed approach is driven by consumer demand for sustainably produced gold, while demand in the ETS is partially driven by allocation of government allocation of credits. Thus, while the proposed approach depends on gold mining companies' ability to produce gold sustainably as well as consumer demand to set prices, the ETS greenhouse gas price is influenced by choices made by governments.

## **Bullfrog Power Inc. Green Electricity**

Bullfrog Power is a Canadian supplier of green electricity. Individuals and businesses agree to pay an additional \$0.02 - \$0.03 / kWh for the assurance that an equivalent amount of electricity will be supplied to their regional grid by wind turbine or EcoLogo certified hydro-electric projects. The system enables end-users to continue to purchase electricity from their current supplier. Revenues generated by Bullfrog Power are used to purchase green electricity for the regional grid and to develop new wind or hydro-electric projects (Bullfrog Power, n.d.).

The similarities between the Bullfrog approach and the proposed approach are that they are both attempting to produce a commodity more sustainably, and the end-user is not supplied with green electricity, but is assured that their equivalent consumption will be supplied to the grid from green resources. The proposed approach aims to ensure that the equivalent gold consumption will be supplied to the bullion exchange from sustainably developed mines.

## **Overview of the Gold Mining Industry**

### **Production**

Gold is mined in three general methods: large-scale gold mines, small scale or artisanal mining, and as a by-product of other metal mines. Gold produced as a primary product, by large-scale gold mines is generally produced at the mine-site and sold by way of metals exchange, while artisanal miners often sell their final gold product via unofficial channels. Gold produced as a by-product is often sent for processing in a metal-bearing mineral concentrate to a smelter. The credit system proposed within this paper will apply to large-scale primary gold mines, selling gold by way of official channels.

While much of the impacts from the production of by-product gold are identical to the of primary gold, the process by which by-product gold is brought to market (typically through a smelter as part of a mineral concentrate) introduces different environmental and social impacts, which are difficult to separate from those of the primary metal product (often copper). Thus, by-product gold is excluded from the credits market until an equivalent mechanism and standards can be established for other metals. As by-product gold accounts for 10 (Natural Resources Canada, 2011) to 33% (mine-engineer.com, n.d.) of the total gold supply from mines, this exclusion will potentially reduce the supply of credits to the market, and will serve to increase the incentive for primary gold mines to follow sustainable practices.

## **Gold Supply**

According to the British Geological Survey (2011: 39), the “centre for world gold trading is the London Bullion Market.” World production of gold peaked at 2560 tonne in 2000 and totalled 2460 tonne in 2009, with seven countries (China, USA, Australia, Russia, South Africa, Peru, and Indonesia) responsible for 60% (British Geological Survey, 2011).

The leading producers of Gold and their production are summarized in Table 1, below. Ten of the leading companies account more than 40% of the world mine production. While each company is headquartered in a particular country, they typically operate mines in multiple countries.

Company	Country	Production				Source
		oz	tonne	USD	% World Production	
Barrick	Canada	7423000	230.88	\$ 7,311,655,000	9.8	Barrick Gold Corporation (2010a)
Newmont	United States	6521000	202.83	\$ 6,371,017,000	8.6	Newmont Mining Corporation (2010)
AngloGold Ashanti	South Africa	4599000	143.04	\$ 3,768,000,000	6.1	AngloGold Ashanti (n.d.)
Gold Fields	South Africa	3690000	114.77		4.9	Gold Fields Limited (2009)
Goldcorp	Canada	2421300	75.31	\$ 2,368,031,400	3.2	Goldcorp Inc. (2010)
Kinross	Canada	2277721	70.85	\$ 2,202,556,207	3.0	Kinross Gold Corporation (2010)
Newcrest	Australia	1631183	50.74		2.2	Newcrest Mining Limited (2010)
Polyus	Russia	1261000	39.22	\$ 1,221,530,700	1.7	Polyus Gold (2010)
Yamana	Canada	790435	24.59	\$ 774,626,300	1.0	Yamana Gold (2010)
Agnico-Eagle	Canada	492972	15.33	\$ 504,803,328	0.7	Agnico-Eagle Mines Limited (2010)
Others		44543096	1385		58.9	
<b>Total (Mine Supply)</b>		<b>75650707</b>	<b>2353</b>		<b>100</b>	World Gold Council (2011)

**Table 1 - Gold Production by Company**

In addition to the 2353 tonne supplied by mines, the official sector (central banks, institutions) supplied 34 tonne of gold to the market, and recycling contributed an additional 1695 tonne (World Gold Council, 2011a). Total gold supply for 2009 was thus 4081 tonnes.

## Gold Demand

The World Gold Council (2011) categorizes gold use into three broad categories – jewellery, technology, and investment. While jewellery historically accounted for approximately 80% of gold demand (Earthworks & Oxfam America, 2007), investment demand increased significantly in 2008 and consumed 39% of gold demand in 2009 (World Gold Council, 2011a). The table below displays world gold demand for 2009.

Purpose	oz	tonne	USD	% World Demand
Jewellery	58321454	1814	\$ 56,700,000,000	50
Investment	44850291	1395	\$ 43,600,000,000	39
Technology	13181806	410	\$ 12,800,000,000	11
<b>Total</b>	<b>116353552</b>	<b>3619</b>	<b>\$ 113,100,000,000</b>	<b>100</b>

Technology includes electronics, industrial uses and dentistry

Source: World Gold Council (2011)

**Table 2 - Gold Demand by Sector**

## Market for Sustainably Produced Gold

In establishing a business case for credits for sustainably produced gold, a market is a key component. I will look at market potential in each of the three categories defined by Table 2. and attempt to find a generally accepted standard that purchasers of gold would demand.

### Technology

Technology accounted for 11% of gold use in 2009 and is further divided into industrial, electronics, and dentistry uses. Of the total technology demand (percentage of total demand in brackets), 67.1% (7.3%) was consumed by electronics, while 20% (2.2%) and 12.9% (1.4%) was used for industrial and dentistry purposes, respectively (World Gold Council, 2011a). The World Gold Council (2011a) also notes that technology demand grew in 2010, while dentistry demand shrank. As gold used in electronics is the most significant in the category of technology, I will look at effort undertaken by the Electronics Industry Citizen Coalition (EICC).

The EICC is composed of many of the world's leading information and communication technology companies (Electronics Industry Citizenship Coalition, 2009a) and promotes corporate social responsibility through its code of conduct (Electronics Industry Citizenship Coalition, 2009b). The code outlines labour, health and safety, environment, management, and ethics standards for companies supplying electronic components, but does not discuss sourcing standards (of raw materials). As the concepts outlined by the EICC code of conduct are compatible with many of the concepts of sustainable gold production, there is potential for the electronics industry to become a market for sustainably produced gold. The lack of a sourcing standard, however, indicates that the focus of the electronics industry is on their production practices rather than on sourcing sustainably produced raw materials.

While there is potential for the electronics industry to become a market for sustainably produced gold, the lack of EICC standard for the sourcing of raw materials indicates that electronics companies are currently prioritizing other concerns, such as in-house and higher level supply chain practises.

## **Investment**

The investment market consumed 39% of the gold demand in 2009. This market, however, was proportionately half that size in 2007 (19%) and increased significantly to 30.9% in 2008 (World Gold Council, 2010). Investors look to hold gold to “protect their capital in assets that offer safer stores of value” (World Gold Council, 2011b). An investor would be unlikely to purchase sustainable production credits unless the market value of the credits was likely to increase. As an increase in market value of credits would likely be driven by demand, investment market demand for credits would likely be driven by demand elsewhere. Thus, it is unlikely that the investment market would serve as a preliminary market for credits.

## **Jewellery**

The jewellery market appears to be the centre of demand for sustainably produced gold. Since 2004, two campaigns have emerged to attempt to inculcate ethical sourcing practices within their members. The No Dirty Gold campaign was launched in 2004 and applies specifically to gold (Earthworks & Oxfam America, 2007), while the Responsible Jewellery Council was formed in 2005 to incorporate responsible practices into gold and diamond jewellery supply chains (Council for Responsible Jewellery Practices, n.d.).

## *No Dirty Gold*

The “No Dirty Gold” campaign is directed towards jewellery retailers and requires that signatories pledge “to work towards sourcing precious metals that will not make them complicit in the destructive impacts of mining” (Earthworks, 2010a, p. 8). Currently, 70 jewellery retailers have signed onto the campaign, accounting for nearly 25% of the US jewellery market (Earthworks, 2010b).

At its core is a list of ten golden rules, which “are a set of criteria for more responsible mining” (Earthworks & Oxfam America, 2007, p. 2), intended to serve as a guide to jewellery retailers for sourcing gold (see standards section for Golden Rules). Periodically, the campaign performs a review of retailers, “Tarnished Gold? Assessing the jewelry industry’s progress on ethical sourcing of metals” (Earthworks, 2010a).

The most recent “Tarnished Gold” review, dated March 2010, uses a points system to report on supporting jewellery retailers (such as Wal-Mart, Tiffany & Co, and Target), giving 1, 0.5, or 0 points for their actions on each of 16 criteria. While large jewellers attained between 1 and 10.5 points out of a total of 16, the areas where none received full points were in sourcing in accordance with golden rules, and in having policies which reflect the golden rules (Earthworks, 2010a). This may indicate a difficulty on the part of large retailers in sourcing gold according to the golden rules.

Small and medium retailers scored between 4 and 13.5 points when presented with the same criteria. In contrast to the larger retailers, 70% of companies surveyed were able to source gold in accordance with the golden rules (Earthworks, 2010a). This may be reflective of the small and medium sized jewellers embracing the golden rules in order to attain a marketing edge,

or it may also reflect the relative difficulty of sourcing large quantities compared to smaller quantities of gold produced in accordance with the golden rules.

As the no dirty gold campaign demonstrates, there is significant demand for sustainably produced gold in the jewellery market. The inability of larger retailers to source gold in compliance with the golden rules indicates that there may potential for the proposed credits market approach to enhance their golden rules compliant sourcing abilities. A market need for sustainably produced gold exists and is not being filled under the current systems.

### ***Responsible Jewellery Council***

The Responsible Jewellery Council is comprised of approximately 300 organisations, including 50 retailers and 5 mining companies (two with primary gold mines – AngloGold Ashanti and Eurocantera), committed to “advancing responsible jewellery practices” (Council for Responsible Jewellery Practices, n.d. b) for gold and diamond jewellery. The council certifies its members’ compliance of its code of practices through third party verification.

The certification process is identical for all member companies and must be complete by December 2011 for retailers and by December 2012 for mining companies who joined before December 2009. As of August 2011, six retailers and no mining companies have completed certification (Council for Responsible Jewellery Practices, n.d. b). The precise certification standards that members must adhere to are outlined in the standards section of this paper.

### **Target Market for Proposed Approach**

While technology and investment markets consume significant gold, the most established market for sustainably produced gold is the jewellery market. Through the No Dirty Gold campaign and the Responsible Jewellery Council, retailers have committed to sourcing

sustainably produced gold and following high standards for jewellery sales. Thus, the target market for credits for sustainable gold production is the jewellery market.

## **Standards for Sustainable Gold Mining**

As a key part of the proposed credit system, a standard for sustainable gold production must be defined for companies producing gold. While many voluntary sets of guidelines and practices exist for the mining industry, the selected set for this approach must meet standards that the retail and consumer jewellery markets demand, that mining companies are able to adhere to (while remaining financially viable), include criteria that are assessable by a third party, and contribute to the social and environmentally sustainable development in locations affected by the mining industry.

In order to meet the three above requirements, the selected standards will be a combination of the No Dirty Gold campaign's (NDG) Golden Rules (accepted by retailers), portions of the International Finance Corporations' (IFC) Performance Standards on Social and Environmental Sustainability (widely used when obtaining financing for projects), and the Responsible Jewellery Council's (RJC) Code of Practices (subscribed to by some mining companies and jewellery retailers).

The RJC's Code will form the core of the standard for participation in the credits market and serve as a prescriptive set of guidelines to address general sustainability and gold-mining-specific issues. While the IFC's Performance Standards are not mining specific, they can serve to address sustainability issues not included in the RJC's Code of Practices. The Golden Rules will be used as an addition to the RJC's Code to meet the standards already accepted by gold jewellery retailers.

The sections below will give an overview of each standard, the rationale for selection and a specific suggestions for conditions a company would be required adhere to for inclusion in the credits market. Where overlap occurs between the RJC's Code and the IFC's Performance Standards, the RJC's Code will be used. Where overlap occurs between the RJC's Code and the Golden Rules, the Golden Rules will apply.

## **The Responsible Jewellery Council's Principles and Code of Practices**

### **Overview**

The RJC's Principles and Code of Practices is applied to companies operating at all stages of the gold and diamond supply chain, from mine to jewellery retailer and contains mining specific practices. Specifically it aims to “provide a common standard for RJC Members that builds on international standards for responsible business practices; set out the mandatory expectations for the establishment, implementation, and maintenance of policies, procedures and practices in order to manage issue within a member's control; establish provisions that can be independently audited to provide objective evidence for the granting of RJC Certification; drive improvement of business practices for the gold and / or diamond jewellery supply chain” (Responsible Jewellery Council, 2009a, p. 4).

The Code sets out principles and practices to contribute to sustainable development in the areas of business ethics, human rights and social performance, environmental performance, and management systems. Adherence to the code is a requirement of certification and membership with the RJC and third party assessment of adherence must be completed every three years. A summary of the provisions of the RJC Principles is provided below, while the complete

document including Code of Practices and assessment questions is available in Appendix A. Principles marked as “N/A” are identified as not applicable to the gold mining industry.

RJC Principles (Responsible Jewellery Council, 2009a, pp. 7-8):

## 1 Business Ethics

1. We are committed to conducting our businesses to a high ethical standard, and to ensuring integrity, transparency and conformance with Applicable Law.
2. We will not engage in Bribery and/or corruption.
3. We will not tolerate Money Laundering and/or financing of terrorism.
4. We will adhere to the Kimberley Process Certification System and the World Diamond Council voluntary System of Warranties. [N/A]
5. We will fully and accurately disclose the material characteristics of the products that we sell.
6. We will take reasonable measures to ensure the physical integrity and security of product shipments.
7. We will respect commercial confidentiality and data privacy.

## 2 Human Rights and Social Performance

1. We believe in and will respect the fundamental human rights and the dignity of the individual, according to the United Nations Universal Declaration of Human Rights.
2. We will not tolerate the use of Child Labour.
3. We will not use any forced, bonded, indentured or prison labour, nor restrict the freedom of movement of Employees and dependents.
4. We are committed to high standards of Health and Safety in our operations.
5. We will not prevent workers from associating freely. Where laws prohibit these freedoms, we will support parallel means of dialogue.
6. We will not discriminate based on race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, physical appearance, age, or any other applicable prohibited basis in the workplace, such that all individuals who are “Fit for Work” are accorded equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.
7. We will not use corporal punishment under any circumstances and will prohibit the use of degrading treatment, harassment, abuse, coercion or intimidation in any form.
8. We will adhere to working hours and remuneration legislation, or, where no such legal requirements have been established by law, the prevailing industry standards.
9. We will support the development of communities where we operate, contributing to their social and economic welfare.
10. We will recognise and respect the rights of indigenous peoples and the value of their traditional, cultural and social heritage.
11. We will engage with artisanal and small scale miners who operate in our vicinity, and participate in multi-stakeholder initiatives to promote responsible and legal mining practices.

## 3 Environmental Performance

1. We will conduct our business in an environmentally responsible manner.
2. We will manage our environmental footprint by eliminating or minimising negative environmental impacts.
3. We will ensure the efficiency of our business operations by managing our use of resources and energy.

4. We will adopt practices to enhance Biodiversity and reduce negative impacts on biodiversity.

#### 4 Management Systems

1. We will comply with Applicable Laws and publicly state our commitment to the RJC Code of Practices.
2. We will assess our risks, including risks to our business from our business partners, and establish systems that manage and improve ethical, human rights, social and environmental business practices.

### **Rationale**

The Responsible Jewellery Council's Principles and Code of Practices serves as an auditable code of practice for sustainable development. As such, it requires members of the council to verify their adherence to the Code of Practices through 3<sup>rd</sup> party assessments. As adherence to the code is a membership requirement for the council, it has already been implicitly subscribed to (pending certification) by two gold mining companies.

The standards outlined in the Code of Practices are based on and make reference to several international standards (including the IFC's Performance Standards, Extractive Industries Transparency Initiative, the International Labour Organization's conventions, and the Global Reporting Initiative) and are the result of a formal, transparent multi-stakeholder consultation (Responsible Jewellery Council, 2009a). While not all principles of the RJC were agreed upon by all stakeholders (i.e. free, prior and informed consent versus consultation), the process ensured that all comments were taken into consideration (Responsible Jewellery Council, 2009b). As such they are a generally agreed-upon set of principles to ensure sustainable development in the gold mining industry.

### **Requirements for Inclusion in the Credits Market**

Certification under the RJC's Code of Practices will form the core requirement for inclusion in the credits market.

# International Finance Corporation's Performance Standards on Social and Environmental Sustainability

## Overview

The IFC's Performance Standards are applied to “manage social and environmental risks and impacts and to enhance development opportunities in its private sector financing in its member countries eligible for financing” (International Finance Corporation, 2006, p. i). They may also be applied by other financial institutions for projects in emerging markets.

The set comprises eight general performance standards, with specific requirements to assist companies in implementing them. The performance standards are as follows (International Finance Corporation, 2006):

Performance Standard 1. Social and Environmental Assessment and Management System

Performance Standard 2. Labour and Working Conditions

Performance Standard 3. Pollution Prevention and Abatement

Performance Standard 4. Community Health, Safety and Security

Performance Standard 5. Land Acquisition and Involuntary Resettlement

Performance Standard 6. Biodiversity Conservation and Sustainable Resource Management

Performance Standard 7. Indigenous Peoples

Performance Standard 8. Cultural Heritage

See Appendix B for the IFC Performance Standards on Social and Environmental Performance document.

## Rationale

The IFC's Performance Standards are incorporated in the Equator Principles as an applicable social and environmental standard for projects located in non-OECD countries, or

those in OECD countries not designated as high income (The Equator Principles Association, 2006, p. 3). These standards, through the equator principles, thus apply to projects in developing countries as a condition of financing from an equator principles financial institution. While the World Bank and IFC publish industry-specific guidelines for pollution prevention and abatement, the mining and milling guidelines are not currently in use (The Equator Principles Association, 2006).

As 70 of the world's leading financial institutions have signed the equator principles (including the Royal Bank of Canada, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Export Development Canada and TD Bank Financial Group) (The Equator Principles Association, 2011), the acceptance of the IFC's Performance Standards as a condition of financing in developing countries is wide-spread. Thus, the IFC Performance Standards can serve as a familiar basis for sustainable development, which mining companies already adhere to.

### **Requirements for Inclusion in the Credits Market**

As the RJC's Code of Practice incorporates many of the principles of the Performance Standards, only standards not included in the Code are recommended for adoption. These standards are portions of Performance Standard 4: Community Health, Safety and Security and Performance Standard 8: Cultural Heritage.

Performance Standard 4 aims to minimize risks to the health and safety of local communities during the life-cycle of the project. It requires that the mine operator evaluate potential risks to the community, develop and disclose an action plan to address the risks, and operate in a way such that community safety is not jeopardized by hazardous materials, exposure

to natural hazards (due to land use changes from project activities), or security requirements. The standard also requires the operator to minimize the potential exposure to infectious disease as a result of project activities and the influx of project labour and develop an emergency response plan (International Finance Corporation, 2006, pp. 15 - 17). As the RJC's Code of Practice (2.6.8 and 2.12) addresses the security and emergency response aspects of this Performance Standard, the RJC's code will be applied in these two areas (Responsible Jewellery Council, 2009a, pp. 13, 15) (see Appendix A).

Performance Standard 8 is in place to protect monuments, buildings, and sites defined as cultural heritage under the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage (UNESCO, 1972). This Performance Standard prioritizes protection of cultural heritage and states that removal of cultural heritage may only occur when "there are no technically or financially feasible alternatives to removal, the overall benefits of the project outweigh the anticipated cultural heritage loss from removal, and any removal of cultural heritage is conducted by the best available technique" (International Finance Corporation, 2006, p. 33).

Performance Standards 4 and 8 address issues not covered by the RJC's Code of Practices. Companies wishing to participate in the credits market will be required to adhere to and undergo 3<sup>rd</sup> party assessment of their adherence to these standards.

Adherence to Performance Standard 4 could be achieved through a detailed community health and safety impact assessment as part of the already required environmental and social impact assessments (per RJC's Code of Practice 4.4). This assessment would include risks of

and plans to mitigate community exposure to hazardous materials, natural disaster (through change of land use), and infectious diseases.

As Performance Standard 8 seeks to preserve cultural heritage, an action plan could be developed to assess the risks of encountering cultural heritage during project development, and protect the heritage should any be discovered. Through this action plan, community consultation, as well as adherence to the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage would be required.

## **The No Dirty Gold Campaign's Golden Rules**

### **Overview**

This overview will state the golden rules by which signatory retailers have agreed to source gold and add a comparison between the RJC's Code of Practices and the Golden Rules. Six of the Golden Rules are met by the RJC's Code of Practices, while the remaining five are partially fulfilled. (Responsible Jewellery Council, 2010). Table 3, below, outlines the Golden Rules as well as adherence to the Golden Rules by the RJC's Code of Practices.

Golden Rule	RJC Meets	RJC Code of Practices	Divergence of Standards
1. Respect basic human rights outlines in international convention and laws.	Yes	2.1 - Human Rights 2.11.4 - Rights-compatible complaints and grievance mechanisms 4.4 - Impact assessment	
2. Obtain free, prior, and informed consent (FPIC) of affected communities.	Partial	2.11 - Community engagement and development 2.13 - Indigenous Peoples	RJC requires free, prior and informed consultation rather than consent
3. Respect workers' rights and labour standards, including safe working conditions. (Freedom of association, collective bargaining, child labour, forced labour, discrimination, remuneration - ILO Conventions 87, 98, 138, 182, 29, 105, 111, 100)	Yes	2.2 - Child labour and young persons 2.3 - Forced labour 2.4 - Freedom of association and collective bargaining 2.5 - Discrimination 2.6 - Health and Safety 2.7 - Discipline and grievance procedures 2.8 - Working hours 2.9 - Remuneration 2.10 - General employment terms	
4. Ensure that operations are not located in areas of armed militarized conflict.	Partial	2.12 - Use of security personnel 4.4 - Impact assessment	RJC's approach is to minimize risks of and arising from conflict, while this rule aims to avoid sourcing gold from areas with conflict.
5. Ensure that projects do not force communities off their lands. (Applies to cases of "forcible eviction")	Partial	2.11.3 - Resettlement	RJC refers to IFC Performance Standard 5 and aims to minimize involuntary resettlement and its impacts.
6. Refrain from dumping mine waste into oceans, rivers, lakes, or streams.	Partial	3.3.4 - Tailings management	RJC prohibits dumping of tailings into rivers and streams and requires scientific demonstration that adverse impacts will not result from submarine disposal
7. Ensure that projects are not located in protected areas, fragile ecosystems, or other areas of high conservation or ecological value. (Applies to environmentally sensitive areas and cultural and historical sites)	Partial	3.5 - Biodiversity	While RJC prohibits projects from being located in legally protected areas, the code of practice focuses on identifying key biodiversity areas and delivering measurable benefits to biodiversity, and not on cultural heritage. IFC Performance Standard 8 will be used to meet this rule.
8. Ensure that projects do not contaminate water, soil, or air with sulphuric acid drainage or other toxic chemicals. (Others include cyanide and mercury)	Yes	3.3 - Wastes and emissions	
9. Cover all costs of closing down and cleaning up mine sites.	Yes	4.5 - Mine closure planning	
10. Fully disclose information about social and environmental effects of projects.	Yes	2.11 - Community engagement and development 4.4 - Impact assessment 4.6 - Sustainability reporting	
11. Allow independent verification	Yes	Inherent to RJC Certification	

Source: Responsible Jewellery Council (2010), Earthworks & Oxfam America (2007)

**Table 3 - The Golden Rules' Compatibility with the RJC Code of Practices**

## Rationale

Due to the aforementioned high degree of acceptance of the No Dirty Gold campaign's Golden Rules by jewellers (accounting for 25% of the US jewellery market) and inability of

large retailers to source gold produced in adherence to the rules (Earthworks, 2010b), a sustainable approach to gold production adhering to the Golden Rules would likely have a significant market. Thus, adoption of the Golden Rules is essential for establishing a credits market for sustainably produced gold.

While the RJC's Code of Practices offers a certifiable approach to sustainability in gold mining, the Golden Rules contribute additional conditions to address some controversial issues. Rules which are not satisfied by the Code, such as free, prior and informed consent and prohibiting involuntary relocation are best practices recommended as standard policy in the final report of the World Bank Extractive Industries Review (World Bank, 2003, pp. 50, 55), while the protection of cultural heritage is detailed above as part of IFC Performance Standard 8. Environmental concerns regarding the long term impacts deep sea tailings disposal are relatively uncertain, and thus, the precautionary approach recommended by the Golden Rules is supported by mining company BHPBilliton in their sustainability framework (BHPBilliton, 2010, p. 5).

### **Requirements for Inclusion in the Credits Market**

The Golden Rules do not act as a code of practice which mining companies could follow, but rather a set of outcomes desired of mining companies. Thus, where the RJC's Code of Practice does not meet the outcomes set by the Golden Rules, specific guidance is required. The guidance suggested below is the result of multi-stakeholder processes. More research will be required to determine the best course of action for site-specific conditions.

#### *Obtain Free, Prior, and Informed Consent of Affected Communities*

Free, prior, and informed consent has been a subject of debate within the mining community. For this purposes of this paper, I will state the concerns of the RJC and a multi-

stakeholder workshop (including mining companies such as BHP Billiton, NGO's such as Oxfam, and the Government of Australia) for the Mining Certification Evaluation Project (MCEP) (Solomon, Schiavi, Horowitz, Rouse, & Rae, 2006), and incorporate suggestions from the workshop as well as an example (the Shell Malampaya project) where FPIC has been attained.

While the RJC received comments urging them to include FPIC in their Code of Practices (Responsible Jewellery Council, 2009b), the requirement for consent was excluded for the following reasons (Responsible Jewellery Council, 2009c):

1. The right of consent is reserved for sovereign states, as opposed to a matter to be brokered between third parties.
2. There is a wide variety of views on what constitutes consent (i.e. majority of adult persons by secret ballot, a decision from a single authoritative leader, a full consensus).
3. The role of supporting processes such as determining which communities have the right to consent, customary law, public hearings, and referenda will vary.

The first reason above is supported by article 32 of the United Nations Declaration on the Rights of Indigenous Peoples: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (United Nations, 2007).

While the United Nations recognizes the need for the a state to attain the free, prior and informed consent of affected communities, a mining company may choose not to proceed with the development or exploration of a project due to opposition from affected communities, despite being legally permitted to do so (Responsible Jewellery Council, 2009c).

The second concern, the definition of consent, cannot be resolved in this paper. However, during the process of consultation with affected communities, as required by the RJC's Code of Practices (Responsible Jewellery Council, 2009a), a mining company may be able to effectively develop a definition of consent applicable to a particular community and particular project. Thus, a management procedure to attain free, prior and informed consent can include within it a requirement to establish, through documented community consultation, a definition of consent applicable to that community.

The RJC's third issue regarding FPIC can be addressed by applicable laws, where present. Where claims or treaty rights to the land directly impacted by the project are legally established, the consenting community is well-defined. Where no legal basis exists for defining affected communities or multiple communities may experience varying degrees of impact, an approach by which the gold mining company justifies the reasons consultation rather than consent is needed from a particular community help resolve debate on the issue.

The MCEP working group was able to agree that mining companies should reach a level of performance regarding FPIC. This performance should include (Solomon, Schiavi, Horowitz, Rouse, & Rae, 2006, pp. 33-34):

- Providing local communities with information about the hazards, risks and the planned management and ensuring that people understand the information;
- Allowing communities to engage in a decision-making process to grant or withhold consent for mining activities, without manipulation from proponents;
- Consulting with communities throughout the life of the project, while seeking renewal of consent at appropriate stages;
- Establishing a mutually satisfactory dispute resolution process;

- Seeking information from local communities about their aspirations for the future and negotiating ways the mining project can contribute to their realization;
- Understanding the local social structure and community dynamics and addressing all concerns of sub-groups within the community.

Some basic principles for obtaining community consent were applied by Shell Philippines Exploration in preparation for the construction phase of the Malampaya Deep Water Gas-to-Power Project. As Shell was successfully able to obtain consent (Herz, 2007), the principles applied as well as the recommendations from “Development Without Conflict, the business case for community consent” (Herz, 2007) will serve as a basis for the suggestions in this paper.

Shell commenced community consultation on the Malampaya project approximately two years prior to the scheduled start of construction. In obtaining community consent, they employed four key strategies (Herz, 2007, p. 21):

1. Community outreach and interviews with key opinion leaders and decision makers;
2. Information dissemination, education and community activities;
3. Perception surveys and participatory workshops to introduce the project and validate initial survey results;
4. Participatory involvement in the formulation of environmental plans.

As part of Shell’s effort to obtain consent, the company negotiated agreements pertaining to micro-financing. In exchange for the consent to relocate one community, Shell offered monetary compensation, social programs, hiring preference, support for a high school and medical / dental facilities. In addition, Shell assisted the community in establishing an agreement with the government barring future projects from being located in their area.

Due to community concerns about the drop in project employment from 3000 during construction to eight at a time (total of ~32) during operations, Shell also offered skills training and a job placement program. To maintain the relationship with the community during operations, Shell has facilitated ongoing sustainable development programs, including training, workshops, employment link-ups, scholarships, microfinance, health and safety workshops, and conservation activities.

While the Malampaya project serves as a specific example of the strategies a company can employ to obtain and maintain community consent, challenges of communities in other locations will likely result in the need for significantly different strategies. General recommendations for project sponsors regarding community consent, according to Herz (2007), are as follows:

1. Develop binding operational policies for disclosing information and securing free, prior and informed consent.
2. Ensure consent is achieved before construction begins and is maintained at each stage of decision making.
3. Have, as an outcome of consent, culturally appropriate, legally enforceable, negotiated agreements. Agreements can be renegotiated as the project evolves.
4. Adjust planning, assessment, and decision making timelines and procedures to allow for full local involvement.

For participation in the credits market, the recommended guidance includes the aforementioned efforts to define the communities granting consent, what consent entails as well as portions of the four strategies employed by Shell. It is thus recommended that companies develop operational procedures for securing free, prior, and informed consent, including:

- i. Defining communities granting consent through legal claim or title or through an approach detailing the communities subjected to significant impacts.
- ii. Through community consultation, gaining consensus for a culturally-appropriate definition of consent.
- iii. Disseminating information (hazards, risks, worst-case scenarios) and conducting outreach and participatory processes to ensure community engagement and understanding.
- iv. Ensuring consent is received prior to start of project.
- v. Seeking renewal of consent at all major phases of the project.
- vi. Reaching culturally appropriate, negotiated and legally enforceable agreements.
- vii. Applying a grievance / dispute mechanism for addressing community and sub-group concerns at all stages of the project life-cycle.
- viii. Documenting all of the above.

*Ensure that operations are not located in areas of armed or militarized conflict*

The procedure for this rule will involve determining where armed conflicts are occurring, verifying any mine participating in the credits program is not located in such an area, and revoking participation should an armed conflict arise in the area of a mine.

Conflict is assessed as follows (World Gold Council, 2011c):

1. If any area within a country is in conflict, the entire country is considered to be in conflict.
2. Countries of conflict may be defined by legislation from a supra-national body, such as the UN Security Council, the OECD, the European Union, the African Union or the Organization of American States.
3. Countries of conflict may be defined by legislation from a national body with wide-spread international acceptance such as the United States.
4. Countries of conflict may be defined by external references set by non-governmental organisations widely recognized as credible and independent in their assessment, such as

the Heidelberg Institute for Conflict Research, Fund for Peace Failed States Index, and others.

*Ensure that projects do not force communities off their lands*

This rule prohibits participants in the credits market from undertaking involuntary resettlement of affected communities and does not apply to voluntary resettlement. Thus, in cases where resettlement cannot be avoided, resettlement must be voluntary and conducted with free, prior, and informed consent.

*Refrain from dumping mine waste into the ocean, rivers, lakes, or streams*

The environmental impacts assessment and project plans will identify the arrangements for tailings storage. Any mine depositing tailings into the ocean, rivers, lakes, or streams will not be eligible for participation in the credits market.

*Ensure that projects are not located in protected areas, fragile ecosystems or other areas of high conservation or ecological value*

While the ecological component of this rule is addressed through the RJC's Code of Practice 3.5 – Biodiversity, the No Dirty Gold campaign applies conservation to cultural heritage as well (Earthworks & Oxfam America, 2007). As cultural heritage is addressed in IFC Performance Standard 8, the provisions included in the IFC Performance Standards on Social and Environmental Sustainability (above) will apply.

## **Summary of Requirements for Participation in Credits Market**

Participation in the credits market will require the following:

- Certification by the Responsible Jewellery Council's Code of Practice.

- Adherence to International Finance Corporation's Performance Standards on Social and Environmental Sustainability Performance Standards 4 and 8.
- Adherence to the following additional standards to conform to the Golden Rules:
  - Obtain the free, prior and informed consent of affected communities.
  - Ensure that operations are not located in areas of armed or militarized conflict.
  - Ensure that projects do not force communities off their lands.
  - Refrain from dumping mine waste into oceans, rivers, lakes, or streams.
- Third party verification of the above at three year intervals, coinciding with Responsible Jewellery Council re-certification.

## **Conclusion**

The market approach to sustainability in the gold mining industry is intended to provide a financial incentive for sustainable practices. Through the trading of credits for sustainable production, a mining company can profit from their adherence to best practices while continuing its ongoing gold sales arrangements.

Demand for sustainably produced gold at this time appears to originate the jewellery market. While the combined demand from technology and investment gold uses accounts for approximately the same level of gold demand as jewellery, a significant portion of jewellery retailers have agreed to source sustainably produced gold through their signing of the No Dirty Gold campaign's Golden Rules.

In order to ensure a high level of performance on issues related to social and environmental sustainability, the selected standards for inclusion in the credits market address issues identified by NGO's, financial institutions, mining companies and governments. Through the selected combination of practices, gold mining companies will adhere to the performance level that the jewellery retail market demands through methods verifiable by a third party.

## Next Steps

This paper serves to propose a market approach to sustainability in the gold mining industry. In order to implement this approach, further research and action is required. The recommended immediate next steps are limited to setting up working groups composed of jewellery retailers, gold mining companies, metals exchanges, mining-related NGO's and governments of selected gold-producing countries to review and amend the approach proposed by this paper and recommend a road map to implementation.

Further tasks for working groups may include evaluating the RJC Code of Practices once certification is obtained by a mining company (after December 2012); establishing and refining diverse and robust methods for obtaining free, prior and informed consent; confirming with the No Dirty Gold campaign that the selected standards and credits market mechanism meet the Golden Rules requirements; setting up the market trading system and secure credit notes; obtaining agreements from mining companies to adhere to the selected standards; and investigating the potential for demand for credits in the investment and technology gold markets.

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# Appendix A – Responsible Jewellery Council’s Code of Practices and Assessment Questions

[http://www.responsiblejewellery.com/downloads/boxed\\_set\\_2009/S001\\_2009\\_RJC Prin COP.pdf](http://www.responsiblejewellery.com/downloads/boxed_set_2009/S001_2009_RJC Prin COP.pdf)

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## 1 Business Ethics

### 1.1 Bribery and Facilitation Payments

1. Members will prohibit Bribery in all business practices and transactions that are carried out by them, or on their behalf by Business Partners. They will not offer, accept or countenance any payments, gifts in kind, hospitality, expenses or promises as such that may compromise the principles of fair competition or constitute an attempt to obtain or retain business for or with, or direct business to, any person; to influence the course of the business or governmental decision-making process.
2. Members will consider Bribery Risk as it applies to their organisation (including agents) to identify which areas pose high Risks. Members will develop appropriate methods to monitor conduct of Employees and agents and eliminate Bribery based on this understanding.
3. Members will facilitate the reporting of incidences of attempted Bribery or inappropriate gifts within their organisation and will apply the appropriate sanctions for Bribery and attempted Bribery in all forms.
4. Members will clearly communicate to their Employees that no Employee will suffer demotion, penalty or other adverse consequences for voicing a concern, or for refusing to pay a bribe or Facilitation Payment even if this action may result in the enterprise losing business.
5. Where Members have not yet been able to eliminate Facilitation Payments, they will implement appropriate controls to monitor, oversee and fully account for all Facilitation Payments made. They will work to ensure that they are of limited nature and scope, with an ultimate objective to eliminate all Facilitation Payments.

#### Questions

- Confirm that the Member has systems to prohibit involvement in Bribery of any form and ensure that these systems are communicated to and understood by personnel and others that conduct transactions on their behalf.
2. Determine whether these systems include measures that control not offering, accepting or countenancing any facilitation payments, gifts in kind, hospitality, expenses or promises as such that may compromise the principles of fair competition or constitute an attempt to obtain or retain business for or with, or direct business to, any person, or to influence the course of the business or governmental decision-making process.
  3. Confirm that the risk of bribery has been considered by the business and that any areas considered high risk have been identified.
  4. Confirm whether there is a system to monitor conduct of employees and agents to eliminate Bribery.
  5. Determine whether the business encourages employees and contractors to report instances of attempted Bribery or inappropriate gifts, and that, in response to each report of Bribery and attempted Bribery in all forms, the appropriate investigation and subsequent sanctions are applied.
  6. Confirm that employees who refuse to participate in bribery or facilitation payments are supported by the business, and that employees are aware that they will not suffer demotion, penalty or other adverse consequences for voicing a concern, or for refusing to pay a bribe or Facilitation payment even if this action may result in the enterprise losing business.
  7. Confirm that the organisation endeavours to eliminate all facilitation payments, and that where they do occur, appropriate controls to monitor, oversee and fully account for the payments are implemented.

### 1.2 Money Laundering and Finance of Terrorism

1. Members must maintain financial accounts of all business transactions where required by Applicable Law and in accordance with national or international accounting standards. These accounts must be independently certified and/or audited by a properly qualified auditor who is appointed free of any bias or influence.
2. Members should be aware that international transactions may be subject to more than one regulatory jurisdiction.
  - a. Where no Applicable Law exists, Members should comply with the provisions in the Financial Action Task Force (FATF) 40 Recommendations and 9 Special Recommendations as applicable to dealers in Precious Metals and gemstones under the Designated Non-Financial Business Professions (DNFBP).
  - b. Cash or cash-like transactions should always take place in compliance with Applicable Law. Where they occur above the relevant defined financial threshold, records need to be lodged with the relevant designated authority.
3. Members must operate according to the principles of “know your customer” so as to establish the identity of all organisations with which they deal, have a clear understanding of their business relationships and have a reasonable ability to identify and react to transaction patterns appearing out of the ordinary or suspicious.

## **Questions**

8. Determine whether the business maintains financial accounts of all relevant business transactions where required by Applicable Law, and in accordance with national, and where appropriate, international accounting standards.
9. Determine whether the financial accounts are annually independently certified and/or audited.
10. Confirm that audits are undertaken by an appropriately qualified auditor, and that the selection process appoints an auditor that is free of any bias or influence.
11. Determine whether there is a system to identify the various jurisdictions encountered with each transaction, and the associated regulatory requirements.
12. Confirm that the business complies with the relevant legislation relating to international transactions, or, where no Applicable Law exists, the provisions in the Financial Action Task Force (FATF) 40 Recommendations and 8 Special Recommendations as applicable to the Designated Non-Financial Business Professions (DNFBP) i.e. dealers in Precious metals and gemstones.
13. Confirm that cash or cash-like transactions always take place in compliance with Applicable Law and are lodged with the designated authority if above the relevant defined financial threshold.
14. Determine whether there is a system for checking the identity of all suppliers and customers, and monitoring for unusual transactions.
15. Confirm that there is a clear understanding of the business' relationships with these individuals and organisations, and that the operation has a reasonable ability to identify and react to transaction patterns appearing out of the ordinary or suspicious.

### **1.3 Kimberley Process**

1. Members must not knowingly buy or sell Conflict Diamonds or assist others to do so.
2. Members, where involved with the international trade of rough Diamonds must apply the rough Diamond export and import verification system and controls as laid out by the Kimberley Process Certification Scheme and relevant national legislation. Members must keep records of Kimberley Process Certificates for rough Diamonds. Kimberley Process certificates must be independently audited and reconciled by a company's own independent auditor on an annual basis. If asked for by a duly authorised government agency, these records must be able to prove compliance with the Kimberley Process.
3. Members, where involved in buying and selling Diamonds, whether rough, polished or set in Jewellery, must fully adhere to the principles of the "World Diamond Council Resolution on Industry Self-Regulation". Members are required to have systems in place so that all invoices for Diamonds, whether rough, polished or set in Jewellery, either bought or sold, contain the World Diamond Council warranty statements. Members must keep records of all such invoices. Members must have systems in place so that they do not purchase from sources that do not provide the World Diamond Council warranty statement on their invoices.
4. Members will inform all Employees that buy or sell Diamonds about government restrictions on the trade in Conflict Diamonds, the Kimberley Process Certification Scheme and the World Diamond Council System of Warranties.

## **Questions**

16. Determine whether there are procedures or systems in place to prevent the purchase or sale of rough diamonds by employees or agents, without appropriate Kimberley Process documentation. Procedures and systems must comply with the Kimberley Process and relevant national legislation. This includes preventing the purchase of Conflict Diamonds from countries or regions that have not implemented the Kimberley Process or are subject to a governmental advisory that exports from such regions are not in conformance with the Kimberley Process.
17. Determine whether there is a rigorous audit process to reconcile rough diamond trade records i.e. Kimberley Process Certificates (in and out). Confirm that audits are conducted no less than annually and by independent auditors.
18. Determine whether these records are sufficient to prove compliance with the Kimberley Process.
19. Determine whether there are procedures or systems in place including the need to keep records, to prevent the purchase or sale of diamonds, whether rough, polished or set in jewellery without appropriate warranties in accordance with the World Diamond Council System of Warranties.
20. Determine whether there is a system for educating employees that are involved in the buying and selling of diamonds. Verify that Employees have a satisfactory understanding of the Kimberley Process Certification Scheme and government restrictions on the trade in Conflict Diamonds and the WDC System of Warranties.

### **1.4 Product Security**

1. Members will establish product security measures within the premises and during shipments to protect against product theft, damage or substitution.

2. The security and well being of Employees, Visitors and other relevant Business Partners will be prioritised when establishing product security measures.

### **Questions**

21. Confirm Members have implemented product security measures that protect products against theft, damage or substitution, whilst the products are on site or during shipments.

22. Confirm that the Member prioritises the security of Employees, Contractors working in the Facilities, visitors including customers to the Facilities, and other affected stakeholders, when implementing reasonable precautionary product security measures, to prevent product theft, damage or substitution, whilst on the premises and during shipments.

## **1.5 Product Integrity**

1. **General:** Members will at all times comply with relevant trading standards legislation and, where they exist, specific national and/or local regulations applicable to Diamond and Gold Jewellery products. Where no specific trading standards or product integrity regulations apply, Members must comply with the requirements listed below.

2. **Proper Disclosure:** Members must make all reasonable efforts to properly disclose all relevant information on the physical characteristics, such as mass/weight, cut, colour, clarity or fineness, of a Diamond or Gold Jewellery product.

3. **Misrepresentation:** Members will not make any untruthful, misleading or deceptive statement, representation, or material omission in the selling, advertising, or distribution of any Diamond, Treated Diamond, Synthetic or Simulant, or any Gold product, in any medium, including the internet.

### **4. Gold:**

a. Members will accurately disclose the fineness of the Gold used in their products.

b. When applying Gold Quality Marks to articles wholly or in part composed of Gold, Members will apply a Mark authorised to be applied thereto under Applicable Law that correctly indicates the quality of the Gold of which the article is in whole or in part composed. The Mark will be applied in a manner authorised by Applicable Law or relevant international standards.

### **5. Treated Diamonds:**

a. A Treated Diamond must be disclosed as either “Treated” or with specific reference to the particular Treatment. The description must be as equally conspicuous and placed immediately preceding the word(s) “Diamond” or “Synthetic”, as the case may be. Specifically:

- Any term that is designed to disguise that Treatment has occurred, or to imply that a Treatment is part of the normal polishing process, or that misleads the consumer in any way, must not be used.

For example, the term “improved” must not be used to describe a Treated Diamond.

- Any special care requirements that the Treatment creates must be disclosed.

b. Names of firms, manufacturers or trademarks are not to be used in connection with Treated Diamonds, unless such names are clearly succeeded by the word “Treated” as defined in this section or are otherwise equally conspicuously and prominently disclosed as Treated.

### **6. Synthetic Diamonds:**

a. A wholly or partially Synthetic diamond must always be disclosed as “laboratory created”, “laboratory grown”, “man-made”, “[Manufacturer’s name] created”, and/or “Synthetic” and the description must be equally as conspicuous and immediately preceding the word “diamond”.<sup>7</sup>

b. Members will not use the words “real”, “genuine” or “natural” to describe any Synthetic, or any terms that may disguise the fact that a diamond is Synthetic or that mislead the consumer in any way.

### **7. Diamond Simulants:**

a. Members must always disclose a Simulant either as the mineral or compound that it is, or as a “diamond Simulant” or “imitation diamond”. The unqualified word “Diamond” must never be used with Simulants.

b. Members will not use the words “real” and “genuine” to describe any Simulant.

c. Members will not use the word “natural” to describe any Simulant if the Simulant is not a naturally occurring mineral or compound.

### **8. Diamond Quality – Cut and Polished Diamonds:**

a. Members when describing the weight, colour, clarity or cut of Diamonds will at all times do so in accordance with the recognised guidelines appropriate to the particular jurisdiction.

b. Members will not use the word “flawless” or “perfect” to describe either:

- any Diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination by a person skilled in Diamond grading; or

- any article of Jewellery that contains any Diamonds that do not meet the definition of “flawless” or “perfect”.

c. Members will not use the terms “brilliant”, “brilliant cut” or “full cut” to describe, identify or refer to any Diamond except a round Diamond that has at least 32 facets plus the table above the girdle, and at least

24 facets below it.

### **Questions**

23. Determine that the business identifies and complies with relevant local, national and global trading standards and legislation that is specifically applicable to its diamond and gold jewellery products.

24. Confirm that the business adopts the Code of Practices 'Product Integrity' provisions where there is no local applicable law.

25. Confirm that gold, diamonds and gold and/or diamond jewellery products purchased or sold have appropriate product disclosure including applicable information on:

- Mass/weight
- Cut
- Colour
- Clarity/fineness.

26. Determine that information used for selling, advertising or distribution of Diamond and/or Gold products is not misleading, untruthful or deceptive, or that that material information has not been omitted.

27. Confirm that the gold fineness is accurately disclosed for gold products.

28. Confirm that when applying Gold Quality Marks to gold products, the Mark is authorised to be applied and accurately indicates gold quality.

29. Confirm that treated diamonds are properly disclosed as such, including to always have the word "diamond" preceded by the word "treated", the nature of the treatment and any special care requirements. Confirm that the treated diamond product information does not mislead or incorrectly represent the product.

30. Confirm that the term "treated diamond" is clearly associated with any use of the names of firms, manufacturers or trademarks used to describe treated diamonds.

31. Confirm that Synthetic diamonds (whether wholly or partially) are properly disclosed as such and always have the word "diamond" preceded by words such as:

- Synthetic
- Laboratory Created or Grown
- Man-made
- [Manufacturer name] created.

Confirm that there are effective procedures or systems that specifically prohibit the use of the terms including but not limited to the following when representing synthetic diamonds:

- Natural
- Real
- Genuine.

32. Confirm that synthetic diamond products are clearly identifiable and distinguishable by the product statements from 'natural' or 'mined' diamond products, and that terms are not used that may mislead the consumer in any way.

33. Confirm that diamond simulants are properly disclosed and always have the word "diamond" preceded by words such as:

- Simulant
- Imitation.

Confirm that there are effective procedures or systems that specifically prohibit the use of the terms including but not limited to the following when representing simulant diamonds:

- Real
- Genuine
- Naturally occurring mineral or compound.

34. Determine whether the business identifies and complies with recognised guidelines applicable to the description of cut and polished diamonds, in terms of:

- Weight
- Colour
- Clarity or
- Cut.

35. Confirm that there are effective procedures or systems that specifically prohibit the use of the terms "flawless" or "perfect" when representing diamond products that when viewed under magnification at 10 power, have any of the following imperfections:

- Flaws
- Cracks
- Inclusions
- Carbon spots
- Clouds
- Internal lasering
- Blemishes.

36. Confirm that these procedures or systems only permit the use of the terms "brilliant", "brilliant cut" or

“full cut” specifically for a round diamond that has at least 32 facets plus the table above the girdle, and at least 24 facets below it.

### **1.6 Extractive Industries Transparency Initiative**

1. Members with Mining Facilities will commit to and support implementation of the Extractive Industries Transparency Initiative (EITI).

#### **Questions**

37. Verify that Members with Mining Facilities have committed to and support implementation of the Extractive Industries Transparency Initiative (EITI).

## **2 Human Rights and Social Performance**

### **2.1 Human Rights**

1. Members will at all times respect the fundamental human rights and the dignity of the individual, according to the United Nations Universal Declaration of Human Rights.

#### **Questions**

38. Determine whether the business has identified, is knowledgeable of and complies with the articles from the United Nations Universal Declaration of Human Rights that are applicable to its business, to that ensure fundamental human rights and the dignity of the individual are respected at all times.

### **2.2 Child Labour and Young Persons**

1. Members will not engage in or support the employment of Children (younger than 15 years, or 14 years where the law of the country permits) beyond those circumstances defined in ILO Convention 138 and Recommendation 146 unless sanctioned by national and/or local government or as part of a recognised apprentice scheme, in accordance with the guidelines laid down in the Global Compact.

2. Where any Children are found to be in employment, Members will provide adequate support to enable them to attend and remain in school until no longer a Child. Child Labour Remediation processes will include steps for the continued welfare of the Child and consider the financial situation of the Child's family. Children found to be in employment contrary to minimum age requirements may remain in partial employment during a phased Remediation process. Members will provide a minimum period of night time rest of 12 hours, with customary weekly rest days; and ensure that overtime is prohibited and the Child receives fair payment for the work he or she is undertaking.

3. Members will promote education for Children covered under ILO recommendation 146 and Young Persons who are subject to local compulsory education laws or attending school, including means to ensure that no such Child or Young Person is employed during school hours and that combined hours of daily transportation (to and from work and school), school and work time does not exceed 10 hours a day.

4. Members will not expose a Child or Young Person to work, which by its nature or the circumstances in which it is carried out, is likely to jeopardise the Health, Safety or morals of persons younger than 18 years (or 16 years subject to authorisation in Applicable Law and the receipt of adequate and specific instruction or vocational training in the relevant branch of activity).

#### **Questions**

39. Determine whether there is a policy and/or a system to prevent engaging in or supporting the employment of Children (younger than 15 years, or 14 years where the law of the country permits).

40. Confirm that there are effective systems supported by procedures, practices and written agreements with contractors that prevent the employment of Children, including an effective mechanism for verifying age prior to recruitment, maintaining copies of documentary evidence on file, and investigating potential discrepancies.

*Note that this Provision does not apply to situations where Children (younger than 15 years, or 14 years where the law of the country permits) were previously identified during previous Assessments AND the Member is conforming with, Provisions 2.2.2, 2.2.3 and 2.2.4 .*

41. Where children have been found to be working within the business, determine whether there is an effective phased remediation process that ensures the continued welfare of each Child employed and their family, that the work does not interfere with schooling, and that a structured educational program is supported. Confirm that any child workers found to be in employment receive fair payment for their work, at least 12 hours nightly rest time and weekly rest days, and do not work overtime.

42. Confirm that where young persons are employed, they are employed according to the requirements of Applicable Law, or if no such law exists, the provisions of ILO Convention 138 and Recommendation 146.

43. Determine whether hazardous work areas and activities have been identified, that workers are mapped against tasks by age, and that there are no young persons under the age of 18 (or 16 under strict conditions) engaged in 'hazardous work'.

### **2.3 Forced Labour**

1. Members will not use Forced Labour (including bonded, indentured or prison labour), nor restrict the freedom of movement of Employees.
2. Members will not retain original copies of Employee personal documentation, such as identity papers, nor require any form of deposit, recruitment fee, or equipment advance from Employees either directly or through recruitment agencies.

#### **Questions**

44. Confirm that the business does not use Forced Labour (including bonded, indentured or prison labour) or restrict the freedom of movement of employees.
45. Confirm that the business does not retain any original personal documentation belonging to workers (such as passports or other official proof of identity) during the course of their employment, other than by specific legal requirement, nor require any form of deposit, recruitment fee, or equipment advance from Employees either directly or through recruitment agencies

### **2.4 Freedom of Association and Collective Bargaining**

1. Members will not prevent Employees from associating freely. Where laws prohibit these freedoms, Members will support parallel means for independent and free association and bargaining.
2. Members will not prevent collective bargaining and will adhere to collective bargaining agreements, where such agreements exist.

#### **Questions**

46. Determine whether Employees are afforded the freedom and means to associate freely through either unions or parallel means for independent and free association and bargaining.
47. Determine whether workers are afforded the freedom and means to collectively bargain and to participate in collective bargaining agreements in place.
48. Where collective agreements exist, confirm that they are adhered to.

### **2.5 Discrimination**

1. Members will not practice or condone any form of discrimination in the workplace in terms of hiring, remuneration, overtime, access to training, promotion, termination or retirement based on race, ethnicity, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status, or age, or any other applicable prohibited basis, such that all individuals who are "Fit for Work" are accorded equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.

#### **Questions**

49. Determine whether there is a system to prevent discrimination in the workplace and a mechanism which ensures that all individuals who are Fit for Work are accorded equal opportunities and are not discriminated against on the basis of factors unrelated to their ability to perform their job.
50. Confirm that the systems are communicated to and understood by personnel, and are effectively implemented.

### **2.6 Health & Safety**

1. Members will provide safe and healthy working conditions for all Employees in accordance with Applicable Law and other relevant industry standards. These conditions include:
  - a. minimising, so far as reasonably practicable, the causes of workplace Hazards.
  - b. appropriate safeguards and isolation between Employees and all machinery including mobile equipment.
  - c. adequate and appropriate labelling and storage of all chemicals and cleaning materials.
  - d. methods to protect Employees from exposure to airborne particles and chemical fumes.
  - e. identifying and providing appropriate Personal Protective Equipment (PPE ) free of charge and verifying that it is current, worn and used correctly.
  - f. providing work stations that are designed as appropriate to the task performed, to minimise occupational Health Risks such as repetitive strain.
  - g. adequate lighting, ventilation and air quality; safe noise levels and temperatures.
  - h. maintaining adequate workplace hygiene at all times by conducting regular routine cleaning, providing safe and accessible potable drinking water and sanitary facilities for food storage, and clean and hygienic washing and toilet facilities commensurate with the number and gender of staff employed.
  - i. providing adequately constructed and maintained workplaces that meet local building regulations.
  - j. ensuring that if Employees are provided with on-site housing by Members, such housing will be maintained to a reasonable standard of Safety, repair and hygiene; and provided with sufficient and proper sanitation facilities, potable water and access to adequate power supply.

2. Members who are engaged in the cutting and polishing of Diamonds will use cobalt-free Diamond impregnated scaifes.
3. Members will provide Employees with a mechanism, such as a joint Health and Safety committee, by which they can raise and discuss Health and Safety issues with management.
4. Members will make information about Health and Safety available to Employees in an understandable form and in an appropriate language. Material Safety Data Sheets (or equivalent necessary information) will be accessible where all Hazardous Substances are in use, and the Risks associated with use of Hazardous Substances must be clearly communicated to all Employees who work with them.
5. Appropriate procedures must be in place to prevent accidents and injury to Health arising from, or linked to, the course of work-related activities and operations at a Facility.
6. Members will provide access to adequate on-site Health and medical facilities, including clearly marked first aid provisions, and develop procedures for transportation of more serious Health concerns to local hospitals or medical facilities.
7. Members will install appropriate alarms, warning devices and fire Safety mechanisms. This includes fire fighting equipment; clearly marked, unlocked and unblocked emergency exits and escape routes; and emergency lighting in all Facilities.
8. Members will establish emergency procedures and evacuation plans for all reasonably foreseeable emergencies. Members will ensure that the procedures and plans are accessible or clearly displayed throughout their Facilities, are maintained, regularly tested (including the conduct of evacuation drills), and are updated periodically. Mining Facilities will develop and maintain emergency response plans, in collaboration with potentially affected communities, workers and their representatives, and relevant agencies, pursuant to guidance provided by UNEP on Awareness and Preparedness for Emergencies at the Local Level (APELL) for Mining.
9. Members will provide training so that Employees are aware of: specific role-related Health and Safety Risks and Hazards; and methods for appropriate protection from such Hazards, including proper use of PPE and appropriate action to take in the event of an accident or emergency. Training will include first aid training to designated Employee representatives and appropriate training in fire Safety and emergency procedures for all Employees. Training undertaken must be recorded and repeated for new and re-assigned Employees.
10. Members will ensure that serious Health and Safety incidents, as well as the business' response and outcome from such incidents, are formally documented and investigated with the results of the investigation feeding into regular Health and Safety reviews and improvement plans.
11. Members will ensure that Employees and Contractors understand that they have the right and responsibility to stop work or refuse to work in situations that have Uncontrolled Hazards, and to immediately bring these situations to the attention of those at imminent Risk and to management.
12. Diamond or Gold Jewellery products sold by Members to end consumers will be compliant with the applicable regulations for product Health and Safety.

**Questions**

51. Confirm that the workplace environment complies with Applicable Law and relevant industry standards such that it is safe to conduct work related activities. Determine how effective systems and controls are to ensure that legal requirements relating to ambient workplace environment (chemical exposure, noise, air temperature, air quality, lighting, ventilation, etc) are adhered to.
52. Determine whether there is an effective method to identify and minimise, so far as reasonably practicable, workplace hazards.
53. Confirm that sufficient and appropriate machine safety guards and isolation measures are installed and used correctly.
54. Confirm that chemicals including cleaning materials have been identified, and adequately labelled and stored.
55. Determine whether workplaces are adequately constructed and maintained, with systems and controls in place to ensure that workers are protected from chemical exposure, air borne particles and chemical fumes.
56. Confirm that basic PPE is available free of charge for employees and on-site contractors, and that it is current, properly used and worn.
57. Confirm that all workspaces are fit for the job, and designed with appropriate safety measures, particularly with regard to minimise occupational health risks such as repetitive strain.
58. Determine whether workplace temperature, noise, light, cleanliness, vibration and ventilation levels are appropriate to perform tasks safely (given the requirements of the operation).
59. Confirm that the entire workforce has access to an appropriate standard of hygiene by providing:
  - a regular and effective cleaning regime
  - safe drinking water and adequate means of safely storing food are easily accessible to all employees; and
  - sanitation facilities including ablution and bathrooms that are clean and well-maintained, and that these are sufficient for the number and gender of staff employed.
60. Determine whether workplaces are adequately constructed and maintained to meet local building and

occupational health & safety regulations.

61. Confirm that on-site housing offered to employees are in a condition that is safe to occupy, clean and hygienic, has potable water, sufficient and proper sanitation facilities and adequate power supply.
62. For processes engaged in the cutting and polishing of diamonds, ensure that cobalt-free diamond impregnated scaifes are used.
63. Determine whether there is a formal process for employees to discuss, review and manage health and safety issues, or to raise concerns with management, such as via a trade union or a health and safety committee.
64. Determine whether personnel are aware of specific work place hazards and risks and the precautionary methods in place to avoid such hazards.
65. Determine whether information about hazards and risks is available to all personnel and communicated in appropriate language. Confirm that communication includes:
  - clear lines of responsibility in relation to management of hazards
  - information includes current Materials Safety Data Sheets (or equivalent necessary information), and that these are available at the place of work.
66. Determine that there are effective procedures or systems in place commensurate with the nature of work related activities, to avoid accidents, injury and illness, to cover all activities in the workplace environment.
67. Determine whether there are clearly identifiable and sufficient first aid provisions and equipment.
68. Determine whether there is information detailing how personnel can make ready use of medical facilities either on or offsite.
69. Confirm that sufficient, appropriate and working fire safety devices are in place, including alarms and extinguishers, which are accompanied with instructions understandable by the workforce.
70. Determine whether there are sufficient and appropriately placed emergency exits, and that they are clearly marked and are unlocked and unblocked.
71. Confirm that evacuation and emergency response procedures are available to respond to all reasonably foreseeable emergency scenarios, and that these plans are accessible to all personnel, prominently displayed, understandable, regularly tested (including the conduct of drills) and updated.
72. Verify that, for Members with Mining Facilities, emergency response plans have been developed and maintained in collaboration with potentially affected communities, workers and their representatives, and relevant agencies, as described in the APELL guidelines.
73. Confirm that the appropriate level of training is offered to all personnel at commencement of employment (with the business or when reassigned) and that training records are maintained. Confirm that training covers:
  - Proper handling of hazardous substances
  - Use of Material Safety Data Sheets
  - Proper use of PPE
  - Fire safety and evacuation procedures
  - Emergency response in the event of an accident, including special training personnel with key responsibilities (e.g. wardens, incident/emergency response co-ordinators, etc)
  - Specific job related hazards, risks and the precautionary measures to avoid these risks.
74. Confirm that sufficient numbers of personnel are trained in first aid for the nature and scale of the business.
75. Determine whether there is a procedure or system for formally recording and investigating serious occupational accidents, incidents (including near misses), occupational diseases, and/or emergencies.
76. Confirm that results from incident investigations result in the implementation of effective corrective actions and improvement measures and that these are reviewed on a periodic basis.
77. Determine whether employees understand that they can stop work in situations that may cause serious harm or uncontrolled hazards, and that they have a responsibility to bring these situations to the attention of those at imminent risk and to management.
78. Demonstrate that the Member has effective systems in place to ensure that diamond and gold jewellery products sold to end-consumers (i.e. retail consumers) comply with health and safety regulations applicable to the products.

## **2.7 Discipline and Grievance Procedures**

1. Members will not use corporal punishment under any circumstances, and will ensure that Employees are not subjected to harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation in any circumstances.
2. Members will clearly communicate the business' disciplinary process, and related standards on appropriate disciplinary procedures and Employee treatment, and apply these equally to all management and staff.
3. Members will provide clear grievance procedures and investigation processes and clearly explain these to all Employees. Records of Employee grievances raised, investigation processes and outcome will be maintained.

### **Questions**

79. Ensure that the business does not use corporal punishment.
80. Confirm that the business prohibits its employees from being subjected to harsh or degrading treatment;

sexual or physical harassment; mental, physical or verbal abuse; coercion or intimidation in any circumstances in the workplace.

81. Confirm that the business has clearly communicated to all personnel the business' disciplinary process and related standards on appropriate disciplinary procedures and Employee treatment, and that the process and standards apply equally to all management and staff.

82. Confirm that grievance procedures and investigation processes are clear, and that they are clearly explained to all Employees.

83. Verify that records are maintained of Employee grievances raised, investigation processes and outcomes.

## **2.8 Working Hours**

1. Members will apply normal working hours that comply with Applicable Law. Where no specific laws and regulations exist, working hours will not exceed, on a regular basis, a maximum of 48 hours per working week in accordance with ILO Convention 1. Where these limits are required to be exceeded in special circumstances (for example on fly-in, fly-out sites), this should be in compliance with Applicable Law and should be planned so as to provide safe and humane working conditions.

2. If overtime is required for business needs, Members will compensate overtime to their Employees according to Applicable Law. Overtime will be voluntary and except in special circumstances (for example on fly-in, fly-out sites) be limited to a maximum of 12 hours in a week.

3. Members will provide Employees with all legally mandated leave, including maternity and paternity, compassionate and paid annual leave. Where no Applicable Law exists, paid annual leave will be provided in accordance with ILO Convention 132.

4. Members will provide all Employees with at least one rest day in seven consecutive working days in accordance with ILO Convention 14. Where these limits are required to be exceeded in special circumstances (for example on fly-in, fly-out sites), this will be in compliance with Applicable Law, or where no specific laws exist, the prevailing industry standards. All exceedances should be planned so as to provide safe and humane working conditions.

### **Questions**

84. Confirm that the business applies normal working hours that comply with Applicable Law. Where no specific laws and regulations exist, confirm that working hours do not, on a regular basis, exceed a maximum of 48 hours per working week.

85. Confirm that the business has compensated overtime (based on business needs) to their Employees according to Applicable Law and Sector regulations.

86. Confirm that overtime is voluntary and except in special circumstances (for example on fly-in, fly-out sites), is limited to a maximum of 12 hours in a week.

87. Confirm that the business has provided Employees with all legally mandated leave including maternity and paternity, compassionate and paid annual leave. Where no Applicable Law exists, paid annual leave shall be provided in accordance with ILO Convention 132.

88. Confirm that appropriate weekly rest is provided in accordance with ILO Convention 14 (at least one rest day in seven consecutive working days). Where no specific laws and regulations exist the Member demonstrates compliance with prevailing Standards. Where this is not possible (for example on fly-in, fly-out sites) the leave allocation complies with the relevant laws and is planned so as to provide safe and humane working conditions. Ensure that all exceedances of the minimum one rest day in seven consecutive working days are planned so as to provide safe and humane working conditions.

## **2.9 Remuneration**

1. Members will pay all Employees a wage based on the higher of either the applicable legal minimum wage plus associated statutory benefits, or the prevailing industry standards.

2. Members will make payment to the Employee on a regular and pre-determined basis.

3. Members will provide payment by bank transfer or in cash or cheque form, in a manner and location convenient to the Employees.

4. Members will accompany all payments by a wage slip which clearly details wage rates, benefits and deductions where applicable.

5. Members will not make deductions from wages without following due process.

6. Members will not force Employees to buy provisions from the Member's own business or Facilities.

### **Questions**

89. Confirm that employees are paid a wage based on the higher of either the applicable legal minimum wage or within the range of prevailing industry wages.

90. Ensure that the business makes payment to employees on a regular and pre-determined basis.

91. Ensure that the business provides payment by bank transfer or in cash or cheque form in a manner and location convenient to employees.

92. Confirm that all payments are accompanied by a wage slip that clearly details wage rates, benefits and deductions where applicable.

93. Confirm that due process is being followed if deductions from wages need to occur.
94. Confirm that Employees are not forced to buy provisions from the business or its Facilities.

## **2.10 General Employment Terms**

1. Obligations to Employees under Applicable Law relating to labour or social security arising from the regular employment relationship will not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements; or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment; or through the excessive use of fixed-term contracts of employment.
2. Members will maintain appropriate Employee records, including records of piece rate and wage payments as well as working hours, for all staff employed, whether on a full time, part time or seasonal basis. **2.11 Community**

### **Questions**

95. Confirm that all work performed for the business is carried out under a recognised employment relationship established through Applicable Law and practice, and includes obligations to Employees relating to labour or social-security.
96. Confirm that obligations to Employees under Applicable Law relating to labour or social security are not avoided through use of labour-only contracting, sub-contracting, home-working arrangements, apprenticeship schemes or the presence of any excessive use of fixed-term contracts of employment.
97. Confirm the maintenance of appropriate Employee records (this includes records of piece rate and wage payments as well as working hours, for all staff employed, whether full time, part time or seasonal basis).

## **2.11 Engagement and Development**

1. Members will seek to support the development of the communities in which they operate through support of community initiatives.
2. Members with Mining Facilities will have appropriate skills, resources and systems in place for early and ongoing engagement with affected communities and stakeholders throughout the project's lifecycle, from earliest exploration activities, construction prior to commencement of mining, during mine operations, through to closure and post-closure monitoring. The interests and development aspirations of affected communities must be considered in major mining decisions in the project's lifecycle, and broad community support for proposals should be sought. Engagement must be carried out in an inclusive, equitable, culturally appropriate and rights-compatible manner.
3. Members with Mining Facilities will avoid or otherwise minimise involuntary resettlement. Where resettlement is unavoidable, its implementation should be consistent with International Finance Corporation (IFC) Performance Standard 5.
4. Members with Mining Facilities must ensure that affected communities have access to rights-compatible complaints and grievance mechanisms at the operational level for raising and resolving disputes and clearly explain these to the affected communities. Records of grievances raised, investigation processes and outcomes will be maintained.

### **Questions**

98. Determine whether the business supports the development of the community in which they operate through support of community initiatives.
99. Determine whether the Mining Facility has appropriate skills, resources and implemented systems for early and ongoing engagement with affected communities and stakeholders throughout the project's lifecycle.  
*Note that this Provision does not apply retrospectively, that is, before the 12 months prior to initial certification.*
100. Verify that these systems include mechanisms to consider the views and aspirations of affected communities when developing the mine project.  
*Note that this Provision does not apply retrospectively, that is, before the 12 months prior to initial certification.*
101. Verify that broad support for major mining proposals is sought using engagement processes that are inclusive, equitable, culturally appropriate and rights-compatible manner.  
*Note that this Provision does not apply retrospectively, that is, before the 12 months prior to initial certification.*
102. Determine how Members with Mining Facilities avoid involuntary resettlement, and verify that where it is unavoidable, the extent is minimised and it is carried out (including compensation) in accordance with the International Finance Corporation (IFC) Performance Standard 5.  
*Note that this Provision does not apply retrospectively, that is, before the 12 months prior to initial certification.*
103. Ensure that the Members with Mining Facilities have a system for dealing with and resolving complaints and grievances, and that this system is understood and accessible to affected communities.

## **2.12 Use of Security Personnel**

1. Members will use armed security personnel only when there is no acceptable alternative to manage Risk or to

ensure the personal Safety of Employees, Contractors and Visitors to the Facility.

2. Members will ensure that all security personnel respect the human rights and dignity of all people and use the minimum force proportionate to the threat.

3. Members with Mining Facilities will ensure that security risk assessments are conducted and that security personnel receive training and operate in accordance with the Voluntary Principles on Security and Human Rights (2000).

#### **Questions**

104. Determine that the business uses a rigorous system to evaluate the need for armed security personnel and that armed security personnel are used only when there is no acceptable alternative to manage risk or to ensure the personal safety of Employees, Contractors and Visitors.

105. Ensure that all armed personnel respect the human rights and dignity of all people and use the minimum force proportionate to the threat.

106. Ensure that security risk assessments are conducted by Members with Mining Facilities.

107. Ensure that security personnel working for Members with Mining Facilities receive appropriate training to ensure they operate in accordance with standards and principles defined in the Voluntary Principles on Security and Human Rights (2000).

### **2.13 Indigenous Peoples**

1. Mining Facilities will respect the rights of Indigenous Peoples as articulated and defined in applicable provincial, national and international laws and their social, cultural, environmental and economic interests, including their connection with lands and waters.

2. Mining Facilities will seek to obtain broad-based support of affected Indigenous Peoples and to have this support formally documented, including partnerships and/or programs to provide benefits and mitigate impacts.

#### **Questions**

108. Verify that Members with Mining Facilities respect the rights of Indigenous Peoples as defined in Applicable Law. Verify that the social, cultural, environmental and economic interests, including connection with lands and waters, of affected Indigenous Peoples, are understood and respected.

109. Verify that Members with Mining Facilities seek to obtain formally documented broad based support from affected Indigenous Peoples for mining operations. Ensure that this documentation includes any partnerships and/or programs to provide benefits and mitigate impacts benefits to the affected Indigenous Peoples.

### **2.14 Artisanal and Small-scale Mining**

1. Members with Mining Facilities will, as appropriate, participate in initiatives, including multi-stakeholder initiatives, that enable the professionalisation and formalisation of artisanal and small-scale mining (ASM), where it occurs within their areas of operation.

2. Where ASM operates on or around a Mining Facility, Members will engage directly with them as part of their Social and Environmental Impact Assessment and community engagement processes.

#### **Questions**

110. Verify that Members with artisanal and small-scale mining within their areas of operation participate, as appropriate, in initiatives that enable the professionalisation and formalisation of artisanal and small-scale mining.

111. Verify that Members with Mining Facilities with artisanal and small-scale miners operating on their (the Members) concession, include them in Social and Environmental Impact Assessment (SEIA) and community engagement processes.

## **3 Environmental Performance**

### **3.1 Environmental Protection**

1. Members will, wherever appropriate, introduce management and operating systems to minimise the detrimental environmental impacts of its business practices.

#### **Questions**

112. Determine whether the business has introduced appropriate management and operating systems that:

Identify and assess detrimental environmental impacts resulting from its — business practice

— Factor appropriate environmental considerations into new developments, processes and business practices.

— Manage and minimise significant detrimental environmental impacts commensurate with the nature and scale of the Members business.

### **3.2 Hazardous Substances**

1. Members will not manufacture, trade, and/or use chemicals and Hazardous Substances subject to international bans due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation,

or potential for depletion of the ozone layer.

2. Members will employ alternatives to other Hazardous Substances used in production processes wherever technically and economically viable.

3. All mining Members using cyanide in the recovery of Gold will comply with the International Cyanide Management Code, 2005 and will ensure applicable sites are certified to the International Cyanide Management Code within 3 years from the date of joining the RJC.

#### **Questions**

113. Confirm that the business does not manufacture, trade and/or use chemicals or hazardous substances that have been banned (locally or internationally) due to their high toxicity, environmental impact, persistence, potential for bioaccumulation or potential for depletion of the ozone layer.

114. Confirm that where technically and economically viable the business substitutes hazardous substances used in production processes with alternatives that are less hazardous.

115. For Members with Mining Facilities using cyanide in the recovery of gold, determine whether the applicable site(s) is certified to and complies with the International Cyanide Management Code (2005) within 3 years of joining the RJC.

### **3.3 Waste and Emissions**

1. Members will dispose of waste substances in compliance with Applicable Law. Where Applicable Law does not exist, prevailing international standards will be adopted.

2. Members will take steps to reduce the quantity of waste produced from their operations through the principles of reduce, recover, re-use and recycle. All waste will be responsibly managed and the waste disposal decision making process will take into account environmental considerations as well as cost considerations.

3. Members will seek to decrease emissions to air, water and land relative to production output.

4. Members with Mining Facilities will:

a. Design, construct, maintain and monitor tailings facilities and waste rock facilities to ensure structural stability, and protect the surrounding environment and local communities.

b. Not use riverine tailings disposal at new Facilities. Any Mining Facilities that currently use riverine tailings disposal cannot be included in the Member's RJC Certification. These Facilities will be excluded from the Certification, but all other relevant COP provisions apply.

c. Not use submarine tailings disposal for land-based Mining Facilities, unless:

- a thorough environmental and social analysis of alternatives was conducted which showed that submarine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility, and

- it can be scientifically demonstrated that a significant adverse effect on coastal resources does not result, and

- the tailings are released in seawater below the surface thermocline and euphotic zone.

d. Carry out physical and geochemical characterisations of mining wastes so as to identify and manage potential impacts arising from acid rock drainage and metal leaching.

#### **Questions**

116. Determine that waste (hazardous and general) is disposed of in accordance with the requirements of Applicable Law, and that there are systems for keeping abreast of regulations. Where Applicable Law does not exist, determine whether the Member has identified and adopted prevailing international standards relating to waste management and disposal.

117. Determine whether the business seeks to avoid, or where avoidance is not possible, minimises the use of materials and processes that generate wastes relative to production output (hazardous and/or general) by using the principles of:

— Reduce

— Recover

— Reuse

— Recycle.

118. Confirm that waste disposal decision-making processes consider environmental impacts and not just cost.

119. Determine that the business seeks to reduce emissions to air, water and land relative to production output.

120. Verify that when Members with Mining Facilities design, construct, monitor and maintain tailings facilities and waste rock facilities, this is done to ensure structural stability, and to protect the surrounding environment and local communities.

121. Verify that controls are monitored to ensure ongoing structural stability and protection of the environment and local communities

122. Verify that Members with Mining Facilities do not dispose tailings into rivers for any new Facilities.

*Mining Facilities that currently use riverine tailings disposal cannot be included in the Member's RJC Certification. These Facilities will be excluded from the Certification, but all other relevant COP provisions apply.*

123. Verify that Members with existing land based Mining Facilities do not practice submarine tailings disposal

unless:

A detailed assessment shows there are submarine tailings disposal is less risky and has lower environmental and social impacts than a land based tailings facility.

- Scientific studies demonstrate that there are no significant adverse effect on coastal resources, and
- tailings are released below the surface thermocline and euphotic zone.

124. Verify that Members with Mining Facilities have characterised mining waste to identify and manage the potential impacts for storage and or disposal of the waste. This include impacts from acid rock drainage and metal leaching.

### 3.4 Use of Energy and Natural Resources

1. Members will seek to ensure the efficiency of their business operations in terms of consumption of natural resources including, but not limited to, water and energy.

2. Where transportation of people, goods and materials is a significant business impact, Members will seek to identify and implement practices that reduce use of fossil fuels and associated greenhouse gas emissions from transportation.

#### Questions

125. Determine whether the business has identified and quantified the energy and natural resources (including but not limited to water) used, and set initiatives to manage their business so as to use these resources efficiently.

126. Determine how the Member has identified and implemented practices that reduce fossil fuel usage and greenhouse gas emissions from its business practices, including the transportation of people, goods and materials.

### 3.5 Biodiversity

1. Members with Mining Facilities will not explore or mine in World Heritage Sites and will ensure that their activities do not negatively impact directly on adjacent World Heritage Sites.

2. Members with Mining Facilities will respect legally designated protected areas by ensuring that:

- a. Members have a process to identify nearby legally designated protected areas.
- b. Members comply with any regulations, covenants or commitments attributed to these areas.
- c. Decisions to proceed with exploration, development, operation and closure activities take into account the presence of, and impact on, legally designated protected areas.

3. Members with Mining Facilities will identify Key Biodiversity Areas within their operating boundaries and implement action plans to deliver measurable biodiversity benefits commensurate with the level of biodiversity impacts.

4. Members with Mining Facilities will not undertake an activity that will, or is likely to, lead to the extinction of a species listed by the IUCN as threatened with extinction.

5. Land and disturbed or occupied by Mining Facilities shall be rehabilitated by adopting good practice techniques. The rehabilitation objective should be to establish a sustainable native ecosystem, or other post-mining land use developed through engagement with key stakeholders in the mine closure planning process. **4**

#### Questions

127. Verify that Members with Mining Facilities do not carry out exploration or mining activities in World Heritage Sites, nor have negative impacts on World Heritage Sites adjacent to exploration or mining activities.

*Note that this Provision does not apply retrospectively to Mining Facilities already in operation before World Heritage or protected area status is designated.*

128. Determine how Members with Mining Facilities identify and keep informed about nearby legally designated protected areas.

129. Verify that Members with Mining Facilities comply with Applicable Laws, covenants and other commitments given in relation to legally designated protected areas.

130. Determine how Members with Mining Facilities consider and assess the actual and potential impacts of exploration, development, operational and closure activities on legally designated protected areas.

131. Determine how Members with Mining Facilities identify key biodiversity and implement measures to mitigate impacts and deliver measurable, commensurable biodiversity benefits.

132. Determine how Members with Mining Facilities ensure exploration, development, operational or closure activities do not result in or present a risk to the extinction of a species listed by the IUCN Red List.

133. Verify that Members with Mining Facilities adopt recognised good rehabilitation practices.

134. Determine how Members with Mining Facilities establish post mining land use during mine closure planning. Verify that closure planning involves key stakeholders and consideration is given to establishing a sustainable native ecosystem once the mine operations cease.

## Management Practices

### 4.1 Legal Compliance

1. Members will be aware of and comply with Applicable Law.

#### **Questions**

135. Confirm that the business is aware of and complies with Applicable Law relating to its business conduct, human rights, social and environmental performance. Applicable Law includes but is not limited to:

Bribery and facilitation payments;

— Money laundering and finance of terrorism;

— Corruption, smuggling, embezzlement, fraud, racketeering, transfer pricing and tax evasion;

— Trading practices and consumer rights;

— Human rights;

— Child labour;

— Employment terms and conditions including occupational health & safety;

— Environmental management;

— Community and social impact;

— Consumer health safety and environmental product information;

— Competition laws.

#### **4.2 Policy**

1. Members must adopt a policy that is endorsed by senior management, supports achievement of this Code of Practices and make the policy publicly available.

#### **Questions**

136. Confirm that the business has developed a Policy suitable for the nature, scale and impacts of its business practices that supports the achievement of the Code of Practices.

137. Confirm that this Policy is made available to the public.

#### **4.3 Business Partners – Contractors, Customers, Suppliers and Partners**

1. Members will consider Risks related to business ethics, human rights, social and environmental business practices of significant Business Partners in the Gold and Diamond Jewellery supply chain, which have the potential to impact the Members' own practices arising from such business relationships. Based on this Risk Assessment, Members will use their best endeavours, commensurate with their ability to influence, to promote responsible business practices among their Business Partners.

2. Contractors working on Member's Facilities and Visitors to these Facilities will be required to comply with the Member's management and operating systems relevant to the Code of Practices.

#### **Questions**

138. Verify that the Member has identified those Business Partners that have the potential to constitute a significant risk to the Members.

139. Determine whether the Member has conducted a risk assessment to understand the risks associated with these significant Business Partners.

140. Determine how the business encourages Business Partners to establish and maintain practices consistent with the Code of Practices.

141. Verify that relevant Business Partners (Contractors) working at the Facility, and visitors to the Facility, are aware of and follow the business' management policies, procedures and systems established to meet the Code of Practices that relate to the Member's certification scope.

#### **4.4 Impact Assessment**

1. Members with Mining Facilities will engage with affected communities and stakeholders to complete an environmental and social impact assessment, and associated environmental and social management plans, for exploration and new Mining Facilities or significant changes to operations at existing Facilities. Social impact assessments and management plans should include assessment of human rights, gender and conflict.

#### **Questions**

142. Determine how Members with Mining Facilities consult and engage communities and stakeholders affected by exploration activities, new Mining Facilities or significant changes to operations at existing Facilities. Ensure that the scope of social impact assessments include an assessment of human rights, gender and conflict.

*This Provision does not apply retrospectively to impact assessments for existing Facilities formally commenced prior to 2010.*

#### **4.5 Mine Closure Planning**

1. Members with Mining Facilities will prepare and regularly review a mine closure plan in relation to each Mining Facility, and ensure that adequate resources, including financial resources, are available to meet closure and rehabilitation requirements. New Facilities require a closure plan from start-up and existing Facilities need to put in place a comprehensive plan as early as possible.

2. Members with Mining Facilities will engage regularly with local stakeholders in relation to each Mining Facility, including Indigenous Peoples, communities, ASM, employees and regulators, regarding mine closure and rehabilitation plans.

**Questions**

143. Verify that Members with Mining Facilities including new and proposed Mining Facilities, develop and maintain a closure plan for each Facility. Ensure that each plan includes defined objectives for closure.

144. Confirm that the plan includes the capacity and resources to achieve the closure objectives.

145. Verify that Members with Mining Facilities engage regularly with local stakeholders relating to each Facility, regarding mine closure and rehabilitation plans and workers. Stakeholders include communities, including ASM, Indigenous Peoples and workers, as appropriate.

**4.6 Sustainability Reporting**

1. Members with Mining Facilities will report annually on their sustainability performance using the Global Reporting Initiative (GRI) Guidelines and GRI Mining and Metals Sector Supplement. The reports must have external assurance as defined by the GRI.

**Questions**

146. Verify that Members with Mining Facilities annually prepare and publish a sustainability report of the mines' performance, using the Global Reporting Initiative (GRI) Guidelines and GRI Mining and Metals Sector Supplement. Confirm that the company publishes an external assurance statement as defined under GRI.

# Appendix B – International Finance Corporation’s Performance Standards on Social and Environmental Sustainability

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol\\_PerformanceStandards2006\\_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

## Performance Standard 1

### Social and Environmental Assessment and Management Systems

1. Performance Standard 1 underscores the importance of managing social and environmental performance throughout the life of a project (any business activity that is subject to assessment and management). An effective social and environmental management system is a dynamic, continuous process initiated by management and involving communication between the client, its workers, and the local communities directly affected by the project (the affected communities). Drawing on the elements of the established business management process of “plan, implement, check, and act,” the system entails the thorough assessment of potential social and environmental impacts and risks from the early stages of project development, and provides order and consistency for mitigating and managing these on an ongoing basis. A good management system appropriate to the size and nature of a project promotes sound and sustainable social and environmental performance, and can lead to improved financial, social and environmental project outcomes.

- To identify and assess social and environment impacts, both adverse and beneficial, in the project’s area of influence
- To avoid, or where avoidance is not possible, minimize, mitigate, or compensate for adverse impacts on workers, affected communities, and the environment
- To ensure that affected communities are appropriately engaged on issues that could potentially affect them
- To promote improved social and environment performance of companies through the effective use of management systems

2. This Performance Standard applies to projects with social or environmental risks and impacts that should be managed, in the early stages of project development, and on an ongoing basis.

#### Social and Environmental Management System

3. The client will establish and maintain a Social and Environmental Management System appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks and impacts. The Management System will incorporate the following elements: (i) Social and Environmental Assessment; (ii) management program; (iii) organizational capacity; (iv) training; (v) community engagement; (vi) monitoring; and (vii) reporting.

#### Social and Environmental Assessment

4. The client will conduct a process of Social and Environmental Assessment that will consider in an integrated manner the potential social and environmental (including labor, health, and safety) risks and impacts of the project. The Assessment process will be based on current information, including an accurate project description, and appropriate social and environmental baseline data. The Assessment will consider all relevant social and environmental risks and impacts of the project, including the issues identified in Performance Standards 2 through 8, and those who will be affected by such risks and impacts. Applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law, will also be taken into account.

5. Risks and impacts will be analyzed in the context of the project’s area of influence. This area of influence encompasses, as appropriate: (i) the primary project site(s) and related facilities that the client (including its contractors) develops or controls, such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps; (ii) associated facilities that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project; (iii) areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the Social and Environmental Assessment is undertaken; and (iv)

areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.

6. Risks and impacts will also be analyzed for the key stages of the project cycle, including preconstruction, construction, operations, and decommissioning or closure. Where relevant, the

Assessment will also consider the role and capacity of third parties (such as local and national governments, contractors and suppliers), to the extent that they pose a risk to the project, recognizing that the client should address these risks and impacts commensurate to the client's control and influence over the third party actions. The impacts associated with supply chains will be considered where the resource utilized by the project is ecologically sensitive, or in cases where low labor cost is a factor in the competitiveness of the item supplied. The Assessment will also consider potential transboundary effects, such as pollution of air, or use or pollution of international waterways, as well as global impacts, such as the emission of greenhouse gasses.

7. The Assessment will be an adequate, accurate, and objective evaluation and presentation of the issues, prepared by qualified and experienced persons. In projects with significant adverse impacts or where technically complex issues are involved, clients may be required to retain external experts to assist in the Assessment process.

8. Depending on the type of project and the nature and magnitude of its risks and impacts, the Assessment may comprise a full-scale social and environmental impact assessment, a limited or focused environmental or social assessment, or straightforward application of environmental siting, pollution standards, design criteria, or construction standards. When the project involves existing business activities, social and/or environmental audits may need to be performed to determine any areas of concern. The types of issues, risks and impacts to be assessed, and the scope of the community engagement (see paragraphs 19 through 23 below) can also vary considerably, depending on the nature of the project, and its size, location, and stage of development.

9. Projects with potential significant adverse impacts that are diverse, irreversible, or unprecedented will have comprehensive social and environmental impact assessments. This assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed. In exceptional circumstances, a regional, sectoral or strategic assessment may be required.

10. Narrower scopes of Assessments may be conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

11. Projects with minimal or no adverse impacts will not be subject to further assessment beyond their identification as such.

12. As part of the Assessment, the client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status.<sup>2</sup> Where groups are identified as disadvantaged or vulnerable, the client will propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.

### **Management Program**

13. Taking into account the relevant findings of the Social and Environmental Assessment and the result of consultation with affected communities, the client will establish and manage a program of mitigation and performance improvement measures and actions that address the identified social and environmental risks and impacts (the management program).

14. Management programs consist of a combination of operational policies, procedures and practices. The program may apply broadly across the client's organization, or to specific sites, facilities, or activities. The measures and actions to address identified impacts and risks will favor the avoidance and prevention of impacts over minimization, mitigation, or compensation, wherever technically and financially feasible. Where risks and impacts cannot be avoided or prevented, mitigation measures and actions will be identified so that the project operates in compliance with applicable laws and regulations, and meets the requirements of Performance Standards 1 through 8 (see paragraph 16 below). The level of detail and complexity of this program and the priority of the identified measures and actions will be commensurate with the project's risks and impacts.

15. The program will define desired outcomes as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods, and with estimates of the resources and responsibilities for implementation. Recognizing the dynamic nature of the project development and implementation process, the program will be responsive to changes in project circumstances, unforeseen events, and the results of monitoring (see paragraph 24 below).

### *Action Plan*

16. Where the client identifies specific mitigation measures and actions necessary for the project to comply with applicable laws and regulations and to meet the requirements of Performance Standards 1 through 8, the client will prepare an Action Plan. These measures and actions will reflect the outcomes of consultation on social and environmental risks and adverse impacts and the proposed measures and actions to address these, consistent with the requirements under paragraph 21. The Action Plan may range from a brief description of routine mitigation measures to a series of specific plans.<sup>3</sup> The Action Plan will: (i) describe the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken; (ii) prioritize these actions; (iii) include the time-line for their implementation; (iv) be disclosed to the affected communities (see paragraph 26); and (v) describe the schedule and mechanism for external reporting on the client's implementation of the Action Plan.

### **Organizational Capacity**

17. The client will establish, maintain, and strengthen as necessary an organizational structure that defines roles, responsibilities, and authority to implement the management program, including the Action Plan. Specific personnel, including management representative(s), with clear lines of responsibility and authority should be designated. Key social and environmental responsibilities should be well defined and communicated to the relevant personnel and to the rest of the organization. Sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous social and environmental performance.

### **Training**

18. The client will train employees and contractors with direct responsibility for activities relevant to the project's social and environmental performance so that they have the knowledge and skills necessary to perform their work, including current knowledge of the host country's regulatory requirements and the applicable requirements of Performance Standards 1 through 8. Training will also address the specific measures and actions required under the management program, including the Action Plan, and the methods required to perform the action items in a competent and efficient manner.

### **Community Engagement**

19. Community engagement is an on-going process involving the client's disclosure of information. When local communities may be affected by risks or adverse impacts from a project, the engagement process will include consultation with them. The purpose of community engagement is to build and maintain over time a constructive relationship with these communities. The nature and frequency of community engagement will reflect the project's risks to and adverse impacts on the affected communities. Community engagement will be free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information.

### *Disclosure*

20. Disclosure of relevant project information helps affected communities understand the risks, impacts and opportunities of the project. Where the client has undertaken a process of Social and Environmental Assessment, the client will publicly disclose the Assessment document. If communities may be affected by risks or adverse impacts from the project, the client will provide such communities with access to information on the purpose, nature and scale of the project, the duration of proposed project activities, and any risks to and potential impacts on such communities. For projects with adverse social or environmental impacts, disclosure should occur early in the Social and Environmental Assessment process and in any event before the project construction commences, and on an ongoing basis (see paragraph 26 below).

### *Consultation*

21. If affected communities may be subject to risks or adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them. Effective consultation: (i) should be based on the prior disclosure of relevant and adequate information, including draft documents and plans; (ii) should begin early in the Social and Environmental Assessment process; (iii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iv) will be carried out on an ongoing basis as risks and impacts arise. The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. The client will tailor its consultation process to the language preferences of the affected communities, their decision-making

process, and the needs of disadvantaged or vulnerable groups.

22. For projects with significant adverse impacts on affected communities, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation. Informed participation involves organized and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected communities on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The client will document the process, in particular the measures taken to avoid or minimize risks to and adverse impacts on the affected communities.

#### *Grievance Mechanism*

23. The client will respond to communities' concerns related to the project. If the client anticipates ongoing risks to or adverse impacts on affected communities, the client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution. The mechanism should not impede access to judicial or administrative remedies. The client will inform the affected communities about the mechanism in the course of its community engagement process.

#### **Monitoring**

24. As an element of its Management System, the client will establish procedures to monitor and measure the effectiveness of the management program. In addition to recording information to track performance and establishing relevant operational controls, the client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. For projects with significant impacts that are diverse, irreversible, or unprecedented, the client will retain qualified and experienced external experts to verify its monitoring information. The extent of monitoring should be commensurate with the project's risks and impacts and with the project's compliance requirements. Monitoring should be adjusted according to performance experience and feedback. The client will document monitoring results, and identify and reflect the necessary corrective and preventive actions in the amended management program. The client will implement these corrective and preventive actions, and follow up on these actions to ensure their effectiveness.

#### **Reporting**

##### *Internal Reporting*

25. Senior management in the client organization will receive periodic assessments of the effectiveness of the management program, based on systematic data collection and analysis. The scope and frequency of such reporting will depend upon the nature and scope of the activities identified and undertaken in accordance with the client's management program and other applicable project requirements.

##### *External Reporting on Action Plans*

26. The client will disclose the Action Plan to the affected communities. In addition, the client will provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities. If the management program results in material changes in, or additions to, the mitigation measures or actions described in the Action Plan on issues of concern to the affected communities, the updated mitigation measures or actions will also be disclosed. These reports will be in a format accessible to the affected communities. The frequency of these reports will be proportionate to the concerns of affected communities but not less than annually.

## **Performance Standard 2 Labor and Working Conditions**

1. Performance Standard 2 recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers. For any business, the workforce is a valuable asset, and a sound worker-management relationship is a key ingredient to the sustainability of the enterprise. Failure to establish and foster a sound worker management relationship can undermine worker commitment and retention, and can jeopardize a project. Conversely, through a constructive worker-management relationship, and by treating the workers fairly and providing them with safe and healthy working conditions, clients may create

tangible benefits, such as enhancement of the efficiency and productivity of their operations.

2. The requirements set out in this Performance Standard have been in part guided by a number of international conventions negotiated through the International Labour Organization (ILO) and the United Nations (UN) .1

- To establish, maintain and improve the worker-management relationship
- To promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws
- To protect the workforce by addressing child labor and forced labor
- To promote safe and healthy working conditions, and to protect and promote the health of workers

3. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

4. Throughout this Performance Standard, the term "workers" is used to refer to employees of the client, as well as to certain types of non-employee workers described in paragraph 17. The application of this Performance Standard will vary depending on the type of workers, as follows:

- **Employees:** All the requirements of this Performance Standard, except for the requirements under paragraphs 17 and 18, apply

- **Non-Employee Workers:** The requirements of paragraph 17 apply

5. Supply chain issues are addressed in paragraph 18.

## **Working Conditions and Management of Worker Relationship**

### *Human Resources Policy*

6. The client will adopt a human resources policy appropriate to its size and workforce that sets out its approach to managing employees consistent with the requirements of this Performance Standard. Under the policy, the client will provide employees with information regarding their rights under national labor and employment law, including their rights related to wages and benefits. This policy will be clear and understandable to employees and will be explained or made accessible to each employee upon taking employment.

### *Working Relationship*

7. The client will document and communicate to all employees and workers directly contracted by the client their working conditions and terms of employment, including their entitlement to wages and any benefits.

### *Working Conditions and Terms of Employment*

8. Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment (such as wages and benefits, hours of work, overtime arrangements and overtime compensation, and leave for illness, maternity, vacation or holiday) the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.

### *Workers' Organizations*

9. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the client will comply with national law. Where national law substantially restricts workers' organizations, the client will enable alternative means for workers to express their grievances and protect their rights regarding working conditions and terms of employment.

10. In either case described in paragraph 9, and where national law is silent, the client will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively. Clients will engage with such worker representatives. Worker organizations are expected to fairly represent the workers in the workforce.

### *Non-Discrimination and Equal Opportunity*

11. The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the

employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for nondiscrimination in employment, the client will comply with national law. When national laws are silent on non-discrimination in employment, the client will meet this Performance Standard. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job will not be deemed discrimination.

#### *Retrenchment*

12. The client will develop a plan to mitigate the adverse impacts of retrenchment on employees, if it anticipates the elimination of a significant number of jobs or a layoff of a significant number of employees. The plan will be based on the principle of non-discrimination and will reflect the client's consultation with employees, their organizations and, where appropriate, the government.

#### *Grievance Mechanism*

13. The client will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns. The client will inform the workers of the grievance mechanism at the time of hire, and make it easily accessible to them. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution. The mechanism should not impede access to other judicial or administrative remedies that might be available under law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.

### **Protecting the Work Force**

#### *Child Labor*

14. The client will not employ children in a manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for the employment of minors, the client will follow those laws applicable to the client. Children below the age of 18 years will not be employed in dangerous work.

#### *Forced Labor*

15. The client will not employ forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

### **Occupational Health and Safety**

16. The client will provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client's work areas, including physical, chemical, biological, and radiological hazards. The client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, so far as reasonably practicable, the causes of hazards. In a manner consistent with good international industry practice, the client will address areas, including: the identification of potential hazards to workers, particularly those that may be life-threatening; provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; training of workers; documentation and reporting of occupational accidents, diseases, and incidents; and emergency prevention, preparedness and response arrangements.

### **Non-Employee Workers**

17. For purpose of this Performance Standard, "non-employee workers" refers to workers who are: (i) directly contracted by the client, or contracted through contractors or other intermediaries; and (ii) performing work directly related to core functions essential to the client's products or services for a substantial duration. When the client contracts non-employee workers directly, the client will use commercially reasonable efforts to apply the requirements of this Performance Standard, except for paragraphs 6, 12, and 18. With respect to contractors or other intermediaries procuring nonemployee workers, the client will use commercially reasonable efforts to: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that these contractors or intermediaries apply the requirements of this Performance Standard, except for paragraphs 6, 12, and 13.

### **Supply Chain**

18. The adverse impacts associated with supply chains will be considered where low labor cost is a

factor in the competitiveness of the item supplied. The client will inquire about and address child labor and forced labor in its supply chain, consistent with paragraphs 14 and 15 above.

### **Performance Standard 3 Pollution Prevention and Abatement**

1. Performance Standard 3 recognizes that increased industrial activity and urbanization often generate increased levels of pollution to air, water, and land that may threaten people and the environment at the local, regional, and global level.<sup>1</sup> On the other hand, along with international trade, pollution prevention and control technologies and practices have become more accessible and achievable in virtually all parts of the world. This Performance Standard outlines a project approach to pollution prevention and abatement in line with these internationally disseminated technologies and practices. In addition, this Performance Standard promotes the private sector's ability to integrate such technologies and practices as far as their use is technically and financially feasible and cost-effective in the context of a project that relies on commercially available skills and resources.

- To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities
- To promote the reduction of emissions that contribute to climate change

2. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

#### **General Requirements**

3. During the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider ambient conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective.<sup>2</sup> The project-specific pollution prevention and control techniques applied during the project life-cycle will be tailored to the hazards and risks associated with project emissions and consistent with good international industry practice, as reflected in various internationally recognized sources, including IFC's Environmental, Health and Safety Guidelines (the EHS Guidelines).

#### *Pollution Prevention, Resource Conservation and Energy Efficiency*

4. The client will avoid the release of pollutants or, when avoidance is not feasible, minimize or control the intensity or load of their release. This applies to the release of pollutants due to routine, non-routine or accidental circumstances with the potential for local, regional, and transboundary impacts.<sup>4</sup> In addition, the client should examine and incorporate in its operations resource conservation and energy efficiency measures, consistent with the principles of cleaner production.

#### *Wastes*

5. The client will avoid or minimize the generation of hazardous and non-hazardous waste materials as far as practicable. Where waste generation cannot be avoided but has been minimized, the client will recover and reuse waste; where waste can not be recovered or reused, the client will treat, destroy, and dispose of it in an environmentally sound manner. If the generated waste is considered hazardous, the client will explore commercially reasonable alternatives for its environmentally sound disposal considering the limitations applicable to its transboundary movement.<sup>6</sup> When waste disposal is conducted by third parties, the client will use contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies.

#### *Hazardous Materials*

6. The client will avoid or, when avoidance is not feasible, minimize or control the release of hazardous materials resulting from their production, transportation, handling, storage and use for project activities. The client will avoid the manufacture, trade, and use of chemicals and hazardous materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone

layer, and consider the use of less hazardous substitutes for such chemicals and materials.

#### *Emergency Preparedness and Response*

7. The client will be prepared to respond to process upset, accidental, and emergency situations in a manner appropriate to the operational risks and the need to prevent their potential negative consequences. This preparation will include a plan that addresses the training, resources, responsibilities, communication, procedures, and other aspects required to effectively respond to emergencies associated with project hazards. Additional requirements on emergency preparedness and response are found in paragraph 12 of Performance Standard 4.

#### *Technical Guidance*

8. The client will refer to the current version of the EHS Guidelines when evaluating and selecting pollution prevention and control techniques for the project. These Guidelines contain the performance levels and measures that are normally acceptable and applicable to projects. When host country regulations differ from the levels and measures presented in the EHS Guidelines, clients will achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, the client will provide full and detailed justification for any proposed alternatives. This justification will demonstrate that the choice for any alternate performance levels is consistent with the overall requirements of this Performance Standard.

#### **Ambient Considerations**

9. To address adverse project impacts on existing ambient conditions, the client will: (i) consider a number of factors, including the finite assimilative capacity<sup>9</sup> of the environment, existing and future land use, existing ambient conditions, the project's proximity to ecologically sensitive or protected areas, and the potential for cumulative impacts with uncertain and irreversible consequences; and (ii) promote strategies that avoid or, where avoidance is not feasible, minimize or reduce the release of pollutants, including strategies that contribute to the improvement of ambient conditions when the project has the potential to constitute a significant source of emissions in an already degraded area. These strategies include, but are not limited to, evaluation of project location alternatives and emissions offsets.

#### **Greenhouse Gas Emissions**

10. The client will promote the reduction of project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts.

11. During the development or operation of projects that are expected to or currently produce significant quantities of GHGs, the client will quantify direct emissions from the facilities owned or controlled within the physical project boundary and indirect emissions associated with the off-site production of power used by the project. Quantification and monitoring of GHG emissions will be conducted annually in accordance with internationally recognized methodologies.<sup>11</sup> In addition, the client will evaluate technically and financially feasible and cost-effective options to reduce or offset project-related GHG emissions during the design and operation of the project. These options may include, but are not limited to, carbon financing, energy efficiency improvement, the use of renewable energy sources, alterations of project design, emissions offsets, and the adoption of other mitigation measures such as the reduction of fugitive emissions and the reduction of gas flaring.

#### **Pesticide Use and Management**

12. The client will formulate and implement an integrated pest management (IPM) and/or integrated vector management (IVM) approach for pest management activities. The client's IPM and IVM program will entail coordinated use of pest and environmental information along with available pest control methods, including cultural practices, biological, genetic and, as a last resort, chemical means to prevent unacceptable levels of pest damage.

13. When pest management activities include the use of pesticides, the client will select pesticides that are low in human toxicity, known to be effective against the target species, and have minimal effects on non-target species and the environment. When the client selects pesticides, the selection will be based on whether the pesticides are packaged in safe containers, are clearly labeled for safe and proper use, and have been manufactured by an entity currently licensed by relevant regulatory agencies.

14. The client will design its pesticide application regime to minimize damage to natural enemies and prevent the development of resistance in pests. In addition, pesticides will be handled, stored, applied, and disposed of in accordance with the Food and Agriculture Organization's International Code of Conduct on the Distribution and Use of Pesticides or other good international industry practice.

15. The client will not use products that fall in World Health Organization Recommended Classification of Pesticides by Hazard Classes Ia (extremely hazardous) and Ib (highly hazardous); or Class II (moderately hazardous), if the project host country lacks restrictions on distribution and

use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply, and dispose of these products properly.

## **Performance Standard 4**

### **Community Health, Safety and Security**

1. Performance Standard 4 recognizes that project activities, equipment, and infrastructure often bring benefits to communities including employment, services, and opportunities for economic development. However, projects can also increase the potential for community exposure to risks and impacts arising from equipment accidents, structural failures, and releases of hazardous materials. Communities may also be affected by impacts on their natural resources, exposure to diseases, and the use of security personnel. While acknowledging the public authorities' role in promoting the health, safety and security of the public, this Performance Standard addresses the client's responsibility to avoid or minimize the risks and impacts to community health, safety and security that may arise from project activities. The level of risks and impacts described in this Performance Standard may be greater in projects located in conflict and post-conflict areas.

- To avoid or minimize risks to and impacts on the health and safety of the local community during the project life cycle from both routine and non-routine circumstances
- To ensure that the safeguarding of personnel and property is carried out in a legitimate manner that avoids or minimizes risks to the community's safety and security

2. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

3. This Performance Standard addresses potential risks and impacts to the affected community from project activities. Occupational health and safety standards are found in paragraph 16 of Performance Standard 2, and environmental standards to prevent impacts on human health and the environment due to pollution are found in Performance Standard 3.

### **Community Health and Safety Requirements**

#### *General Requirements*

4. The client will evaluate the risks and impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures to address them in a manner commensurate with the identified risks and impacts. These measures will favor the prevention or avoidance of risks and impacts over minimization and reduction.

5. Where the project poses risks to or adverse impacts on the health and safety of affected communities, the client will disclose the Action Plan and any other relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and impacts, and will engage the affected communities and agencies on an ongoing basis consistent with the requirements of Performance Standard 1.

#### *Infrastructure and Equipment Safety*

6. The client will design, construct, and operate and decommission the structural elements or components of the project in accordance with good international industry practice, and will give particular consideration to potential exposure to natural hazards, especially where the structural elements are accessible to members of the affected community or where their failure could result in injury to the community. Structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals. When structural elements or components, such as dams, tailings dams, or ash ponds, are situated in high-risk locations, and their failure or malfunction may threaten the safety of communities, the client will engage one or more qualified experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, and commissioning. For projects that operate moving equipment on public roads and other forms of

infrastructure, the client will seek to prevent the occurrence of incidents and accidents associated with the operation of such equipment.

#### *Hazardous Materials Safety*

7. The client will prevent or minimize the potential for community exposure to hazardous materials that may be released by the project. Where there is a potential for the community (including workers and their families) to be exposed to hazards, particularly those that may be life-threatening, the client will exercise special care to avoid or minimize their exposure by modifying, substituting or eliminating the condition or substance causing the hazards. Where hazardous materials are part of existing project infrastructure or components, the client will exercise special care when conducting decommissioning activities in order to prevent exposure to the community. In addition, the client will exercise commercially reasonable efforts to control the safety of deliveries of raw materials and of transportation and disposal of wastes, and will implement measures to avoid or control community exposure to pesticides in accordance with the requirements outlined in paragraphs 6 and 12 through 15 of Performance Standard 3.

#### *Environmental and Natural Resource Issues*

8. The client will avoid or minimize the exacerbation of impacts caused by natural hazards, such as landslides or floods that could arise from land use changes due to project activities.

9. The client will also avoid or minimize adverse impacts due to project activities on soil, water, and other natural resources in use by the affected communities.

#### *Community Exposure to Disease*

10. The client will prevent or minimize the potential for community exposure to water-borne, water based, water-related, vector-borne disease, and other communicable diseases that could result from project activities. Where specific diseases are endemic in communities in the project area of influence, the client is encouraged to explore opportunities during the project life cycle to improve environmental conditions that could help reduce their incidence.

11. The client will prevent or minimize transmission of communicable diseases that may be associated with the influx of temporary or permanent project labor.

#### *Emergency Preparedness and Response*

12. The client will assess the potential risks and impacts from project activities and inform affected communities of significant potential hazards in a culturally appropriate manner. The client will also assist and collaborate with the community and the local government agencies in their preparations to respond effectively to emergency situations, especially when their participation and collaboration are necessary to respond to such emergency situations. If local government agencies have little or no capacity to respond effectively, the client will play an active role in preparing for and responding to emergencies associated with the project. The client will document its emergency preparedness and response activities, resources, and responsibilities, and will disclose appropriate information in the Action Plan or other relevant document to affected communities and relevant government agencies.

#### **Security Personnel Requirements**

13. When the client directly retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks to those within and outside the project site posed by its security arrangements. In making such arrangements, the client will be guided by the principles of proportionality, good international practices in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel, and applicable law. The client will make reasonable inquiries to satisfy itself that those providing security are not implicated in past abuses, will train them adequately in the use of force (and where applicable, firearms) and appropriate conduct toward workers and the local community, and require them to act within the applicable law. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat. A grievance mechanism should allow the affected community to express concerns about the security arrangements and acts of security personnel.

14. If government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, communicate its intent that the security personnel act in a manner consistent with paragraph 13 above, and encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.

15. The client will investigate any credible allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities when appropriate.

## **Performance Standard 5**

### **Land Acquisition and Involuntary Resettlement**

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition.<sup>1</sup> Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain; and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided or at least minimized. However, where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities<sup>3</sup> should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities can result in cost-effective, efficient, and timely implementation of those activities, as well as innovative approaches to improving the livelihoods of those affected by resettlement.

3. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Clients are encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller's consent.

- To avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected
- To improve or at least restore the livelihoods and standards of living of displaced persons
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure<sup>4</sup> at resettlement sites

4. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

5. This Performance Standard applies to physical or economic displacement resulting from the following types of land transactions:

- Type I: Land rights for a private sector project acquired through expropriation or other compulsory procedures
- Type II: Land rights for a private sector project acquired through negotiated settlements with property owners or those with legal rights to land, including customary or traditional rights recognized or recognizable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiations<sup>5</sup>

Paragraph 18 and part of paragraph 20 below apply to displaced persons with no recognizable legal right or claim to the land they occupy.

6. This Performance Standard does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail). In the event of adverse economic, social, or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), such impacts will be avoided, minimized, mitigated or compensated for through the process of Social and Environmental Assessment under Performance Standard 1. If these impacts become significantly adverse at any

stage of the project, the client should consider applying the requirements of Performance Standard 5, even where no initial land acquisition was involved.

## **General Requirements**

### *Project Design*

7. The client will consider feasible alternative project designs to avoid or at least minimize physical or economic displacement, while balancing environmental, social, and financial costs and benefits.

### *Compensation and Benefits for Displaced Persons*

8. When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods, as provided in this Performance Standard. Standards for compensation will be transparent and consistent within the project. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer land based compensation, where feasible. The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

### *Consultation*

9. Following disclosure of all relevant information, the client will consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement. Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard.

### *Grievance Mechanism*

10. The client will establish a grievance mechanism consistent with Performance Standard 1 to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.

### *Resettlement Planning and Implementation*

11. Where involuntary resettlement is unavoidable, the client will carry out a census with appropriate socio-economic baseline data to identify the persons who will be displaced by the project, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits. In the absence of host government procedures, the client will establish a cut-off date for eligibility. Information regarding the cut-off date will be well documented and disseminated throughout the project area.

12. In the case of Type I transactions (acquisition of land rights through the exercise of eminent domain) or Type II transactions (negotiated settlements) that involve the physical displacement of people, the client will develop a resettlement action plan or a resettlement framework based on a Social and Environmental Assessment that covers, at a minimum, the applicable requirements of this Performance Standard regardless of the number of people affected. The plan or framework will be designed to mitigate the negative impacts of displacement, identify development opportunities, and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the poor and the vulnerable (see Performance Standard 1, paragraph 12). The client will document all transactions to acquire land rights, as well as compensation measures and relocation activities. The client will also establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary. A resettlement will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives stated in the resettlement plan or framework as well as the objectives of this Performance Standard.

13. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement of people, the client will develop procedures to offer to the affected persons and communities compensation and other assistance that meet the objectives of this Performance Standard. The procedures will establish the entitlements of affected persons or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. The implementation of the procedures will be considered complete when affected persons or communities have received compensation and other assistance according to the requirements of this Performance Standard. In cases where affected persons reject compensation offers that meet the requirements of this Performance Standard and, as a result, expropriation or other legal procedures are initiated, the client will explore opportunities to collaborate with the responsible government agency, and if permitted by the agency, play an active role in the resettlement planning, implementation, and monitoring.

## **Displacement**

14. Displaced persons may be classified as persons: (i) who have formal legal rights to the land they occupy; (ii) who do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national laws<sup>8</sup>; or (iii) who have no recognizable legal right or claim to the land they occupy.<sup>9</sup> The census will establish the status of the displaced persons.

15. Land acquisition for the project may result in the physical displacement of people as well as their economic displacement. As a result, requirements for both physical displacement and economic displacement may apply.

### *Physical Displacement*

16. If people living in the project area must move to another location, the client will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.

17. In the case of physically displaced persons under paragraph 14 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, equivalent or better characteristics and advantages of location, or cash compensation at full replacement value where appropriate.<sup>10</sup>

18. In the case of physically displaced persons under paragraph 14 (iii), the client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction. Where these displaced persons own and occupy structures, the client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these people occupy the project area prior to the cut-off date for eligibility. Compensation in kind will be offered in lieu of cash compensation where feasible. Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.<sup>11</sup> The client is not required to compensate or assist those who encroach on the project area after the cut-off date.

19. Where communities of Indigenous Peoples are to be physically displaced from their communally held traditional or customary lands under use, the client will meet the applicable requirements of this Performance Standard, as well as those of Performance Standard 7 (in particular paragraph 14).

### *Economic Displacement*

20. If land acquisition for the project causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the client will meet the following requirements:

- Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost
- In cases where land acquisition affects commercial structures, compensate the affected business owner for the cost of re-establishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment
  - Provide replacement property (e.g., agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognized or recognizable under the national laws (see paragraph 14 (i) and (ii))
  - Compensate economically displaced persons who are without legally recognizable claims to land (see paragraph 14 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost. The client is not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date
  - Provide additional targeted assistance (e.g., credit facilities, training, or job opportunities) and opportunities to improve or at least restore their income-earning capacity, production levels, and standards of living to economically displaced persons whose livelihoods or income levels are adversely affected
  - Provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living

21. Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of project-related land acquisition, the client will meet the applicable requirements of this Performance Standard, as well as those of Performance Standard 7 (in particular paragraphs 12 and 13).

### **Private Sector Responsibilities under Government-Managed Resettlement**

22. Where land acquisition and resettlement are the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring, as described below in paragraphs 23 through 25.

23. In the case of Type I transactions (acquisition of land rights through expropriation or other legal procedures) involving physical or economic displacement, and Type II transactions (negotiated settlements) involving physical displacement, the client will prepare a plan (or a framework) that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 13, and requirements for Physical Displacement and Economic Displacement above). The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this Performance Standard; and (iii) the financial and implementation responsibilities of the government agency and/or the client.

24. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement, the client will identify and describe the procedures that the responsible government agency plans to use to compensate affected persons and communities. If these procedures do not meet the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 12, and requirements for Economic Displacement above), the client will develop its own procedures to supplement government action.

25. If permitted by the responsible government agency, the client will, in collaboration with such agency: (i) implement its plan or procedures established in accordance with paragraph 23 or 24 above; and (ii) monitor resettlement activity that is undertaken by the government agency until such activity has been completed.

## **Performance Standard 6 Biodiversity Conservation and Sustainable Natural Resource Management**

1. Performance Standard 6 recognizes that protecting and conserving biodiversity—the variety of life in all its forms, including genetic, species and ecosystem diversity—and its ability to change and evolve, is fundamental to sustainable development. The components of biodiversity, as defined in the Convention on Biological Diversity, include ecosystems and habitats, species and communities, and genes and genomes, all of which have social, economic, cultural and scientific importance. This Performance Standard reflects the objectives of the Convention on Biological Diversity to conserve biological diversity and promote use of renewable natural resources in a sustainable manner. This Performance Standard addresses how clients can avoid or mitigate threats to biodiversity arising from their operations as well as sustainably manage renewable natural resources.

- To protect and conserve biodiversity
- To promote the sustainable management and use of natural resources through the adoption of practices that integrate conservation needs and development priorities

2. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

3. Based on the Assessment of risks and impacts and the vulnerability of the biodiversity and the natural resources present, the requirements of this Performance Standard are applied to projects in all habitats, whether or not those habitats have been previously disturbed and whether or not they are legally protected.

### **Protection and Conservation of Biodiversity**

4. In order to avoid or minimize adverse impacts to biodiversity in the project's area of influence (see Performance Standard 1, paragraph 5), the client will assess the significance of project impacts

on all levels of biodiversity as an integral part of the Social and Environmental Assessment process. The Assessment will take into account the differing values attached to biodiversity by specific stakeholders, as well as identify impacts on ecosystem services. The Assessment will focus on the major threats to biodiversity, which include habitat destruction and invasive alien species. When requirements of paragraphs 9, 10, or 11 apply, the client will retain qualified and experienced external experts to assist in conducting the Assessment.

#### *Habitat*

5. Habitat destruction is recognized as the major threat to the maintenance of biodiversity. Habitats can be divided into natural habitats (which are land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions) and modified habitats (where there has been apparent alteration of the natural habitat, often with the introduction of alien species of plants and animals, such as agricultural areas). Both types of habitat can support important biodiversity at all levels, including endemic or threatened species.

#### *Modified Habitat*

6. In areas of modified habitat, the client will exercise care to minimize any conversion or degradation of such habitat, and will, depending on the nature and scale of the project, identify opportunities to enhance habitat and protect and conserve biodiversity as part of their operations.

#### *Natural Habitat*

7. In areas of natural habitat, the client will not significantly convert or degrade such habitat, unless the following conditions are met:

- There are no technically and financially feasible alternatives
- The overall benefits of the project outweigh the costs, including those to the environment and biodiversity
- Any conversion or degradation is appropriately mitigated

8. Mitigation measures will be designed to achieve no net loss of biodiversity where feasible, and may include a combination of actions, such as:

- Post-operation restoration of habitats
- Offset of losses through the creation of ecologically comparable area(s) that is managed for biodiversity<sup>2</sup>
- Compensation to direct users of biodiversity

#### *Critical Habitat*

9. Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity values<sup>3</sup>, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities.

10. In areas of critical habitat, the client will not implement any project activities unless the following requirements are met:

- There are no measurable adverse impacts on the ability of the critical habitat to support the established population of species described in paragraph 9 or the functions of the critical habitat described in paragraph 9

- There is no reduction in the population of any recognized critically endangered or endangered species
- Any lesser impacts are mitigated in accordance with paragraph 8

#### *Legally protected Areas*

11. In circumstances where a proposed project is located within a legally protected area, the client, in addition to the applicable requirements of paragraph 10 above, will meet the following requirements:

- Act in a manner consistent with defined protected area management plans
- Consult protected area sponsors and managers, local communities, and other key stakeholders on the proposed project
- Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area

#### *Invasive Alien Species*

12. Intentional or accidental introduction of alien, or non-native, species of flora and fauna into areas

where they are not normally found can be a significant threat to biodiversity, since some alien species can become invasive, spreading rapidly and out-competing native species.

13. The client will not intentionally introduce any new alien species (not currently established in the country or region of the project) unless this is carried out in accordance with the existing regulatory framework for such introduction, if such framework is present, or is subject to a risk assessment (as part of the client's Social and Environmental Assessment) to determine the potential for invasive behavior. The client will not deliberately introduce any alien species with a high risk of invasive behavior or any known invasive species, and will exercise diligence to prevent accidental or unintended introductions.

#### **Management and Use of Renewable Natural Resources**

14. The client will manage renewable natural resources in a sustainable manner.<sup>7</sup> Where possible, the client will demonstrate the sustainable management of the resources through an appropriate system of independent certification.<sup>8</sup>

15. In particular, forests and aquatic systems are principal providers of natural resources, and need to be managed as specified below.

#### *Natural and Plantation Forests*

16. Clients involved in natural forest harvesting or plantation development will not cause any conversion or degradation of critical habitat. Where feasible, the client will locate plantation projects on unforested land or land already converted (excluding land that is converted in anticipation of the project). In addition, the client will ensure that all natural forests and plantations over which they have management control are independently certified as meeting performance standards compatible with internationally accepted principles and criteria for sustainable forest management.<sup>9</sup> Where a pre-assessment determines that the operation does not yet meet the requirements of such an independent forest certification system, the client will develop and adhere to a time-bound, phased action plan for achieving such certification.

#### *Freshwater and Marine Systems*

17. Clients involved in the production and harvesting of fish populations or other aquatic species must demonstrate that their activities are being undertaken in a sustainable manner, through application of an internationally accepted system of independent certification, if available, or through appropriate studies carried out in conjunction with the Social and Environmental Assessment process.

## **Performance Standard 7 Indigenous Peoples**

1. Performance Standard 7 recognizes that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalized and vulnerable segments of the population. Their economic, social and legal status often limits their capacity to defend their interests in, and rights to, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. They are particularly vulnerable if their lands and resources are transformed, encroached upon by outsiders, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also be under threat. These characteristics expose Indigenous Peoples to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.

2. Private sector projects may create opportunities for Indigenous Peoples to participate in, and benefit from, project-related activities that may help them fulfill their aspiration for economic and social development. In addition, this Performance Standard recognizes that Indigenous Peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development.

- To ensure that the development process fosters full respect for the dignity, human rights, aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples
- To avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not feasible, to minimize, mitigate, or compensate for such impacts, and to provide opportunities for development benefits, in a culturally

appropriate manner

- To establish and maintain an ongoing relationship with the Indigenous Peoples affected by a project throughout the life of the project
- To foster good faith negotiation with and informed participation of Indigenous Peoples when projects are to be located on traditional or customary lands under use by the Indigenous Peoples
- To respect and preserve the culture, knowledge and practices of Indigenous Peoples

3. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

4. There is no universally accepted definition of "Indigenous Peoples". Indigenous Peoples may be referred to in different countries by such terms as "Indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups."

5. In this Performance Standard, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- An indigenous language, often different from the official language of the country or region

6. Ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this Performance Standard may require technical judgment.

## **General Requirements**

### *Avoidance of Adverse Impacts*

7. The client will identify through a process of Social and Environmental Assessment all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage<sup>1</sup>), and environmental impacts on them, and avoid adverse impacts whenever feasible.

8. When avoidance is not feasible, the client will minimize, mitigate or compensate for these impacts in a culturally appropriate manner. The client's proposed action will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan, or a broader community development plan with separate components for Indigenous Peoples consistent with the requirements of paragraph 9.2

### *Information Disclosure, Consultation and Informed Participation*

9. The client will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning and throughout the life of the project. In projects with adverse impacts on affected communities of Indigenous Peoples, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The process of community engagement will be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process will include the following steps:

- Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others)
- Be inclusive of both women and men and of various age groups in a culturally appropriate manner

- Provide sufficient time for Indigenous Peoples' collective decision-making processes
- Facilitate the Indigenous Peoples' expression of their views, concerns, and

proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation

- Ensure that the grievance mechanism established for the project, as described in Performance Standard 1, paragraph 23, is culturally appropriate and accessible for Indigenous Peoples

#### **Development Benefits**

10. The client will seek to identify, through the process of free, prior, and informed consultation with and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend. The client will document identified development benefits consistent with the requirements of paragraphs 8 and 9 above, and provide them in a timely and equitable manner.

#### **Special Requirements**

11. Because Indigenous Peoples may be particularly vulnerable to the project circumstances described below, the following requirements will also apply, in the circumstances indicated, in addition to the General Requirements above. When any of these Special Requirements apply, the client will retain qualified and experienced external experts to assist in conducting the Assessment.

##### *Impacts on Traditional or Customary Lands under Use*

12. Indigenous Peoples are often closely tied to their traditional or customary lands and natural resources on these lands. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented. Paragraphs 13 and 14 below specify the requirements that the client will follow when traditional or customary lands are under use in a manner described in this paragraph.

13. If the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use, and adverse impacts<sup>3</sup> can be expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples, the client will respect their use by taking the following steps:

- The client will document its efforts to avoid or at least minimize the size of land proposed for the project
  
- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any Indigenous Peoples' land claim<sup>4</sup>
- The affected communities of Indigenous Peoples will be informed of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use
- The client will offer affected communities of Indigenous Peoples at least compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible
- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation

##### *Relocation of Indigenous Peoples from Traditional or Customary Lands*

14. The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held<sup>5</sup> traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.

##### *Cultural Resources*

15. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Indigenous Peoples of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such

commercialization unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.

## **Performance Standard 8**

### **Cultural Heritage**

1. Performance Standard 8 recognizes the importance of cultural heritage for current and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage, this Performance Standard aims to protect irreplaceable cultural heritage and to guide clients on protecting cultural heritage in the course of their business operations. In addition, the requirements of this Performance Standard on a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity.

- To protect cultural heritage from the adverse impacts of project activities and support its preservation
- To promote the equitable sharing of benefits from the use of cultural heritage in business activities

2. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

3. For the purposes of this Performance Standard, cultural heritage refers to tangible forms of cultural heritage, such as tangible property and sites having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values, as well as unique natural environmental features that embody cultural values, such as sacred groves. However, for the purpose of paragraph 11 below, intangible forms of culture, such as cultural knowledge, innovations and practices of communities embodying traditional lifestyles, are also included. The requirements of this Performance Standard apply to cultural heritage regardless of whether or not it has been legally protected or previously disturbed.

### **Protection of Cultural Heritage in Project Design and Execution**

#### *Internationally Recognized Practices*

4. In addition to complying with relevant national law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage and other relevant international law, the client will protect and support cultural heritage by undertaking internationally recognized practices for the protection, field-based study, and documentation of cultural heritage. If the requirements of paragraphs 7, 8, 9, 10 or 11 apply, the client will retain qualified and experienced experts to assist in the Assessment.

#### *Chance Find Procedures*

5. The client is responsible for siting and designing a project to avoid significant damage to cultural heritage. When the proposed location of a project is in areas where cultural heritage is expected to be found, either during construction or operations, the client will implement chance find procedures established through the Social and Environmental Assessment. The client will not disturb any chance finds further until an Assessment by a competent specialist is made and actions consistent with the requirements of this Performance Standard are identified.

#### *Consultation*

6. Where a project may affect cultural heritage, the client will consult with affected communities within the host country who use, or have used within living memory, the cultural heritage for longstanding cultural purposes to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage. Consultation will also involve the relevant national or local regulatory agencies that are entrusted with the protection of cultural heritage.

#### *Removal of Cultural Heritage*

7. Most cultural heritage is best protected by preservation in its place, since removal is likely to result in irreparable damage or destruction of the cultural heritage. The client will not remove any cultural heritage, unless the following conditions are met:

- There are no technically or financially feasible alternatives to removal
- The overall benefits of the project outweigh the anticipated cultural heritage loss from removal
- Any removal of cultural heritage is conducted by the best available technique

#### *Critical Cultural Heritage*

8. Critical cultural heritage consists of (i) the internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes; and (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation.

9. The client will not significantly alter, damage, or remove any critical cultural heritage. In exceptional circumstances, where a project may significantly damage critical cultural heritage, and its damage or loss may endanger the cultural or economic survival of communities within the host country who use the cultural heritage for long-standing cultural purposes, the client will: (i) meet the requirements of Paragraph 6 above; and (ii) conduct a good faith negotiation with and document the informed participation of the affected communities and the successful outcome of the negotiation. In addition, any other impacts on critical cultural heritage must be appropriately mitigated with the informed participation of the affected communities.

10. Legally protected cultural heritage areas are important for the protection and conservation of cultural heritage, and additional measures are needed for any projects that would be permitted under the applicable national laws in these areas. In circumstances where a proposed project is located within a legally protected area or a legally defined buffer zone, the client, in addition to the requirements for critical cultural heritage cited above in Paragraph 9, will meet the following requirements:

- Comply with defined national or local cultural heritage regulations or the protected area management plans
- Consult the protected area sponsors and managers, local communities and other key stakeholders on the proposed project
- Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area

#### **Project's Use of Cultural Heritage**

11. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes, the client will inform these communities of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialization unless it: (i) enters into a good faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.