



# LME responsible sourcing: supplier red flags

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## Document purpose

This document provides guidance to producers of LME-listed brands (“Brands”) in interpreting the two supplier red flags described in the supplement on tin, tantalum and tungsten (“3T Supplement”) from the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“OECD Guidance”):

***RF 1*** *The company’s suppliers or other known upstream companies have shareholder or other interests in companies that supply minerals from or operate in one of the above-mentioned<sup>1</sup> red flag locations of mineral origin and transit*

***RF 2*** *The company’s suppliers’ or other known upstream companies are known to have sourced minerals from a red flag location of mineral origin and transit<sup>2</sup> in the last 12 months*

Brands can use this document to facilitate their interpretation of the supplier red flags, and consequently their choice of track to LME responsible sourcing compliance (e.g. Track A, Track B or Track C – as fully explicated in the LME Policy on Responsible Sourcing of LME-Listed Brands (“LME Responsible Sourcing Policy”). It should be noted, however, that these two red flags, along with the three location red flags, are part of the broader OECD Guidance and as such, this document does not provide a comprehensive guidance to the entirety of the OECD Guidance, or the LME’s responsible sourcing rules. Brands will need to comply with all the LME’s requirements as set out in the LME Responsible Sourcing Policy.

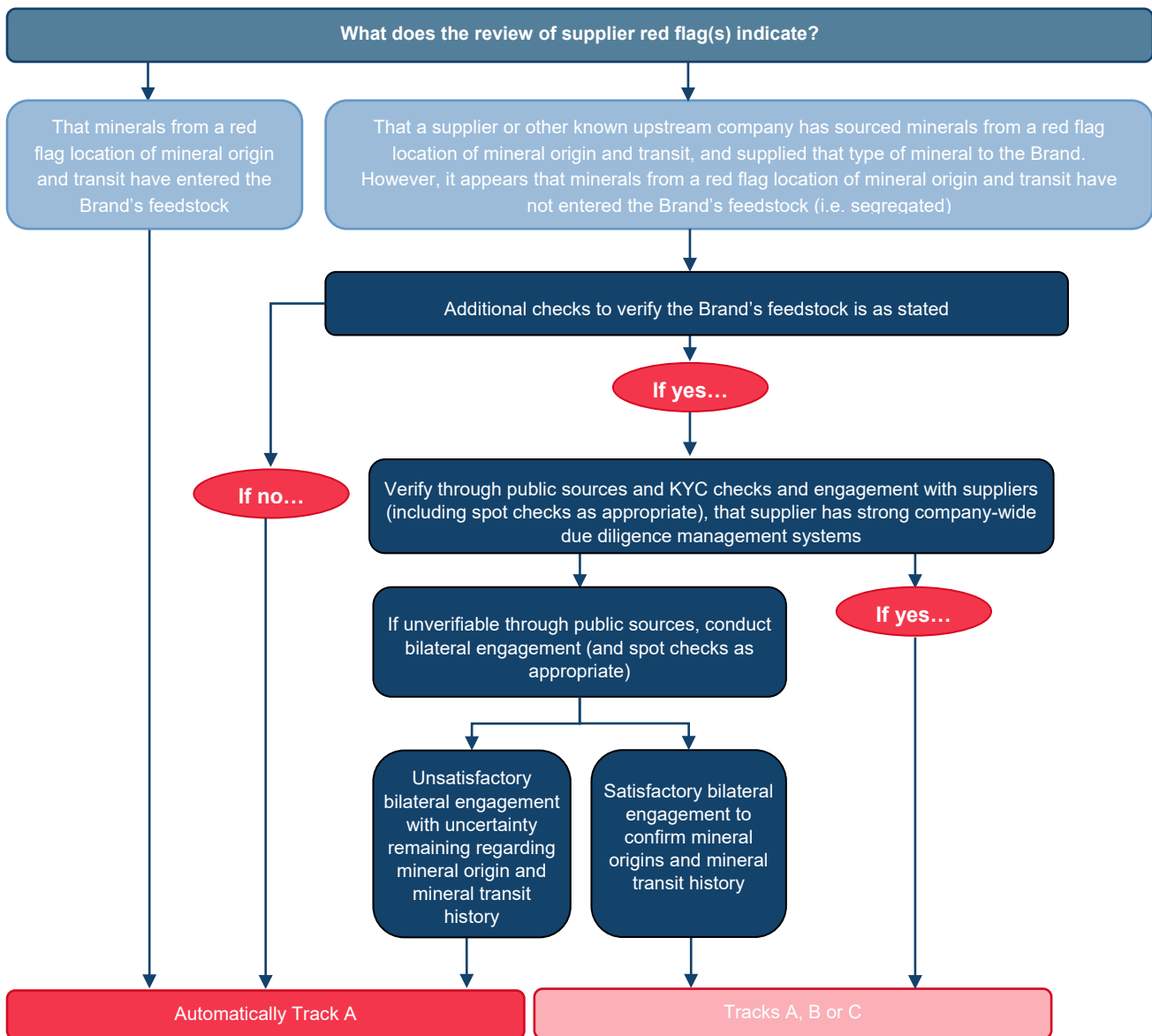
## Scope of the supplier red flags

The decision tree below addresses the minerals in scope for the supplier red flags, and should be read in conjunction with the glossary underneath which provides further supporting information. Although the LME believes that primary focus should be on the mineral in question (i.e. the direct supply chain of the mineral the Brand lists with the LME), that does not mean to say that the broader activities of the supplier are not of relevance, and due care should be taken in Know Your Customer (“KYC”) checks, as is set out in the glossary below.

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<sup>1</sup> This refers to the “red flag locations of mineral origin and transit” found on p33 in the OECD Guidance

<sup>2</sup> Where the term “red flag location of mineral origin and transit” is used, this should be taken to include all three location red flags found on p33 in the OECD Guidance



### Specific guidance for the first supplier red flag

Alongside mineral scope, the first red flag also addresses the issue of suppliers and other known upstream companies having shareholder or other interests<sup>3</sup> in companies that supply minerals from or operate in red flag locations of mineral origin and transport.

The LME's view is that companies in which suppliers and other upstream companies have an interest that have no relation to the supply of minerals (in particular, the mineral in question as outlined in the decision tree above) fall out of scope, and do not need to be disclosed. In this instance, the Brand would need to be comfortable that the relevant company does not supply minerals and that any concerns raised during initial KYC checks are investigated appropriately. If the relevant company does supply minerals, then the list of countries in scope would include the locations from which they supply minerals and in which they operate.

<sup>3</sup> Defined in the LME Red Flag Assessment template, as follows: "For the purposes of this analysis, 'shareholder interest' may be interpreted as a majority shareholder interest, and 'other interest' may be interpreted as a controlling interest achieved through a route other than a shareholding."

Although suppliers with whom brands are in a direct business relationship (including immediate suppliers) will be most in focus, upstream suppliers (i.e. suppliers of suppliers), should also be considered.

As an example, Company X could be supplying Brand A with feedstock, which it sources from a tier 1 (or immediate) supplier which operates a very high level of due diligence (Supplier A). Correspondingly, the chain of custody goes Supplier A → Company X → Brand A and there are no concerns. However, if Supplier A is itself sourcing from Supplier B who does not conduct any due diligence, then more extensive knowledge of the supply chain is needed, or there is a risk that Supplier B is supplying non-responsibly sourced metal into the supply chain.

In both cases, it is worth considering companies that set up different legal entities, despite effectively being the same company, in order to circumvent rules such as these. Brands could be sourcing from a legal entity that only sources from non-CAHRAs, but that same company (under a different legal entity name) also sources from CAHRAs. That does not mean Brands will necessarily raise a red flag, but Brands will need to undertake due diligence and appropriate KYC checks to ensure they are clear on the material being received, and the broader activity of the companies within their mineral supply chain.

Equally, Brands need to be conscious of companies that are headquartered or registered in one location, but operate in an alternative location. A Brand needs to be comfortable that the information they are supplied with (and in turn, submit for compliance purposes) is accurate and has been compiled in good faith i.e. that a supplier has not attempted to disguise areas of concern by using a different location (such as headquarters).

## Glossary<sup>4</sup> and other information

Term	Definition
Known upstream companies	<p>Below are the OECD definitions of “upstream / upstream companies” from the OECD Guidance:</p> <ul style="list-style-type: none"> <li>○ Defined in the 3T Supplement (p.32): <ul style="list-style-type: none"> <li>▪ <i>“For the purposes of this Supplement ‘upstream’ means the mineral supply chain from the mine to smelters/refiners. ‘Upstream companies’ include miners (artisanal and small-scale or large-scale producers)<sup>5</sup>, local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners [...]”</i></li> </ul> </li> <li>○ In the Gold supplement (p.70): <ul style="list-style-type: none"> <li>▪ <i>“‘Upstream supply chain’ means the gold supply chain from the mine to refiners. ‘Upstream companies’ include miners (artisanal and small-scale enterprises or medium and large-scale gold mining companies),<sup>6</sup> local gold traders or exporters from the country of gold origin, transporters, international gold traders of Mined/Recyclable Gold and refiners. Artisanal and small-scale gold producers such as individuals, informal working groups or communities are not expected included as upstream companies for the purposes of carrying out due diligence in line with this</i></li> </ul> </li> </ul>

<sup>4</sup> Explained terms are in order of appearance

<sup>5</sup> From 3T supplement: *“Upstream companies” includes artisanal or small-scale producing enterprises, rather than individuals or informal working groups of artisanal miners’.*

<sup>6</sup> From Gold supplement: *“For the avoidance of doubt, these guidelines include miners, processors and refiners which may be owned or otherwise controlled or directed by governments or other State entities.”*

	<p><i>Guidance, although they are encouraged to remain involved in due diligence efforts of their customers and formalise so they can carry out due diligence in the future”</i></p> <p>Known upstream companies include immediate suppliers and any known actors further upstream which are identifiable through general business dealings or public reports (or other publicly available information) to the extent necessary to enable a red flag review.</p> <p>Immediate supplier is the entity which has a contract with and supplies mineral or material to the smelter and is immediately before the smelter in the supply chain. This could include (but is not limited to):</p> <ul style="list-style-type: none"> <li>• Tier 1 suppliers in addition to other upstream companies including miners (artisanal and small-scale or large-scale producers)</li> <li>• Local traders or exporters from the country of mineral origin</li> <li>• International concentrate traders</li> <li>• Mineral re-processors</li> <li>• Smelters/refiners involved in the extraction, trade, handling, export, processing or refining of minerals that may have entered the company’s feedstock</li> </ul>
CAHRA	Conflict-Affected and High-Risk Area
Additional checks to verify the company’s feedstock is in fact is as stated	<p>The level of rigour applied to this check should be commensurate with the nature of the commodity and risk. Commodities that are more fungible, more frequently blended, or more easily laundered should be subject to a higher level of scrutiny and verification, although this red flag is primarily determined by knowledge and evaluation of the supplier.</p> <p>Please refer to Step 1 of the five-step framework in the OECD Guidance for further information on these checks</p>
Verify through public sources, Know Your Customer (“KYC”) checks and engagement with suppliers (including spot check if appropriate) that supplier has strong company-wide due diligence management systems	<p>Basic KYC checks are considered a necessity for any supplier.</p> <p>Brands should carry out at least a minimum level of due diligence on the supplier’s corporate-level, company-wide policies, management systems and practices and ensure strong engagement with the supplier (Step 1 from the OECD Guidance). Brands should seek credible evidence including but not limited to the supplier’s annual public report, ensure that the supplier carries out due diligence in line with the Guidance’s 5-step framework, in particular in relation to the mineral in question. This is to verify that any CAHRA with which the Brand’s operations or sourcing practices may be associated are identified, and any Annex II risks identified, and potentially mitigated.</p>

	<p>The aim of this step is to verify the trustworthiness of suppliers, particularly insofar as weak transparency or suspect representations on the sourcing of any material could call into question representations made in respect of another. This approach is focused on identifying serious allegations of misconduct among suppliers, and should also help Brands avoid sanctions violations.</p> <p>Utilising OECD Step 5 reporting can provide a way to meet this minimum requirement for corporate-level, company-wide due diligence on a company's supplier. Such reporting may be made as part of a single Step 5 report, or through other reporting frameworks as long they are publicly accessible and clearly identified e.g. a supplier's annual report. However, the existence of a Step 5 report alone is insufficient. Disclosures should include information on company management systems relevant to the due diligence process, publish the company assessment of risks, and describe the steps taken to manage risks.</p> <p>As part of the process of conducting due diligence on a supplier's corporate-level, company-wide due diligence, a Brand should, on a risk-based basis, also cross-check public disclosures of the supplier against other sources. For example, if a tier 1 supplier makes a complete Step 5 disclosure that appears to attest to strong due diligence throughout their operations, but public reporting or other information gleaned from general business dealings on a tier 3 supplier in the same supply chain contradicts such disclosures and/or provides information about a risk or adverse impact that has not been addressed in the tier 1 supplier's disclosures, this should lead to bilateral engagement in order to verify the allegations, including through spot checks as appropriate</p> <p>Brands should always conduct KYC checks on suppliers, including in relation to breaches of national and international laws and sanctions violations. The Financial Action Taskforce ("FATF") also has useful recommendations on this topic</p>
<p>If unverifiable through public sources, conduct bilateral engagement (and spot checks as appropriate)</p>	<p>Unsatisfactory disclosures from a supplier and/or information that conflicts with such disclosures should lead to bilateral engagement in order to better understand the supplier's sourcing and due diligence practices, and should include capacity building and measurement improvement standards in order to improve the quality and completeness of the supplier's disclosures as an integral part of the OECD 5-Step framework in the future</p>
<p>Satisfactory versus unsatisfactory results in verifying due diligence</p>	<p>What is considered to be a satisfactory level of verification on due diligence of suppliers or other known upstream companies is highly context-specific. For the purposes of the flowchart, an unsatisfactory outcome should be understood to mean that, on the basis of all information collected (through desk research, bilateral</p>

engagement, etc.) there is still a reasonable risk that material from a CAHRA has entered the Brand's feedstock