

ITSCI MEMBERSHIP PROGRAMME AGREEMENT SUMMARY



1, 2 and 3. GENERAL INFORMATION, PREAMBLE and DEFINITIONS

- Simply sets out background to the ITSCI Programme Agreement and explains the meaning of the terms used within the Agreement.

4. GENERAL INTRODUCTION TO ITSCI

- Notes that the International Tin Supply Chain Initiative (ITSCI) is a due diligence process designed to address conflict mineral concerns existing within the international supply chain, and is a Programme that includes traceability, risk assessment and audit requirements as recommended in the Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) due diligence guidelines. The Programme also intends to include any additional recommendations of the US SEC once known.

5. PURPOSE AND SCOPE OF THE MEMBERSHIP PROGRAMME

- Participation in the Programme allows upstream operators to demonstrate a commitment to the appropriate level of due diligence expected when trading in Conflict Minerals known, or suspected to come from, the Great Lakes Region. The Programme currently operates in the DRC and Rwanda.
- The Programme is concerned with cassiterite, columbotantalite, wolframite and any other tin, tantalum or tungsten-bearing minerals.
- Upstream operators may join as Full Members, while downstream companies may support the Programme by joining as Associate Members.
- Membership is not restricted to International Tin Association Ltd or Tantalum-Niobium International Study Center (T.I.C) members and does not confer any rights in those organisations.

6. ORGANISATIONAL STRUCTURE OF THE MEMBERSHIP PROGRAMME

Steering Committee

- The Steering Committee is responsible for overall direction of the Programme and is intended to have one representative from each of the tin, tantalum and tungsten industries (International Tin Association; T.I.C.; and a representative for wolframite, if available) and will work closely with relevant governments.
- The Steering Committee may also include competent person(s) drawn from internationally recognised independent expert bodies, individuals with suitable expertise, and significant non-industry donors.
- The Steering Committee will appoint organisations to carry out other essential roles within the Programme and will take decisions based on advice from the Risk Assessor, including admission, suspension or expulsion of Members, requiring improvements in working practices, and agreeing on mines to be included in the Programme.

Programme Operator(s)

- The Programme Operator(s) will be appointed by the Steering Committee and will be responsible for daily management and local implementation of the Programme, including the establishment of local stakeholder committees and monitoring developments in security and mining circumstances in the relevant country.

Risk Assessor

- The Risk Assessor will be appointed by the Steering Committee and will provide independent risk assessment advice on any potential links to conflict or serious human rights abuses impacting upon the Programme by studying all available information on Members and prevailing circumstances on the ground.
- The Risk Assessor will have an in-depth knowledge of the mining sector in the relevant country, and will work in close co-operation with the Programme Operator(s), local stakeholders and government representatives when making their assessments and recommendations. The Risk Assessor will regularly consult with the Advisory Panel.
- The Risk Assessor will use information relevant to the period beginning 1st April 2011, although historical information will be used as general background to any assessment.
- When providing advice or preparing reports, the Risk Assessor will take due regard of Confidential Business Information, competition law concerns, protection of witnesses and other security issues. The limits of confidentiality will also be discussed with the Advisory Panel.
- Programme Members may respond to reports and findings of the Risk Assessor if not in agreement.
- Any third party may approach the Risk Assessor if they wish to provide information of relevance to the Programme or about its Members.

Secretariat

- The Secretariat will administer and financially manage the Programme, and will assist with initial implementation, working closely with the relevant governments.

Auditors

- The Auditors will be appointed by the Steering Committee to independently verify that operators and Members are following Programme rules and carrying out their responsibilities correctly, as well as assessing the Programmes' performance in ensuring traceability of the minerals and the due diligence required by the international community.
- The Auditors will carry out documentary or site checks on those involved in the Programme.
- The Auditors will prepare audit reports which will be publicly available. When doing so, the Auditors will take due regard of Confidential Business Information, competition law concerns, protection of witnesses and other security issues and will discuss the limits of confidentiality with the Advisory Panel.
- Programme Members may respond to reports and findings of the Auditors if not in agreement.

Advisory Panel

- The Advisory Panel will be appointed by the Steering Committee and will consist of a range of civil society, industry or governmental or other stakeholders wishing to provide independent advice on the running of the Programme.
- Panel members have an advisory role only and will work mainly in co-operation with the Risk Assessor. Their observations must be based on information which is current, factual and correct, without any personal bias. Conflicts of interest or any connections to Members must be declared.
- Panel members will not gain financially from any decision made and will receive no remuneration.
- Any third party may approach the Advisory Panel if they wish to provide information of relevance to the Programme or about its Members.

The Programme Ombudsman

- The Programme Ombudsman will be appointed by the Secretariat if necessary in order to deal independently with appeals relating to disputes over membership eligibility or expulsion.
- The Ombudsman will practice neutrally and informally and act only if all other efforts to resolve any dispute have failed.
- The Steering Committee will implement any recommendations of the Programme Ombudsman.

7. MEMBERSHIP

- **Full Membership:** is open to any local or international trader or smelter, local mine company, local exporter, any 'upstream company' (as defined in the OECD Guidelines), and any companies associated with the upstream mineral trade such as mineral transport and mineral assay companies.
- **Associate Membership:** is open to users of the minerals, product manufacturers and 'downstream companies' (as defined in the OECD Guidelines), or the authorised auditors of such member companies. Other financial supporters of the Programme may be included as Associate Members.

Admission and Eligibility for Full Membership

- Full Members agree to: pay all membership fees and Programme levies due; adopt the OECD Annex II Model Supply Chain Policy and fulfil all obligations recommended by the OECD Guidelines; provide information to immediate downstream purchasers on any payments made to government etc; provide prompt and honest answers to any questions from operators of the Programme; act on required mitigation or improvements; and allow access to Auditors or other authorised validators of the Programme.
- The admission process for Full Members is as follows:
 - provisional membership is granted on signature of the Declaration of Accession and provision of all company documentation, along with agreement to pay the appropriate levy;
 - necessary checks will be completed by the Risk Assessor and a decision made by the Steering Committee within one (1) month of payment;
 - if successful, full membership will be granted on payment of the joining fee and annual membership fee
- Provision of documentation will not automatically guarantee admission. The Steering Committee will decide on admission based on advice from the Risk Assessor. The Steering Committee is not obliged to approve an application.
- Prospective local exporter members purchasing from local traders or miners who are not members of the Programme must provide information on those suppliers with whom they deal. Some artisanal miners or suppliers may not be in the Programme, nor have official operating licences; in such circumstances the Member who is purchasing from them must provide whatever similar information exists.
- A company who employs a director or executive manager who has been disqualified as a director in any country, is subject to UN sanctions or is confirmed as being involved, directly or indirectly, in the conflict and/or in human rights abuses, will not be permitted to join unless they can show that the disqualifications/sanctions have been lifted, or they commit to specific risk mitigation steps.
- Affiliates of Members are not covered by the Programme and must join in their own right.

Expulsion and Re-Admittance of a Full Member to the Programme

- The Risk Assessor will examine, in liaison with the Advisory Panel, information on infringements by any Members, and may request further explanation from the involved Member.
- Based on the findings of the risk assessment, the Steering Committee may decide to expel the Full Member or may put in place an improvement plan with a specified time period with which the Full Member must comply.
- Any verified risk of links with conflict or serious human rights abuses will be shared with all Members in order to alert them to such concerns.
- Fraudulent or criminal acts by a Full Member or one of its directors will result in immediate expulsion. Non-payment of fees or levies will also result in expulsion if not rectified within the notified period.
- The Steering Committee (on the advice of the Risk Assessor and in line with prevailing laws or guidance) will decide on whether the expulsion should be indefinite; for a set period of time, or to be effective until a violation has been rectified.
- If an acceptable outcome through discussion cannot be reached, final recourse to the Programme Ombudsman may be sought by an expelled Member who disagrees with the decision.
- Expelled Full Members may subsequently re-apply for admission to the Programme. The Risk Assessor (in liaison with the Advisory Panel) will review the facts and take account of any change in circumstances, before advising the Steering Committee (which is under no obligation to approve the re-application). Additional terms of membership may be imposed for a set period of time after re-admittance.

Withdrawal of a Full Member from the Programme

- Any Full Member may withdraw at any time by notification to the Secretariat. Withdrawal will take effect from the date that the notification is received. No fees or Programme levies will be reimbursed.

Associate Membership

- Associate Members will be charged an annual membership fee, and will be kept abreast of developments in the Programme. They will not automatically be entitled to receive any data or Confidential Business Information.
- If Associate Members require access to any data or Confidential Business Information within their supply chain, or any auditors of that Associate Member wish to access data in order to fulfil their auditing obligations, then an additional fee will be payable for such access. The Associate Member and their auditor will be subject to all relevant confidentiality and data handling obligations.
- Fraudulent or criminal acts carried out by an Associate Member or one of its directors will result in immediate expulsion from the Programme.
- An Associate Member may withdraw at any time by notification to the Secretariat. Withdrawal will take effect from the date that the notification is received. No fees will be reimbursed.

8. FINANCIAL MANAGEMENT

Joining Fee

- A one-off joining fee of between US\$3,000 and US\$30,000 will apply to all Full Members, which will take into account company type and position in the supply chain and any previous contributions made.

Annual Membership Fee

- Full Members will also be charged an upfront annual membership fee of between US\$2,000 and US\$10,000, which will recognise company type and position in the supply chain.
- Associate Members will be charged an upfront annual membership fee of US\$7,839. An additional fee will be payable by any Associate Member requiring access to data.

Programme Levy

- A Programme levy will be collected from the applicable Full Member(s) established as the appropriate point in the supply chain. This may be smelters, exporters or traders, or a combination of those, depending upon the mineral which is being traded. The amount of the Programme levy will differ depending upon the mineral being traded and the country or region involved.
- Relevant Members are expected to provide information that allows the Programme levy to be calculated.

General Financial Matters

- The financial year is 1st January to 31st December. Annual fees and levy invoices are payable within fifteen (15) days. Action will be taken on non-payment, including application of interest or eventual expulsion from the Programme.

9. CONFIDENTIALITY AND DATA HANDLING

- Confidential Business Information disclosed to the Programme will remain confidential and must not be disclosed or used outside of the Programme unless prior written consent of the Disclosing Party has been obtained.
- Confidentiality obligations will be included in all contracts with organisations operating the Programme.
- Information on involved companies and aggregated data will be released according to the ITSCI Data

Management and Release Policy¹.

- Risk assessment and audit reports are required to be made public but will take into account requirements to protect Confidential Business Information, competition law and witnesses.
- All Full Members (and Associate Members who have paid for access to data) will be alerted to any verified risk of any links relating to any of the conflict or human rights issues listed in the OECD Guidelines, as well as risks on any mine, transport route or other relevant information.
- Access to data held on transactions within a company's own supply chain relating to source of mineral and those involved in the supply chain may be granted. Information of direct relevance to an upstream supply chain will be shared on request.
- Representatives of the UN may access data with approval of the government where the company on which they request data is located.

10. LIABILITY

- Members of the Programme remain individually responsible for assessing and implementing their responsibilities and should take reasonable steps and make good faith efforts to conduct due diligence in line with the OECD² and UN Guidelines, and any rules of the SEC.
- Members assume liability for the accuracy of all documentation provided to the Programme.
- Members are solely liable vis-à-vis third parties, and will indemnify any other Member in the Programme against all liabilities and claims in connection with any loss, damage or injury to third parties resulting from its own fault or negligence, including any broken third party contract claims which may result from expulsion as a Member. Members assume liability for any costs or fees incurred or irrevocably obligated in the event of termination of the Programme.

11. DURATION AND TERMINATION

- The Agreement will enter into force on 1st April 2011 and will continue indefinitely unless terminated by the Secretariat.

12. COMPETITION LAW

- The Programme will not restrict competition, and Members must comply with all applicable competition laws.

13. LEGAL STATUS

- The Programme Agreement may be summarised and/or translated into other languages for reference purposes only; the only authentic and legally binding version of the Agreement will be the full English text.

14. DISPUTE RESOLUTION AND JURISDICTION

- Any disputes should be settled initially by the amicable discussion; if this is not possible, the dispute will be governed by English law in the courts of England and Wales.

Contact Details of the Secretariat:

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Please note: this summary document is for information only, and the full text of the ITSCI Membership Programme Agreement should be referred to for full details. Prospective members should ensure that they have read and fully understood the full ITSCI Membership Programme Agreement, which defines all terms and obligations of membership, before signing up to the Programme.

¹ ITRI Tin Supply Chain Initiative: Project Data Management and Release Policy, Nov 2010 v2.

² OECD Guidelines, page 7