



# **ARTISANAL AND SMALL-SCALE MINING STANDARD**

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Requirements 2021

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## KEY DEFINITIONS

<b>Artisanal and Small-Scale Miner</b>	means either the Licence Holder and/or Supporter of a Mine Site, who is also an Authorised Person, subject to the GemFair Assurance Programme.
<b>Artisanal and Small-Scale Mining</b>	has the meaning given by the OECD which is: <i>“formal or informal operations with predominantly simplified forms of exploration, extraction, processing, and transportation. ASM is normally low capital intensive and uses high labour-intensive technology. ASM can include men and women working on an individual basis as well as those working in family groups, in partnership, or as members of cooperatives or other types of legal associations and enterprises involving hundreds and even thousands of miners. For example, it is common for work groups of 4-10 individuals, sometimes in family units, to share tasks at one single point of mineral extraction (e.g. excavating one tunnel). At the organisational level, groups of 30-300 miners are common, extracting jointly one mineral deposit (e.g. working in different tunnels), and sometimes sharing processing facilities.”</i> <sup>1</sup>
<b>Aspirational Criteria</b>	has the meaning given in Section 5 below.
<b>Authorised Person</b>	means, in relation to the Mine Site, a Supporter, a Licence Holder or a Mine Manager, who is authorised to use the GemFair app and toolkit. In the case of a regular Mine Site, a Licence Holder and Supporter can either be two individuals or the same person. In the case of a cooperative Mine Site, a Mine Manager and the Licence Holder can either be two individuals or the same person. Cooperative Mine Sites do not have a Supporter, so the Authorised Person would be either the Licence Holder and/or the Mine Manager. Hereafter, the Licence Holder, Supporter and Mine Manager are referred to as the Authorised Person.
<b>Diamond</b>	means a natural mineral consisting essentially of pure carbon crystallised with a cubic structure in the isometric system. Its hardness in the Mohs scale is 10; its specific gravity is approximately 3.52; it has a refractive index of 2.42 and it can be found in many colours.
<b>Digger</b>	means a Worker who supplies labour to mining operations for a wage or a share of the profits or diamond-bearing gravel, and usually works in a group of four individuals.
<b>GemFair</b>	means the De Beers Group company incorporating the name ‘GemFair’ which is registered in the relevant country in Africa.
<b>GemFair Member</b>	means an approved Supplier or Authorised Person of GemFair.
<b>GemFair Office</b>	means GemFair’s Diamond buying office in the relevant country in Africa.
<b>GemFair Programme</b>	means a programme that intends to connect Artisanal and Small-Scale Miners to the global market using a digital solution and that seeks to foster economic development for Artisanal and Small-Scale Miners by providing them with traceability, empowerment and fair value (see <a href="http://www.gemfair.com">www.gemfair.com</a> for more information).
<b>GemFair Toolkit</b>	has the meaning given under paragraph 1.2.
<b>Legitimacy Requirements</b>	has the meaning given in Section 2 below.

<sup>1</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas. 3rd edition. Paris: OECD Press. P. 54. Adapted from ARM’s definition, found here: Hruschka & Echavarría, 2011. Rock-solid chances for responsible artisanal and small-scale mining. Alliance for Responsible Mining Series on Responsible ASM, No. 3.

<b>Licence Holder</b>	means an individual who holds the legal right, granted to it by the government, to conduct mining operations (exploitation and production) at a Mine Site. Also referred to as a Miner or a Supplier. The Licence Holder is the individual from whom GemFair purchases Diamonds.
<b>Mine Manager</b>	means the individual who manages daily activities at a Mine Site, including settling disputes between Workers, receiving Worker complaints, mediating the sale of Diamonds between the Worker and the Supporter, amongst others.
<b>Mine Site</b>	means a mine location in the relevant country in Africa where Artisanal and Small-Scale Miners conduct mining operations and which is licensed by the government.
<b>Miner</b>	means the operator of a Mine Site, usually also the Licence Holder who holds the rights to mine the plot of land.
<b>Modern Slavery Statement</b>	means the latest modern slavery statement published on the De Beers Group website ( <a href="https://www.debeersgroup.com/site-services/uk-msa">https://www.debeersgroup.com/site-services/uk-msa</a> ) in accordance with the Modern Slavery Act 2015.
<b>Risk Management Plan</b>	means a mutually-agreed strategy between GemFair and the Supplier in the case of an identified risk at the Supplier's Mine Site or within his or her business practices. A Risk Management Plan lays out deadlines and milestones for completion and is monitored by the GemFair Programme on a regular basis.
<b>Sale and Purchase Agreement</b>	means an agreement entered into between GemFair and the Member relating to the sale and purchase of Diamonds in the relevant country in Africa.
<b>Your Voice service</b>	means an Anglo American Group incident reporting service. The whistle-blower can contact Speak Up via a toll-free telephone number, website, email, post or fax. Incident reporting can be done anonymously. If the whistle-blower includes his or her contact information, he or she will be provided with regular feedback on the status of the incident investigation. The identity of the whistle-blower will be protected.
<b>Supplier</b>	means the Licence Holder from whom GemFair would purchase Diamonds. The Supplier is also the individual subject to GemFair Certification.
<b>Supporter</b>	means an individual who finances an Artisanal and Small-Scale Mining operation on a temporary or long-term basis through cash or in-kind support. Miners repay the loan by giving the Supporter the right of first refusal for any Diamonds. The Supporter purchases the Diamonds at a discount that takes account of the loan amount. Supporters are often financed by larger dealers or exporters.
<b>Work Agreement</b>	means a contract between the Supplier and his or her Workers. A Work Agreement details the terms of work, such as number of hours/days, entitlements (e.g. meals, transport), wage, etc.
<b>Worker</b>	means any individual employed to work at the Mine Site. This includes Diggers, gravel transporters, washers, group heads and Mine Managers.
<b>Third-party assurance programme audit</b>	means an independent assessment commissioned by GemFair to certify GemFair's due diligence management system against the OECD's due diligence guidance for mineral supply chains. Any Members who are Members at the time of an audit will also be assured should GemFair's management system be assured by the auditor.

# INTRODUCTION

## 1.1 OVERVIEW OF THE GEMFAIR PROGRAMME

The GemFair Programme is a pilot programme of De Beers Group (“**De Beers**”) to create a secure and transparent route to market for ethically-sourced artisanal and small-scale mined (“**ASM**”) Diamonds. GemFair uses dedicated technology to record Artisanal and Small-Scale Mining production at Mine Sites that meet demonstrable ethical standards, with the aim of purchasing rough Diamonds from approved locations while helping improve working conditions and livelihoods for those working in the sector.

The core principles of the GemFair Programme are:

- **Traceability:** Miners create a digital record of the Diamonds they find;
- **Empowerment:** Miners are trained by GemFair and can access tutorials prepared by leading diamond experts; and
- **Fair value:** Miners receive a fair value for their production.

These GemFair Artisanal and Small-Scale Mining Standard Requirements (being this document and also referred to as the “**Requirements**”) provide an assurance that key risks, as defined in Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“**OECD Guidance**”) are identified and managed accordingly. Meanwhile, GemFair’s digital solution ensures traceability of Diamonds from the point of the Mine Site until it reaches the international market.<sup>2</sup> In this way, GemFair fulfils the aspirations of the Kimberley Process Washington and Moscow Declarations (2012 and 2005, respectively) to improve the development potential of the ASM Diamond sector.

## 1.2 HOW GEMFAIR WORKS

Once GemFair’s assurance programme is certified by an independent third-party, each GemFair Member (hereafter referred to as a Member) is given a toolkit (the “**GemFair Toolkit**”) which includes

- a tablet with the GemFair app, which logs Diamonds;
- digitally-supported bags with a unique barcode in which each Diamond is sealed;
- a set of tools to measure stone characteristics; and
- diamond tutorials from De Beers’ experts via the GemFair app.

The GemFair app is designed to work in online and offline settings and the tablet can be charged using solar power. A digital fingerprint is created with the GemFair app, which includes a photo of the Diamond, of the Digger with the Diamond, the Diamond’s caratage, colour, clarity and model. The Diamond is then placed in a sealable, QR-coded bag and brought to the GemFair Office.<sup>3</sup>

The Member is under no obligation to sell to GemFair, but GemFair does require that all Diamonds at the Member’s Mine Site are logged and that GemFair is given the right to make a first offer.

GemFair will provide a fair value for the Diamonds it purchases, based on De Beers’ world-renowned expertise in valuation. If the Member chooses to accept GemFair’s offer, the Member will be paid directly.

## 1.3 STANDARD TERMS OF REFERENCE

### 1.3.1 Scope of the standard and geographic application

These Requirements currently apply to Diamonds, but it is the intention that in future versions they will be expanded to include other materials, such as gold and coloured gemstones. These Requirements apply to Artisanal and Small-Scale Miners only, as defined by the OECD Guidance. These Requirements are designed to be applicable globally, but some criteria, particularly the Legitimacy Requirements (see Section 2 below) and Aspirational Criteria (see Section 4 below), should be adapted to the national legislative context and type of mining involved.

<sup>2</sup> Prior to being assured by a third-party auditor, GemFair staff visit GemFair Member Mine Sites to log the diamonds with the Members.

<sup>3</sup> More information about the Diamond logging process can be found at [www.gemfair.com](http://www.gemfair.com).

### 1.3.2 What GemFair Assurance means

GemFair Assurance means that Diamonds were extracted, processed and transported in a responsible and legitimate manner:

- in the absence of contributing to serious human rights abuses, such as forced labour or child labour, conflict finance and reduced risks of corruption, money laundering and terrorist financing and tax crimes;
- human and Worker rights were maintained;
- Diamonds are traceable from the Mine Site to the international market; and
- Miners were empowered with greater knowledge of the value of their production.

GemFair takes measures to ensure that GemFair does not violate the human rights of any individuals involved with or impacted by the GemFair Programme. The respect for human rights is a principle that GemFair extends to the Artisanal and Small-Scale Miners with whom GemFair has a business relationship. GemFair recognises that the operational reality for Artisanal and Small-Scale Miners is different from large-scale miners and therefore the risks of sourcing from this sector are also different from the formal, large-scale mining sector. GemFair therefore engages with Artisanal and Small-Scale Miners who meet a threshold for risk, which is based on, but goes beyond Annex II of the OECD Guidance. GemFair's response to avoid, manage or eliminate these risks depends on their level of severity.

A breach of GemFair's Core Requirements (as set out in Section 3 below) include: serious abuses associated with the extraction, transport or trade of Diamonds, including gross human rights abuses, direct and indirect support of non-state armed groups, money laundering, terrorist financing, sacrificing traceability and bringing the industry into disrepute. GemFair will not engage with Artisanal and Small-Scale Miners whose business practices or mining operations are contributing to conflict or human rights abuses. If there are confirmed at the Member's Mine Site, this will be considered a Material Breach of these Requirements and the Member will be subject to disqualification from the GemFair Programme.

GemFair's General Requirements are further material issues related to responsible sourcing from ASM suppliers, but where there are breaches, GemFair may not immediately disengage from the Member. A breach of GemFair's "General Requirements" (set out in Section 4) include topics such as wilful misuse of GemFair equipment and the engagement of public or private security forces. GemFair's General Requirements also cover other sustainability targets that go beyond the OECD Guidance, such as wage targets for workers, occupational health and safety and environmental management. Where breaches of the General Requirements are identified, consequences for the Member will range from expulsion or suspension, to GemFair's engagement with the Member to develop and monitor a Risk Management Plan with clear milestones and timelines for completion, based on;

- (1) severity of the risk,
- (2) the extent to which any risk represents a continuing course of conduct, and
- (3) the actual capacity of the member to rectify the risk.

The member has up 18 months to demonstrate measurable improvement in the identified areas.

GemFair will monitor the Member's operations through regular spot checks, self assessments and a third-party assessment. If there is no measurable improvement, GemFair reserves the right to expel the Member. Re-entry into the GemFair Programme is determined on a case-by case basis.

#### **Responsible individual**

The individual responsible for meeting these Requirements in entirety is the Supplier, who is also a Member. The Supplier is the Licence Holder of a Mine Site. Where the Supplier has a separate investor (called a Supporter), this individual will also be subject to some of these requirements (e.g. financial and business practices).

The Member must demonstrate that his or her mining operations are legitimate (see Section 2 below). The Member must also ensure that the Mine Manager and all Workers are aware of how these Requirements affect them. Awareness-raising will be done initially with GemFair's support and training, but GemFair expects the Supplier to take full responsibility for the dissemination of these Requirements to all relevant Workers after Year 2 of membership.

## 1.4 THE GEMFAIR PROGRAMME'S EXPECTED IMPACTS

The GemFair Programme's theory of change is: If Artisanal and Small-Scale Miners are equipped with a transparent way to keep track of their Diamonds; and Miners and Diggers receive a fair value, coupled with training in how to value their Diamonds and mine more safely and efficiently; then their living and working conditions will be improved in a measurable way. These Requirements set the baseline for how GemFair outlines and measures its outcomes.

## 1.5 REFERENCE TO INTERNATIONAL BEST PRACTICE

These Requirements draw upon and make reference to the following international best practice:

- Fundamental Conventions of the International Labour Organisation ("ILO Convention"), including on forced labour, freedom of association, discrimination, occupational health and safety in mines and the elimination of the worst forms of child labour
- *ISEAL Code of Good Practice*
- *OECD's Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains.*
- UN Guiding Principles on Business and Human Rights
- UK Modern Slavery Act
- Washington Declaration on Integrating Development of Artisanal and Small-Scale Diamond Mining with Kimberley Process Implementation
- Universal Declaration of Human Rights
- *Frequently Asked Questions on ASM*, developed by the OECD <sup>4</sup>
- UN Guiding Principles on Business and Human Rights.

These Requirements were designed to be aligned with best practice standards for the large-scale and Artisanal and Small-Scale Mining sectors. Likewise, the programmes listed below are a starting point for the key provisions of these Requirements.

- Alliance for Responsible Mining and Resolve's open source CRAFT Code ("Craft Code")
- De Beers Group's Best Practice Principles
- Diamond Development Initiative's Maendeleo Diamond Standards™
- Fairtrade Standard for Gold and Associated Precious Metals for Artisanal and Small-Scale Mining.
- Fairmined Standard for Gold from Artisanal and Small-Scale Mining, Including Associated Precious Metals
- iTSCi Programme
- OECD Due Diligence Guidance for Responsible Supply Chains from Conflict and High-Risk Areas
- Responsible Jewellery Council's Code of Practices
- Responsible Minerals Initiative.

<sup>4</sup> See OECD, n.d. Responsible supply chains in artisanal and small-scale gold mining: Implementing the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Available at: [https://mneguidelines.oecd.org/FAQ\\_Sourcing-Gold-from-ASM-Miners.pdf](https://mneguidelines.oecd.org/FAQ_Sourcing-Gold-from-ASM-Miners.pdf) (accessed 10 September 2018).

## 1.6 HOW TO JOIN THE GEMFAIR PROGRAMME

**Step 1:** Applicants complete an application form, substantiated by the required registration documentation, which includes furnishing a mining licence or other demonstration of legitimacy (See Section 2 below) and signing on to a Sale and Purchase Agreement with GemFair, including all appendices.<sup>5</sup> In tandem, GemFair assesses the applicant's Mine Site and business operations for any observable or reported evidence<sup>6</sup> of serious abuses and direct or indirect support of non-state armed groups, as a first priority. Should the above issues be present, the applicant will not be eligible to join the GemFair Programme.

**Step 2:** GemFair conducts due diligence on every Applicant in accordance with the GemFair Policy on Sourcing from Conflict-Affected and High-Risk Areas. Each applicant will also be screened upon joining, and on a regular basis, to verify: 1) his or her identity and; 2) any existing records of international sanctions, political exposure or charges or material criminal convictions. Where there are any possible or positive matches for the above, GemFair will develop a Risk Management Plan in accordance with its Anti-Money Laundering and Combatting the Finance of Terrorism procedures.

**Step 3:** If the applicant passes Steps 1 and 2, he or she will be invited to participate in the GemFair Programme and given a Diamond scale. At this stage, the applicant becomes a Member.

**Step 4:** The Member will then work with GemFair to reduce and eventually eliminate breaches of any of GemFair's General Requirements. During this time, the Member will be eligible to sell Diamonds to GemFair, while working towards overall compliance.

**Step 5:** In later phases of the GemFair Programme, the Member and GemFair will develop a plan to work toward fulfilling the Aspirational Criteria (Section 5 below).

**The GemFair Programme operates under a calendar year and conducts membership assessments in clusters.**

## 1.7 HOW THE MEMBER DEMONSTRATES ONGOING COMPLIANCE

Compliance with these Requirements is determined through first, second and third-party verification.

GemFair staff carry out a baseline assessment of the working conditions at each Member Mine site. The assessment consists of questions corresponding to the thematic areas of these Requirements. The responses and evidence provided in the assessment survey, help GemFair and the third-party assessor (see below) determine whether the Member has any risks present in his or her business practices or Mine Site. The Member must also develop and implement relevant procedures to support a safe, legal and rights-abiding work environment.

**Second-party verification:** GemFair will carry out Mine Site monitoring on a bi-annual basis, at a minimum. GemFair will conduct interviews with Artisanal and Small-Scale Mining stakeholders, government officials and other relevant parties on work practices and the Member's general adherence to these Requirements. Second-party verification also includes Mine Site observation and review of relevant documentation and the baseline assessment. If there are any breaches identified through this verification, a Risk Management Plan will be developed, including remedial training, with the Member and GemFair will monitor its implementation.

**Third-party verification:** GemFair will commission a third-party assessment of a sample of Members' Mine Sites during each 18 month assurance programme cycle. The third-party assessment will provide assurance to the veracity of GemFair's second-party assessments and monitoring as well as GemFair's due diligence management system as whole.

The third-party assessor will be accredited, independent and will possess experience in human rights risks assessments, and social audits.

The third party assessments will be followed by Risk Management and follow-up reviews from the assessor where necessary. Inspection criteria and level of sanctions or Risk Management Plans are detailed further in the GemFair ASM Standard Manual.

<sup>5</sup> Which include: a completed and signed KYC form, a completed and signed letter of best endeavours to follow the provisions of these requirements; and a completed and signed SELF-DECLARATION on the PROBITY OF THE DIAMONDS.

<sup>6</sup> GemFair will gather reports through conversations and interviews at a Mine Site visit.



## 1.8 STRUCTURE OF THESE REQUIREMENTS

**Section 2 of these Requirements:** Relates to legitimacy of mining operations, which include, depending on the legislative context, a licence, evidence of having applied for a licence and a licence to operate with the surrounding community.<sup>7</sup> The Member must demonstrate compliance with the Legitimacy Requirements before being accepted into the GemFair Programme. Legitimacy Requirements must be maintained for the entire duration of GemFair Programme membership.

**Section 3 of these Requirements:** Core Requirements. A breach of GemFair's Core Requirements causes a serious non-compliance issue that contravene these Requirements. The Member must demonstrate that there are no breaches of the Core Requirements at his or her Mine Site or in his or her business practices before being accepted into the GemFair Programme. Where there are reasonable grounds to believe that a breach of the Core Requirements is occurring, GemFair will suspend the Member immediately. Re-entry into the GemFair Programme will be determined on a case-by-case basis.

**Section 4 of these Requirements:** : GemFair's "General Requirements" (set out in Section 4) include financial crimes, smuggling, bribery and corruption, willful misuse of GemFair equipment, the engagement of public/private security forces, as well as other risks that go beyond the OECD Guidance such as wage targets for workers, treatment of workers and environmental management. Where these risks are identified, GemFair will engage with the Member and develop and monitor the implementation of a Risk Management Plan with clear milestones and time-lines for completion. Where a breach of GemFair's General Requirements is identified, GemFair will develop a Risk Management Plan with the Member based on: 1) the severity of the risk; and 2) the Member's current capacity to implement the Risk Management Plan. The timeline for the Risk Management Plan will also depend on the aforementioned two factors, but will not exceed 12 months, to demonstrate measurable improvement.

**Section 5 of these Requirements: Aspirational Criteria:** This category of criteria does not become part of the Member's scope until after the Member's first successful GemFair Certification audit. GemFair will work with the Member to ascertain the timeline, milestones and support required to meet these criteria. The applicability of the Aspirational Criteria is triggered at different times, starting in Year 1 to Year 6 and beyond. The year at which the Aspirational Criteria are triggered is suggestive and subject to modification based on the capacity and priorities of each Member. The manner in which compliance or non-compliance with the Aspirational Criteria is determined after field-testing these Requirements.

## 1.9 A NOTE ON THIS VERSION OF THESE REQUIREMENTS

This is **Version 2** of these Requirements. These Requirements were subject to review by a group of technical experts and have been field tested. After stress-testing these requirements, the first-party assessment carried out by the Member was replaced with a baseline assessment, to be carried out by GemFair staff. The assurance programme cycle was clarified to be 18 months and third-party audits need only be commissioned once during the 18 month assurance programme cycle.

<sup>7</sup> A community licence to operate could include a Memorandum of Understanding, Community Benefit Agreement, meeting minutes, etc., depending on the context.

## SECTION 2: LEGITIMACY

GemFair supports the formalisation of the Artisanal and Small-Scale Mining sector. In keeping with the Guiding Principles of Business and Human Rights in which business enterprises are obliged to “comply with all applicable laws,” GemFair only engages with legitimate (e.g. formal) Artisanal and Small-Scale Miners who operate in a country where Artisanal and Small-Scale Mining is legal.<sup>8</sup> GemFair also recognises that it is important to provide the Artisanal and Small-Scale Miner with more than one option to demonstrate the legitimacy of his or her operations.

This section is drawn largely from the CRAFT Code’s definitions and performance criteria.<sup>9</sup> The requirement will be assessed using *pass, progress or fail criteria*. Pass criteria indicate that the Member has fully met the Legitimacy Requirements. Where there is more than one *pass criterion*, the Member need only demonstrate compliance with one of them.

*Progress criteria* indicates that the Member has made his or her best efforts to fulfil the Legitimacy Requirements but must endeavour to meet the full requirement within the next three months. GemFair will verify the Member’s evidence of progress. The Member can still maintain membership if he or she meets the progress criteria, but may not be eligible to sell stones to the GemFair programme.

*Fail criteria* indicates that the Member does not meet the Legitimacy Requirements and therefore must provide evidence of either progress or passing before he or she can be reinstated as a Member.

There must be a legal framework for Artisanal and Small-Scale Mining that “exists, is actively implemented and is enforced by the competent authorities.”<sup>10</sup> The Member must either present a valid mining licence or have demonstrated a good faith effort to acquire a mining licence. In the latter instance, the Member has up to three months to provide a valid mining licence to GemFair, during which time the Member may not sell Diamonds to GemFair.

<sup>8</sup> United Nations, 2011. Guiding Principles of Business and Human Rights.

<sup>9</sup> ARM and RESOLVE, 2018. CRAFT: Code of Risk-mitigation or ASM engaging in Formal Trade, Version 1.0, draft for first publication round. The fourth country case context does not seem applicable to the Artisanal and Small-Scale Mining sector.

<sup>10</sup> ARM and RESOLVE, 2018. CRAFT: Code of Risk-mitigation for ASM engaging in Formal Trade, Version 1.0, draft for first publication round.

## SECTION 3: CORE REQUIREMENTS

GemFair's Core Requirements are any serious non-compliance issue either present at the applicable Mine Site or transport routes that contravenes the core principles of GemFair<sup>11</sup> and, pending investigation, is cause for GemFair's immediate disengagement with the Member.

GemFair's Core Requirements are drawn directly from De Beers Group' Best Practice Principles, the OECD Guidance and the CRAFT Code.

For the avoidance of doubt, Level 1 risks include, but are not limited to:

- gross human rights violations, including torture, war crimes and widespread sexual violence and other violations of international human rights law;
- worst forms of child labour;
- forced labour and human trafficking;
- direct or indirect support of non-state armed groups, including illegal taxation or extortion of minerals;
- violence-free mining operations;
- sexual and gender-based violence;
- conflict-affected and high-risk areas ("**CAHRA**");
- money laundering and financing of terrorist activities; impeding traceability; and
- bringing the industry into disrepute.

The GemFair Member is subject to a pass or fail rating for Level 1 risks, where a pass rating means that GemFair will engage with the Member, provided he or she meets the Legitimacy Requirements' pass or progress criteria, and where fail means GemFair will immediately disqualify the Member. Readmission into the GemFair Programme will be determined on a case-by-case basis.

### 3.1 GROSS HUMAN RIGHTS VIOLATIONS

GemFair adopts the OECD Guidance's definition of gross human rights violations. Gross human rights violations include *"any forms of torture, cruel, inhuman and degrading treatment exacted for the purposes of mineral transport or trade; any forms of forced or compulsory labour to mine, transport and sell minerals; the worst forms of child labour for the purposes of mineral transport or trade; war crimes or other violations of international humanitarian law; crimes against humanity or genocide for the purposes of mineral transport or trade."*<sup>12</sup>

Due to their complexity, these Requirements have separate provisions for the worst forms of child labour and forced labour.

GemFair will gather credible reports<sup>13</sup> of any gross human rights violations, such as torture, cruel inhuman or degrading treatment or sexual violence, occurring at the Mine Site or transport routes.

**3.1.1** If any such reports exist, the Member will be subject to expulsion from the GemFair Programme and referral to the relevant authorities.

<sup>11</sup> The core principles of GemFair include empowerment, traceability and fair value. More specifically, the GemFair Programme contributes to sustainable development through partnership and offering Artisanal and Small-Scale Miners fair value. GemFair ensures the absence of conflict in production and trade of Diamonds, whilst our digital solution ensures traceability, helping us to meet our responsible sourcing commitment to our customers globally.

<sup>12</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, 3rd edition. Paris: OECD Press.

<sup>13</sup> Reports on human rights abuses will be verified through local and international human rights group reports, in-person interviews with local authorities, civil society and community and ASM stakeholders.

## 3.2 WORST FORMS OF CHILD LABOUR

ILO Convention No. 182, The Worst Forms of Child Labour Convention defines the worst forms of child labour as:

- *“All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*
- *The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- *The use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- *Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”<sup>14</sup>*

**3.2.1** The Member must not permit anyone less than 18 years of age at the Mine Site unless the legal working age is less than 18 years of age.

**3.2.2** In a country where the minimum age of work is less than 18 years of age, individuals under 18 years of age must be at the Mine Site voluntarily.

**3.2.3** In a country where the minimum age of work is less than 18 years of age, the Member must ensure that those individuals are working on tasks that are age-appropriate.<sup>15</sup>

**3.2.4** In a country where the minimum age of work is less than 18 years of age, the Member must not allow those individuals to be involved in heavy labour, diving, tunnelling, handling machinery or chemicals, sex work or drug trafficking.<sup>16</sup>

**3.2.5** The Member must keep updated records, including the ages of all Workers.

<sup>14</sup> ILO, 1999. C182- Worst Forms of Child Labour Convention, 1999 (No. 182), Article 3.

<sup>15</sup> Adapted from ARM and RESOLVE, 2018. CRAFT: Code of Risk-mitigation for ASM engaging in Formal Trade, Version 1.0, Official Version.

<sup>16</sup> OECD, 2017. Practical actions for companies to identify and address the worst forms of child labour. Paris: OECD Press.

### 3.3 FORCED LABOUR AND HUMAN TRAFFICKING

The Universal Declaration of Human Rights states “no-one shall be held in slavery or servitude” and ILO Convention 29 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.”<sup>17</sup>

- 3.3.1** The Member should develop and implement a procedure designed to prevent the use of forced labour and human trafficking in its business and its supply chain.
- 3.3.2** The Member must follow all applicable local labour law on working hours, withholding of wages (e.g. for ‘poor performance’), terminating employment, etc.
- 3.3.3** The Member must not require deposits or hold the identity papers of Workers.
- 3.3.4** The Member must not deprive Workers of food or sleep.
- 3.3.5** The Member must not confine or isolate Workers either in the workplace or in living quarters.
- 3.3.6** The Member must have a procedure in place for Workers to give notice or terminate employment. Workers must be able to leave the Mine Site after the agreed-upon notice period.
- 3.3.7** Vulnerable Workers (e.g. migrants, women or the disabled) must not work under “threat of denunciation to authorities” or dismissal.<sup>18</sup>
- 3.3.8** The Member should have confidential reporting procedures to enable Workers to report instances of forced labour and human trafficking, and/or inform Workers of their right to report any grievances to GemFair staff.

### 3.4 DIRECT OR INDIRECT SUPPORT OF NON-STATE ARMED GROUPS

GemFair adheres to the OECD Guidance section on direct or indirect support of non-state armed groups. The OECD defines direct or indirect support to non-state armed groups as “[support] through the extraction, transport, trade, handling or export of minerals [including] but not limited to, procuring minerals from, making payments to or otherwise providing logistical assistance or equipment to non-state armed groups who:

- *Illegally control mine sites or otherwise control transportation routes, points where minerals are traded and upstream actors in the supply chain; and/or*
- *Illegally tax or extort money or minerals at points of access to mine sites, along transportation routes or at points where minerals are traded; and/or*
- *Illegally tax or extort intermediaries, export companies or international traders.”<sup>19</sup>*

- 3.4.1** The Member must not make payments or assist non-state armed groups and their affiliates.
- 3.4.2** The Member must be aware of the risks his or her operations face for illegal taxation and extortion from non-state armed groups and their affiliates.
- 3.4.3** The Member must develop and implement a procedure on illegal taxation and extortion. GemFair will provide guidance where a Member is at risk of being punished for not participating in illegal taxation or extortion (e.g. if a government agent asks for an illegal tax).

<sup>17</sup> United Nations, 1948. General Assembly resolution 217 A. The Universal Declaration of Human Rights. Available from: <https://www.un.org/en/universal-declaration-human-rights/> (accessed 17 November 2020).

<sup>18</sup> ARM and Solidaridad, 2014. Addressing forced labor in artisanal and small-scale mining (ASM): A practitioner’s toolkit. Version 1.1, p. 10.

<sup>19</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict affected and high-risk areas, 3rd edition. Paris: OECD Press, p. 21.

### 3.5 VIOLENCE-FREE OPERATIONS AND DISCRIMINATION

GemFair expects the operations of Members to be free of violence. Physical and psychological violence, including fighting, threats or wilful neglect of any Workers are not permitted.

- 3.5.1 The Member must have a zero-tolerance policy for any instances of physical or psychological violence, either at the Mine Site or transport routes.
- 3.5.2 The Member should design and implement a procedure on a violence-free workplace.
- 3.5.3 Witnesses and victims of violence must be able to come forward without fear of retribution.
- 3.5.4 Verified perpetrators of violence should be expelled from the Mine Site permanently.
- 3.5.5 The Member's Mine Site should be a place where Workers can work without fear of discrimination or harsh disciplinary practices.
- 3.5.6 Workers should have the right to express their grievances or concerns without suffering any prejudice or retribution.
- 3.5.7 Any grievance raised should be examined according to appropriate procedures.
- 3.5.8 The Member must not deduct from wages as a disciplinary measure nor shall deductions not provided for by national law be permitted without the express permission of the Worker.

### 3.6 SEXUAL AND GENDER-BASED VIOLENCE

Sexual and gender-based violence ("SGBV") is defined by the United Nations High Commissioner for Refugees as *"any act that is perpetrated against a person's will and is based on gender norms and unequal relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of denial of resources or access to services. [SGBV] inflicts harm on women, girls, men and boys."*<sup>20</sup>

- 3.6.1 The Member must not permit any forms of SGBV to take place at his or her Mine Site.
- 3.6.2 The Member must develop and implement a procedure on SGBV.
- 3.6.3 Any perpetrators of SGBV should be expelled from the Mine Site. Victims must be able to make reports to their Mine Manager and/or GemFair in a safe and confidential manner, without fear of retribution.
- 3.6.4 The Member should make inroads with victim support groups and NGOs focused in this area, if they exist locally, to assist with education and outreach.

<sup>20</sup> UNHCR, 2018. "Sexual and gender-based violence". Retrieved on June 20, 2018 from: <http://www.unhcr.org/uk/sexual-and-gender-based-violence.html>.

### **3.7 CONFLICT-AFFECTED AND HIGH-RISK AREAS (CAHRA)**

Conflict-affected and high-risk areas are characterised by the OECD as areas with *“the presence of armed conflict, widespread violence, including violence generated by criminal networks, or other risks of serious and widespread harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars. High-risk areas are those where there is a high risk of conflict or of widespread or serious abuses as defined in paragraph 1 of Annex II of the [OECD Due Diligence] Guidance. Such areas are often characterised by political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure, widespread violence and violations of national or international law”*<sup>21</sup>

- 3.7.1** GemFair will carry out an annual assessment of his or her operation’s risks of being in a CAHRA. This assessment will consist of consulting local government agents, human rights organisations, multilateral organisations, etc. The outcome of this assessment should be a brief written update.
- 3.7.2** If the Member’s operations are located in a CAHRA, the Member must provide information on how he or she ensures that his or her operations do not materially or financially contribute to the conflict.

<sup>21</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, 3rd edition. Paris: OECD Press., p. 66.

### 3.8 MONEY LAUNDERING AND TERRORISM FINANCING

Money laundering and terrorism financing are under-researched areas of the artisanal and small-scale mining sector, particularly for Diamonds. As such, the GemFair Programme has developed its own procedures on Anti-Money Laundering and Combatting Financing of Terrorism (AML/CFT), which is based on De Beers Group's AML/CFT Policy, the Best Practice Principles section on Financial Offences and learnings from the GemFair pilot. This procedure is continually updated as the GemFair Programme learns more from the pilot.

Additionally, GemFair incorporates Annex II Risks of the OECD Guidance into its own CAHRA Policy. GemFair will *"support efforts, or take steps to contribute to the effective elimination of money laundering resulting from, or connected to, the extraction, trade, handling, transport or export of minerals derived from illegal taxation or extortion of minerals at points of access to mine sites, along transportation routes or at points where minerals are traded by upstream Suppliers."*<sup>22</sup> In the Artisanal and Small-Scale diamond mining sector, such steps could include GemFair supporting Members to break their dependency on unscrupulous financiers who use Diamonds as a means to launder large sums of cash.<sup>23</sup>

GemFair will not engage with an Artisanal and Small-Scale Miner who has been convicted of money laundering or financing terrorist groups; likewise, should GemFair observe or receive reports of money laundering or terrorism financing from a Member or affiliates, GemFair will terminate the commercial relationship and refer the individual to the relevant authorities.

**3.8.1** The Member is required to comply with *"national...legislation and regulations with respect to money laundering and terrorism financing."*<sup>24</sup>

**3.8.2** The Member must sign a Self-Declaration Form affirming that the Diamonds being traded are:

- acquired through legal means and from the designated GemFair-registered Mine Site;
- are not, to the best of the Member's knowledge, synthetic or manmade;
- have not been used to facilitate or pay an illegal tax or bribe; and
- have not been used for money laundering, smuggling or the financing of terrorist activities.

<sup>22</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, 3rd edition. Paris: OECD Press, p. 23.

<sup>23</sup> For more information on illicit financial flows in the artisanal and small-scale mining sector, see the work of the GIFF Project: Investigating Financial Flows Linked to the Artisanal and Small-Scale Gold Mining Sector.

<sup>24</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements 2017. Section A4 on Financial Offences.



### **3.9 IMPEDING TRACEABILITY**

GemFair requires the Member to take part in GemFair's efforts to achieve total traceability of the Diamonds mined at his or her operations by keeping up-to-date records on the following:

- Location of the mining licence;
- Number and age of all Workers;
- Work Agreements between the Member and each Worker, including for different roles like casual labour or contractors;
- Receipts for all payments made to the government for licensing, tax, royalties or tribute purposes;
- Payments made to Workers, including wages and frequency of payment of wages, provisions and Diamond profits distribution (the sum of both must be equivalent to the national minimum wage); and
- Quantities of mined minerals.

**3.9.1** The Member must not smuggle any minerals in or out of the Mine Site.

**3.9.2** The Member must not log stones in the GemFair app which have not been produced at the eligible Mine Site.

### **3.10 OTHERWISE BRINGING THE INDUSTRY INTO DISREPUTE**

**3.10.1** GemFair follows De Beers Group' Best Practice Principles section on bringing the Diamond industry into disrepute. The Member must not:

- participate in any activity that results in a material criminal conviction;
- buy or trade rough Diamonds from areas where this would encourage or support conflict and/or human suffering;
- commit practices which intentionally or recklessly endanger or harm the health and/or welfare of individuals; or
- participate in any conduct that seeks to deceive, cheat or delude GemFair, including any undeclared or misrepresented trade in treated diamonds, whole or partial synthetic diamonds or diamond stimulants or any trade misrepresenting the colour, clarity, caratage, cut and provenance of the diamond.

## SECTION 4: GENERAL REQUIREMENTS

GemFair's General Requirements are further material issues related to responsible sourcing from ASM suppliers, but where there are breaches, GemFair will not immediately disengage from the Member. Where a risk relating to General Requirements are observed by or reported to GemFair, GemFair and the Member will develop a Risk Management Plan with milestones and an agreed time-line with the member timeline with the Member. GemFair will monitor the Member's implementation of the Risk Management Plan. If there is no measurable improvement during the agreed time, GemFair reserves the right to expel the Member. Re-entry into the GemFair Programme will be determined on a case-by-case basis, requiring development of a revised Risk Management Plan. Of these risks, some go beyond the conflict, human rights and financial crimes orientation of the OECD Guidance and incorporate principles that are integral to GemFair's wider development goals for Artisanal and Small-Scale Mining businesses.

For the avoidance of doubt, these risks include:

- illegal involvement of public and/or private security forces;
- bribery, corruption and facilitation payments;
- non-payment of taxes, royalties or fees;
- wilful misuse of GemFair equipment, such as logging stones from other Mine Sites;
- occupational health and safety risks;
- causing adverse effects to the environment; and
- absence of community rights and consent.

### 4.1 INVOLVEMENT OF PUBLIC AND/OR PRIVATE SECURITY FORCES

These Requirements adopt the provisions of the CRAFT Code relating to public and/or private security forces with the aim of preventing any serious abuses at the Member's Mine Site or transport routes. In rare cases and where legal to do so, the Member may elect to hire public and/or private security forces to keep the peace or regulate entry and exit from the Mine Site (e.g. to prevent smuggling).<sup>25</sup>

- 4.1.1** Where a Member has hired a public or private security force, he or she must exercise his or her best endeavours to reduce and avoid any tensions between Workers, the surrounding community and public and private security forces. Where these relationships are difficult to maintain, the Member must seek the advice of law enforcement.
- 4.1.2** Where a Member contracts public and/or private security forces, there must be a clear Work Agreement in place. Any payments made to public and/or private security forces must be transparent and disclosed to GemFair upon request.
- 4.1.3** The security forces contracted by the Member must have received training on the Voluntary Principles on Security and Human Rights.

<sup>25</sup> ARM and RESOLVE, 2018. CRAFT: Code of Risk-mitigation for ASM engaging in Formal Trade, Version 1.0, draft for first publication round.

## 4.2 BRIBERY, CORRUPTION AND FACILITATION PAYMENTS

GemFair understands that bribery, especially involving small sums of money, is commonplace in the Artisanal and Small-Scale Mining sector. Likewise, it takes time for a culture shift around bribery to occur. GemFair adheres to De Beers Group's Best Practice Principles sections on business integrity, including bribery, anti-corruption, facilitation payments and gifts as well as financial offences and takes a zero-tolerance approach to bribery (sections A1, A.3 and A.4, respectively).<sup>26</sup> GemFair expects its Members to hold similar values of business integrity.<sup>27</sup> Should GemFair conclude that the Member has offered or received bribes or facilitation payments, this will be cause for immediate expulsion from the GemFair Programme.

- 4.2.1** The Member must demonstrate commitment to responsible business practices, including on bribery, anti-corruption, facilitation payments and gifts.
- 4.2.2** The Member must demonstrate that he or she is *"fully informed of all relevant legislation and regulations regarding bribery and facilitation payments...ensuring [procedures] are developed and clearly explained to the relevant [workers]."*<sup>28</sup>
- 4.2.3** The Member should have a procedure in place for reporting and investigating allegations of attempted bribery in his or her operations.
- 4.2.4** The Member should not offer, accept or countenance any payments, including but not limited to facilitation payments

<sup>26</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements, Section A.

<sup>27</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements, Section A.

<sup>28</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements, p. 9.

### 4.3 NON-PAYMENT OF TAXES, ROYALTIES OR FEES

The Member is expected to comply with all applicable national tax requirements. GemFair will “engage with the [Member] and authorities to improve and track performance”<sup>29</sup>, such as by providing training on financial acumen and business integrity to assist the Member in these efforts.

GemFair will share records of Diamond purchases from the Member with the relevant authorities, as required by national law.

- 4.3.1** The Member must pay and document all payments of lawfully required taxes, royalties, fees and tributes related to extraction, trade and transport of minerals and commit to disclose such payments in accordance with the principles set forth under the Extractive Industries Transparency Initiative (“EITI”).<sup>30</sup>

<sup>29</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, 3rd edition. Paris: OECD Press, p. 24.

<sup>30</sup> OECD, 2016. OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, 3rd edition. Paris: OECD Press.

## 4.4 WILFUL MISUSE OF GEMFAIR EQUIPMENT

The provenance of the stones GemFair purchases from its Members is of utmost importance. GemFair has fraud-prevention mechanisms in place in the GemFair app. Any attempts to log ineligible stones into GemFair's app will be grounds for suspension. .

- 4.4.1** All Certified Members<sup>31</sup> must follow all rules associated with GemFair Toolkit use and must instruct his or her Mine Manager and Workers to do the same. The rules for GemFair Toolkit use include:
- All Diamonds from that specific Mine Site must be logged in the GemFair app.
  - Diamonds must be placed in sealed secure bags provided by the GemFair Toolkit.
  - The GemFair tablet is on loan and should only be used for the GemFair app.
  - Selling GemFair equipment is forbidden.
  - The GemFair app has an offline function, but the tablet must be connected to the internet periodically, so that production records are safely and securely stored in the GemFair system online.
  - If the tablet is lost or stolen, the user must inform a GemFair point of contact. The theft will then be investigated. When the tablet is replaced, the user can recommence participation in the GemFair Programme.
  - GemFair equipment must not be given to an unauthorised person. An Authorised Person is known to GemFair and has a profile in the GemFair app.
- 4.4.2** The Member must have product security measures in place at the Mine Site to prevent theft, damage or substitution of Diamonds

## 4.5 FAIR WAGE

Usually the national minimum wage is insufficient for most people to enjoy a decent standard of living. GemFair defines a fair wage as a living income: Workers must be able to cover their costs for food, housing, non-food and housing items, healthcare, education, unexpected events and factor for family size and number of dependents.<sup>32</sup>

- 4.5.1** The Member must commit to paying Workers a fair wage. Where a fair wage is not possible immediately, the Member must set a reasonable timeline for meeting this requirement.
- 4.5.2** Workers must in the first instance be paid the national minimum wage or the national minimum wage for the sector, as applicable. If there is no such designation, then Workers should be paid the national minimum wage for a similar sector.
- 4.5.3** The Member must establish a written Work Agreement with each Worker, specifying the daily wage and provisions, working hours, number of working days and a designation of the distribution of proceeds from a Diamond sale.
- 4.5.4** Male and female Workers must earn the same wage for the same role.
- 4.5.5** Workers must be paid regularly.
- 4.5.6** The Member must keep a record of all payments made to Workers. GemFair reserves the right to review these records at any time.
- 4.5.7** Workers are entitled to make a complaint to GemFair if there is a dispute over wages.
- 4.5.8** The Member must allow and enable Workers to form units of collective bargaining.
- 4.5.9** The Member must keep accurate records of any loans to Workers. Any loans should adhere to the following procedure:
- Require Workers to alert the Member if there are any loans between Workers. These loans should be capped at an agreed amount.
  - A loan between the Member and a Worker should be capped at a sum that the Worker can reasonably repay during the next pay cycle
  - A reason must be given for the loan.

<sup>31</sup> GemFair Members do not receive a GemFair Toolkit until they have been part of the GemFair Assurance Programme third-party audit.

<sup>32</sup> Anker & Anker, 2017. Living Wages Around the World: Manual for Measurement. Cheltenham, UK: Edward Elgar Publishing Ltd.

## 4.6 OCCUPATIONAL HEALTH AND SAFETY

The Member must work to create a more formalised system of ensuring the health and safety of all Workers. GemFair adapts the guidance provided by the International Labour Organization's *Safety and Health in Small-Scale Mines* manual.<sup>33</sup> Where serious or persistent hazards are identified through the course of GemFair's regular Mine Site monitoring visits, the GemFair Programme may institute sanctions over and above the 12-month Risk Management Plan.

- 4.6.1** The Member must take all measures within his or her capacity to safeguard Workers and the surrounding communities from hazards, injury or disease.
- 4.6.2** The Member should have an accident, injury and rescue plan in place and communicated to all workers on a regular basis.
- 4.6.3** Extraction and processing equipment
- The Member must conduct regular safety checks of equipment.
  - All Workers must be instructed in safe use of equipment.
- 4.6.4** Underground mining safety (where relevant)
- Pits and tunnels must be well-marked and, where applicable, mine shafts should be timbered.
  - The Member must maintain a maximum depth for pits or tunnels, as directed by national law. If there is no national requirement, the Member should seek the advice of GemFair.
  - Tunnels must be well-ventilated.
  - Workers must not be underground for more than two hours at a time.
- 4.6.5** Surface mining safety
- The Member must require terracing and ensure that the incline of the terraces is no more than 45°.
  - Piles of overburden must also be shaped to a safe angle of 30-45°.
  - Any wall, slope or bench must be inspected regularly for instability, weakness or cracks. If weaknesses are discovered, then work must be ceased in that area until it is repaired.<sup>34</sup>
- 4.6.6** Safe work practices
- All Workers should be suitably qualified and skilled for their respective position.
  - Workers must be allowed regular rest and meal breaks.
  - Potable drinking water must be available on site.
  - Alcohol and narcotics must not be permitted at the Mine Site.
  - First aid training must be provided to one individual for every 10 Workers.
  - The Member must appoint a safety point of contact at the Mine Site (it could be the Member, a gang leader or the Mine Manager) who supervises daily operations and rectifies any hazards or dangerous behaviour immediately.
- 4.6.7** The Member must develop procedures on the above and make all new and existing Workers aware of said procedure.

<sup>33</sup> ILO, 2001. Safety and health in small-scale surface mines. Sectoral Activities Programme Working Paper (WP. 168).

<sup>34</sup> ILO, 2001. Safety and health in small-scale surface mines. Sectoral Activities Programme Working Paper (WP. 168).

## 4.7 CAUSING SERIOUS ADVERSE IMPACT TO THE ENVIRONMENT

GemFair recognises that the Artisanal and Small-Scale Mining sector can be the cause of environmental degradation, including soil erosion, increased turbidity in waterbodies, water course diversion and a general tax on natural resources like water and land, potentially at the expense of other resource-dependent sectors. In the spirit of the Kimberley Process' *Washington Declaration*, the GemFair Programme encourages the reduction of the sector's environmental footprint.<sup>35</sup> Each Member should assess his or her own potential or anticipated environmental impact and develop an Environmental Management Plan (see below) on that basis.

GemFair follows the relevant sections of De Beers Group's Best Practice Principles section on Best Environmental Practice and the Regulatory Framework<sup>36</sup> on prioritising the most serious potential impacts of mining operations.

- 4.7.1** The Member must assess, to the furthest extent possible, the present and anticipated environmental impacts of his or her operations.
- 4.7.2** Where a simple Environmental Impact Assessment template is available from the country's national minerals authority, this template must be used. Where such a template is not available, the Member must seek the guidance of GemFair or a service provider to assess the environmental impacts on land, water, air and biodiversity in a suitable manner.
- 4.7.3** Based on the above Environmental Impact Assessment, the Member must develop an Environmental Management Plan for the most harmful anticipated impacts.
- 4.7.4** At a minimum, the Member must:
- develop appropriate environmental procedures, starting with managing and/or mitigating the most serious potential environmental impacts of the mining operation and monitoring their consistent implementation;
  - manage waste, emissions, dust and the use of potentially harmful substances so as to prevent pollution (e.g. fuel should not be dumped into nearby waterbodies);
  - regularly monitor the Mine Site's environmental performance using a government or GemFair template (as relevant); and
  - not carry out any mining activities in legally Protected Areas or World Heritage Sites.
- 4.7.5** The Environmental Management Plan must also address the above areas.
- 4.7.6** The Member must, to the best of his or her ability, follow all relevant environmental legislation and put controls in place to divert any serious adverse impact to the environment. Where it is impossible for the Member to follow all relevant environmental legislation, the Member should develop a progressive improvement plan that includes timelines and milestones which will be monitored by the GemFair Programme, dealt with on a case-by-case basis.

<sup>35</sup> Kimberley Process, 2012. *Washington Declaration on Integrating Development of Artisanal and Small-Scale Diamond Mining with Kimberley Process implementation*. Available from: <https://www.kimberleyprocess.com/en/2012-washington-declarationcompendium> (accessed 26 June 2018), Section B3.

<sup>36</sup> De Beers Group, 2017. *Best Practice Principles: The Assurance Programme Requirements*, Section C.

## 4.8 COMMUNITY RIGHTS AND CONSENT

GemFair adheres to De Beers Group's Best Practice Principles section on Community Engagement and Development.<sup>37</sup>

GemFair supports *"early and ongoing engagement with affected communities and stakeholders throughout the project's lifecycle, including post-closure monitoring."*<sup>38</sup>

- 4.8.1** The Member should be aware of the different stakeholders from whom consent should be sought.
- 4.8.2** The Member should carry out early and ongoing engagement with the neighbouring community and community leadership to his or her mining operation, including during the pre-licensing phase.
- 4.8.3** A written agreement between the Member and the affected community's leadership should be in place and updated annually.
- 4.8.4** The Member should maintain ongoing and transparent communications with affected communities and stakeholders, particularly with respect to major decisions relating to mining operation that may impact the community.
- 4.8.5** If a community is directly impacted by a mining operation (e.g. the mining takes place in the village), express written permission must be given by the village's leadership and renewed once a year, at minimum.

<sup>37</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements, Section D8.

<sup>38</sup> De Beers Group, 2017. Best Practice Principles: The Assurance Programme Requirements, Section D8, p. 27.



## SECTION 5: ASPIRATIONAL CRITERIA

The Aspirational Criteria for these Requirements form a fuller picture of best practice in the Artisanal and Small-Scale Mining sector. The criteria become part of the Member's scope after he or she has demonstrated compliance with the provisions in Sections 1-4 and has operation, audit. GemFair acknowledges that Artisanal and Small-Scale Miners have limited capacity to focus on every aspect of best practice at the same time. Therefore, in the interests of promoting the formalisation of the Artisanal and Small-Scale Mining sector, these Requirements take a phased approach toward requiring compliance with the Aspirational Criteria. The timeline for progress beyond the first round of GemFair Assurance is meant for guidance purposes only and will be informed by field testing.

### 5.1 FORMALISATION BEYOND MINERAL EXTRACTION

Like the CRAFT Code, GemFair acknowledges that formalisation is a process, not an end. The Member is encouraged to take steps *beyond proving his or her legitimacy* to formalise his or her operations, as required by national law and beginning in Year 1.

- 5.1.1** Beginning in Year 1, or when deemed appropriate, GemFair will support the Member to improve the efficiency and organisation of his or her mining operations. This support could take the form connecting the Member with a suitable lender; implementing a rent-to-own scheme for equipment upgrades; providing technical training on extraction and processing methods; or other forms of appropriate support.<sup>39</sup>
- 5.1.2** Formalisation also applies to organised business practices. Beginning in Year 3, GemFair or a service provider will work with the Member on record-keeping, business planning, savings skills and procedures, as needed.

<sup>39</sup> The identification of appropriate support should be accompanied by a livelihoods assessment so as to ensure that vulnerable Workers, such as women, are not going to be displaced from an income generating activity through the introduction of new equipment.

## 5.2 CHILDREN AT THE MINE SITE

GemFair supports a phased and harm reduction approach to transitioning children out of work in the Artisanal and Small-Scale Mining sector. GemFair recognises that if a considered and phased approach is not taken, it could drive children into even more harmful activities.<sup>40</sup>

- 5.2.1** Beginning in Year 1, the Member should base decisions about how to reduce the use of child labour on: (1) expert advice about the options available to children in the local context; (2) the best interests of the children affected; and (3) ensure that the time that children spend at work when added to the time that children spend at school and in travelling there and back should not total more than 10 hours a day, so as to help prevent the child from transitioning into “*similar or worse forms of child labour*” if he or she is banned from the Member’s Mine Site.<sup>41</sup>
- 5.2.2** Beginning in Year 3, the Member should provide economic and/or logistical support to allow children to attend and remain in school or training for as long as they are ‘children’ under the International Labour Organization’s definition of ‘child labour’ and per national law.
- 5.2.3** The requirements should be clearly communicated to Workers, parents in the mining area, local authorities and teachers.
- 5.2.4** Beginning in Year 6, the Member should participate in and contribute to a local campaign to keep children in school or register children in a vocational scheme, in accordance with national laws.<sup>42</sup>

<sup>40</sup> OECD, 2017. Practical actions for companies to identify and address the worst forms of child labour. Paris: OECD Press.

<sup>41</sup> OECD, 2017. Practical actions for companies to identify and address the worst forms of child labour. Paris: OECD Press.

<sup>42</sup> OECD, 2017. Practical actions for companies to identify and address the worst forms of child labour. Paris: OECD Press.

## 5.3 GRIEVANCE MECHANISM

Artisanal and Small-Scale Mining, like any mining activity, brings with it the potential for accidents, conflict, crime and other social or environmental impacts. It is important for there to be a suite of mechanisms in place for issues to be raised both at the Mine Site and wider community level. The Member should be actively involved in establishing an effective mechanism for incidents and grievances to be reported and resolved at a Mine Site or local level before they are escalated to GemFair.

GemFair will support the Member with the establishment of a such a mechanism, either individually or collectively.

- 5.3.1** Beginning in Year 2, GemFair encourages and will support the Member to form or take part in a multi-stakeholder committee which includes members of the local government, civil society, Digger representatives (such as a gang leader) and village leaders. The committee should meet regularly to discuss any arising or ongoing complaints or incidents.<sup>43</sup>
- 5.3.2** Beginning in Year 3, there should be a *“transparent, legitimate, accessible and effective”* feedback and complaints mechanism in place for impacted community members to use, above and beyond the YourVoice service.<sup>44</sup>

## 5.4 FURTHER OCCUPATIONAL HEALTH AND SAFETY CONSIDERATIONS

The previous sections of these Requirements provide guidance on how the Member can make his or her Mine Site structurally safe so that the risks of the most serious injuries and accidents are reduced. As Mine Sites become more formalised, their occupational health and safety performance also tends to improve.

- 5.4.1** Beginning in Year 1, the Member should construct a clean and shaded structure for Workers to eat and take rest.
- 5.4.2** Beginning in Year 1, the Member should appoint a trusted point of contact to be onsite at all times, such as a Mine Manager or other leader, with whom Workers can raise any concerns about health and safety.
- 5.4.3** Beginning in Year 1, the Member should make a first aid kit available onsite. There must be a trusted point of contact onsite at all times, such as a Mine Manager or gang leader, with whom he or she can raise any concerns around health and safety.
- 5.4.4** Beginning in Year 3, the Member should develop a record-keeping system for health and safety incidents and subsequent preventative/remedy measures taken.
- 5.4.5** Beginning in Year 3, the Member should develop and implement a health and safety management plan for the Mine Site. This plan should account for gender differentiated health impacts of Artisanal and Small-Scale Mining work.
- 5.4.6** Beginning in Year 3, Workers should have free use of appropriate and gender-specific personal protective equipment (e.g. hard hats, safety glasses, dust masks and head lamps (for underground mining), rain gear, sun protective clothing, ear plugs/muffs, as needed and appropriate).
- 5.4.7** Beginning in Year 6, the Member should build gender-segregated latrines.
- 5.4.8** Beginning in Year 6, the Member should construct adequate drainage mechanisms, such as water collection pits and channels.

<sup>43</sup> The identification of appropriate support should be accompanied by a livelihoods assessment so as to ensure that vulnerable Workers, such as women, are not going to be displaced from an income generating activity through the introduction of new equipment.

<sup>44</sup> Fairtrade, 2013. Fairtrade standard for gold and associated precious metals for artisanal and small-scale mining, version 1.2. Available from: <http://www.fairgold.org/wp-content/uploads/2014/01/Gold-and-Precious-Metals-Standard.pdf> (accessed 28 June 2018).

## 5.5 GENDER EQUITY

Women play various roles in Artisanal and Small-Scale Mining operations that range from labourers to providers of goods and services such as meals, sex trade and small shops at the Mine Site. It is commonplace that women are restricted to certain roles, often to their disadvantage. Likewise, when Mine Sites undergo mechanisation, it is frequently women who are the first to lose their jobs.

- 5.5.1 Beginning in Year 1, female Miners should be included in GemFair training (i.e. on Diamond valuation and gemmology).
- 5.5.2 Beginning in Year 3, women (including pregnant women) should not be excluded from specific mining activities.
- 5.5.3 Beginning in Year 1, the Member should take steps to ensure that female Miners have equal access to resources and roles as men.<sup>45</sup>
- 5.5.4 Beginning in Year 6, the Member should carry out an extended sensitisation campaign with Workers on gender equity at the Mine Site. This shall extend to information dissemination on basic financial literacy, environmental health and nutrition, sexual and reproductive health and rights, not only for women but for men as well.
- 5.5.5 Beginning in Year 9, should the Member rent or purchase time-saving equipment, he or she is required to provide compensation or reassignment to any resulting displaced ancillary Workers, including women.

## 5.6 ENVIRONMENTAL MANAGEMENT

GemFair will work with its Members to reduce the impacts of the mining operations and prepare for responsible site closure. GemFair or a service provider will provide context-specific training on responsible Artisanal and Small-Scale Mining techniques, including, for example, how to avoid erosion, maintaining the stability of riverbanks and slopes, avoiding turbidity and landslide and mudslide prevention.

- 5.6.1 Beginning in Year 3, the Member should work with GemFair to prepare a brief annual report on the environmental performance of the Mine Site operations, highlighting key areas of improvement and the plan for remediation of improvement areas.
- 5.6.2 Beginning in Year 3, the Member should work with GemFair's or a service provider to prepare an Environmental Management Plan on all key areas of the operation including site-specific environmental risks and site closure.
- 5.6.3 Beginning in Year 3, the Member should provide training to all Workers on how to manage and contain the environmental impacts of the Mine Site operations, including:
  - **Back-filling open pits:** Encourage the preservation of overburden, which can later be used for back-filling. Employ back-filling techniques when a pit is depleted. Carry out an education campaign with Diggers in the area to demonstrate that the pit is indeed depleted.
  - **Waste rock/ tailings disposal:** Marine or lake tailings or waste rock disposal is not permitted. Take tangible steps to reduce wastewater and tailings contamination.
  - **Dredging (if applicable):** If the Member's operations involve dredging a riverbed or streambed, a site-specific environmental monitoring plan should be developed.
  - **Water:** Take a proactive approach to water management, particularly if there is water scarcity. Where possible, pit water should be used for washing gravel, instead of seeking fresh water sources.
  - **Machinery maintenance:** Machinery used in the extraction and processing of Diamonds must be in good condition and free of leakages so as to avoid diesel and other fuels contaminating the soil or waterbodies.
  - **Pollution prevention:** Measures should be taken to prevent pollution from fuels and oils from machinery and where this occurs, to dispose of the waste correctly.
  - **Waste management:** Establish a centralised area for waste. Waste should be disposed of responsibly and, where possible, recycled. Burning of rubbish should be avoided, where possible. If burning of waste must occur, it should take place in a contained and managed area.

<sup>45</sup> Adapted from ARM and RESOLVE, 2018. CRAFT: Code of Risk-mitigation for ASM engaging in Formal Trade, Version 1.0, Official Version.

## 5.7 SITE CLOSURE

Site closure, if not anticipated or carried out responsibly, can have lasting impacts on the environment and the livelihoods of other resource dependent groups. The GemFair Programme adopts the Maendeleo Diamond Standards provisions on site closure with the intention of: (1) ensuring that the greatest environmental and social impacts of site closure are mitigated; (2) facilitating proper planning for closure; and (3) demonstrating to Diggers that the area is exhausted so as to avoid future incursions.

- 5.7.1** Beginning in Year 3 (or before, if the mine operations are of a shorter duration), a site closure plan should be prepared with the assistance of the GemFair Programme or a service provider, and in collaboration with the government. This plan should be compliant with national legislation and regularly reviewed in case the scope of the operation changes.
- 5.7.2** Beginning in Year 3 (or before, if the mine operations are of a shorter duration), the Member should engage regularly with potentially-impacted stakeholders about the site closure and rehabilitation plan.
- 5.7.3** Before the Member moves to a new Mine Site, the operations at the previous location must be reclaimed. Reclamation activities should include, for example:
- refilling pits and other excavation areas;
  - safely disposing of rubbish, including fuel containers; and
  - *"trimming slopes to a safe angle...and... stabilizing unstable daces like pit walls, benches or waste dumps."*<sup>46</sup>
- 5.7.4** Beginning in Year 6 (or before, if the mining operations are of a shorter duration), the Member should develop a plan for restoration of the mined-out area. Where possible, members of the neighbouring village should be employed to carry out reclamation and re-vegetation activities.

<sup>46</sup> ILO, 2001. Safety and health in small-scale surface mines. Sectoral Activities Programme Working Paper (WP. 168).

## 5.8 LSM-ASM COEXISTENCE<sup>47</sup>

**Please note:** this provision is only relevant where the Member's operations are located near or within a large-scale miner's concession.

These Requirements adapt the Maendeleo Diamond Standard's section on interactions with large-scale mining (hereafter referred to as "LSM", and a company operating LSM will be referred to as "the Company") in a cordial and non-violent manner.<sup>48</sup>

- 5.8.1** Beginning in Year 1, where the Member's operations are adjacent to an LSM operation, the Member must maintain cordial relations with the Company and instruct Workers to do the same.
- 5.8.2** Beginning in Year 1, the Member should make Workers aware of any adjacent LSM concession and its boundaries.
- 5.8.3** Beginning in Year 1, the Member and relevant Workers (e.g. the Mine Manager and gang leader) should participate in any meetings or consultations requested by either the government or the Company.
- 5.8.4** Beginning in Year 3, the Member should develop and disseminate a procedure for Workers on how to raise concerns or grievances regarding the Company. The procedure should be user-friendly and aligned with existing grievance mechanisms.
- 5.8.5** Beginning in Year 6, the Member should participate in and provide feedback on any efforts led by the Company to provide training, support or any other form of formalisation or professionalisation of the Member's operations.
- 5.8.6** Beginning in Year 6 (or before, if site closure applies), the Member should collaborate with the Company on a site closure plan.

<sup>47</sup>Coexistence is characterised by a peaceful and mutually beneficial agreement between ASM and LSM entities. Coexistence agreements can take on different forms. For example, an LSM company could offer a parcel of its concession to an Artisanal and Small Scale Mining organisation to exploit in an organised and safe manner. In return, the Artisanal and Small-Scale Mining organisation would be obliged to sell any production to the company. Coexistence could also simply mean that the Artisanal and Small-Scale Mining organisation and the LSM company have made an agreement to work without disrupting the operations of the other. For more information, see CASM, ICMM, IFC and the World Bank, 2008, Working together: How large-scale mining can engage with artisanal and small-scale miners.

<sup>48</sup>DDI, 2018. An overview of the Maendeleo Diamond Standards is published on [http://www.ddiglobal.org/login/resources/mds-summary\\_march-6-2018.pdf](http://www.ddiglobal.org/login/resources/mds-summary_march-6-2018.pdf) (accessed 26 June 2018).

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