



# **Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain**

**采矿业和矿产价值链调解磋商机制**



**中国五矿化工进出口商会**

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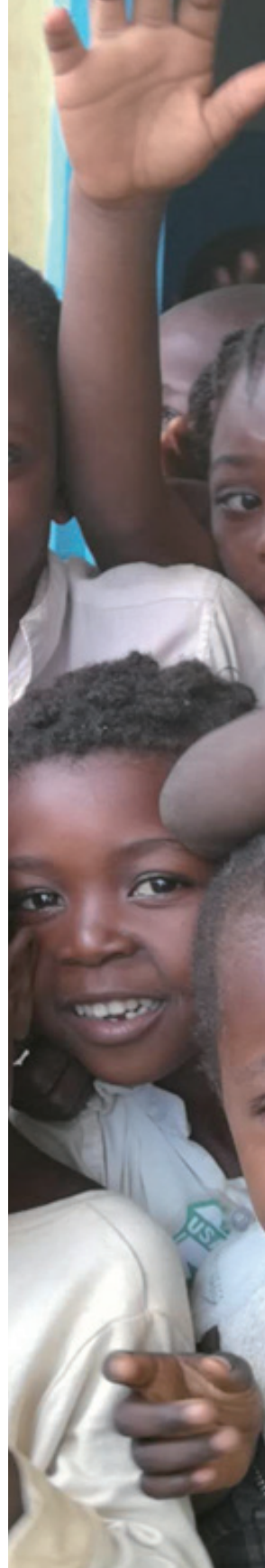
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# Introduction

In recent years, the issue of responsible business conduct in the mining industry and mineral supply chain has received extensive attention from the international community. In practice, we have noticed that the emergence of many controversial, discriminatory issues and unfair treatment among stakeholders and the intensification of conflicts are directly related to the lack of timely, effective, equal, and transparent communication and consultation channels among all parties.

To overcome obstacles and concerns in the communication and consultation among various stakeholders, provide professional support for all parties to conduct equal dialogue, and promote problem-solving, we have developed the Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain (hereinafter referred to as “this Mechanism”). This Mechanism aims to build a mediation and consultation platform with industry coordination, expert support, and voluntary participation of all parties, which can be used by stakeholders throughout the entire life cycle of the mineral value chain, including exploration, feasibility study, construction, operation, and mine closure, contributing to laying an important foundation for joint actions between upstream and downstream stakeholders working together to mitigate risks in the mineral supply chain.

This Mechanism is non-profit. In the initial stage, based on the practical considerations of the operation of the mechanism, the cost of services and support provided by external experts and institutions will be borne by the parties by mutual agreement. This Mechanism will strive for external institutions or personnel to provide pro bono services and support, actively explore diversified sources of funds to provide support for vulnerable groups participating in this Mechanism and ensure the accessibility and sustainable operation of this Mechanism.

This Mechanism is based on the premise of voluntary participation and the principle of equal and friendly dialogue. As a non-judicial industry-level mediation and consultation platform which does not have the power of compliance review, damage and remedy assessment, and liability determination, this Mechanism has the following limitations:

- (1) It does not conduct a compliance review on disputed matters. When the parties cannot reach a consensus on the disputed facts, this Mechanism can coordinate its Supporting Resources to help both parties clarify the facts.
- (2) It does not have the power to make decisions on compensation and remedy. The focus is on building a dialogue platform that, through neutral, flexible, transparent, and effective consultations, promotes the parties to seek solutions to problems by way of equal and friendly communication.
- (3) It does not have the power to enforce the Problem-solving Plan achieved. Neither does it have the right to take any punitive and corrective measures for the implementation of the Problem-solving Plan. The aim is to use industry initiatives and cooperation platforms to monitor the progress of the implementation of the Problem-solving Plan and to coordinate and promote the establishment of a long-term communication mechanism for multiple stakeholders.
- (4) It has no intention to intervene in judicial processes or to replace the judicial system of the host country or home country. Neither can it effectively punish criminal acts that obstruct justice or are subject to jurisdiction. This Mechanism aims at promoting effective resolution and proper handling of non-judicial issues and disputes.

To ensure that the rights of both parties involved be sufficiently respected and protected during the mediation and consultation process and to ensure the legitimacy of the operation of the mechanism, the design and operation of this Mechanism follow the principles of being legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning established in the *United Nations Guiding Principles on Business and Human Rights*. It takes reference from the Organisation for Economic Co-operation and Development (OECD)'s *Guidelines for Multinational Enterprises* and its National Contact Point (NCP) case handling mechanism, draws on the procedural design and practical experience of other major relevant international mechanisms such as the Compliance Advisory Office (CAO) of the International Finance Corporation (IFC) and the Accountability Mechanism (AM) of the World Bank, and is informed by conversations and interviews with many social organisations and major mining companies with rich experience.



## ***This Mechanism innovates in the following aspects:***

### **(1) Diversified participants**

This Mechanism encourages extensive participation of diversified stakeholders including individuals and communities, upstream and downstream enterprises in the mineral supply chain, standards owners and assessors, the media, social organisations, and the general public, etc.

### **(2) Multi-dimensional disputes**

This Mechanism applies to not only ESG issues involved in the mining process and the mineral supply chain but also to disagreement over the assessment process and results. It is also applicable to the direct or indirect effect on other stakeholders caused by the misconduct of the upstream and downstream companies in the mineral supply chain.

### **(3) Bi-directional application**

The mediation and consultation application accepted by this Mechanism can be filed by stakeholders towards companies over ESG issues occurring in their supply chain due diligence management, or by a company or companies towards stakeholders over inappropriate perception and misunderstanding of its operations or its supply chain due diligence performance; by standards owners and assessors towards companies over non-compliance, or by a company or companies towards standards owners and assessors over unjust assessment and audits.

### **(4) Openness to standards**

The standard documents applicable to this Mechanism include the *Guidelines for Social Responsibility in Mining Investments*, the *Chinese Due Diligence Guidelines for Mineral Supply Chain*, the *Cobalt Refiner Supply Chain Due Diligence Standard*, the *Artisanal and Small-Scale Mining (ASM) Cobalt ESG Management Framework* and other standard documents which are consistent with the above standards. This Mechanism also applies to disputes regarding other internationally recognised codes for responsible business conduct.

### **(5) Professionalism of mediation and consultation**

This Mechanism mobilizes professional resources inside and outside the industry on a global scale and provides multiple handling routes and available tools. This Mechanism mainly utilizes the internal professional capacity within the mechanism to support the communication and consultation among parties; when the technical, normative, and social factors involved in the dispute are so complicated as to necessitate the involvement of external expert resources, such external resources will be involved based on the mutual agreement between the parties to enable and facilitate an effective resolution.



## Chapter 1

# General Rules

### 1. Aims and Objectives

As a non-judicial mediation and consultation platform with industry coordination, expert support, and voluntary participation, this Mechanism aims to facilitate dispute resolution through effective communication, consultation, and mediation between stakeholders in the mining industry and mineral supply chains.

This Mechanism is established and operated to achieve the following objectives:

- Actively establishing a neutral and professional mediation and consultation platform to facilitate stakeholders to use the procedure-based and systematic approaches and methods to build dialogues and problem-solving consultation to resolve disputes and achieve a win-win outcome and a virtuous circle properly and efficiently.
- Giving full play to the bridging and bonding role of industry associations to promote the effective operation of a consultation mechanism for the industry and to jointly create and promote model cases for stakeholder mediation and consultation.
- Continuously strengthening the communication, coordination, and cooperation between stakeholders, conveying the demands and expectations of all parties, enhancing the practice of corporate due diligence, and building partnerships for a responsible, resilient, and sustainable mineral supply chain.

As one of the ways to promote communication among stakeholders, this Mechanism encourages various subjects to make active efforts to attempt direct objections to or communication with relevant parties on the disputes before applying to this Mechanism.



## 2. Scope of Application

### 2.1 Scope of applicants

*The following subjects affected during the due diligence management practices in the mining processes and mineral supply chains or concerned about companies' due diligence performance may apply to use or participate in this Mechanism:*

- Individuals, communities, and other stakeholders: Individuals and communities who claim that their rights and interests have been or are likely to be adversely affected by a company's business operations and production activities which allegedly violated the applicable standard documents of this Mechanism; other stakeholders who concern the due diligence and responsible business conduct of a company, including but not limited to the media, social organisations, and the general public.
- Upstream and downstream companies in the mineral supply chain (hereinafter referred to as "companies"): companies operating in various phases of the mining supply chain such as mining, smelting, refining, processing, manufacturing, and final-end brands who believe that the misconduct of other stakeholders has infringed or is likely to infringe upon their legitimate rights and interests, disrupted or is likely to disrupt their normal business order, or impacted or is likely to impact their due status in the market.
- Standard Owners and Assessors: standard owners that conduct second-party or third-party assessments, institutions that initiate or are entrusted with the assessment, and the professionals who carry out the assessments according to the applicable standards of this Mechanism.

### 2.2 Scope of standards

*This Mechanism applies to disputes between parties over a company's compliance with the following standard documents (hereinafter referred to as "standard documents"):*

- The *United Nations Guiding Principles on Business and Human Rights*, the *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, the *OECD Guidelines for Multinational Enterprises* and the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and other internationally recognised standard documents that are consistent with the above documents.

- The *Guidelines for Social Responsibility in Mining Investments*, the *Chinese Due Diligence Guidelines for Mineral Supply Chain*, the *Cobalt Refiner Supply Chain Due Diligence Standard*, the *Artisanal and Small- Scale Mining (ASM) Cobalt ESG Management Framework* and other standard documents which conform with the above standards.

### 2.3 Scope of disputes

This Mechanism accepts applications for mediation and consultation from various applicants on the following disputes:

- Individuals and communities who believe a company's conduct does not comply with the standard documents and directly or indirectly harms their legitimate rights and interests, and hope to seek solutions through dialogue and consultation.
- Social organisations who believe that the conduct of companies, standards owners, or assessors does not comply with the standard documents and incurs serious ESG risks, and hope to mitigate relevant risks through dialogue and communication.
- Companies who believe standards owners, assessors, individuals and communities, and other stakeholders have incorrect perceptions and misunderstanding of their operations or supply chain due diligence performance and hope to seek clarification and conversation to avoid damage to their legitimate rights and interests.
- Standards owners or assessors who hope to engage in dialogue and consultation with companies regarding their performance in complying with the requirements of the standard documents.

## 3. Principles

The establishment and operation of this Mechanism follow the five principles of being “lawful and compliant, neutral and professional, inclusive and balanced, equal and voluntary, and transparent and open”.



## Chapter 2

# Organisational Structure and Supporting Resources

### 1. Secretariat

*This Mechanism set up a Secretariat as the functional body for the handling of mediation and consultation and the operation of this Mechanism. The main functions of the Secretariat include, but are not limited to:*

- managing the registration, acceptance, triage, and other processes of applications.
- designating and setting up a case-handling working group and facilitating its functioning.
- establishing and maintaining the Supporting Resources, coordinating, and ensuring the provision of professional services to the consultation and the operation of this Mechanism.
- reviewing the objections raised by parties during the consultation and the implementation of Problem-solving Plan.
- monitoring the progress of the implementation of Problem-solving Plan reached through this Mechanism.
- enforcing information disclosure on individual cases, maintaining the case registration and management system, as well as carrying out case studies and operational analysis.
- actively raising funds, to provide financial support for the participation of vulnerable groups and to enhance the accessibility and sustainable operation of this Mechanism.
- updating regularly on effective communication methods between companies and stakeholders to promote long-term effective communication.
- providing advice and guidance to potential users of the Mechanism.
- establishing and strengthening coordination and knowledge sharing with relevant domestic and foreign consultation mechanisms.

## 2. Stakeholder Committee

To ensure professionalism, inclusiveness, neutrality, and fairness, this Mechanism invites individuals with rich experience in the mineral supply chain due diligence management, formulation and implementation of relevant international standards, and dispute resolution on a global scale, to set up a Stakeholder Committee to provide recommendations on the operation of this Mechanism.

The Stakeholder Committee is composed of stakeholders from standards owners, governments, international organisations, companies, financial institutions, communities, civil society, media, etc.

*The functions of the Stakeholder Committee include but are not limited to:*

- providing technical consultation, advice, and guidance on the operation of the mechanism.
- promoting the influence of this Mechanism.
- recommending candidate individuals and institutions for the Supporting Resources specified in Article 3 of this chapter, helping build the Supporting Resources, and providing opinions on the final determination of the list of Supporting Resources.
- helping this Mechanism to raise funds, resources, and other external support to maintain the long-term effective operation of this Mechanism.



The ways in which the Stakeholder Committee guides this Mechanism include but are not limited to regular and occasional meetings, the Secretariat seeking advice and suggestions from the Stakeholder Committee on specific matters, and the Stakeholder Committee proactively provides suggestions to the Secretariat.

The Stakeholder Committee provides consultation, advice, and guidance for the operation and development of this Mechanism but shall not get involved in the handling of specific cases. When necessary, the Secretariat may consult the Stakeholder Committee on certain technical details of specific cases.

Under no circumstances shall the members of the Stakeholder Committee express opinions or exert influence in any way on any case in which they have direct or indirect interests. Neither shall the members of the Stakeholder Committee disclose specific information of this Mechanism or cases without authorization.

### 3. Supporting Resources

To better support its operation and strengthen its the capacity, this Mechanism selects experts and institutions on a global scale to establish its Supporting Resources. The Supporting Resources provide professional services and support during External Expert Mediation, Fact-Finding, and Assessment and Verification as defined in Chapter 4.

This Mechanism encourages and actively facilitates professionals and institutions listed in the Supporting Resources to provide pro bono services and support to all parties in the mediation and consultation process.

### 3.1 Types of Supporting Resources

- **Expert Network**

The expert network is composed of globally recognised and reputable experts in the industry, who have solid professional knowledge and rich practical experience. They perform the tasks of External Expert Mediation and Fact-Finding in specific cases.

Sub-groups can be set up: Region-specific Expert Group, Topic-specific Expert Group, and Dispute Resolution Expert Group. Experts with comprehensive professional skills and rich practical experience may be listed in multiple groups.

- **Fact-finding Institution Resources**

Independent, qualified, and reputable institutions worldwide (including but not limited to consulting companies, law firms, assessment companies, research institutions, and non-governmental organisations) are selected as the institutional resources for fact-finding. They provide Fact-Finding services to parties in specific cases.

- **Assessment and Verification Institution Resources**

Independent, qualified, and reputable assessment and verification institutions are selected to be the institutional resources for assessment. They provide Assessment and Verification services to parties in specific cases.



### 3.2 The establishment and maintenance of Supporting Resources

- **Source of Supporting Resources**

The Secretariat selects candidates for the Expert Network, Fact-Finding Institutions, and Assessment and Verification Institutions on a global scale.

This Mechanism encourages professional individuals and institutions around the world to self-recommend and welcomes stakeholders to recommend candidates. Self-recommendation and recommendation shall be submitted to the Secretariat in writing.

- **Qualification and maintenance of Supporting Resources**

The Secretariat conducts qualification evaluation through stages of invitation, preliminary evaluation, public notice, and selection. Before finally determining the list of Expert Network members, Fact-Finding institutions, and Assessment and Verification Institutions, the Secretariat shall solicit the opinions of the Stakeholder Committee as reference.

The Secretariat regularly updates, maintains, and publishes the list of Expert Network members, Fact-finding Institutions, and Assessment and Verification Institutions.

### 3.3 Appointment of experts and institutions in a specific case

In a specific case, both parties may apply to the Secretariat to use the Supporting Resources. Based on the application, the Secretariat recommends experts, fact-finding institutions, and/or assessment and verification Institutions, and with a consensus of both parties, the Secretariat appoints the experts or institutions to provide relevant professional support and services in the case.

## Chapter 3

# Submission and Acceptance of Application

### 1. Applicant and Respondent

The party that applies for mediation and consultation (hereinafter referred to as the “application”) to the Secretariat is referred to as the “applicant”; the party which the application towards is referred to as the “respondent”.

The applicant and the respondent apply, respond, and participate in their own names in various stages of the process of mediation and consultation. The applicant and the respondent may participate in person or authorize in writing 1 or 2 agents to participate on their behalf.

Both the applicant and the respondent can be one or more subjects. Where there are more than 3 applicants or respondents, 1 to 2 representatives shall be selected by the applicants or respondents to participate them respectively in the mediation and consultation.

## 2. Submitting an Application

To submit an application, the applicant shall fill in and submit the “Mediation and Consultation Application Form” to the Secretariat by email, post, or on-site submission.

An application shall include the following:

- the applicant’s full name, address, or place of registration, contact details, and other relevant information.
- the respondent’s name, address or place of registration, possible contact details, and other relevant information.
- facts, claims, and reasons for a specific dispute.
- basic evidence that can preliminarily prove the existence of the dispute.

To ensure the confirmation of the qualification of the parties in the process of application acceptance and review as well as convenient liaison and effective communication during the mediation and consultation, this Mechanism does not accept anonymous applications. The applicant may submit a confidentiality application or other rights protection requests to the Secretariat in accordance with this Procedure Document.

## 3. Accepting an Application

### 3.1 Acceptance criteria

- The dispute falls into the range of the scope of application of this Mechanism.
- The contents and materials submitted are sufficient to preliminarily prove the existence of a dispute.

### 3.2 Pro forma review and acceptance

Within 10 working days from the date of receiving the application, the Secretariat shall conduct a pro forma review to decide whether the application meets the acceptance criteria and shall issue a written decision to the applicant to accept or reject the application.

During the pro forma review, the Secretariat may request the applicant to provide further evidence or information as appropriate.

If the application is rejected, the applicant may re-apply to the Secretariat on the same disputed matter.



## Chapter 4

# Mediation and Consultation Process

## Section 1 Procedure Activation and Case Triage

### 1. Procedure Activation

Within 10 working days from the date of application acceptance, the Secretariat shall issue a written Invitation to Mediation and Consultation to the respondent; the respondent shall notify the Secretariat in writing whether it accepts the invitation within 20 working days from the date of the delivery of the invitation.

**1.1. If the respondent accepts the invitation, the Secretariat shall, within 10 working days from the date of receiving the written notification of the respondent, issue a “Notice of Activating the Mediation and Consultation Procedure” to both parties.**

The Mediation and consultation procedure is officially activated on the day when this notice is served on both parties.

While accepting the invitation, the respondent may provide the Secretariat with its preliminary response to the statement and claims raised by the applicant in writing and supporting evidence, the absence of which shall not affect the activation of the procedure.

**1.2. If the respondent notifies the Secretariat in writing that the invitation is not accepted, the Secretariat shall issue a “Notice of Not Activating the Mediation and Consultation Procedure” to the applicant in writing within 10 working days from the date when the respondent rejects the invitation.**

If the respondent fails to give a written reply within the prescribed time limit, the Secretariat shall issue once again a written “Invitation to Mediation and Consultation” to the respondent within 5 working days from the date the time limit expires. If the respondent again fails to give a written reply within 10 working days from the date of the second serving of the invitation, it shall be deemed that the respondent rejects the invitation. The Secretariat shall then issue a “Notice of Not Activating the Mediation and Consultation Procedure” to the applicant in writing within 10 working days.

## 2. Evaluation and Triage

Within 15 working days from the date the “Notice of Activating the Mediation and Consultation Procedure” is served, the Secretariat shall conduct a preliminary assessment on the type and nature of the dispute, the scope and content of the disputed facts, the complexity of the issues concerned, the difficulty in reaching an understanding and solution, etc. The assessment shall be based on the applicant’s claim, the respondent’s preliminary response, and the supporting materials provided by both parties and lead to suggestions on the parties’ mutual choices from the processing routes and available tools provided in Sections 2 and 3 of this Chapter.

Under the advice and guidance of the Secretariat, both parties agree on the case triage by choosing from three processing routes: Bilateral Dialogue, Internal Mediation, and External Expert Mediation. The parties may also decide whether to use any of the two available tools: Fact-finding, and Assessment and Verification.

## Section 2 Processing Routes

Depending on the type and nature of the dispute, the scope and content of the disputed facts, the complexity of the issues concerned, and the difficulty in reaching a solution, this Mechanism provides three processing routes: Bilateral Dialogue, Internal Mediation, and External Expert Mediation, to conduct mediation and consultation between the parties by way of remote dialogue, face-to-face consultation, focus group meetings, conversation in writing, etc.

### 1. Bilateral Dialogue

In this route, the parties carry out an independent conversation with the assistance of the Secretariat, aiming at mutual understanding and Problem-solving Plan.

Scope of application: this route is recommended for cases with relatively minor disputes and relatively simple issues involved, and relatively mildly difficulty in independent communication between the parties.

Implementation method: the Secretariat designates internal professional(s) to coordinate with the parties in a flexible manner to conduct friendly, equal, inclusive, sufficient, and independent/autonomous communication, seeking a consensus-based feasible resolution; according to the common intention of the parties, the Secretariat may provide advice regarding knowledge, technology, and experience relevant to the disputes involved.

Duration: The duration of the bilateral dialogue is in principle 1 month and the Secretariat may decide to extend upon the application of the parties.



## 2. Internal Mediation

In this route, the Secretariat designates internal experts within the mechanism with rich professional knowledge and mediation experience in the relevant field to form an Internal Mediation Panel to mediate between the parties.

**Scope of application:** this route is recommended for cases with relatively major disputes, relatively complex issues, and relatively significant difficulty in independent communication between the two parties.

**Implementation method:** the Internal Mediation Panel conducts intermediary mediation, relying on its precise understanding of relevant rules and standards and rich experience in dispute resolution, to support the parties to reach practical solutions through equal and friendly negotiations.

**Duration:** The duration of the bilateral dialogue is in principle 3 months and the Secretariat may decide to extend upon the application of the parties.

### 3. External Expert Mediation

In this route, the Secretariat appoints certain Expert Network members to serve as the External Expert Mediator or to form an External Expert Mediation Panel to mediate between the parties.

Scope of application: this route is recommended for cases with major disputes, complex issues, and significant difficulties in communication between the parties.

Implementation method: the External Expert Mediator or External Expert Mediation Panel uses profound professional knowledge and rich experience in dispute resolution to conduct in-depth interpretation and analysis of difficult issues involved in disputes, coordinate the parties to clarify the facts and formulate case handling plans, guide the parties to take a comprehensive consideration of all factors, provide expert advice on Problem-solving Plan and action steps, and eventually facilitate the parties to reach a consensus-based feasible Problem-solving Plan through equal and friendly negotiations.

When necessary, the available tools of Fact-finding and/or Assessment and Verification provided in Section 3 of this Chapter may be activated upon the application of the parties.

Duration: The duration of the bilateral dialogue is in principle 6 months and the Secretariat may decide to extend upon the application of the parties.

### 4. Change of Route

During the mediation and consultation, both parties to the dispute may apply to the Secretariat for a route change.

Upon communicating with the Internal Mediation Panel or External Expert Mediator/External Mediation Panel, the Secretariat takes a comprehensive consideration of the situation of the specific case and decides on whether to switch routes based on the mutual agreement of both parties.

## Section 3 Available Tools

### 1. Fact-finding

Fact-finding is only recommended to be activated in the route of External Expert Mediation.

Under the guidance and advice of the External Expert Mediator/External Mediation Panel, the two parties jointly select experts or fact-finding institutions from the Supporting Resources to form a Fact-finding Panel to conduct fact-finding on specific disputed matters.

Fact-finding aims to help the two parties reach a consensus on the disputed matters, which can be a reference for mediation and consultation.

#### 1.1 Scope and Principles of Fact-finding

Fact-finding shall be limited to the disputed matters involved in the application and the specific scope shall be determined by consensus between the two parties under the guidance of the External Expert Mediator/External Mediation Panel and the Fact-finding Panel.

Both parties enjoy the full right to state facts, express opinions and provide information during the fact-finding process.

The activation of fact-finding does not automatically suspend an ongoing mediation unless deemed necessary by both parties.

#### 1.2 Method and Duration of Fact-finding

The method of fact-finding shall be determined by the Fact-finding Panel based on the specific circumstances and needs. The methods can include but are not limited to written reviews, desktop research, on-site investigations, interviews with relevant parties, investigation meetings, or other methods that can help clarify the disputed facts. Both parties should support and actively cooperate with the investigation.

In principle, the fact-finding shall be completed within 3 months.



## 2. Assessment and Verification

Assessment and verification can be activated in all processing routes of Bilateral Dialogue, Internal Mediation, and External Expert Mediation.

Any party who deems it necessary to conduct Assessment and Verification on a specific matter can select an assessment institution from the Supporting Resources to provide assessment service, with clear applicable standards, boundaries, procedures, and methods of assessment.

The Assessment and Verification are for and not limited to:

- determining the scope and degree of damage or impact on the interests of relevant parties. For this, an independent third-party institution conducts a comprehensive or special assessment of the issues or matters involved in the application.
- dealing with common and universal issues in the industry related to assessment standards, procedures, methods, and conclusions. For this, upstream and downstream companies in the supply chain, standards owners, and assessors can all apply for Assessment and Verification. In principle, the number of applicants or respondents should not be less than 3.

In principle, the Assessment and Verification shall be completed within 3 months.



## Section 4 Conclusion of Process

### 1. Problem-solving Plan

This Mechanism endeavours to facilitate both parties to reach an understanding and jointly sign a Problem-solving Plan through processing routes of bilateral dialogue, internal mediation, and external expert mediation as well as available tools of Fact-finding, and Assessment and Verification.

This Mechanism recommends and encourages parties to include the following in their Problem-solving Plan:

- the focus of the dispute and the respective claims of the parties.
- major stakeholders concerned.
- the applicable standard documents, international guidelines, and relevant laws and regulations.
- the main process of mediation and consultation, and the consensus reached by both parties on the disputed matters.
- obligors and contents of specific obligations (including but not limited to remedies and corrective measures).
- timeline for obligation performance and indicators of outcome.
- feedback plan on the implementation progress and the (progressive) outcome.
- scope, channels, methods, and steps of information disclosure.
- methods, channels, and plans for equal, effective, and continuous communication between the parties on their disputes and broader issues.
- other elements that help to regulate conduct, improve performance, and facilitate communication among various stakeholders.

The Problem-solving Plan must not violate laws and regulations or internationally recognised principles and standards. During the process of mediation and consultation to reach the Problem-solving Plan, the Secretariat, Internal Mediation Panel, and External Expert Mediator/External Mediation Panel shall review whether the Mediation and Consultation process and the Problem-solving Plan conform to the above standards and give both parties directions and suggestions based on their professional knowledge and practical experience.

- the parties reach an understanding and jointly sign a Problem-solving Plan.
- the parties reach an understanding and jointly decide that there is no need to sign a Problem-solving Plan.
- the respondent fails to reply to the invitation and the attempt to directly contact the respondent fails within the relevant time limit, or the respondent explicitly declines the invitation.
- the parties fail to reach an understanding despite efforts and one party or both parties express the intention not to continue with the process.

In this situation, the Secretariat may advise the parties on the continued communication after the conclusion of the process and provide them with other forms of support such as policy interpretation and consulting according to the wishes of the parties.

### 3. Case Closure Report

When the process ends, the Secretariat will issue a written notice of ending the process and a Case Closure Report to both parties.

The Case Closure Report summarizes the basic information of the participants, the disputed matters and focus, the mediation and consultation process, the facts found by both parties and the way the process ends, etc. According to the specific circumstances of the case, the report includes obligations for stakeholders and measures to promote understanding and communication.



## Chapter 5

# Implementation and Monitoring of the Problem-solving Plan

### 1. Implementation and Feedback

The party with a specific obligation in the Problem-solving Plan is the “obligor”, and the counterpart to the obligation is the “obligee”.

Both the applicant and the respondent may become the obligor or/and the obligee in the Problem-solving Plan.

The Problem-solving Plan is reached on a voluntary and equal basis. Both parties should earnestly perform their obligations in good faith, and actively give feedback to the obligee and the Secretariat on the main steps and outcomes of the implementation of the solution, as well as any situation that affects the performance of obligations.

### 2. Inquiries and Monitoring

If the obligee fails to get feedback from the obligor within a reasonable time and the attempts to communicate fail to achieve satisfactory results, the obligee may enquire the Secretariat about the progress of the implementation. The Secretariat may collect relevant information from the obligor on the progress, depending on the specific circumstances, striving to promote continuous and effective communication between the two parties and the fulfilment of the obligations set in the Problem-solving Plan.

The Secretariat actively monitors the progress and effect of the implementation on a regular or irregular basis and updates the Case Closure Report accordingly.



## Chapter 6

# Safeguarding of Rights and Support

### 1. Disclosure of Information

This Mechanism strives to raise funds and technical resources from resources on an extensive range and to set up a website to disclose information on individual cases and mechanism operations. At the same time, this Mechanism actively explores other ways of information disclosure to fully protect the right to know of all parties involved and the transparency of the operation of the mechanism.

#### 1.1 Disclosure of information on individual cases

The Secretariat establishes a dedicated system to manage all cases. All cases are registered and recorded during the process of application acceptance, mediation, consultation, and the implementation and monitoring of the Problem-solving Plan, and relevant information is disclosed based on the specific progress and the intention of both parties.

The disclosure of information on individual cases follows the principles of truthfulness, timeliness, and cautiousness.

The information to disclose on individual cases includes the region and industry of the dispute, the type of dispute, the category of participating parties, a summary of the focus of the dispute, processing status, a summary of the Case Closure Report, and the progress of the implementation of the Problem-solving Plan, etc.



## 1.2 Information disclosure on the operation of the mechanism

The Secretariat will explore a variety of flexible ways to disclose the information and updates on the institutional policies, procedure document, organisational structure, operating methods, code of conduct, applicable standards, composition and functions of the Stakeholder Committee and the Supporting Resources, source of funds, list of entities participating in the mechanism, etc. to stakeholders and the public.

The Secretariat establishes and maintains a case database to publish research and analysis on typical cases handled by this Mechanism.

The Secretariat regularly conducts thematic, periodical, and systematic analysis of the cases and the operation of this Mechanism and publishes the results when appropriate.

## 2. Confidentiality

### 2.1 Application for confidentiality

If any participant believes the disclosure of certain information may endanger personal safety or cause major business risks, she or he

has the right to request confidentiality from the Secretariat at any time during the mediation and consultation process.

The confidentiality request should be clear on the following:

- the specific content of the information requested to be kept confidential.
- whom should the information be kept confidential from, for example, from the respondent, from the experts or institutions participating in the consultation, or from any third party and the public, etc.
- the period or processing stage of the confidentiality request.
- the reason for requesting confidentiality.

All parties shall submit a confidentiality application in good faith and shall not abuse the application for improper purposes including but not limited to delaying and obstructing the mediation and consultation process.

### 2.2 Decision on confidentiality request

The Secretariat shall make a decision to the party who has applied for confidentiality within 3 working days from the date of receiving the application and the decision shall specify whether to adopt confidentiality

measures, what scope and concrete content of the information to be kept confidential, whom to keep it confidential from and for how long, based on the type and nature of the information and the specifics of the confidentiality application.

After receiving the confidentiality request, before a decision is made, the relevant information will not be disclosed to those against whom the confidentiality request is.

The staff of this Mechanism, experts, Fact-finding Institutions, and Assessment and Verification institutions who have access to confidential information due to the need for case handling should only use relevant confidential information as necessary for case handling.

Throughout the consultation process and at any time after the conclusion of the process, no person or institution shall use and disclose information in violation of confidentiality measures, except with the consent of the requesting party.

## 3. Right to Raise Objections

### 3.1 Applicable circumstances

All participants have the right to raise an objection to the Secretariat at any time if they believe that a circumstance exists where the fair dealing of the application or the performance of obligations set in the Problem-solving Plan has been or is likely to be impaired in the procedures of application acceptance, mediation and consultation, and the implementation of the Problem-solving Plan.

The circumstances include, but are not limited to:

- one party violates the principle of good faith, abuses this Mechanism to avoid or delay the performance of obligations, or seeks other interests unrelated to dispute resolution.
- when performing duties and providing services, the experts, Fact-finding Institutions, Assessment and Verification Institutions, and staff of this Mechanism involved in the case handling show favouritism to and have a partiality for a particular side, accept bribes, or have undue interest in the disputes which may affect their fair dealing.
- one party forges evidence or conceals major facts.
- the obligor violates the Problem-solving Plan in the performance of obligations.

### 3.2 Raising an Objection

Objections shall be made to the Secretariat in writing and the party that raises an objection shall provide evidence to support its claim.

### 3.3 Handling an Objection

After receiving an objection, the Secretariat will conduct an internal investigation and evaluation and make a decision within 30 days from the date of receiving the objection and shall take measures accordingly. These measures include, but are not limited to:

- rejecting applications made in bad faith.
- revoking the qualifications of experts, Fact-finding Institutions, Assessment and Verification Institutions, or staff of this Mechanism who have misconduct or undue interests in the case.

- deeming invalid the handling and conclusion based on forged evidence and concealed facts, and re-deciding on disposal.
- reminding, advising, and supervising the obligee who violates the agreement of the Problem-solving Plan and the principle of good faith, and facilitating the proper performance of the obligation.

#### **4. Free from Retaliation, Prosecution, and Threat**

All participants have the right to freely and fully express their views, provide evidence and respond to the disputes and claims without threat or coercion by any person or organisation, nor shall they be subject to any form of retaliation or persecution because of their applying for or participating in a process of mediation and consultation, or raising an objection.

This Mechanism is non-judicial and non-enforcement in nature and has no mandate and capacity to directly guarantee the physical safety of participating parties, nor can it ensure that local judicial or law enforcement agencies take timely and effective action to protect participants from reprisals, persecution, and threats.

Nevertheless, this Mechanism attaches great importance to the safety of all parties involved, adopts preventive measures in the design of the mechanism against relevant behaviours and risks, and responds appropriately to the greatest extent possible within its capabilities. For example, during the whole process of mediation and consultation, this Mechanism constantly emphasizes to all parties the principle of honesty and peace, continuously assesses relevant risks that participants may face, strictly implements the confidentiality provisions included in this Procedure Document, and, when necessary, strives to assist as much as possible in seeking support from local judicial or law enforcement agencies.

## 5. Accessibility of this Mechanism

### 5.1 Languages and Localization

The working languages of this Mechanism are Chinese and English.

If it is indeed inconvenient for any participant to use Chinese or English and difficult to seek translation by themselves, the Secretariat will coordinate to hire qualified agencies or translators to provide translation services.

### 5.2 Fees and financial support

This Mechanism is non-profit, and it aims to help stakeholders in the mining industry and mineral supply chain to facilitate effective communication and proper dispute resolution through communication, consultation, and mediation.

The third-party professional services such as External Expert Mediation, Fact-finding, and Assessment and Verification provided by experts and institutions from the Supporting Resources, as well as translation services by agencies and translators, may incur reasonable costs, which shall be borne by both parties through negotiation and shall be paid directly to the service providers. This Mechanism encourages and strives to promote these third-party experts, institutions, individuals, and agencies to provide pro bono service and support to all participants.

This mechanism actively explores diversified sources of funds and encourages relevant government departments, development aid agencies, foundations, social organisations, non-profit organisations, companies, or

individuals to donate funds to ensure the daily operation of this Mechanism, to financially support disadvantaged groups participating in this Mechanism, and to better facilitate the achievement and implementation of Problem-solving Plan.

This Mechanism upholds the principles of neutrality, transparency, and impartiality when receiving any financial support and accepts the oversight of stakeholders and public scrutiny through financial information disclosure. No one shall gain favoritism or improper interests in the mediation and consultation process involving itself out of the financial support that it provides, nor shall it exert undue influence on the mediation and consultation of other disputes or the operation of the mechanism.

### 5.3 Capacity-building support

The Secretariat relies on its internal professional capacity and the external Supporting Resources to provide policy consultation, explanations, and clarification on the procedure of this Mechanism, as well as professional advice, lectures, and training on relevant topics, making it easier for users and other stakeholders to understand and use this Mechanism.

## 6. Recusal and Independence

### 6.1 Recusal

If any participant finds that any Expert Network members, Fact-finding Institutions, or Assessment and Verification Institutions appointed by the Secretariat in specific cases have a conflict of interest in the dispute or are involved in other circumstances that may affect the fair dealing of the application, the participant has the right to, at any time



during the mediation and consultation, request such experts or institutions to recuse from the process. The request should be made in writing to the Secretariat, stating the reasons and basis.

After accepting the designation, if the experts or institutions find that they have a conflict of interest in the dispute or there are other circumstances that may affect the fair dealing of the application, they shall immediately submit a written request to the Secretariat to recuse themselves.

The Secretariat shall decide on the recusal request within 5 working days from the date of receiving the written request. A request for reconsideration of the decision will not be accepted.

## 6.2 Independence

The Secretariat coordinates and assists the work of the Expert Network members, Fact-finding Institutions, and Assessment and Verification institutions, but may not express positions or intervene in any other form.

All participating parties shall actively cooperate with the experts and institutions appointed by the Secretariat without interfering with or sabotaging their work.

## 7. Disclaimer

All comments, opinions, and factual conclusions expressed by the Expert Network members, Fact-finding Institutions, and Assessment and Verification Institutions appointed by the Secretariat to involve in the mediation and consultation are only for reference to the parties in seeking solutions. They shall not be deemed as judgments of right or wrong on either side.

Expert Network members, Fact-finding Institutions, Assessment and Verification Institutions, as well as internal experts and staff of this Mechanism shall not be held liable to any form of legal or moral responsibility at any time in the future for any opinions and views expressed in the process of providing professional support, coordination, and services to all parties.



## Chapter 7

# Supplementary Provisions

### 1. Entry into force and interpretation

The Procedure Document takes effect from the date of public release, and the Secretariat of this Mechanism is responsible for the interpretation.

### 2. Text language

There are two versions of this program document in Chinese and English. In case of any difference in understanding between the two versions, the Chinese version shall prevail.

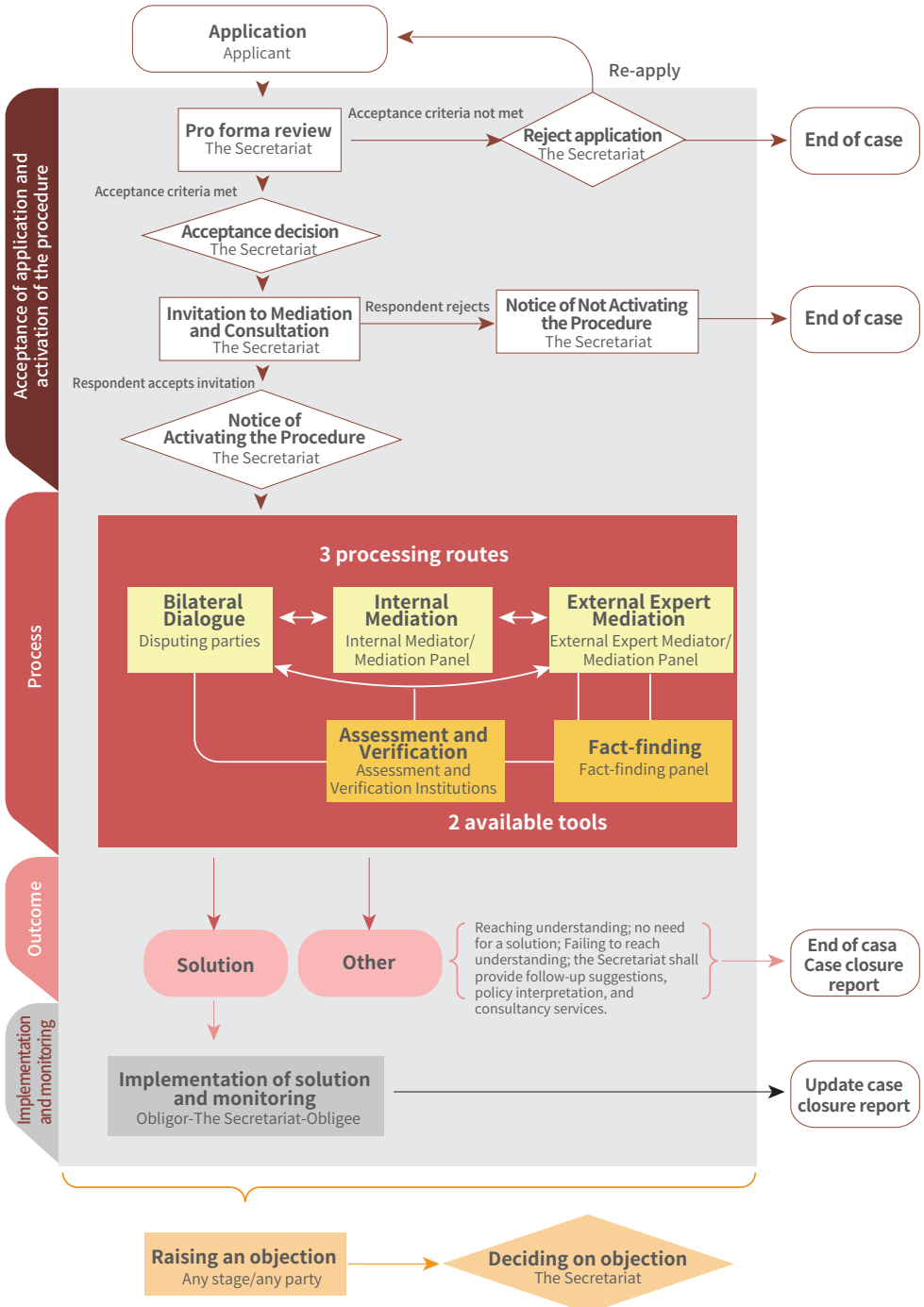
## Annex 1: Key Terms and Definition

Term	Definition
Application	The formal written request to this Mechanism made by applicants including upstream and downstream companies in the mining industry and mineral supply chain, individuals and communities, other stakeholders (social organisations, the media, the public, etc.), standards owners and assessors (assessment institutions or personnel), asking for consultation with the respondent on disputed matters applicable to this Mechanism, through processing routes and Available Tools provided by this Mechanism.
Invitation to Mediation and Consultation	The formal written invitation by the Secretariat to the respondent after the Secretariat accepts an application, to encourage and facilitate the respondent to participate in the mediation and consultation procedures under this Mechanism, consult on the disputed matters and seek solutions with the support and coordination of the professional strength of this Mechanism and external Supporting Resources.
Bilateral Dialogue	<p>It is one of the three processing routes of this Mechanism which is mainly based on the independent dialogue between the applicant and the respondent with the assistance of the Secretariat. Bilateral Dialogue is available for cases with relatively minor disputes and relatively simple issues involved, and relatively mildly difficulty in independent communication between the parties. The duration is 1 month in principle.</p> <p>In this route, this Mechanism encourages the parties to seek problem-solving plan through friendly, equal, inclusive, and thorough dialogue. The Secretariat may provide advice regarding knowledge, technology, and experience relevant to the disputes involved.</p>
Internal Mediation	<p>It is one of the three processing routes provided in this Mechanism, in which the Secretariat designates internal experts within the mechanism with rich professional knowledge and mediation experience in the relevant field to form an Internal Mediation Panel to mediate between the parties. Internal Mediation is available for cases with relatively major disputes, relatively complex issues, and relatively significant difficulty in independent communication between the two parties. The duration is 3 months in principle.</p> <p>In this route, the Internal Mediation Panel conducts intermediary mediation, relying on its precise understanding of relevant rules and standards and rich experience in dispute resolution, to support the parties to reach practical Problem-solving Plan through equal and friendly negotiations.</p>

Term	Definition
External Expert Mediation	<p>It is one of the three processing routes of this Mechanism, in which Expert Network members mediate between the parties. External Expert Mediation is available for cases with major disputes, complex issues, and significant difficulty in communication between the parties. The duration is 6 months in principle.</p> <p>In this route, the Secretariat, based on the mutual agreement of the parties, appoints certain Expert Network members to serve as the External Expert Mediator or to form the External Expert Mediation Panel to preside over and promote the problem-solving process, guide both parties to jointly clarify disputes and formulate mediation and communication plans, and direct both parties to reach practical Problem-solving Plan through equal and friendly negotiations.</p>
Fact-finding	<p>It is one of the two Available Tools of this Mechanism, which shall be completed within 3 months in principle. Fact-finding is only recommended in the route of External Expert Mediation.</p> <p>Under the guidance and advice of the External Expert Mediator/External Expert Mediation Panel, the parties jointly select certain Expert Network members or Fact-finding Institutions to form a Fact-finding panel to conduct factual investigations on specific matters in the dispute, which provide a reference for consultation.</p>
Assessment and Verification	<p>It is one of the two Available Tools of this Mechanism, which shall be completed within 3 months in principle. Assessment and Verification can be activated in all three processing routes (Bilateral Dialogue, Internal Mediation, and External Expert Mediation).</p> <p>Any party can select an Assessment and Verification Institution from the Supporting Resources to provide Assessment and Verification service, assessing the scope and extent to which the interests of stakeholders are damaged or affected and certain common and universal issues in the mining industry related to the assessment.</p>
Problem-solving Plan	<p>The action plan that this Mechanism endeavours to, by way of three processing routes (Bilateral Dialogue, Internal Mediation, and Expert Mediation) and two Available Tools (Fact-finding, and Assessment and Verification), facilitate both parties to jointly sign and perform, to solve the dispute involved and promote long term effective communication between the parties.</p>



## Annex 2: Flow Chart



# Acknowledgement

The research on the Mediation and Consultation Mechanism for the Mining and Mineral Value Chain was launched in October 2021. Following interviews, benchmarking studies, field visits and framework design by the research team, the first draft of the procedure document for this mechanism was completed in September 2021. We conducted a targeted consultation in September-October 2022 and a public consultation in November-December 2022, during which a wide range of opinions and suggestions were heard and incorporated, and the Procedure Document of this mechanism was revised and improved in several rounds.

During the conception phase of the mechanism, we consulted with international organisations, foundations, social organisations, universities, and mining companies, such as the Organisation for Economic Co-operation and Development (OECD), the International Finance Corporation (IFC), the World Bank (WB), the Ford Foundation, the World Wildlife Fund (WWF), Accountability Counsel, the Catholic University of Valparaíso in Chile, Huayou Cobalt, Zijin Mining and others, which provided useful inspiration for structure the design of the mechanism. During the consultation period, feedback was received from companies in the mineral value chain, and the Rainforest Foundation, Accountability Counsel, Inclusive Development International, SOMO, Saferworld, Latinoamérica Sustentable (LAS), Fundación Ambiente y Recursos Naturales (FARN), Brics Policy Center (BPC), Sustentarse, CooperAcción provided valuable input into the design of the structure and procedures of this mechanism. China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCC MC), CHINA-UK Collaboration on International Forest Investment and Trade (InFIT) Programme, and Global Witness have provided expertise support and resources throughout the development cycle of the mechanism. We thank these organisations for supporting the development of this mechanism.

We recognise that responsible business conduct in the mining and minerals supply chain is of great concern, and that the proper resolution of issues and disputes in the mining and minerals value chain is of vital importance for the well-being of all stakeholders. This mechanism will be used by mining and minerals value chain stakeholders to contribute to responsible, resilient and sustainable minerals supply chains by addressing barriers and concerns, facilitating issue and dispute resolution, and mitigating environmental, social and governance (ESG) risks through equal dialogue and appropriate communication.