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### Key Terms

e3 Plus: A Framework for Responsible Exploration is the expanded framework that now includes not only principles and guidance related to environmental stewardship, but also to social responsibility, as well as health and safety

## 6.0 Boundaries of Responsibility - What Am I Responsible For?

Most explorers can agree that the principles contained in e3 Plus: A Framework for Responsible Exploration apply to them, but many stumble over how to put these into practice, not because they are not well intentioned and do not want to take action, but because they often do not know or recognize where their responsibility to act begins and ends.

There is no clear map delineating the boundaries of responsibility; those boundaries very much depend on the facts and circumstances of each individual situation. The fact that the boundaries of responsibility are situation dependent is complicated by the subject matter of social responsibility: ethical conduct, human rights, environmental integrity, community well-being, etc. These subjects are nuanced and responsibility is based on a combination of legal, ethical and social expectations. In some jurisdictions, the legal standards related to these issues may not be in place, well-defined, or adequate to prevent harm to people or the environment. Enforcement may be weak and the rule of law fragile. Moreover, for any one subject or situation, explorers will face different expectations from different stakeholders and sometimes these expectations will compete or conflict with each other.

### 6.1 How Do I Determine What I Am Responsible For?

As previously mentioned, there is no convenient map but there are, however, a number of different concepts that apply to how a company goes about determining the scope of their responsibility. These include due diligence, sphere of influence and materiality.

**Due diligence** should be used by explorers to determine the scope of their responsibility to prevent harm to people and the environment.

**Sphere of influence** should be used by explorers to understand the scope of their responsibility to use their influence to encourage others to also act in an environmentally and socially responsible manner.

**Materiality** should be used by explorers to understand the scope of their responsibility to be transparent and disclose information to stakeholders.

Although these concepts apply to different facets of the scope of explorers' responsibility, they have common themes that explorers can integrate into their planning and decision-making processes.

## 6.2 How Do I Prevent Harm?

Due diligence is a term used to describe two different legal concepts. The first, and probably the best understood by explorers, is the investigation of a person or business for the purpose of making a decision (investigative due diligence). As an example: The process of investigation and evaluation for the purpose of making a decision on a potential acquisition of property, investment or other transaction, involving an examination of operations, financial records, management and the verification of material facts.

The second legal concept of due diligence is the effort made by an ordinarily prudent or reasonable person to avoid harm. The concept is that, if a person, group of persons, or the environment will be harmed by your actions, then you have a duty to take reasonable steps to avoid that harm. Canadian explorers are also likely to be familiar with this form of due diligence, since it is the cornerstone of the standard of care for health and safety and environmental performance.

The goal of this second concept of due diligence is to prevent harm by putting controls in place to address foreseeable risks. The key is the foreseeability of the risks; if the risks can reasonably be foreseen, then steps must be taken to address them. Due diligence does not allow for reckless behaviour, or wilful or blind ignorance of consequences. It is not whether you actually knew about the risk, but whether you ought to have known.

This implies a standard of behaviour or care that applies both to the effort taken to identify the risks of harm, as well as to the actions taken to control them. The standard of behaviour expected is that of a reasonable person and is commensurate with the risk of harm and severity of the consequences.

The key elements of due diligence are briefly described below. Remember that the intent of due diligence in this context is to prevent harm. Therefore, it is important not only to understand and assess the potential or risk of harm inherent in any action or omission, but also to design controls that are commensurate with the risks.

### 6.2.1 Understanding and Assessing the Risk

- There should be processes for identifying the risks and impacts resulting from operations and for understanding the likelihood and the degree of harm of those risks and impacts
- Factors that will affect the likelihood of risk in terms of issues related to social responsibility include:
  - impacts (hazards) associated with the activity itself (social<sup>1</sup>, economic and environmental);
  - country context (culture, governance, security, rule of law); and
  - relationships connected to their activities (e.g., with business partners, suppliers, state agencies, other non-state actors)
- The degree of harm is a factor of the scope and severity. Scope includes geographical extent of impact, duration of impact, numbers (people, animals) impacted. Severity relates to the consequences: seriousness of the injury or

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<sup>1</sup> Social Impacts include – health and safety, human rights (e.g., labour rights, indigenous peoples, land management)

### Key Terms

**foreseeability** is reasonable anticipation that harm or injury would be a likely result of a certain act or an omitted act

**reasonable care** is ordinary prudence and intelligence an average, rational person would take to prevent harm under particular circumstances

damage and ability to mitigate the injury or damage

- Assessment of risks and impact must be made based on sound information, using rational analysis
- For information to be sound it has to be:
  - material or relevant to the risks and issues being assessed;
  - credible, from a reliable source and, where possible, verified or at least verifiable; and
  - sufficient upon which to draw reasonable conclusions
- Rational analysis involves assessing the likelihood of the risk and the severity of impact and consequences
- If there are changes to the original circumstances upon which the assessment of risk and impact was made, or new information comes to light, then the risks should be re-evaluated

### 6.2.2 Taking Reasonable Steps to Prevent the Harm

- Once an assessment of risks and impacts is made, reasonable steps need to be taken to address the risks
- The greater the likelihood of the risk and the degree of harm, the greater the responsibility, effort and rigour of control expected
- What is reasonable depends upon:
  - the alternatives available; what feasible alternatives could be employed to avoid or minimize harm and what would a reasonably prudent person do in the circumstances?
  - whether the actions taken conform to current technological and industry standards; however, where the scale and severity of the consequences are significant, a greater degree of care than industry standards may be necessary;
  - the extent of control or influence over the cause of the harm; no one should be held responsible for unforeseeable accidents or for activities that they cannot reasonably be expected to influence<sup>2</sup>
  - maintaining awareness of changing conditions and responding in a timely and appropriate manner, so as to mitigate the foreseeable harm;
  - whether the systems established to control the risks are properly implemented, their effectiveness is monitored and evaluated and action is taken to improve their effectiveness

### 6.2.3 Recommended Practices

Explorers should:

- Adopt a risk-based approach to determining the extent of their

<sup>2</sup> Note that domestic laws can in some cases establish even high standards of performance that impose liability, regardless of control of foreseeability.

responsibilities for preventing harm

- Understand not only the law that applies to their activities and operations, but also international norms and the national and international industry standards and best practices that apply
- Understand the ways in which their activities and operations might contribute to impacts caused by others through the relationships with business partners, agents, contractors, and state agencies. It is in this latter context that explorers can use the concept of sphere of influence, to help them identify and think about the potential relationships that may represent a risk

Throughout the *e3 Plus* guidance project, due diligence prior to commencement of each phase of an exploration activity and due diligence of contractors and agents are identified as recommended practices. Explorers can integrate a broader due diligence decision-making framework that incorporates social and environmental risks. This will help to determine the scope of their responsibilities to prevent harm and ensure that their actions are appropriate to the scope, scale and context of their operations and the specific activity they are undertaking. Project due diligence conducted with the use of recommended tools for assessing risks and impacts (e.g., risk assessments, stakeholder analysis, hazard analysis and social and environmental impact assessments) should – **if conducted diligently and if appropriate systems and controls are established to mitigate and manage the risks** – adequately prepare explorers to address their responsibilities to obey the law and international norms and prevent harm.

**Related e3 Plus Guidance**

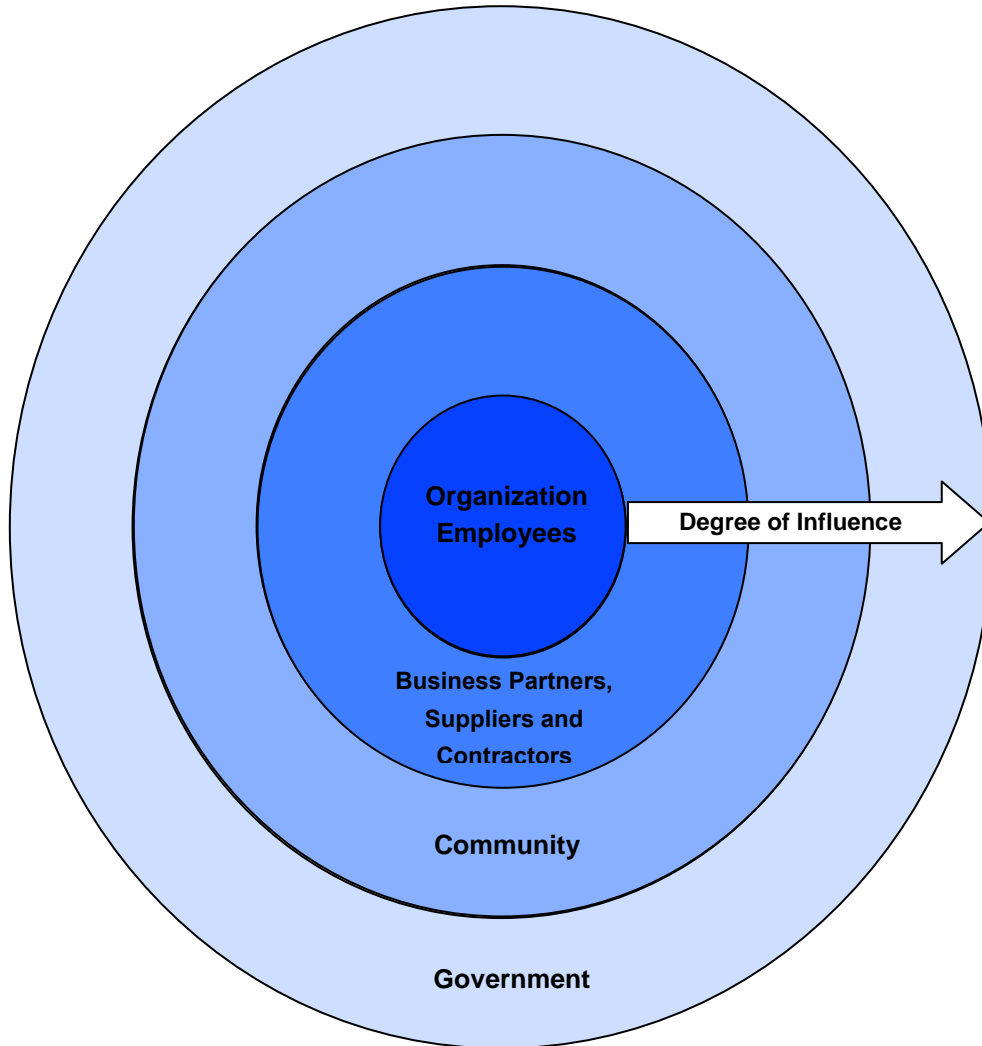
[Project Due Diligence](#)

**6.3 How Do I Encourage Better Performance and Promote Good?**

**Key Reference Sources**

[Global Compact Sphere of Influence](#)

The United Nations Global Compact first introduced the concept of “sphere of influence”. The illustration below shows a series of spheres of declining influence, starting at the centre with the workplace – where companies have the greatest influence – and moving outward to government – where presumably companies have the least influence. The assumption underlying the concept of sphere of influence is that the extent of a company’s responsibility is commensurate with the extent of their influence.



**Figure 5:** Sphere of Influence

The concept of sphere of influence is useful both as a visual model and as a model for explorers, to help them think more broadly about their responsibilities and help them map the scope of opportunities to make the greatest positive impact. This is particularly true in relation to understanding how they can promote or encourage

others to act in a responsible manner

However, the concept of sphere of influence should not be used to determine the scope of responsibility to prevent harm since: (a) it does not differentiate between stakeholders it impacts (e.g., communities) and stakeholders it can influence (e.g., suppliers); (b) it incorrectly suggests that a company is responsible just because it does have influence with them; and (c) it incorrectly suggests that a company is not responsible if the company has little influence over a stakeholder (e.g., a company has little influence over government security forces, but if they attack nearby communities to protect company operations, the company is obligated to act).

The concept of sphere of influence, taken together with the concept of due diligence, can help explorers determine to what extent they can or should take steps to improve their performance. For example, in the case where state security forces are causing harm to villagers when protecting the company's operations, there is a causal connection and an obligation to prevent and redress the harm. In a situation where there are known human rights abuses by state forces in the country in which an explorer is operating, but they are not in any way related to the company's operations, there is no causal connection and no obligation to act. However, the company may choose to demonstrate leadership and through public advocacy and dialogue try to discourage such actions. Additional information on public advocacy and government capacity-building is in the Community Development section.

In circumstances not directly related to preventing harm, there is more discretion on what explorers should and can do. Explorers are not expected to be ambassadors of goodwill on all causes, nor to take on sole responsibility for influencing change. However, as part of their community development programs, explorers should set priorities for areas where they will use their leadership and work with others to influence positive change.

### **6.3.1 Recommended Practices**

Explorers should:

- Understand their sphere of influence
- Understand the difference between when they should exert influence as corporate citizens to help those within their sphere of influence to improve their performance and when there is a positive duty to prevent harm that is connected to their own activities and operations
- Establish processes to conduct investigative due diligence of those actors within their sphere of influence that are connected to their operations and that have the potential to cause harm (e.g., contractors, agents, security forces, joint venture partners), before they enter into a business relationship with them
- Maintain controls to address potential problems that could arise during the course of those relationships

## 6.4 What Is My Responsibility for Business Relationships?

A contractor that has poor safety standards, an agent who bribes a government official, an operating partner who violates environmental laws or ignores the rights of indigenous people, or a supplier that uses child labour: all of these represent ways in which your company, by virtue of its relationships, might contribute to, and be liable for, the impacts and abuses caused by others. The examples also illustrate how a company may be exposed to potential financial, reputational and legal risks as a result of the social and environmental performance of partners, contractors, suppliers, agents and others who conduct work on your behalf or interest.

Explorers need to understand and take steps to control the social and environmental risks they may be inheriting by virtue of their business relationships. To do this requires paying attention to business relationship risks at all phases of exploration development and business relationship decisions, from initial screening and qualification of business, through to potential termination of the relationship.

Processes to manage business relationship risks need not be complex or cumbersome. However, they do require ongoing vigilance. Programs cannot be managed from head office. They require a solid understanding of the local context and trained staff that understand the risks and the warning signs. The level of rigour required should always be determined by the risk. In most cases, simple due diligence screening of suppliers and partners and regular project management oversight will do the job. However, in conflict zones, where security personnel are involved, in areas where there is institutionalized corruption, or where there is a high degree of community concern, a greater degree of care must be applied. By implementing some standard processes that are applied across all projects, explorers do not have to scramble to respond to problematic situations when they do arise.

If the situation has the potential to result in the explorers' complicity in violations of human rights, or actions that have significant negative social or environmental consequences, then explorers need to reconsider their presence in that area.

### 6.4.1 Recommended Practices

- Establish social and environmental standards of performance and/or a Code of Conduct that you expect partners and suppliers to adhere to; include provisions in contractual agreements that reflect these expectations.
- Establish a due diligence screening process for all business relationships by developing a screening checklist. At a minimum, explorers should collect information for a due diligence review that will enable them to evaluate suppliers and partners based on their:
  - track record related to social and environmental performance; and
  - current ability to meet social and environmental standards of performance and/or Code of Conduct
- Select and retain suppliers based on their agreement and ability to meet these

### Key Terms

**supplier** is a company or individual that provides goods and services and is independently owned and managed (includes agents and contractors)

**partner** is a party involved in a voluntary and collaborative relationship between more than one party, in which all participants agree to work together to achieve a common purpose or to undertake a specific task. Partners agree to share risks, responsibilities, resources, competencies and benefits

### Related e3 Plus Guidance

[Boundaries of Responsibility](#)

[Project Due Diligence](#)

[Grievance and Complaints Mechanisms](#)

[Community Development](#)

### Key Reference Sources

#### Sample Policies

[Barrick Gold](#), Supplier Code of Ethics

[Business and Anti-Corruption Portal.3](#)

<sup>3</sup> The Business Anti-Corruption Portal is an information source for small and medium sized companies operating in emerging markets and developing countries. The portal has examples of procedures and checklists related to due diligence of



standards

- Work collaboratively with suppliers and partners to encourage compliance with defined performance standards. This might include:
  - mentoring; providing advice and suggestions for how they might improve performance;
  - providing training in key areas, including human rights, environment, health and safety;
  - sharing resources and tools developed for your operations and helping them build capacity within their organizations; and
  - establishing plans that outline areas of performance improvement
- Train staff at the local level to work with suppliers and partners to achieve policy objectives, including local social and environmental issues
- Negotiate fair contract terms. Suppliers should not have to exclusively shoulder the financial burden of higher standards
- Work collaboratively with other explorers and business enterprises in the same location. Collaborative efforts are an effective way to leverage the work of each individual company or organization to raise standards. This can prevent partners and suppliers from having to shoulder the burden of having to adhere to multiple performance standards and codes of conduct, due diligence investigations and monitoring. It can also help to buffer explorers from facing labour shortages because their standards exceed the local norms, or because of poaching by other organizations. This will also prevent inconsistencies in expectations
- Take reasonable steps to monitor compliance with standards of performance. This need not involve onerous formal audits, but rather simply training company personnel to be vigilant in their observations of suppliers and understand the warning signs that may be indicative of problem areas may be sufficient
- Establish a grievance mechanism to receive, investigate and respond to complaints related to performance of suppliers and partners

### 6.5 What Should I Disclose?

Most explorers are familiar with the concept of materiality as it relates to timely disclosure of material information concerning their business and affairs for the purposes of securities law. Material information in this context is any information relating to the business and affairs of a company that affects, or could affect, the market price or value of any of the company's listed securities.

The concept of materiality as it relates to transparency in a company's social and environmental performance is similar. Their purpose is to protect the reputation and integrity of the company, by ensuring that their stakeholders (e.g., shareholders, investors, employees, members of the local community, contractors, government agencies within their boundaries of responsibility) have information that enables them to make coherent decisions and take planned and timely action relevant to their interests.

Transparency and disclosure are directly linked to accountability. Companies should be accountable to their stakeholders for the decisions and performance that affect them. The think tank [AccountAbility](#) has identified

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*suppliers and agents, although these are geared to anti-corruption they can provide explorers with excellent templates for due diligence review for all aspects of social and environmental performance.*

five tests to determine whether information related to aspects of social and environmental performance is material and should be disclosed. Information should be disclosed if:

- 1) It has short-term, direct financial impact (e.g., significant environmental impacts that require remediation or compensation, or impede the development of a project)
- 2) It relates to a strategic commitment made by the company (e.g., a commitment made in their human rights policy)
- 3) It is of relevance to stakeholders, in terms of likely impact on their decisions and behaviour
- 4) A company's peers are deeming certain issues and aspects of performance to be of material importance (e.g., where industry peers report or disclose issues related to private security forces)
- 5) It relates to regulatory or international social norms of behaviour

### **6.5.1 Recommended Practices**

Explorers should:

- Adopt a risk-based analysis to determine what should be disclosed. This could be based on the first three tests proposed by AccountAbility that relate to risk: financial risks, impacts on stakeholders, and reputational risk
- Not take policy commitments lightly; if you commit to it, you should be prepared to account for your performance in meeting that commitment
- Understand the link between accountability and transparency. If you made a commitment, if a stakeholder is impacted by your decisions and actions, if your performance relates to a legal obligation or an obligation related to international norms of behaviour, you have a responsibility to disclose

Take into account industry practice, not only in terms of defining a standard of reasonable care, but also in terms of the type of information that should be disclosed