

What are Conflict Minerals?

Where is the Democratic Republic of the Congo (DRC)?

The Democratic Republic of the Congo (DRC) is located in Central Africa and is about 900,000 square miles in size. The DRC is the 12th largest country in size and has 71 million people. It is also rich in natural resources with some estimates of the value of its total mineral wealth ranging from \$10 trillion to \$24 trillion.

The DRC has basically been in a state of civil war for more than 15 years in one form or another. The result of this conflict includes more than five million people reported dead by 2008, with ongoing deaths numbering up to 45,000 a month according to reports from the region.

What are conflict minerals?

It is well documented that armed militant groups in this region of Africa exploit or have direct control over minerals traded throughout the region. This includes the Congolese Army and the Democratic Forces for the Liberation of Rwanda (or FDLR) who are viewed as the main, but not the only, armed groups involved in the DRC's minerals trade. In all, they derive an estimated 15 percent to 75 percent of their revenues from minerals trade where they use forced labor and child labor in the mines, as well as sexual violence against local populations and workers in and around the mines.

It is a fluid situation, but the armed groups control several of the major mines and roughly 50 percent of approximately 200 mines in the Eastern Congo. These are the primary sources of minerals, now widely known as conflict minerals that are sourced in the Democratic Republic of the Congo and linked to the conflict and the human rights abuses existing in the country.

What is the US conflict minerals law?

The United States Congress initially took up the conflict minerals issue in 2009 in a bill sponsored by Senator Sam Brownback (R-KS). The evolving issue would eventually manifest itself into a bill passed on July 21, 2010 within a six-page legislative provisions in the US Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Section 1502 of Dodd-Frank specifies several minerals as being potentially conflict minerals, including cassiterite, columbite-tantalite, wolframite and gold. These are frequently cited as tin, tantalum and tungsten, and gold (or 3Ts plus gold) and are used pervasively within electronics such as smart phones or laptops that rely considerably on these materials to perform critical functions.

How are conflict minerals related to the US Securities & Exchange Commission (SEC)?

US Dodd-Frank Section 1502 added Section 13(p) to the Securities Exchange Act of 1934, which requires that the Securities and Exchange Commission (SEC) promulgate rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country.

It requires annual disclosure to the SEC regarding whether potential conflict minerals originated in the DRC or an adjoining country. If minerals used by an SEC-issuing company originated in these countries, those issuers must report on the due diligence measures that they utilize to identify the source and chain of custody.

What was the SEC Final Ruling on conflict minerals?

On August 22, 2012, the SEC approved a final rule on conflict minerals. The rule implements disclosure requirements mandated by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act signed in 2010.

Certain publicly traded companies and their suppliers must now disclose whether they use conflict minerals in their products, and what efforts they have undertaken to ensure their use of the minerals does not contribute to human atrocities in the Democratic Republic of Congo (DRC) and adjoining countries.

What are SEC conflict minerals reporting requirements?

The final SEC ruling defines conflict minerals as columbite-tantalite, also known as coltan (used to produce tantalum), cassiterite (used to produce tin), wolframite (used to produce tungsten), and gold regardless of their source of origin; it also includes the derivatives of these minerals.

Everything from capacitors, cell phones, and GPS systems to hearing aids, pacemakers and even jet engines make use of circuitry, finishes, alloys or other materials that contain these materials.

A company is subject to regulatory requirements in the final rule if it files reports with the SEC under Sections 13(a) or 15(d) of the Exchange Act and conflict minerals are necessary to the functionality or production of a product the company manufactures or contracts to manufacture.

What is the timeline for conflict mineral compliance?

The first reporting year commences January 1, 2013 with filings due May 31, 2014. The complex and time-consuming nature of communicating, collecting, analyzing and preparing information on mineral sources across a globally diverse, multi-tier supply network gives companies little time to act.

Practical implications of the law include both potential penalties for failing to comply with the SEC reporting requirements as well as the risks associated with an inability to respond adequately to customer or third-party requests. Meanwhile, companies discovering that their products contain these controversial materials may naturally seek to source new parts and materials from conflict-free sources.

What must companies do to comply?

Companies must determine the applicability of requirements to their business. Where applicable, organizations must conduct a “reasonable country of origin inquiry” to understand and disclose aspects of the minerals in their supply chain. Ultimately, they must file a Conflict Minerals Report. This report must undergo a certified audit conducted by an independent third party.

What are the supply chain implications of conflict minerals compliance?

The new SEC disclosure requirements demands immediate review of, and revision to, most companies’ supply chain management policies and procedures. It calls for source-of-origin and due diligence to determine the presence or use of very common materials inherent in conflict minerals, namely gold, tin, tantalum, and tungsten.

The supply chain for these minerals and metals consists of many tiers and is very complicated. A complex network of mines, traders, exporters, smelters, refiners and alloy producers can all be involved upstream in the supply chain prior to a single part or electronic component is even produced. Add to this the extended nature of technology value chains traversing numerous borders and one begins to appreciate the difficulty in tracking and tracing minerals back to the mine of origin, as well as the enormity of the task at hand.

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