

CONFLICT MINERAL COMPLIANCE

FREQUENTLY ASKED QUESTIONS

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INTRODUCTION

Global conflict mineral rules are on the rise, placing important obligations on companies to report the presence of conflict minerals within their supply chains. These rules include Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the European Union's (EU) conflict mineral rule and Non-Financial Reporting Directive, as well as various corporate social responsibility (CSR) standards. In order to comply with these, companies must tap their suppliers for mineral sourcing information. As such, conflict minerals compliance is a global affair, involving companies and suppliers across the world.

In this FAQ, we will answer some of the most commonly asked questions about conflict minerals, regulatory requirements and associated compliance activities.

ABOUT

1. WHAT ARE CONFLICT MINERALS?

While definitions vary between countries and associated legislation, conflict minerals are generally understood to include: **columbite-tantalite**, also known as **coltan** (the metal ore from which tantalum is extracted); **cassiterite** (the metal ore from which tin is extracted); **wolframite** (the metal ore from which tungsten is extracted); **gold**; or their derivatives, which are believed to be financing conflict in the Democratic Republic of the Congo (DRC) or an adjoining country.

Due to the complexity of tracking and identifying ores and derivatives, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act only deals with the four principal metals derived from the aforementioned ores. Accordingly, for Dodd-Frank due diligence and reporting purposes, conflict minerals are restricted to tin, tungsten, tantalum and gold (3TGs) that are found to be financing conflict in the DRC or an adjoining country. It is important to note, however, that the Organisation for Economic Cooperation and Development does not restrict the definition of conflict minerals to 3TGs sourced from the DRC, but rather includes minerals from conflict-affected and high-risk areas more broadly.

2. WHAT ARE SMELTERS?

Smelters are organizations that purchase raw materials from mines, recyclers and scrap suppliers and melt them down to produce metals intended for use in production. Manufacturers that use 3TGs at some point within their supply chain must purchase metals from a smelter.

Smelters are considered a 'pinch point' in the conflict minerals supply chain. Ore and recycled metals go through smelters or refiners before becoming commercially viable 3TGs. This makes smelters a viable audit-point to determine the source of 3TGs. However, because smelters purchase raw ores and recycled materials from many different locations, once the metals have been smelted, it becomes near impossible to accurately trace their sources.



DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT, SECTION 1502

3. WHAT IS THE DODD-FRANK ACT AND HOW DOES IT RELATE TO CONFLICT MINERALS?

The Dodd-Frank Act is a regulation passed by the Obama Administration in 2010 to increase liability among companies and to curb unethical business practices. Section 1502 of the Act requires U.S. publicly-traded companies to perform due diligence on their supply chain, identify whether conflict minerals are present within their products and submit a report to the U.S. Securities & Exchange Commission. These reports are public disclosures and must be made available on U.S. publicly-traded company websites.

4. WHO IS IN SCOPE OF THE DODD-FRANK ACT?

The Act only applies to U.S. publicly-traded companies. However, because regulatory requirements trickle down through the chain of production, private companies who do business with their public counterparts, or private organizations who do business with public companies, will also be affected.

In terms of conflict mineral reporting, suppliers to U.S. publicly-traded companies will be required to submit reports to their customers concerning the source of 3TGs that exist within their products. Publicly-traded companies require this information to fulfill their regulatory filing and due diligence requirements. Therefore, in many cases, participation in these due diligence processes are a stipulation in contracts.

5. WHAT DOES DODD-FRANK MEAN FOR PRIVATE AND/OR NON-U.S. COMPANIES?

If you do business with a publicly-traded U.S. company, you will be required by your customer to take action. They have specific requirements they must legally meet and require your cooperation to do so. As such, participating in these due diligence processes is often essential to doing business with these firms and written into the service agreement.

Even if you do not have 3TGs in your supply chain, you must still submit that information to the U.S. Securities & Exchange Commission along with proof of due diligence.

THE EUROPEAN UNION CONFLICT MINERAL RULE

6. WHAT IS THE EUROPEAN UNION CONFLICT MINERAL RULE?

Due to enter into force in January 2021, the EU conflict mineral rule (EU 2017/821) obliges EU importers of 3TGs to undertake due diligence to ensure their supply chains are not contributing to armed conflict and instability in the DRC and surrounding countries. In-scope companies must maintain documentation demonstrating compliance and the results of mandatory, independent third-party audits.

7. WHO IS IN SCOPE OF THE EU CONFLICT MINERAL RULE?

The EU conflict mineral rule places due diligence obligations on "union importers." In the context of EU conflict minerals, a union importer means any natural or legal person declaring minerals or metals for release for free circulation, or any natural or legal person on whose behalf such declaration is made. Enforcement will occur at the Member State level, with each state responsible for assigning an authority to conduct on-the-spot inspections of importers and review five years' worth of mineral and metal import data.

OTHER GLOBAL CONFLICT MINERAL RULES

8. WHAT OTHER CONFLICT MINERAL REGULATIONS AND STANDARDS SHOULD I BE AWARE OF?

- » The EU Non-Financial Reporting Directive: Requires companies to produce corporate social responsibility disclosures on matters relating to the environment, social and employee issues, workplace diversity, human rights (including conflict minerals) and anti-bribery and anti-corruption (ABAC) in order to increase transparency and accountability.
- » Emerging Chinese conflict mineral guidelines: China is advancing its efforts to address conflict minerals issues by incorporating the OECD's responsible minerals guidance into a national standard (called the "Standard"), and by creating legally binding oversight and a supervision rule (called the "Rule").
- » The IPC-1754, 1752A and 1755 standards: Various standards relating to conflict mineral compliance, with which companies and suppliers may be asked to align to secure contracts, membership in particular trade groups and more.
- » Corporate social responsibility (CSR) and environmental and social governance (ESG) programs.

COMPLIANCE & AUDITING

9. HOW DO I COLLECT INFORMATION FROM MY SUPPLIERS IN ORDER TO COMPLY WITH GLOBAL CONFLICT MINERAL RULES?

To collect conflict mineral data from suppliers, companies should request they complete and submit a Conflict Mineral Reporting Template (see Question 10: What is a Conflict Mineral Reporting Template?).

Once received, these forms help companies identify the presence of 3TGs in supplied products. This information can then be rolled up into a Conflict Mineral Report (CMR) and submitted to the U.S. Securities & Exchange Commission, and other relevant conflict mineral regulatory enforcement bodies.

10. WHAT IS A CONFLICT MINERAL REPORTING TEMPLATE (CMRT)?

The Conflict Mineral Reporting Template (CMRT) is the industry standard for conflict mineral data collection, used by the majority of in-scope companies to complete supply chain due diligence.

The CMRT was developed by the Responsible Minerals Initiative (RMI) and is regularly updated to better support companies as they complete their regulatory requirements. It is available as a free-to-download Excel file.

The CMRT file is broken down by tabs and contains a number of questions. Suppliers fill in their responses and submit the file to their customers. Based on the answers provided in the CMRT, the data can be programmatically validated by a software solution provider such as Assent Compliance, allowing companies to quickly analyze and utilize their data.



INFORMATION FOR SUPPLIERS

11. HOW CAN I ENSURE SUPPLIERS COOPERATE WITH MY COMPLIANCE REQUIREMENTS?

There is no way to completely guarantee your suppliers will participate in your due diligence program. In fact, most conflict mineral laws do not require complete participation or set any direct standard for completion percentage.

Nonetheless, many companies choose to include participation in due diligence programs as part of their contract with the suppliers and/or business codes of conduct. In this case, enforcement of these requirements lies with the company and it ultimately falls on them to decide whether or not to continue business with that supplier in the event they default on their requirements.

An educated supply chain is often a more compliant supply chain. To increase participation, companies should provide education and information on these requirements, and explain why the suppliers are being asked to participate.

Communication is also an important part of this process. Companies would be well-served to implement a robust communication strategy with their suppliers, making it easy to send them information, collect CMRTs and respond to their questions. In lieu of developing an internal program, established compliance partners such as Assent Compliance can help companies manage this and other processes.

12. HOW DO I VERIFY THE INFORMATION MY SUPPLIERS PROVIDE IS ACCURATE?

Suppliers should be providing information to their customers through CMRTs. Using software solutions such as Assent Compliance, companies can programmatically analyze these logic relationships to determine if the CMRT is valid.

However, while being valid, this does not guarantee the information within the CMRT is accurate. Some companies will take this assessment a step further by conducting on-site audits to validate the processes used to make declarations. Otherwise, they must trust the accuracy of provided information and the validity of processes used to render responses. Note: Under most conflict mineral rules, it is not required for companies to audit their suppliers for data accuracy.

13. HOW DO I SUBMIT REQUESTED INFORMATION TO MY CUSTOMER?

When your customer asked you to complete a Conflict Mineral Reporting Template (CMRT), they should have included details on how to submit the form. If not, contact your customer and inquire how they would like you to return the CMRT.

If your customer is an Assent Compliance client, you will have received an email requesting the CMRT along with a unique link to your very own Supplier Portal. This portal allows you to easily submit your file and supporting documentation directly to your customer's compliance manager. If you have any additional questions about this process, your email also contains contact information to request support.

14. WHAT MAKES A SMELTER HIGH-RISK?

Smelters in the DRC or adjoining countries who are known to source from these entities or who refuse to meet conformance standards with international due diligence efforts tend to be classified as high-risk. Many Responsible Business Alliance (RBA, formerly the Electronic Industry Citizenship Coalition) members rely exclusively on due diligence into smelters administered by the RBA RMI.



15. WHAT DO I DO WHEN A HIGH-RISK SMELTER IS REPORTED IN MY SUPPLY CHAIN?

Most companies will conduct a review of their supply chains against the criteria identified as high-risk. This review needs to be conducted periodically throughout the course of due diligence activities, and must be responsive to changes to information concerning smelters and customer inquiries. Many companies will demand the removal of smelters from the supply chain if they are deemed to be high-risk. The choice to remove or retain the smelter is left to the company, and should be in line with company policies and positions concerning the use of conflict minerals from unethical sources.



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