

Conflict minerals... Does compliance really matter? Ask California, Australia, and the EU

Recent Legislation and Activity Affecting Supply Chains – A comparison

Executive summary

Recent examples of legislation requiring companies to make certain disclosures concerning their supply chain to the Securities and Exchange Commission (SEC) include those around the source of conflict minerals and a company's measures to address conditions of forced labor, slavery, human trafficking, and child labor within their supply chains.

Policy-making and public pressures in many of these areas are both long-standing and vary in method within and outside the United States. For example, United States federal law does not directly prohibit companies from sourcing conflict minerals or using forced labor outside the United States; however, requiring public disclosure may dissuade companies from engaging in certain activities.

Recent legislation and activity is not limited to the United States federal government, but also United States state and local governments and other governments around the world:

- SEC Commissioners approved the form and rule pursuant to Section 1502 of the Dodd-Frank Act relating to the use of conflict minerals¹ (the conflict minerals rule) that mandates new annual reporting requirements affecting companies with products that contain, or if in the production process use, certain "conflict minerals".²
- California enacted a law in 2011 which prohibits the state government from entering into a contract with a company that fails to comply with federal regulations (Section 1502 of the Dodd-Frank Act). In 2012, Maryland's "conflict minerals" bill became law.

Effective October 1, 2012, the law prohibits "...a unit of State government from procuring supplies or services from persons that fail to disclose in a specified manner as required by federal law specified information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries." Other states considering similar legislation include Massachusetts and Rhode Island.

- Noteworthy legislation was introduced in Congress in August 2011. The bill, referred to the House Committee on Financial Services, would "...require companies to disclose any measures the company has taken during the year to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the company's supply chains."
- The State of California enacted a law that prohibits the state government of California from contracting with companies that fail to comply with federal regulations (Section 1502 of the Dodd-Frank Act).
- The State of California enacted a law that requires retail sellers and manufacturers doing business in California to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale.
- The City of Pittsburgh calls on companies from all sectors in the city to factor whether electronic products contain conflict minerals in future purchasing decisions and, when available, will favor verifiably conflict-free products.
- The Australian government released due diligence guidelines for responsible



mineral supply chains to mitigate the risk of providing direct or indirect support of conflict in the eastern part of the Democratic Republic of the Congo.

- The European Commission announced support of the United Nations and Organisation for Economic and Cooperation Development (OECD) guidelines, including the OECD's recommendations on due diligence and responsible supply chain management.

These and other legislation affecting supply chains are reviewed in more detail on the following pages. See Appendix A for more information regarding United States legislation and Appendix B for activity outside of the United States.

¹SEC Final Rule For Disclosing Use of Conflict Minerals, August 22, 2012, <http://sec.gov/rules/final/2012/34-67716.pdf>

²The term "conflict mineral" is defined in Section 1502(e) (4) of the Dodd-Frank Act as (A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.



Appendix A: U.S. legislation affecting supply chains – A comparison

KEY

Rule is final and action required by companies

Rule is either pending anticipated enactment or is final but does not require action by companies

	CONFLICT MINERALS ⁽²⁾					HUMAN RIGHTS		
	UNITED STATES	CITY (PITTSBURGH)	CITY (ST. PETERSBURG)	STATE (MARYLAND)	STATE (CALIFORNIA)		UNITED STATES	
	Dodd-Frank Section 1502 Conflict Minerals	City of Pittsburgh Proclamation on Conflict Minerals	City of St. Petersburg Resolution to Favor Products Free of Congo Conflict Minerals	Maryland Passes Conflict Minerals Bill (SB 551)	California State Senate Committee Passes Conflict Minerals Bill (SB 861)	The California Transparency in Supply Chains Act (SB 657)	Business Transparency on Trafficking and Slavery Act (H.R. 2759) ⁽¹⁾	Trafficking Victims Protection Reauthorization Act of 2011 (H.R. 3589)
Status	FINAL – AUGUST 2012 The SEC voted to adopt rules concerning reporting and disclosure for conflict minerals on August 22, 2012.	FINAL – APRIL 2011	FINAL – OCTOBER 2011	FINAL – MAY 2012 Maryland Governor O’Malley signed conflict minerals law (SB 551) on May 2, 2012.	FINAL – OCTOBER 2011 Passed Assembly (amended) in September 2011. Passed Senate (amended) in September 2011. Approved by governor in October 2011.	FINAL – SEPTEMBER 2010 Passed Assembly in August 2010. Passed Senate in August 2010. Approved by governor in September 2010.	Bill introduced on August 1, 2011 and referred to the Committee on Financial Services No further action and any legislative prospect is unlikely due to little support A new bill, H.R. 3589, Trafficking Victims Protection Reauthorization Act of 2011, was introduced in December 2011. H.R. 3589 was referred to four committees, none of which has held hearings. It has little support and is unlikely to result in progressing.	One section of H.R. 3589 is an alternative to H.R. 2759. Bill introduced in December 2011 and referred to four committees, none of which has held hearings to date.
Effective date	October 2012 Issuers must comply with the final rule for the calendar year beginning January 1, 2013 with the first reports due May 31, 2014.	April 2011	October 2011	October 2012	October 2011	January 2012	Not later than 270 days after the date of the enactment of this subsection	Not later than 270 days after the date of the enactment of this subsection
Jurisdiction affected	Companies that use tin, tantalum, tungsten, or gold that are necessary to the functionality, or production of a product manufactured or contracted to be manufactured, and that file with the SEC under the Exchange Act of 1934 must disclose the source of such materials.	City of Pittsburgh	City of St. Petersburg	Maryland government	California government	Every retailer and seller “doing business” in California “Doing business in this state” shall have the same meaning as set forth in Section 23101 of the Revenue and Taxation Code	U.S. public companies or private entity required to submit any annual report to the SEC	U.S. public companies or private entity required to submit any annual report to the SEC
Company size	Silent	Silent	Silent	Silent	Silent	A retail seller or manufacturer having more than \$100 million in annual worldwide gross receipts	An entity with annual worldwide global receipts in excess of \$100 million	An entity with annual worldwide global receipts in excess of \$100 million

⁽¹⁾ Bill H.R. 2759, Business Transparency on Trafficking & Slavery Act, has been referred to subcommittee.

⁽²⁾ Several states are in various stages of considering legislation. Maryland enacted conflict minerals legislation in May 2012; Massachusetts and Rhode Island are considering legislation.

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	Dodd-Frank Section 1502 Conflict Minerals	City of Pittsburgh Proclamation on Conflict Minerals	City of St. Petersburg Resolution to Favor Products Free of Congo Conflict Minerals	Maryland Passes Conflict Minerals Bill (SB 551)	California State Senate Committee Passes Conflict Minerals Bill (SB 861)	The California Transparency in Supply Chains Act (SB 657)	Business Transparency on Trafficking and Slavery Act (H.R. 2759) ⁽¹⁾	Trafficking Victims Protection Reauthorization Act of 2011 (H.R. 3589)
Summary	The final rule requires an issuer with <i>conflict minerals</i> that are necessary to the functionality or production of a product manufactured, or contracted to be manufactured by the company, to disclose annually information about the origin of its minerals. If an issuer knows or has reason to believe that the minerals may have originated in the Democratic Republic of Congo (DRC) or an adjoining country (collectively, covered countries), or may not be from scrap or recycled sources, an issuer will be required to perform, and submit a report describing its due diligence on the conflict minerals’ source and chain of custody. These conflict mineral disclosures will be provided in a specialized disclosure report on a new form to be filed with the SEC (Form SD).	<p>The City of Pittsburgh calls on companies from all sectors in the city to factor whether electronic products contain conflict minerals in future purchasing decisions and, when available, will favor verifiably conflict-free products.</p> <p>The Council of the City of Pittsburgh (the Council) calls on electronic companies and other industries to take the necessary steps to remove conflict minerals from their supply chain.</p> <p>The Council calls on U.S. executive leadership in helping to establish an international certification system for minerals coming from Central Africa to ensure they are not contributing to conflict.</p>	<p>A resolution of the City Council of the City of St. Petersburg approving consideration of the presence of conflict minerals in electronic products in purchasing and investment decisions. Per the Resolution:</p> <ul style="list-style-type: none">• The City Council of the City of St. Petersburg will consider whether electronic products contain conflict minerals in future purchasing and investment decisions and shall specifically advise City Council of same and, when available, will favor verifiably conflict-free products• The City Council calls on electronic companies and other industries to take the necessary steps to remove conflict minerals from their supply chain• The City of St. Petersburg calls on the United States Executive Branch’s leadership in helping to establish an international certification system for minerals coming from Central Africa to ensure they are not contributing to the conflicts.	For the purpose of prohibiting a unit of State (of Maryland) government from procuring supplies or for services from persons that fail to disclose in a certain manner as required by federal law certain information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; requiring a unit of State government to provide notice of the prohibition in any solicitation for supplies or services; defining certain terms; and generally relating to required disclosure of information related to conflict minerals originated in the Democratic Republic of the Congo or its neighboring countries.	<p>Existing law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies and the various responsibilities of state agencies and the Department of General Services in implementing state contracting procedures and policies.</p> <p>This bill would prohibit a scrutinized company, as defined, from entering into a contract with a state agency for goods or services, as provided.</p>	<p>This bill would require retail sellers and manufacturers doing business in California to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, as specified.</p> <p>That provision would not apply to a retail seller or manufacturer having less than \$100,000,000 in annual worldwide gross receipts.</p> <p>The bill would also make a specified statement of legislative intent regarding slavery and human trafficking.</p> <p>The bill would also require the Franchise Tax Board to make available to the Attorney General a list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking pursuant to that provision, as specified.</p>	<p>Proposed to amend Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)</p> <p>To require companies to include in their annual reports to the SEC a disclosure describing any measures the company has taken during the year to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the company’s supply chains.</p> <p>Per the bill, among other items, disclosure shall include whether the entity “ensures that audits of suppliers are conducted to evaluate supplier compliance with the person’s company standards for eliminating forced labor, slavery, human trafficking, and the worst forms of child labor in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.”</p>	Requires the Ambassador-at-Large for Combating Human Trafficking to encourage any publicly-traded or private entity wherever located, carrying out business operations in the United States, and having annual worldwide global receipts exceeding \$100 million, to disclose annually on its website and to the Secretary of State any measures it has taken during the year to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within its supply chains.
Independent audit requirement	Yes	No	No	Yes, however this would be the same as Section 1502 of the Dodd-Frank Act. No additional audit necessary.	Yes, however this would be the same as Section 1502 of the Dodd-Frank Act. No additional audit necessary.	<p>Not explicitly stated; however the Act requires that the retailer/seller “conduct(s) audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains.</p> <p>The disclosure shall specify if the verification was not an independent, unannounced audit.”</p>	Yes	<p>Ensures that recruitment practices at all suppliers comply with the person’s company standards for eliminating exploitive labor practices that contribute to forced labor, slavery, human trafficking, and the worst forms of child labor, including by conducting audits of labor recruiters and disclosing the results of such audits.</p> <p>Ensures that audits of suppliers are conducted to evaluate supplier compliance with the person’s company standards for eliminating forced labor, slavery, human trafficking, and the worst forms of child labor in supply chains. The disclosure should specify if the verification was not an independent, unannounced audit.</p>
Links to more info	<p>Act: http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf</p> <p>SEC final rule: http://sec.gov/rules/final/2012/34-67716.pdf</p>	http://pittsburgh.legistar.com/LegislationDetail.aspx?ID=873982&GUID=53DB676C-7643-4948-A56D-6731D4925634	http://www.enoughproject.org/news/st-petersburg-passes-resolution-favor-products-free-congo-conflict-minerals http://www.stpete.org/LegisStream/MG278199/AS278200/AS278215/AI280141/DO281299/DO_281299.pdf	http://mlis.state.md.us/2012rs/billfile/SB0551.htm	http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_861_bill_20110913_enrolled.html	http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.html	http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2759.IH:/	http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.3589

Appendix B: Recent activity affecting supply chains outside of the United States

Many countries around the world have begun to address the issue of responsible supply chain management. An activity that is taking place around the world includes:

- The **Australian government** released due diligence guidelines in December 2010 for the responsible supply chain of minerals to mitigate the risk of providing direct or indirect support for conflict in the eastern part of the Democratic Republic of the Congo.
- **European Union (EU) actions:**
 - The European Commission announced support of the United Nations and Organisation for Economic and Co-operation Development (OECD) guidelines, including the OECD's recommendations on due diligence and responsible supply chain management. More information: http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf
 - The **EU Parliament** adopted a resolution calling on the member states to create an EU law to ensure that imported minerals are traceable, as a tool to combat illegal exploitation of conflict minerals in African countries. More information: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P7-TA-2010-0482+0+DOC+XML+V0/EN&language=EN>
 - The **European Commission** said that the issue of transparency in the extractive industry will be reflected in the EU's new communication on raw materials. It follows the 2008 Raw Materials Initiative, which set out a strategy for the EU's policy response to global resource scarcity. More information: <http://www.euractiv.com/sustainability/eu-vows-tackle-blood-minerals-raw-materials-plan-news-501117>
 - The **EU** plans to include "mandatory country-by-country disclosure" of money flows between mining companies and governments. This will be on the lines of U.S. regulation, which requires extractive companies listed on the U.S. stock exchanges to publish payments made to governments on a country-by-country basis. The added disclosure can be used to hold governments accountable for the royalties received, helping to stamp out corruption. More information: <http://euobserver.com/19/31972>



- Two separate bills were introduced in **Parliament in Canada:**

1. *Trade in Conflict Minerals Act (Bill C-571)* – First Reading September 30, 2010

This enactment requires Canadian companies to exercise due diligence before purchasing minerals that originate in the Great Lakes Region of Africa to ensure that no illegal armed group has benefited from any transaction involving those minerals.

It also requires the Extractive Sector Corporate Social Responsibility Counsellor to identify, in its annual report to the Minister for International Trade, those Canadian extractive sector companies that the Counsellor has reasonable grounds to believe are not practicing corporate social responsibility in the Great Lakes Region of Africa.

More information: <http://www.parl.gc.ca/House/Publications/Publication.aspx?Docid=4668098&file=4>

2. *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act (Bill C-300)* – First Reading February 9, 2009

The purpose of this act is to promote environmental best practices and ensure the protection and promotion of international human rights standards in respect to the mining, oil, or gas activities of Canadian corporations in developing countries. It also gives the Minister of Foreign Affairs and Minister of International Trade the responsibility to issue guidelines that articulate corporate accountability standards for mining, oil, or gas activities, and it requires the Ministers to submit an annual report to both Houses of Parliament on the provisions and operation of this act.

More information: <http://www.parl.gc.ca/House/Publications/Publication.aspx?Docid=3658424&file=4>

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Other Resources

Conflict Minerals Website

<http://www.kpmg.com/US/en/WhatWeDo/special-interests/Pages/conflict-minerals.aspx>

Regulatory Practice Letters

<http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/regulatory-practice-letters/Pages/default.aspx>

Washington Reports

<http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/washington-reports/Pages/default.aspx>

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