



OECD WORK ON RESPONSIBLE MINERAL SUPPLY CHAINS & THE U.S. DODD FRANK ACT

This leaflet responds to questions being received on how the OECD Due Diligence Guidance assists companies to comply with Section 1502 of the U.S. Dodd Frank Act.

To what extent do Section 1502 of U.S. Dodd Frank Act and the OECD Guidance intersect?

Section 1502 of U.S. Dodd Frank Act requires U.S. listed companies to disclose whether they use “conflict minerals” (tin, tungsten, tantalum and gold) and whether these minerals originate in the Democratic Republic of the Congo (DRC) or an adjoining country. In such a case, issuers must submit a “Conflict Minerals Report” describing the measures taken to exercise due diligence, the description of the products that are not DRC conflict free, the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity. The OECD Due Diligence Guidance clarifies how issuers and other companies in the supply chain operating beyond U.S. borders should instate a due diligence process which enables them to generate the information issuers must disclose under section 1502 of U.S. Dodd Frank Act.

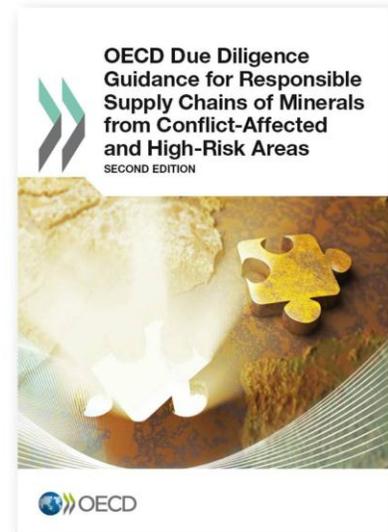
Do Section 1502 of U.S. Dodd Frank Act and the OECD Due Diligence Guidance share the same objectives?

Yes, the OECD Due Diligence Guidance and Section 1502 both seek to break the link between conflict and trade in minerals. Under the Dodd Frank Act, the ways that minerals are described as directly or indirectly financing or benefiting armed groups equate to the detailed modalities described under the OECD Due Diligence Guidance

through which direct or indirect support to non-state armed groups and public or private security forces can be provided. Section 1502 of Dodd Frank Act and the OECD Due Diligence Guidance are complementary and mutually supportive.

Why should issuers use the OECD Guidance to generate the information required under Section 1502 of U.S. Dodd Frank Act?

The OECD Due Diligence Guidance is supported by the international community, the U.S. Department of State, U.S. Congressmen, and a multitude of other stakeholders, including industry and civil society. The OECD Due Diligence Guidance allows issuers to communicate a set of clear inter-governmentally backed expectations throughout the entire supply chain, avoiding the risk of exposing suppliers operating in different jurisdictions to multiple and potentially conflicting requirements. This enables issuers to constructively engage with their minerals suppliers outside U.S. borders to generate the information they need to meet their disclosure obligations under Section 1502 of U.S. Dodd Frank Act. While the legislation applies to U.S. listed companies, it indirectly impacts any company beyond U.S. borders which has directly or indirectly U.S. listed customers, including upstream companies (e.g. mining companies, mineral exporters, international traders, mineral refiners and smelters that are not listed but that deal with or have clients doing business with U.S. listed companies). Implementation of the OECD Due



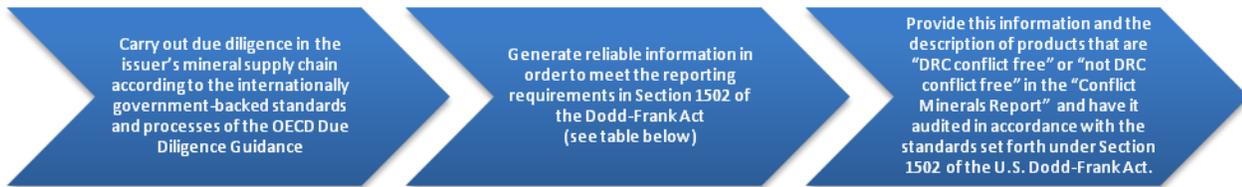
Helping companies source minerals responsibly

The OECD Due Diligence Guidance provides management recommendations for global responsible supply chains of minerals to help companies respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices. The Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

The OECD adopted a Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas at the May 2011 Ministerial Meeting.

Diligence Guidance will therefore help information to flow from upstream suppliers in the mineral supply chain to end users subject to Dodd Frank disclosure requirements. ►

Using the OECD Guidance to generate the information required under Section 1052 of the U.S. Dodd Frank Act



Disclosure Requirements	
U.S. Dodd Frank Act	OECD Due Diligence Guidance
The measures taken to exercise due diligence on the source and chain of custody of minerals.	<p>The OECD Due Diligence Guidance provides a common reference for all actors in the supply chain on the step-by-step due diligence process they should put in place at the different levels of the mineral supply chain to establish the source and chain of custody of the minerals they source and respond to identified risk of direct or indirect support to conflict in accordance with international standards.</p> <p>By undertaking due diligence in accordance with the recommendations tailored to their specific position in the mineral supply chain, issuers can "know and show" that they are not contributing to conflict or abuses of human rights through their sourcing practices.</p>
No definition of "due diligence" is provided	Internationally agreed definition of "due diligence" as the on-going, proactive and reactive process whereby companies take reasonable steps and make good faith efforts to identify and respond to risks of contributing to conflict and serious abuses in accordance with internationally agreed standards, with a view to promoting progressive improvement to due diligence practices through constructive engagement with suppliers.
The facilities used to process the conflict minerals	Downstream companies should introduce a supply chain transparency system and assess conflict-related risks in their supply chain by identifying the smelters/refiners (i.e. mineral processors) in their supply chains, including through collaboration with other companies or through validation schemes of smelters/refiners that comply with the OECD Due Diligence Guidance.
The country of origin of the conflict minerals	Once the smelters/refiners have been identified, downstream companies should obtain from them information on all the countries of mineral origin.
The efforts to determine the mine or location of origin with the greatest possible specificity	Downstream companies should review all the information generated by smelters through Step 1 of the OECD Due Diligence Guidance, including the mine of mineral origin. If the information collected triggers the application of "supplier red flags" or "red flag location of mineral origin or transit", downstream companies should cross-check evidence of smelters/refiners' due diligence practices against the model supply chain policy (Annex II) and due diligence processes contained in the OECD Due Diligence Guidance to determine whether the smelters have carried out appropriate due diligence and have responded to identified risks in accordance with internationally agreed standards.

Audit	
U.S. Dodd Frank Act	OECD Due Diligence Guidance
<p>Audit of the issuer's due diligence report on the source and chain of custody of conflict minerals originating in the DRC or an adjoining country, conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State.</p>	<p>STEP 4 of the OECD Due Diligence Guidance recommends that the <i>due diligence management systems</i> of "red flag" smelters/refiners in the issuers' supply chain are audited. This smelter/refiner audit builds credibility in the conflict-free sourcing practices of the smelter/refiner, and thus all those who source from them. The smelter/refiner audit in the Guidance can also help assure that the information obtained through the smelter/refiner audit and disclosed by the issuer in the SEC reports is credible and reliable. This audit differs in scope and purpose from the audit of the issuer's due diligence report under Section 1502.</p> <p>STEP 5 of the OECD Due Diligence Guidance recommends that downstream companies publish the audit reports of their due diligence practices. Downstream companies that are issuers subject to Section 1502 of Dodd Frank Act will have to comply with the standards set forth therein to carry out such audits.</p>
Describing products as "not DRC conflict free" and labeling products as "DRC conflict free"	
U.S. Dodd Frank Act	OECD Due Diligence Guidance
<p>DRC conflict free: products that do not contain minerals that directly or indirectly finance or benefit armed groups in the DRC or adjoining countries". Under the Dodd Frank Act, the term "armed group" means an armed group that is identified as perpetrators of serious human rights abuses in the annual 11 Country Reports on Human Rights Practices.</p>	<p>The OECD Due Diligence Guidance does not expect companies to describe or label their <i>products</i> as "not DRC conflict free" or "DRC conflict free", but does provide a more elaborate understanding of the various ways the mineral trade "directly or indirectly" supports non-state armed groups or public or private security forces in conflict areas (see Annex II). The OECD Due Diligence Guidance also recommends how upstream companies should respond when confronted with risks of "direct or indirect support" to conflict. While assessing the due diligence of the smelters/refiners, issuers should review whether smelters and their upstream suppliers have followed the recommended risk management strategies:</p> <ul style="list-style-type: none"> ▪ If a company finds a risk in its supply chain that it may be supporting any armed groups (non-state, public or private security forces) that commit serious human rights abuses, the recommended response is immediate suspension or disengagement (see paragraphs 1-2 of Annex II). ▪ If a company finds a risk in its supply chain that it may be supporting non-state armed groups (even if not involved in serious human rights abuses), the recommended response is immediate suspension or disengagement (see paragraphs 3-4 of Annex II). ▪ If a company finds a risk in its supply chain that it may be supporting public or private security forces (i.e. military) <i>that are not involved in serious human rights abuses</i>, the recommended response is the immediate adoption and implementation of a risk management plan by upstream suppliers and that significant measurable improvement is demonstrated within six months from the adoption of the risk management plan (see paragraphs 5 and 10 of Annex II).

	<p>The above recommended responses to identified risks have implications for the categorization of products required under Section 1502 of Dodd Frank:</p> <p>Issuers are allowed to label their products as “DRC conflict free” when they and the mineral processors from which they source know (by assessing the due diligence of smelters/refiners) and can show that they do not tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of serious human rights abuses associated with the extraction, transport or trade of minerals and do not provide any direct or indirect support to non-state armed groups or public or private security forces.</p> <p>Companies implementing a time-bound risk management plan for identified risks of direct or indirect support to public or private security forces that are <i>not perpetrators of serious human rights abuses</i> should not label products as “DRC conflict free”.</p>
<p>Not DRC conflict free: products “containing minerals that directly or indirectly finance or benefit armed groups in the DRC or adjoining countries”. Under the Dodd Frank Act, the term “armed group” means an armed group that is identified as perpetrators of serious human rights abuses in the annual 11 Country Reports on Human Rights Practices.</p>	<p>Dodd Frank leaves open how to describe minerals in situations where public or private security forces are not perpetrators of serious human rights abuses.</p> <p>Companies which adopt and implement a risk management plan to respond to identified risks of direct or indirect support to public or private security forces that are not involved in serious human rights abuses (as outlined in paragraph 10 of Annex II) should not describe their products as “not DRC conflict free”.</p>

What if issuers find it difficult to implement all the due diligence recommendation of the OECD Due Diligence Guidance immediately?

The OECD Guidance provides practical step-by-step recommendations on how companies throughout the entire supply chain should frame their due diligence processes. But it is also flexible and not prescriptive on how those recommendations can be operationalised. The ways that companies choose to operationalise the recommendations will naturally evolve over time as industry tools and capacity develop. For example, the tin industry’s supply chain initiative (iTSCI) relies on adherence to the OECD Guidance in its membership rules as well as for conducting on-the-ground risk assessments and audits. The Electronics Industry Citizenship Coalition (EICC) and the Global e-

Sustainability Initiative (GeSI) requires smelters sourcing from DRC or adjoining countries to be assessed against the OECD Guidance in order to become eligible for the EICC-GeSI Conflict Free Smelter Program.

How can issuers improve their performance, build their due diligence capacities, develop implementing tools and share best practices?

The OECD is coordinating a pilot implementation phase of the OECD Guidance with over 85 companies and industry associations across the entire 3T supply chain, including large multinationals like Siemens, Boeing, Ford Motor Company, Hewlett-Packard and Panasonic. The implementation phase will help companies better understand the due diligence recommendations, learn by doing and share best practices. ■

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