

**APRIL 2011**

# **US LEGISLATION ON CONFLICT MINERALS**

**RCS PRIVATE SECTOR GUIDANCE ON  
THE DODD-FRANK ACT SECTION 1502**



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# OVERVIEW

## Background

On 21 July 2010, the Dodd-Frank Act was signed into law in the USA. The Act's primary focus is financial sector reform and regulation.

Section 1502 of the Act is concerned with 'conflict minerals' originating from the Democratic Republic of the Congo (DRC) and adjoining countries. It requires all companies that use 'conflict minerals' in their products to conduct due diligence to certify that these minerals did not originate from the DRC, and if they did, to determine whether or not they benefited armed groups. For the purposes of the act 'conflict minerals' are defined as one of four minerals (coltan, tin, wolfram and gold) that directly or indirectly finance or otherwise benefit armed groups in the DRC or adjoining countries.

## Purpose of Section 1502

The linkages between conflict in the Eastern DRC and the mineral sector are not fully detailed in the Act, however, the Act states that "the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein".

## Final regulations and implementation

The Dodd-Frank Act requires the Securities and Exchange Commission (SEC) to issue the final regulations and requirements of Section 1502 on April 15<sup>th</sup> 2011. From April 17<sup>th</sup> companies will have to begin conducting due diligence in accordance with the standards promulgated, and describe this in their next annual reports. Only the SEC can determine whether it is able to comply with this schedule. Some affected parties have asked the SEC to allow a phased-implementation of the Act that would postpone the first reports by as much as three years.

Until final regulations are specified, crucial details of the Act remain unspecified that affect its scope, the required standards of due diligence and the reporting requirements.

# CONFLICT MINERALS

## What are 'Conflict Minerals'?

Within the confines of the act, the definition of 'conflict minerals' currently includes four minerals. However, this definition can be altered by the Comptroller General.



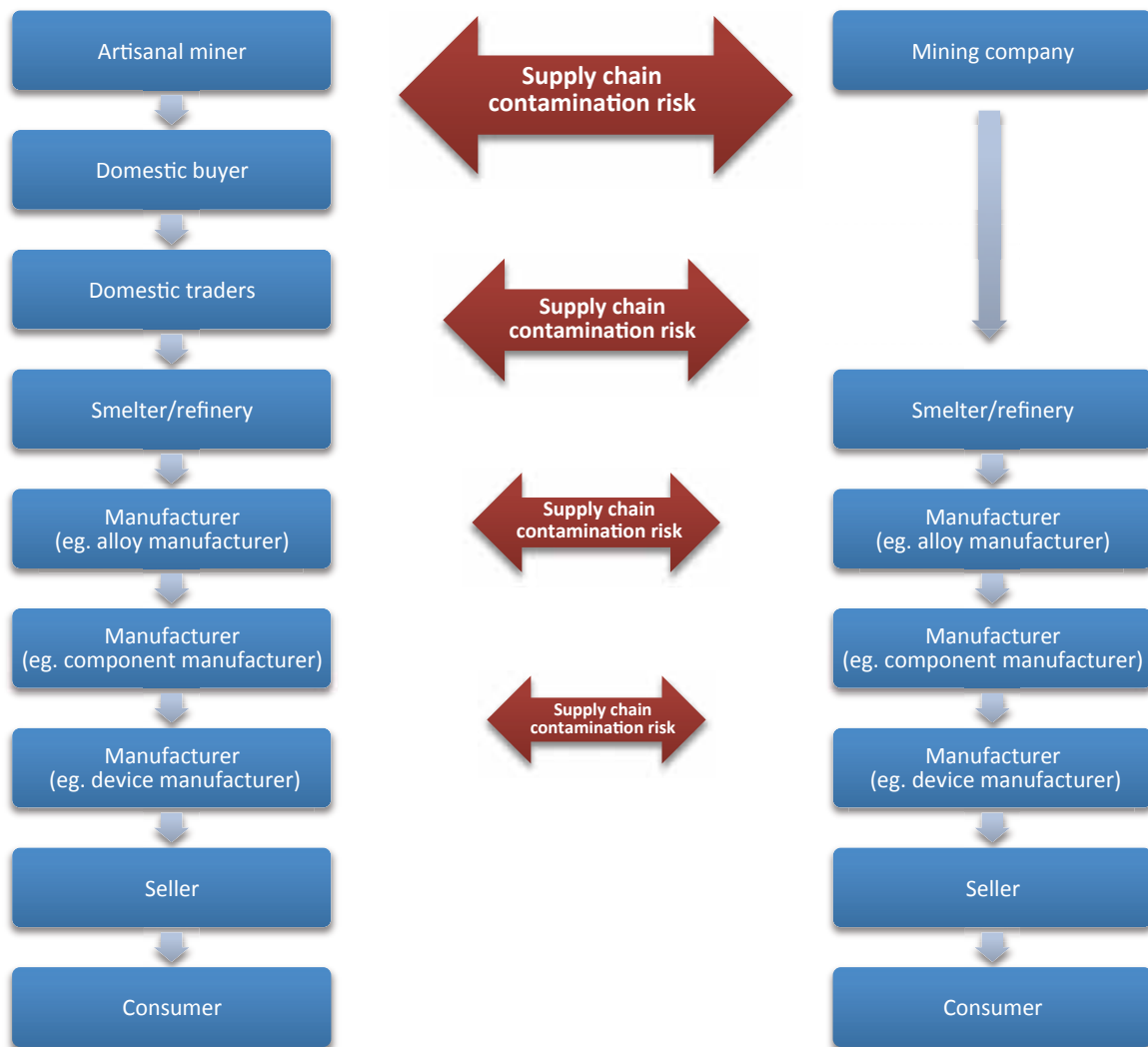
## Who uses 'conflict minerals'?

Each 'conflict mineral' is a material with a range of advantageous properties and uses. They form part of a number of products in sizeable global markets including, for example, in the electronics, automotive and jewellery industries.

The supply chains that link miners, manufacturers and consumers are complex and often opaque, particularly at the upstream part of the supply chain. Minerals pass through many hands between extraction, refinery and downstream processing and manufacture before reaching retail markets and consumers. One key risk for companies is that they may not know the full extent of their supply chain.

## 'Conflict mineral' supply chains contamination

Cassiterite, coltan, gold and wolframite are extracted from the DRC and surrounding countries by both artisanal miners and industrial mining companies. 'Conflict minerals' that have benefited armed groups, are largely drawn from artisanal mining sources in the Eastern DRC. However, they can enter supply chains at multiple entry points. Given that (particularly artisanal) mineral sources are difficult to verify and minerals are blended at the point of trade and refinery to reach a certain level of purity, it is possible for supply chains to become contaminated upstream as well as downstream.



### Due diligence pushed up the supply chain

Countries of origin inquiries and due diligence requirements only apply to manufacturers, but the Act is likely to require them to trace the source of minerals up their supply chains. This might be achieved by system of certification, whereby minerals are labelled and tracked and down the supply chain from the mine onwards. This thorough method is more likely to be effective, but is also costly and demanding of producers, who may not be able or unwilling to comply. Alternatively, a system of warranties might be established, whereby each buyer seeks a warranty from his supplier at each stage of the supply chain, that assures each buyer that the extraction of the minerals have not benefited armed groups. In this scenario, smelters might be most likely to be the points at which the origins of minerals are certified. In any scenario, systems of certification are passed up the supply chain, along with much of the administrative burden. The standards of reporting and due diligence that are required will only be made clear once the SEC releases its final regulations on April 15th 2011.

# WHO DOES SECTION 1502 DIRECTLY APPLY TO?

## Does the company report to the SEC?

The Dodd-Frank Act applies to those companies that has securities held by more than 500 owners with \$10 million in assets.

## Are 'conflict minerals' used?

If a company's manufactured goods contains any of the four 'conflict minerals' that are necessary to the goods function, it must conduct a reasonable country of origin inquiry to determine whether the minerals' source was in the DRC or adjoining countries.

## Do the minerals originate in the DRC or adjoining countries?

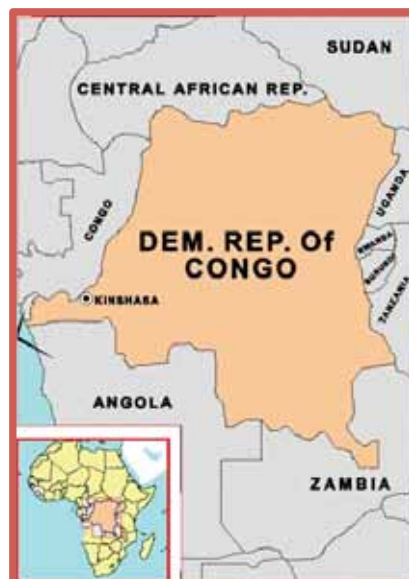
Those companies whose minerals have not been sourced from the DRC or adjoining countries must record this in their annual report. Those companies that do source minerals from the DRC or adjoining countries, or cannot verify the origin of their minerals, must conduct further due diligence, which must be published in a Conflict Minerals Report.

## Have the minerals benefited armed groups?

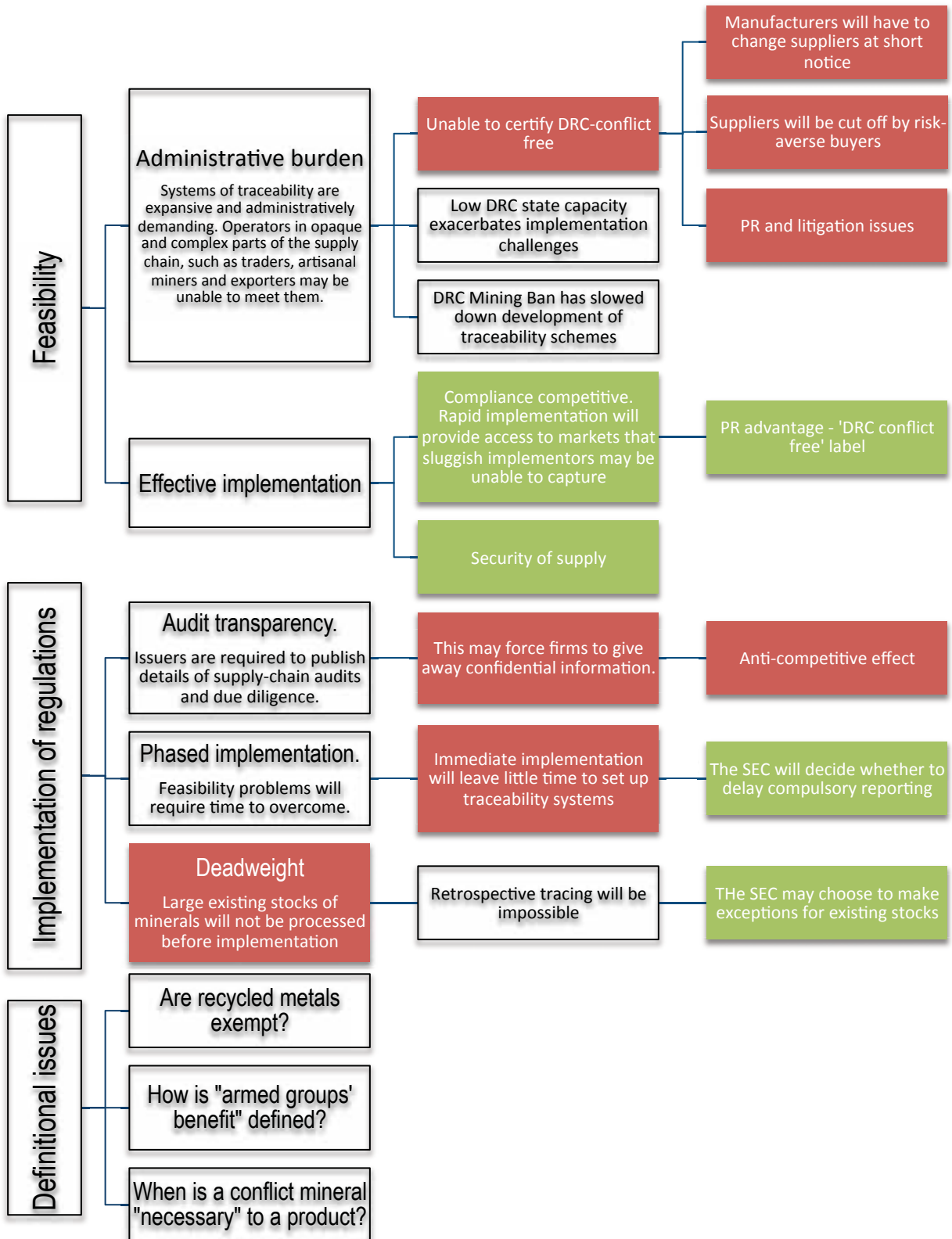
Companies that certify that their minerals have not benefited armed group will be able to write 'DRC conflict free' on their products

## The DRC and adjoining countries

There are 9 adjoining countries to the DRC: Angola, Burundi, the Central African Republic, Congo, Brazzaville, Rwanda, Sudan, Tanzania, Uganda and Zambia.



# OUTSTANDING ISSUES



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# RESOURCE CONSULTING SERVICES

Resource Consulting Services (RCS) is a globally operating research, advisory, implementation and evaluation consultancy. We provide considered solutions to clients' risks and opportunities in the natural resources and agriculture sectors.

RCS has worked extensively in the Eastern DRC and surrounding countries and is a world-leader on issues of conflict resources, supply chain management and due diligence. We are currently helping a number of companies and governments manage their response to the Dodd-Frank Act 1502 and 1504.

Our world-class services help companies, governments, multilateral and bilateral donors, civil society and others to better understand and navigate the risks and opportunities related to investment feasibility, governance, development, conflict and the business environment.

RCS has global reach, drawing on core staff expertise and in-country specialists. Our range of products has helped those in the private sector, including extractive companies, investment banks, the World Bank, the US and European governments and many others, to better understand and help navigate otherwise concealed and previously unforeseen dynamics.

Please contact us for more information.

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