



**Addressing human trafficking
risk in supply chains**
Lessons from conflict minerals



The potential for human trafficking in supply chains is a growing concern for regulatory bodies, nongovernmental organizations (NGOs), investors, and other stakeholders in a range of industries, most notably those that have a global and complex supply chain. Responding effectively to these concerns is a challenge for many companies.

Companies that comply with conflict minerals disclosure requirements are well positioned with a strong framework for addressing similar anti-human trafficking (AHT) requirements. This publication summarizes these experiences and provides leading practices for addressing requirements and concerns around human trafficking. Human trafficking includes (but is not limited to) forced labor, child labor, and slavery, as well as coercion, abduction, fraud, and exploitation connected with labor.¹

Rising to the conflict minerals challenge

Initially, some companies believed that Securities and Exchange Commission (SEC) disclosure requirements related to conflict minerals (the SEC Rule²) would be difficult or impossible to meet. Now, three years into the SEC Rule requirements, many companies have achieved compliance with the rule’s objectives and realized risk mitigation benefits. The latter include enhanced visibility into supply chains, better information on risks, and increased cooperation from suppliers.

The SEC Rule required affected companies to establish a due diligence program to determine the existence and sources of tin, tantalum, tungsten, and gold in their supply chains to support disclosures in an SEC filing. At this point, year-three filings are in the books, with the following results for the past two years:

SEC conflict minerals reporting data (2015 & 2014)

	2015	2014
Number of filings	1,220	1,271
Percentage of filings that included a Conflict Minerals Report	81%	80%
Percentage of filings that included a smelter/refiner list	40%	32%

In the process of responding to the SEC Rule, companies:

- Reviewed their responsible sourcing policies to determine their scope and continued appropriateness to managing conflict minerals concerns and, in some cases, enhanced those policies or developed conflict minerals-specific policies
- Surveyed suppliers by means of a standardized data collection tool, usually the Conflict Minerals Reporting Template developed by the Conflict Free Sourcing Initiative
- Analyzed supplier engagement information and results against expectations set forth in company policies
- Deployed training for personnel and suppliers regarding expectations and disclosure requirements
- Increased standardization of risk indicators to drive more systematic due diligence
- Enhanced collaboration with industry or regional groups to leverage relationships and influence supplier sourcing practices

Challenges remain, yet companies are making progress, as evidenced by increased disclosure of smelter, refiner, and country-of-origin information, and more labeling of products as conflict free. Additionally, companies are sourcing more minerals from certified conflict free smelters and refiners.

In general, the environmental and social impacts of certain business practices are prompting policymakers to focus on

organizations’ social compliance systems. (The US Department of Labor (DOL) defines a social compliance system as “an integrated set of policies and practices through which a company seeks to ensure maximum adherence to its code of conduct.”³) Investors, customers, and other stakeholders are also scrutinizing companies for programs that address human rights risks at every stage of the value chain as part of the organization’s capacity to respond to unforeseen circumstances and risk.⁴

Although many companies may view social compliance efforts as cumbersome, experiences with conflict minerals suggest that these efforts have helped companies improve supply chain transparency and risk identification capabilities. Typically, these benefits result from processes and controls that enable more informed sourcing decisions and faster, more effective responses to risks.

Companies can build on their experiences in conflict minerals, or on those of other companies, to address requirements around human rights and anti-human trafficking. Those experiences apply to activities such as organizational policy development, program governance and execution, training, and auditing and disclosure. These activities should be conducted within a risk management and governance context that considers the organization’s industry, global footprint, and growth targets.



The impact of human trafficking



Although many companies may view social compliance efforts as cumbersome, experiences with conflict minerals suggest that these efforts have helped companies improve supply chain transparency and risk identification capabilities.

The International Labour Organization (ILO) has estimated that almost 21 million people are victims of forced labor and that forced labor in the private economy generates \$150 billion in illegal profits per year.⁵ Research by the Ashridge Centre for Business and Sustainability and the Ethical Trading Initiative (focused on retailers and suppliers in the apparel, grocery, department store, home and garden, beverage, fresh produce, and health and personal care sectors) found that 71 percent of companies believe there is a likelihood of modern slavery occurring at some point in their supply chains.⁶

Many companies see themselves as immune to human trafficking risks or see no urgency in addressing the risks within their operating models. Yet the DOL has identified some 136 goods from 74 countries produced by child or forced labor—spanning all industries and many parts of corporate operations.⁷ Goods reflected in this list are potentially tied to American-owned supply chains. Additionally, new regulatory requirements (see Appendix) are compelling organizations to gain alignment at the highest executive leadership levels around how to approach this issue, establish and effectively implement policies, and develop evaluative metrics to address human trafficking beyond the “check the box” requirements to mitigate scrutiny from stakeholders and NGOs.

Steps in developing an AHT program

A sound social compliance program is built upon a guiding framework for developing and implementing processes and controls. For example, the OECD Framework⁸ guided many companies' conflict minerals compliance activities. Although AHT protocols and guidelines have been issued by various NGOs and government bodies (many focusing strongly on commercial sexual exploitation), there is currently no specific, widely accepted framework to drive companies' AHT activities in their supply chains. Moreover, discerning how their company stands against the principles can be overwhelming.

Given this, companies can turn to other potentially relevant frameworks—such as the OECD Framework—for potentially useful steps. Those steps should aim to establish and implement AHT efforts in the context of a broad, integrated social compliance program that addresses stakeholder concerns as well as associated regulatory, legal, and reputational risk.

Companies can consider following the five actions described below. Many companies impacted by the SEC rule and other regulatory measures have implemented these actions within their conflict minerals compliance programs.

1. Develop policies and program governance

After determining compliance requirements and establishing a steering committee and cross-functional execution team, the company can develop an AHT policy. This policy should drive the program and related public disclosures and set expectations for employees and suppliers. This may take the form of a stand-alone policy or be expressed within a broader human rights policy or company ethics policy.

Relevant tasks:

- Look to general counsel and the legal function for interpretation of various jurisdictions' requirements around AHT and forced labor
- Gather cross-functional input to comprehensively assess AHT exposure across the business
- Develop or incorporate an AHT policy aligned with the company's mission and values
- Decide whether to develop issue-specific policies or an overarching policy to guide multiple and emerging human-rights issues and regulatory requirements
- Identify the party primarily responsible for executing the AHT initiative within the supply chain or operations group

2. Establish training and support

Compliance programs can gain traction or lose steam based on their ability to identify capability gaps within their organizations around mitigating forced labor, as well as the on the quality of and commitment to the associated training, both internal and external. In the case of conflict minerals, training helped company personnel understand the SEC Rule requirements and communicate them more effectively to suppliers. By the same token, a contractor to the US government subject to the US Federal Acquisition Regulation: Ending Trafficking in Persons (FAR) may likely benefit by understanding penalties for noncompliance, which could include losing the opportunity to bid on future contracts.

Relevant tasks:

- Clarify the practical internal and external implications of related legislation or regulations and translate them into employee and supplier training materials and expectations
- Incorporate AHT training into existing training to present it as part of doing business with the organization
- Anticipate questions regarding technical or ambiguous terminology, particularly when there is no precedent
- Consider specific training on the data collection mechanism and on monitoring and reporting initiatives

3. Set clear supplier expectations

Although the conflict minerals case is hardly revolutionary in requiring suppliers' adherence to policies, companies have found they need to establish clear expectations to drive specific actions. These requirements obligated suppliers to adhere to the company's conflict minerals policy, submit certain information and supporting documentation, and provide audit rights to the company. Companies should consider similar requirements in their AHT programs.

Relevant tasks:

- Aim for policies that can broaden and deepen transparency in the supply chain and supplier relations
- Introduce mechanisms such as contractual obligations, including the right to perform supplier audits, supplier codes of conduct, and periodic monitoring and reports, to facilitate specific actions from suppliers
- Reserve or establish the right to terminate the contract in instances of noncompliance

4. Gather data and manage the risks

Forced labor, a component of human trafficking, is reported to be one of the greatest risks to brand reputation this year,⁹ making risk management essential to AHT programs. In the case of conflict minerals, with the OECD Framework as a guide, companies engaged suppliers via a survey process to gather data to gauge risks of financing conflict in certain Central African nations. Although current AHT legislation is largely disclosure-focused (despite the fact that human trafficking is illegal), companies should assess the risk of human trafficking in their supply chains. Once a company identifies risks, it can develop corrective actions, such as ending relationships with suppliers who hold workers' passports or demanding that passports be returned.

If the company is linked to human rights abuses in a public forum, for example, it can better respond with evidence of the rigor of its processes and practices if it has undertaken proper risk management.

Relevant tasks:

- Analyze product content and the supply chain through an industry lens, focusing on specific products, services, and geographies to identify potential AHT risks
- Develop, adapt, or adopt a survey process or other information-gathering mechanism to obtain required data
- Preclude survey fatigue by collaborating with other companies and industries on a single social compliance survey for suppliers, particularly those receiving multiple requests
- Incorporate compliance-related questions into the supplier selection process to identify suppliers who can adhere to company policies
- Develop corrective actions or suitable remediation with suppliers, such as demanding changes in supplier practices or seeking alternate suppliers
- Consider ways to address impacts on the individuals subject to human trafficking

AHT in action

Deloitte Consulting LLP worked with a global food services company to evaluate human rights risks in its global operations. One of Deloitte's proprietary assessment tools was also used to develop a two-year road map assessing the risk of modern slavery in the client company's supply chain. As a result, the client saw that awareness around modern slavery risks for its suppliers was a large gap and risk. Deloitte worked with the company to roll out training and communications to mitigate that risk in the operating model.

5. Develop a public disclosure process

The conflict minerals compliance process ultimately results in a filing with the SEC, signed by an executive officer of the company. AHT legislation requires public disclosure, often on the company's website. For the UK Modern Slavery Act of 2015 (UK MSA), the annual disclosure statement must be approved by the board of directors (or an equivalent management body) and signed by a director (or equivalent). The legal implications of the SEC conflict minerals filing generally fall under the risk of omission or intentional misrepresentation; however, legal implications related to AHT disclosure can be greater due to the illegal nature of human trafficking.

Relevant considerations:

- Weigh the type of disclosure required and the way in which the organization can accurately and effectively portray its AHT efforts to the public
- Ensure compliance program discipline and execution while leveraging existing disclosure control processes to prepare and review annual AHT statements
- Consider stating the policy in the company's UK MSA statement (if applicable), posting it on the company website, and disclosing it in the company's annual report to shareholders and by other appropriate means
- Be aware of disclosure requirements. For example, both the UK MSA and California Transparency in Supply Chains Act of 2010 (CA-TSCA) require certain disclosures as to whether the company took any steps to mitigate the risk of human trafficking in its supply chain. The company is required to disclose if it took no such steps.

Taking no action may increase the risk of being targeted for human trafficking violations and subjected to legal action. Internal discovery and vigorous remediation demonstrate a company's commitment to combating human trafficking.

Getting with the program



Supply chain compliance programs can reduce legal, reputational, operational, and other risks. They can help companies respond effectively to stakeholders demanding greater transparency and regulators mandating more detailed reporting. And they can help position the company to quickly and credibly respond if human rights issues are identified in the supply chain.

Companies seeking to bolster the AHT elements of their social compliance programs can draw upon the lessons learned from conflict minerals compliance programs. Instead of reinventing the wheel, they can use those lessons and leverage existing frameworks and governance structures to integrate requirements into their current processes. By leveraging mechanisms already in place, companies can realize potential cost savings, make more informed decisions about risk, and combat human trafficking within their supply chains.

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Contacts

Kristen Sullivan

Partner | Deloitte Advisory
Deloitte & Touche LLP
+1 203 708 4593
ksullivan@deloitte.com

Sean Morris

Principal
Deloitte Consulting LLP
+ 1 571 814 7640
semorris@deloitte.com

Christine Robinson

Senior Manager | Deloitte Advisory
Deloitte & Touche LLP
+ 1 801 366 6839
chrobinson@deloitte.com

Nes Parker

Manager
Deloitte Consulting LLP
+ 1 571 814 7301
nparker@deloitte.com

Appendix

AHT related laws and regulations

There are several laws and regulations that create compliance obligations for companies with respect to human trafficking. These regulations, and those that laid the foundation for them, include but are not limited to the following:

Law or regulation ¹⁰	Description
US Tariff Act of 1930 and the US Trade Facilitation and Trade Enforcement Act of 2016¹¹	<ul style="list-style-type: none">• Effective March 13, 1930, prohibits merchandise mined, produced, or manufactured by forced labor to be imported into the US except when there is insufficient quantities to meet the “consumptive demand” in the US• Effective February 24, 2016, amends the US Tariff Act of 1930 to enable Customs and Border Patrol to deny entry of imported goods produced with forced labor following a formal investigation regardless of consumptive demand
US Executive Order 13126 of 1999	<ul style="list-style-type: none">• Effective June 12, 1999, aims to ensure that US federal agencies do not procure products made by forced or indentured child labor by requiring:<ul style="list-style-type: none">– The DOL to publish a list of products (by country of origin) that it reasonably believes might have been produced by forced or indentured child labor– Contractors who supply products to the US government to certify they have made a reasonable effort to ascertain that those products were not produced by forced or indentured child labor
US Trafficking Victims Protections Act (TVPA) of 2000 and Reauthorization Acts of 2003, 2005, 2008, and 2013	<ul style="list-style-type: none">• Effective October 28, 2000, defines human trafficking and establishes that human trafficking and related offenses are federal crimes in the US and requires the Secretary of State to provide Congress a report on human trafficking worldwide, including in the US• The Reauthorization Acts of 2003, 2005, 2008, and 2013 amend the TVPA by adding the following:<ul style="list-style-type: none">– Effective January 7, 2003, establishes that federal contracts may be terminated in instances where a contractor or subcontractor engages in severe forms of trafficking in persons or uses forced labor in the performance of the contract– Effective January 10, 2006, charges the DOL to issue a list of products it believes are being produced by child or forced labor– Effective January 1, 2008, establishes a two-year time limit for countries on the Tier 2 special watch list prior to those countries being reclassified and requires the DOL to issue a list of products it has reason to believe are being produced by child or forced labor– Effective March 7, 2013, provides resources/services for survivors of trafficking and creates reporting and compliance requirements for federal agencies
CA-TSCA¹²	<ul style="list-style-type: none">• Effective January 1, 2012, requires companies to disclose on their websites their efforts to combat human trafficking and forced labor in their supply chains• Applies to retailers and manufacturers with annual worldwide gross sales over \$100 million doing business in California
EU Non-Financial Reporting Directive of 2014	<ul style="list-style-type: none">• To be included into Member States national laws by December 6, 2016, with companies reporting beginning on or after January 1, 2017• Requires “large undertakings” (companies with more than 500 employees) include in the management report a non-financial statement containing information relating to human rights, among other non-financial items (e.g., environmental)
UK MSA¹³	<ul style="list-style-type: none">• Effective each fiscal year ending on or after March 31, 2016, requires companies to post on their websites an annual statement, approved by the board, on efforts to prevent slavery, human trafficking, and forced labor in their supply chains• Applies to companies doing business in the UK with at least £36 million (~\$56 million) in annual global sales
FAR¹⁴	<ul style="list-style-type: none">• US Executive Order 13627 of 2012 and US National Defense Authorization Act of 2013 instructed the FAR Council and the Department of Defense to amend its rules, which led to the following:<ul style="list-style-type: none">– Effective March 2, 2015, prohibits federal contractors and subcontractors from using fraudulent or misleading recruitment practices, denying employee access to identity documents, and using recruiters who do not comply with local labor laws or charge recruitment fees– Applies to contractors and subcontractors with any portion of a federal contract outside the US in excess of \$500,000
Trans-Pacific Partnership of 2016	<ul style="list-style-type: none">• Signed February 4, 2016 (in two-year ratification period)• Adopts the ILO Declaration of Fundamental Principles and Rights at Work and its Follow-Up as the basic labor standard and expects members to pass laws and regulations to eliminate forced and child labor

Endnotes

- ¹ For an alternative definition of “trafficking in persons,” see the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 Nov. 2000. <https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf>
- ² The SEC’s rule on conflict minerals, mandated by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, was issued in final form in 2012. Press release: SEC Adopts Rule for Disclosing Use of Conflict Minerals <<https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484002>>
- ³ “Basics of a Social Compliance System,” US Department of Labor. <<https://www.dol.gov/ilab/child-forced-labor/Basics-of-a-Social-Compliance-System.htm>>
- ⁴ “Agathe Derain – Human rights and business: Could performance measurement be premature?” Available at: <http://blogs.lse.ac.uk/businesshumanrights/2016/02/01/agathe-derain-human-rights-business-performance-measurement/>
- ⁵ International Labour Organization. <<http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>>
- ⁶ “Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice,” Ashridge Executive Education, Hult International Business School. <<https://ashridge.org.uk/faculty-research/research/current-research/research-projects/corporate-approaches-to-addressing-modern-slavery/>>
- ⁷ List of Goods Produced by Child Labor or Forced Labor, US Department of Labor. <<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>>
- ⁸ The OECD Framework is the Organisation for Economic Co-operation and Development’s Due Diligence Guidance for Responsible Supply Chains of Minerals From Conflict-Affected and High-Risk Areas.
- ⁹ Alex Whiting, “Businesses to feel the heat from slavery scrutiny in 2016,” Reuters, February 16, 2016. <<http://in.reuters.com/article/companies-labour-slavery-scrutiny-idINKCN0VP0CE>>
- ¹⁰ For further discussion of the laws and regulations, see Bayer, Chris “Corporate liabilities for modern-day slavery in supply and service chains: A transnational framework” (April 21, 2016) which is available at http://www.elrt.org/fileadmin/eLRT.org/eLRT_downloads/Liability_Framework_CB_iPoint_20160425.pdf.
- ¹¹ For details on the US Tariff Act amendment, visit: <https://www.congress.gov/bill/114th-congress/house-bill/644/text>
- ¹² For details on the CA-TSCA, visit: <http://www.state.gov/documents/organization/164934.pdf>
- ¹³ For details on the UK MSA, visit: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- ¹⁴ For details on the FAR, visit: <https://www.federalregister.gov/articles/2015/01/29/2015-01524/federal-acquisition-regulation-ending-trafficking-in-persons>



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