

# U.S. Perspectives on Responsible Sourcing for Gold in the Time of COVID-19

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# What We Do



- Office of Threat Finance Countermeasures,  
U.S. Department of State
- **Small team focused on:**
  - Responsible minerals sourcing issues generally, especially:
    - The Kimberley Process (conflict diamonds)
    - Dodd-Frank 1502 (conflict minerals: tin, tantalum, tungsten, and gold)
    - “Other Troubling Minerals” 😊 (e.g., cobalt, etc.)
  - *Critical Minerals*, per Executive Order 13817 (2017), *A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals*
- We work with other U.S. agencies with equities or programs in on these issues, private sector companies, and civil society or non-governmental organizations with equities or programs.

# What is “Responsible Sourcing”?

**ETHICAL  
SOURCING**

Being a **Responsible**  
Global **Citizen**

It's how you get from here:



To here:



Without funding this:



Or this:



Or Killing this:



Or Contributing to this:



# Can You Answer These?

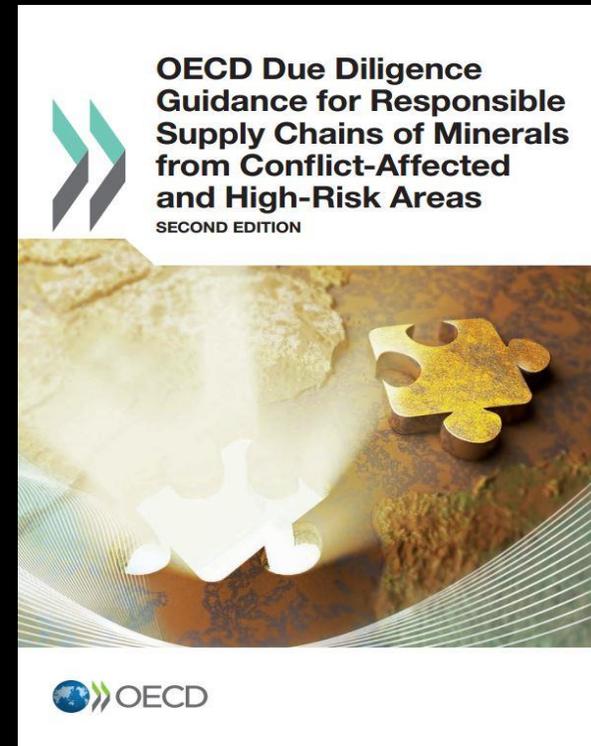
- Do I really know my suppliers?
- Am I constantly reviewing the risks to my supply chain, whether they are regulatory in nature or based on events on the ground where my source material (or my product's source material) comes from?
- Am I checking the box or am I substantively confident about what I'd find?

# What is Artisanal and Small-Scale Gold Mining (ASGM)?

Large-Scale Gold Mining (LSM)	Artisanal and Small-Scale Gold Mining (ASGM)
<ul style="list-style-type: none"><li>• Typically controlled by large corporations</li><li>• Heavily mechanized</li><li>• Often “formal” and licensed by the government</li><li>• Taxed by the government</li><li>• Often substantial upfront investment costs</li></ul>	<ul style="list-style-type: none"><li>• Miners typically independent of corporations</li><li>• Lightly mechanized</li><li>• Often “informal” and not licensed</li><li>• Typically untaxed and undeclared</li><li>• Low upfront investment</li><li>• Supports the livelihoods of about 100 million individuals in 80+ countries</li></ul>

# OECD Due Diligence Guidance?

- Refers to ***The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (CAHRAs)***



# Conflict-Affected High-Risk Area (CAHRA)

- Identified by the presence of armed conflict, widespread violence or other risks of harm to people. Often characterized by widespread human rights abuses and violations of national or international law



# The Mineral Supply Chain

*The process of bringing a raw mineral to the consumer market involves multiple actors and generally includes the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing and sale of end product.*

*The term “supply chain” refers to the system of all the activities, organizations, actors, technology, information, resources and services involved in moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers.*

Five Step Process for  
Conducting 3TG Supply Chain  
Due Diligence



# Dodd-Frank 1502

- Dodd-Frank Section 1502 refers to one part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
- Section 1502 requires:
  - persons/companies to disclose to the Securities and Exchange Commission (SEC) annually whether any conflict minerals that are necessary to the functionality or production of their product originated in the Democratic Republic of the Congo or an adjoining country.
  - IF those minerals are sourced from this region, then the person/company must provide a report (“a conflict minerals report”) describing the measures taken to exercise due diligence on the source and chain of custody of those minerals, which must include an independent private sector audit of the report that is certified by the person filing the report.

# Status of DFA 1502?

- Dodd-Frank 1502 remains U.S. law.
- *However*, the SEC's implementing rule that required persons/companies to label their product as "DRC Conflict Free" was invalidated by the U.S. Appeals Court for the District of Columbia on free speech grounds.
- 
- *AND...*The SEC has said that companies no longer must file a due diligence report, which means that the audit requirement under DFA 1502 is not necessary *unless* you label your product "DRC Conflict-Free." If you do, then you must conduct due diligence, perform an audit, and Conflict Minerals Report with your Form SD filing.
- **REALITY:** Publicly traded companies that are worried about their reputations will always file.



# Looking for New Members!

***Public Private Alliance for Responsible Minerals Trade (the PPA):***

- 40+ private sector companies, NGOs, and U.S. agencies (i.e., State, USAID, and Department of Labor)
- Established in 2012
- Innovative leader in marshalling private sector interest in leading responsible sourcing efforts in the Democratic Republic of the Congo
- Just Gold success story by IMPACT, 2017
- Extended five more years to 2022
- Members include: Apple, Dell, Ford, Sony, Google, Kemet Corporation, Signet Jewelers, and more!

# What is OFAC???

- The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.
- OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.
- [www.treasury.gov/about](http://www.treasury.gov/about)

# In short...OFAC Objectives:

- Identify, expose, isolate, impede and incapacitate the target and its financial activities.
- Deny access to the U.S. financial system.
- Restrict transactions involving U.S. companies and individuals.
- Support U.S. national security and foreign policy objectives.



# OFAC'S Sanctions Programs

- Foreign Country and Regimes Programs  
Russia/Ukraine; Syrian Regime; DPRK
- Counter Terrorism Sanctions
- Counter Narcotics Trafficking Sanctions
- Non-proliferation of Weapons of Mass Destruction
- Diamond Trading Sanctions (“Blood Diamonds”)
- Transnational Criminal Organizations

# Foreign Country and Regimes Programs



- North Korea (1950)
- Cuba (1963)
- Iran (1979)
- Libya (1986)
- Iraq (1990)
- Non proliferation (1994 y 1998)
- Sudan (1997)
- Burma (1997)
- Balkans (2001)
- Daimond Trading (2003)
- Zimbabwe (2003)
- Liberia (2004)
- Syria (2004)
- Côte d'Ivoire (2011)
- Somolia (2011)
- Lebanon (2010)
- Charles Taylor (2010)
- Belarus (2011)

# Global Magnitsky Human Rights Accountability Act (or “GloMag”)

- GloMag authorizes the President to **block or revoke the visas** of certain “foreign persons” (both individuals and entities) or to **impose property sanctions** on them.
- In December 2017, the President, Secretary of the Treasury, the Attorney General, and the Secretary of State took joint action to implement the Global Magnitsky Sanctions Program through the issuance of Executive Order 13818, the announcement of targeted sanctions, and submission of a report to Congress.
- In this Executive Order, the President declared a national emergency with respect to **human rights abuse and corruption globally** and enabled Treasury, in consultation with the Departments of State and Justice, to **impose financial sanctions on foreign persons engaged in these malign activities, as well as enabled the State Department to issue visa restrictions on these persons.**
- A person can be listed if they are **responsible for or complicit in serious human rights abuses**; are a **current or former government official** (or acting on behalf of such an official) who is directly or indirectly engaged in corruption, transfer of the proceeds of corruption; is **the leader or official of an entity of an entity** that engages in these activities or if **someone acts in support of any person or entity that has property blocked by this order.**

So who is this guy?



Photo/Headline Credit: [thisismoney.co.uk](http://thisismoney.co.uk)

A Case study:  
The Application of GloMag and its Relation to Responsible Sourcing  
- Dan Gertler -

- An international businessman and billionaire.
- Amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt **mining and oil deals** in the Democratic Republic of the Congo (DRC). Gertler has used his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC, requiring some multinational companies to go through Gertler to do business with the Congolese state.
- As a result, between 2010 and 2012 alone, the DRC reportedly lost over \$1.36 billion in revenues from the **underpricing of mining assets** that were sold to offshore companies linked to Gertler.
- The failure of the DRC to publish the full details of one of the sales prompted the International Monetary Fund to halt loans to the DRC totaling \$225 million.
- In 2013, Gertler sold to the DRC government for \$150 million the rights to an oil block that Gertler purchased from the government for just \$500,000, a loss of \$149.5 million in potential revenue. Gertler has acted for or on behalf of Kabila, helping Kabila organize offshore leasing companies.

# Sanctioned Entities Related to Dan Gertler:

<b>Fleurette Holdings Netherlands B.V.</b> <b>Oil of DR Congo SPRL</b> <b>International Diamond Industries</b> <b>D.G.I. Israel Ltd</b> <b>Africa Horizons Investment Limited</b> <b>Foxwhelp Limited</b> <b>Lora Enterprises Limited</b> <b>Orama Properties Ltd</b> <b>Rozaro Development Limited</b> <b>Pieter Albert Deboutte</b>	<b>Gertler Family Foundation</b> <b>Jarvis Congo SARL</b> <b>D.G.D. Investments Ltd.</b> <b>Proglan Capital Ltd</b> <b>Emaxon Finance International Inc</b> <b>Caprikat Limited</b> <b>Caprikat and Foxwhelp SARL</b> <b>Zuppa Holdings Limited</b> <b>DGI Mining Ltd</b> <b>Fleurette Properties Limited</b>
	See <a href="https://home.treasury.gov">home.treasury.gov</a>

# Not just an Africa issue....

- NTR Metals & parent company Elemental
- Gold
- Money laundering
- Drug cartels
- Lay-offs of U.S. workers

DIRTY  
GOLD  
CLEAN  
CASH



**A MIAMI HERALD INVESTIGATION**

Source:

Miami Herald, updated online January 24, 2018



© Carreon/Fast Road

# Venezuela and Gold: Executive Order 13850

- The Executive Order blocks, and prohibits the transfer, payment, exportation, withdrawal or other dealing in, all property and interests in property that are in the United States...
  - (i) to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;
  - (ii) to be responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the government of Venezuela or projects or programs administered by the government of Venezuela, or to be an immediate adult family member of such a person;
  - (iii) to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (ii) above, or any person whose property and interests in property are blocked pursuant to this order; or
  - (iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.
- Venezuela's state gold mining company, Minerven, was designated on March 19, 2019 along with its company president, Adrian Antonio Perdomo Mata. The company's property and assets in the United States are blocked and all U.S. citizens are barred from dealing with them. Anyone doing business with them could also face U.S. enforcement action.

# Country Sanctions Regimes

## *Spotlight on DPRK (North Korea)*

North Korea Sanctions & Enforcement Actions Advisory; Issued: July 23, 2018

Title: Risks for Businesses with Supply Chain Links to North Korea

*“Multiple U.S. and UN sanctions impose restrictions on trade with North Korea and the use of North Korean labor.<sup>1</sup> The two primary risks are: (1) inadvertent sourcing of goods, services, or technology from North Korea; and (2) the presence of North Korean citizens or nationals in companies’ supply chains, whose labor generates revenue for the North Korean government....*

***Raw Materials or Goods Provided with Artificially Low Prices:*** *North Korean exporters sell goods and raw materials well below market prices to intermediaries and other traders, which provides a commercial incentive for the purchase of North Korean goods. This practice has been documented in the export of minerals. For example, a close review of trade data on North Korea’s export of anthracite coal to China from 2014-2017 reveals a consistent sub-market price for this export.”*

# Targeting Offshore Businesses

- OFAC can sanction offshore persons/businesses directly
  - Material Assistance
  - Sanctions Evasion
  - Assisting targeted industries of certain countries
- “Reason to believe” standard
- Administrative action
- Violations expose actor to criminal liability

# Question about OFAC violations?

- Look up “When should I call the OFAC Hotline?”
- Toll Free Hotline: 1-800-540-6322

# ...Not just a U.S. thing...

## **European Union – Regulation 821 (effective January 2021):**

- Imposes due diligence obligations for Union importers of 3TGs originating from conflict-affected and high-risk areas. Is not limited to DRC or Africa; does not define CAHRA.
- The EU has a sister organization for the PPA, the European Partnership for Responsible Minerals (EPRM).

## **India – Gold Due Diligence Guidance**

- Will release a draft responsible gold sourcing guidelines this fall to be implemented by 2021 to include certification and accreditation of all refiners.

## **China – Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains**

- Meant to operationalize and provide detail on existing Chinese regulations on *Social Responsibility in Outbound Mining Investments*. Provides guidance to all Chinese companies which are extracting and/or are using mineral resources and their related products and are engaged at any point in the supply chain of minerals to identify, prevent and mitigate their risks of contributing to conflict, serious human rights abuses and risks of serious misconduct, as well as to observe the UN Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project. (Source: CCCMC)

# The Scale of ASM Gold Mining

- Est. 40 million miners in ASM in 80 countries
  - 60% mine gold exclusively as of 2009 (24 million)
  - 70-80% are informal
  - 40-50% are women
  - 2005 UN estimate: 600,000 children in ASM
  - 150 million total people depend on ASM income
- 20% of the world's gold supply comes from ASM
- Est. 442 tons of gold (\$18 Billion) comes from African ASM alone
- Average miner earns \$10 per day (2015 Artisanal Gold Council estimate)

**And now....  
COVID happens.**

# Recent Impact of COVID-19 on ASGM

- Serious concern for ASGM communities dependent on gold trade
- Declining gold prices and rising prices of essential goods in many countries
- One broken link disrupts the entire supply chain
  - e.g. Mines in Mali closing, refineries in Switzerland shutting down, etc.
- Exact implications are uncertain and may vary by region
  - The effects are dependent on government policy and intervention, communities' sensitivity to income shocks, and the extent of the local (and global) COVID-19 outbreak

~100,000 official cases in Latin America

~30,000 official cases in Africa

# Trends and Effects Observed So Far

- “Buy low, sell high.” Noticeable drop in gold price for ASGM, as much as 30%. Signals increased illicit finance activity. Consider spot price of gold hovering around \$1700/oz.
- Drop in price of mercury
- Supply chain stagnation because of restrictions on travel, legitimate buyers ceasing activities, and refineries and mines closing
- Some governments implementing strict controls (Mali, Rwanda) while others act less urgently (Zimbabwe)
- Mounting health concerns due to limited capacity of healthcare system in ASGM countries and risk of transmission while mining, disproportionate impact on women

# Potential Ways to Support Communities Affected by COVID-19

- Triple check your due diligence. Do you know your supply chain?
- Are you aware of ASGM in your supply chain? Then seek opportunities to send direct emergency aid to miners, including through supporting public health networks
- Bring COVID-19 information to miners and raise awareness
  - planetGOLD in Indonesia is using WhatsApp groups and social media
- Support legitimate artisanal gold buying schemes to keep supply chains active or reactivate them when appropriate
- Up your advocacy. Advocate for continued support of ASGM communities by governments, other funders, and non-profit entities

# Today we learned:

- Responsible Sourcing = Do I *really know* my supply chain?
- DFA 1502 – Yes, it is still the law.
- Global Magnitsky – Another reason to know your supply chain!
- Join the PPA!!
- This isn't just an Africa or diamond thing – or even a US thing
- Responsible sourcing is not going to go away
- COVID is impacting gold, particularly ASGM sector

Thanks for listening!

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