THE DODD-FRANK ACT AND CORPORATE SOCIAL RESPONSIBILITY

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While the Dodd-Frank Wall Street Reform and Consumer Protection Act 'Dodd-Frank', enacted in 2010, focuses on assuring stability in the US financial markets, it also hopes to improve transparency and provide investors and citizens with tools to hold companies accountable for their actions.

On this second point, in August 2012, the Securities and Exchange Commission (SEC) issued the detailed implementing rules regarding the sections relating to **conflict minerals (Section 1502) and payments to governments by resource extraction issuers (Section 1504)**.

Conflict minerals

Section 1502 hopes to fight human rights abuses in the war-torn Democratic Republic of the Congo by making companies accountable for buying 'conflict minerals'. These minerals – tantalum, tin, tungsten and gold – are those believed to fund Congo's militias and prolong conflict despite a formal end to the war in 2003.

While these minerals do not have as high a visibility as 'blood diamonds', their contribution to the conflict financing the paramilitary forces has been even more important in the Congo.

The regulation applies to companies listed in US stock exchanges with products that contain tantalum, tungsten, tin or gold that are necessary to the functionality or production of a product. These minerals are commonly found in electric components, thus involving industries such as electronics and communication, automotive and medtech, among others.

Corporate Social Responsibility for the entire sector involved

The companies concerned must make 'a reasonable effort' to determine the origin of the specified metals used in their products and must file a public Conflict Minerals Report with the SEC.

If a company cannot ensure that its minerals are conflict free, it will have to detail in the report:

- the products manufactured that have not been found to be conflict free
- the facilities used to process the conflict minerals in those products
- the country of origin of the conflict minerals in those products
- the efforts made to determine the location of origin with the greatest possible accuracy.

Companies have until May 2014 to make their first disclosures of whether the minerals they use in manufacturing are conflict free.

Conflict minerals: origin and use

Mineral	% Global production from Congo	% of Global production used in electronics
Tantalum	15–20%	~60–70%
Tin	2.3%	35–45%
Tungsten	2–4%	<20%
Gold	<1%	<20%

Source: Enough Projects (2009), BSR (2010), Resolve (2010).

An incentive-driven regulation

Although the SEC itself has no punitive power, it believes that by making the reports public, the risk of reputational damage, investor divesting and lawsuits will motivate corporations throughout the supply chain for these minerals to take the reporting process seriously.

The SEC, however, does recognise that compliance is a matter of will, but also of means. Between the final vendor of the electrical equipment and a mine lie several layers of merchants, warehouses, traders, smelters, processors and electrical component makers.

While companies do have two years (four years for small companies) to declare those of their products which are 'DRC Conflict Undeterminable', the SEC has estimated that the initial cost of implementing the rule among its issuers is between 3 and 4 billion dollars.

While Section 1502 of Dodd-Frank will involve mining companies indirectly, its Section 1504 is drafted specifically for the extraction industry. The new rule regarding payments to governments includes exploration, extraction, processing, and export, or the acquisition of a licence to commercially develop oil, natural gas or minerals. It requires all US-listed extraction companies to file all payments over $100,000 by project, government and category (i.e. taxes, royalties, licence fees, etc.) along with their fiscal year report, starting in September 2013.

The first step towards more transparency within the sector

The ruling was welcomed by various civic society groups as a way to help fight back-room deals and exploitation in developing countries with large mineral or hydrocarbon reserves. It was, however, considered excessively stringent by others, notably the American presidential candidate, Mitt Romney, who pledged that he would repeal certain parts of Dodd-Frank. With the recent results of the American election, there is now less of a chance that the law will be revoked.

As the SEC progresses in this matter, Europe is now facing pressure to revise its 2004 Transparency Directive to support the establishment of a global standard.

One of the main discussions is around a proposal that would create a new loophole by exempting corporations from reporting payments if a law in a country where they are operating bars such disclosures.

- Some industries have argued that such rules could force companies out of Angola, China and Qatar, important markets which have laws restricting financial disclosure
- Others call attention to the fact that such exemption could incentivise countries to develop repressive laws outlawing transparent reporting.

Conclusion

Sections 1502 and 1504 should be viewed in the context of a growing number of regulations promulgated in the US and elsewhere that cover human rights, company-to-government transactions, international business dealings, resource extraction and supply chains. Seen in this light, these regulations may require a broader strategic response from the electronics, oil, gas and mining industries than simply complying with a single provision of one piece of legislation.

As for us, the investors, it offers new data with which we can further learn about improving governance in natural resources, deter corrupt behavior, and favour responsible companies.

> ‘ Society has welcomed this regulation, feeling that it strengthens the struggle against corruption in developing countries rich in natural resources.

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