

# Survey Finds Many Companies Not Ready to Report on Conflict Minerals

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25% of companies are still in the early stages of compliance with the conflict mineral rules that require public disclosure on June 2, according to the latest [PwC survey](#) on where companies stand. These companies are finalizing scoping or planning and performing their reasonable country of origin inquiry, but have not yet started evaluating those responses, which is becoming the primary focus as the reporting deadline looms near. Overall, only 45% had sent an initial inquiry to more than three-quarters of their possible suppliers, and only 47% had received fully completed responses from more than half of those suppliers asked. The survey received 700 responses representing 15 industries.

Companies were roughly split along whether they attempted to achieve a product-level inquiry from their suppliers rather than a more centralized company-level request. PwC noted that in their experience, companies that did ask for product-related information often received only company-level responses anyway, given the challenges posed by asking a supplier to provide details on as many as 10,000 products, for example. Those suppliers are also facing similar roadblocks in obtaining information themselves.

While slightly more than a majority indicated that the responses from suppliers were adequate, a third found that significant follow-up was needed after receiving a high proportion of “unknown” in the answers. With many suppliers just sending in representation letters instead, and only one in five respondents receiving smelter identification from a majority of their suppliers, companies are continually asking how much additional diligence they need to perform. The recent [SEC interpretations](#) indicated that an issuer’s due diligence measures may begin before or extend beyond the calendar year even though it applies to products manufactured during the year. Given the increased intensity, 62% reported that they have full-time resources devoted to the task, some using as many as three to five, and 6% have even more toward this labor-intensive effort. 90% are obtaining third-party assistance.

In terms of the actual SEC filing, 63% have not yet started their drafts, approximately one-third expect to file only the Form SD while another third plan to file both the Form SD and the conflict mineral report. 28% are planning for the CFO to be the signatory and another nearly 20% indicated the general counsel or another lawyer would sign, while more than a quarter of companies have not yet decided.

The new SEC guidance is primarily devoted to private sector independent audits, but PwC’s found that 67% do not expect to need such audits in the first two years, either because they source their conflict minerals from outside the covered countries or they expect those minerals to be DRC-conflict-undeterminable. The SEC FAQ stated that during the transition period, issuers with any products that may be described as DRC-conflict-undeterminable are not required to obtain an audit of their conflict minerals report. In that case, an issuer is not required to describe any qualifying products as conflict-free. However, only by obtaining an audit can an issuer describe qualifying products as conflict-free, since the rules define due diligence as including an audit of the conflict mineral report.

As to the potential consequences once the public disclosures are made, over 60% of companies are concerned about possible loss of customers or brand risks if they cannot certify that their products are conflict-free, leading to a significant number of companies aiming to declare their sourcing as entirely conflict-free eventually.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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