Michael Littenberg is a partner in the securities & public companies practice group at Ropes & Gray.

As part of his practice, for more than 25 years, Michael has been active in advising leading public and private companies on supply chain and corporate social responsibility matters, including relating to, among other areas, anti-human trafficking and conflict minerals and other commodities, and he is widely viewed as the leading practitioner in this emerging area.

Michael advises a significant number of companies on compliance with the US Conflict Minerals Rule, the pending EU Conflict Minerals regulation, the California Transparency in Supply Chains Act, the UK Modern Slavery Act, the FAR anti-human trafficking rule, REACH, RoHS and other supply chain regulations. Michael advises clients on, among other things, disclosure and compliance with legal requirements, the construction and implementation of compliance programs, mitigating customer, litigation, NGO and socially responsible investor risk and in their interactions with these constituencies.

Michael was previously a partner at Schulte Roth & Zabel.
Reciprocal Value through Supply Chain Transparency
Transforming upstream supply chain due diligence
Scope

Supply Chain Response

Re:
- Regulation-driven
- Reputation-driven
- Other voluntary response
- OECD Framework

To:
- Global
  - Fragile contexts / complex environments
  - Where information is:
    - Non-existent
    - Unorganised
    - Unreliable
    - Privatised
  - Approach applicable to all resources, raw materials
  - Focus on mining & minerals

Upstream
- ASM / community mining
  - 3T
  - Gold
  - Cobalt
  - Gemstones
- 3T experience / optimisation bringing costs down
- Systems tailored to the specific context of each supply chain (international expectations, local

Challenges
- Wide-ranging
  - Conflict link
  - Child labour
  - Modern slavery
  - Discrimination
  - Environment
  - Corruption
  - Development

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A service to stakeholders

- Assisting local operators’ response to international expectations
- Collaboration with governments to improve access to information and promote private sector engagement
- Bottom-up agenda: continuous improvement, proactive v. responsive
Conflict-Free Assurance
The case for responsible engagement

Converting transparency / due diligence expectations into sustainable business and development opportunities

• Recognise and value the contribution of ASM to local livelihoods

• Keep conflict out of minerals durably, through economic development

• Improve understanding of the upstream portion of the supply chain to develop more reliable procurement opportunities / normalise market access conditions

• Promote direct mining investment through access to information

• Work together with government, not in parallel

• Meet compliance objectives and create local incentives for compliance to tackle fraud
# The local business case

<table>
<thead>
<tr>
<th></th>
<th>Good day</th>
<th>Bad day</th>
<th>$ Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>International market price</td>
<td>100</td>
<td>50</td>
<td>-50%</td>
</tr>
<tr>
<td>Transportation costs</td>
<td>10</td>
<td>10</td>
<td>0%</td>
</tr>
<tr>
<td>Processing costs</td>
<td>10</td>
<td>10</td>
<td>0%</td>
</tr>
<tr>
<td>Taxes</td>
<td>10</td>
<td>5</td>
<td>-50%</td>
</tr>
<tr>
<td>Illegal taxes</td>
<td>20</td>
<td>10</td>
<td>-50%</td>
</tr>
<tr>
<td>Local supply chain cost (e.g. intermeditation)</td>
<td>20</td>
<td>8</td>
<td>-60%</td>
</tr>
<tr>
<td>“Traceability” (due diligence) costs</td>
<td>5</td>
<td>5</td>
<td>0%</td>
</tr>
<tr>
<td>Miner share</td>
<td>25</td>
<td>2</td>
<td>-92%</td>
</tr>
</tbody>
</table>

Appropriate due diligence can help compensate negative market effects

- Raise transparency to lower the burden of illegal taxation
- Support to investment / commercial engagement at mine level (by-pass local traders)
- Due diligence service tailored to operational circumstances (to lower its costs)
Due Diligence Systems
BSP Compliance

BSP complies with the OECD Due Diligence Guidance (framework endorsed through the SEC CM Rule)

- Program developed along the OECD 5-step framework
- Conformance independently assessed (by BSR.org)
- Working with the OECD Secretariat to align third-party assessment methodology

- Better Sourcing exports certified by the ICGLR
  - MoU signed with governments
  - Letter of support from the ICGLR secretariat
  - All data reported electronically

- First tantalum smelter successfully audited (CFS Program) in September 2016

- BSP materials are conflict free’ and free of human rights abuses

- Built-in continuous improvement objectives to ensure lasting benefits: the Better Sourcing Standard
Full supply chain identification and dynamic evaluation

- Comprehensive investigation and documentation collection process (including at mine site level)
- Responsive to local mining context evolutions
Real-time, electronic traceability system

- Successfully implemented in Rwanda, DRC
- Requirement based on risk level and operational benefits
Better traceability benefits

Tailored to operational context
- Traceability equipment
- Traceability steps
- Role of stakeholders (operators, government)
- Compliance framework (e.g. cobalt)

Traceability data available ahead of export
- Resources allocated to analysis (rather than reconciliation)
- Building trust

Data owned by supply chain participants

Mineral export path is pre-registered in tags

If tags do not follow that path they are not recognized
- Traceability data inaccessible to international buyer
- International conflict-free market closed
- No secondary market for tags (smuggling)
Better Sourcing Information Management System

- A tool for stakeholders to continuously manage and mitigate risks
- Mobile-phone based collection of local information accelerating frisk mitigation
Local capacity building

- Context-relevant integration of due diligence obligations
- Data is the property of supply chain participants (not third-party managed)
- Continuous training of local supply chain monitors
Streamlined Reporting

- All traceability data and due diligence information relevant to each shipment available at a single on-line location
- Data accessible by buyers and smelters ahead of export
- A crucial communication tool
Secure Information Sharing Platform

- To share documentation with international supply chain participants (traders, smelters, other buyers), BSP implements a dedicated file sharing service.

- BSP file sharing involves a secure and intuitive online platform wherein all due diligence information related to a specific shipment is collated.

- BSP has selected EGNYTE as its initial Enterprise File Sync & Share (EFSS) provider - positive initial response from stakeholders.

Security
Granular control over where data resides and who it is shared with.

Audit
Possibility to set an expiry date on access (for one-time access to files).

Collaboration
Possibility to share individual files with users from various organisations.

Mobility
Access content from anywhere, at any time.
Better reporting benefits

Maximise disclosure (OECD framework)

- Legal documentation (mine sites, supply chain participants)
- Local operators, procedures, policies
- BSP supply chain evaluation report
- In-country traceability report (shipment)
- In-country risk management information
- Other IMS data
- Country of origin, shipment export documentation
- Relevant audit reports and other third-party documentation
- Better Sourcing Validation report

Minimise burden on operators

- **All** information relevant to an individual shipment available in one on-line folder
- **Only** information relevant to that shipment
- Shipment folder access granted to next Better Sourcing supply chain participant
- Convenient navigation
- “Audit-ready” folder (single access point for all DD information)
Implementation benefits

• Traceability model tailored to operational context (no “one size fits all”)
• Significant training and advisory efforts, to better meet due diligence and business development objectives
• Addressing supply chain inefficiencies (to stimulate production in low-price context)
• Competitive cost structure
  • Commercial approach
  • Data collection and management innovations
• Protection of investors’ rights
• Information available in a single location, prior to export
• All data owned and reported by supply chain participants
• Continuous risk management tools and active support to risk mitigation
• Live monitoring of in-country operations
Updates from the Field
Rwanda update

Collaboration with the government to support investment into a sustainable mining sector

• Modernise traceability data management
• Rationalise government intervention
• Transparent communication to improve the country’s reputation
• Reform of the mining sector

Current focus

• Conflict-free tantalum exports as part of AVX Corporation due diligence -> proof of concept
• Due diligence cost reduction for semi-mechanised operators -> tungsten export costs down 50%
• Mixed materials supply chain efficiencies
Rwanda – sample project data

<table>
<thead>
<tr>
<th>Data Point</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export materials (kg)</td>
<td>24,474</td>
</tr>
<tr>
<td>Tag scans</td>
<td>902</td>
</tr>
<tr>
<td>Incidents recorded</td>
<td>10</td>
</tr>
<tr>
<td>Monitored mine sites</td>
<td>10</td>
</tr>
<tr>
<td>Daily average collection at Nyakabingo (kg)</td>
<td>2,462</td>
</tr>
<tr>
<td>Average weight variation (local transport)</td>
<td>1.02%</td>
</tr>
<tr>
<td>Miners interviewed</td>
<td>948</td>
</tr>
<tr>
<td>Percentage of female workers</td>
<td>10.7%</td>
</tr>
<tr>
<td>Average weekly income of a digger (RWF)</td>
<td>14,486</td>
</tr>
</tbody>
</table>

**Incidents by BSP criteria and severity**

- Conflict: 0
- Human rights abuses: 0
- Traceability: 6
- Legality: 3
- Safety: 1

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Incident data visualisation and analysis

Mining operator: SOREMI Intego Ltd

<table>
<thead>
<tr>
<th>Incident</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traceability</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Safety</td>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total incidents: 4

2 incidents are related to traceability: the absence of a state agent at the tagging point and untagged bags reported to have been transported from the mine depot to Kigali.

1 incident refers to legality and the minor incident to the safety criteria.

Mining operator: RUTOBWE Mining Company

<table>
<thead>
<tr>
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<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traceability</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Legality</td>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total incidents: 3

One of the incidents with the highest risk score (16) for the shipment is related to traceability, specifically to a possible sourcing of minerals from an uncertified site.

The two other incidents are related to legality.

Mining operator: KOPABAMANYA

<table>
<thead>
<tr>
<th>Incident</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traceability</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Total incidents: 2

The 2 incidents are related to the traceability criteria: the absence of a state agent at the tagging point and a small difference of weight between the mine depot and the exporter premises.

Mining operator: JASPER Minerals Supply

<table>
<thead>
<tr>
<th>Incident</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traceability</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Total incidents: 1

The incident is classified as a traceability issue, as there is a possible contamination of the supply chain with minerals that have been brought in from an uncertified site (highest risk score (16)).
DR Congo update

Collaboration to USAID-funded Capacity Building for a Responsible Minerals Trade Project

- Legalise and formalise artisanal mining activities to generate sustainable development opportunities
- Support to mining cooperatives
- Offer an independent alternative to local operators
- Tackle rampant smuggling and improve upstream due diligence implementation

Current focus

- Conflict-free tantalum mining in the Kivus
- Partnership with investors to develop responsible tin mining operations in the Maniema province
- Large-scale gold mining cohabitation
- Challenges:
  - Mining sector governance
  - Local trading model (which destroys value)
DRC – sample supply chain data

- **53** Incidents recorded
- **5** Monitored mine sites

**Contextual data by category**

- **75** Contextual events
- **15** Security related events

**Incidents by BSP criteria and severity**

- **Conflict**: 6 (Major), 2 (Moderate), 5 (Minor)
- **Human Rights Abuses**: 5 (Major), 3 (Moderate), 4 (Minor)
- **Traceability**: 18 (Major), 9 (Moderate), 2 (Minor)
- **Legality**: 9 (Major), 2 (Moderate), 4 (Minor)
- **Security**: 2 (Major), 4 (Moderate), 6 (Minor)

- **Activités minières**
- **ASM opérations**
- **Critères de progrès**
- **Engagement / développement local**
- **Gouvernance**
- **other**
Downstream engagement

Advisory Committee

Better Sourcing Network

Promote responsible practice upstream through consumer brand support / association

Projects enabling continuous improvement - which are directly relevant to your supply chain

Innovative forms of stakeholder engagement, including with Better Sourcing local network members

Technical collaboration – closing the supply chain loop
QUESTIONS & ANSWERS

ROPES & GRAY