

DIAMOND SOURCE WARRANTY PROTOCOL: Questions & Answers

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Introduction:

The public is increasingly concerned about where their products come from.

As these concerns grow, industry participants and consumers will need reassurances that go beyond the scope of the Kimberley Process, which has demonstrated its effectiveness in dealing with issues around conflict diamonds. However, as the public, human rights groups and governments demand more accountability, the KP cannot be a panacea for all issues and challenges throughout the diamond supply chain. Examples include national or international sanctions that prohibit companies from dealing with individuals and entities with connections to the diamond trade, government regulations and human rights violations.

The Diamond Source Warranty Protocol was designed to address these types of issues. Retailers and suppliers who choose to use it on a voluntary basis, will have an inventory management tool that enables them to take steps toward better control of their supply chain.

Read the following Questions and Answers for more details on the Protocol. You can find a full list of defined terms at the end of the Protocol document.

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1. About the Protocol

Q. What is the Diamond Source Warranty Protocol?

A. The Protocol Warranty is an inventory management tool. It enables a retailer or supplier to obtain or provide a higher level of assurance that an industry product, such as rough or polished diamonds, was NOT obtained from a Subject Source. A Subject Source is a country or person that industry participants have agreed not to buy or sell diamonds from/to as part of their commercial negotiations.

Q. Why does the industry need a Protocol? Isn't the Kimberley Process good enough?

A. The Kimberley Process does not satisfy those industry participants who do not want to deal with diamonds from certain producers. For example, some do not want to purchase or sell diamonds from a particular country, (referred to throughout this Q&A as “Country A”), even though rough diamonds from that country can be exported and imported with Kimberley Process certificates.

Q. Who Can Use the Protocol?

A. Any industry participant can use the Protocol on a voluntary basis as part of their commercial agreements for the purchase of loose diamonds or diamond jewelry from other industry participants.

Q. Why Would Individual Businesses Decide to Use the Protocol Warranty?

A. An individual business may decide that it does not want to purchase or sell diamonds from “Country A,” even though rough diamonds from that country can be exported and imported with Kimberley Process certificates. They may make this decision based on various factors including protection of consumer confidence, concern over negative media attention and government action that bans or limits the use of products from a particular country or person (such as national or international sanctions).

Q. Am I required to use the Protocol?

A. No, a Protocol Warranty can be used by buyers and sellers on a voluntary basis. However, if one or more of your buyers have asked you to provide the warranty as part of your commercial arrangements for the purchase of loose diamonds or diamond jewelry, then you would be required to provide the warranty as part of that arrangement. Companies would be expected to work closely with their suppliers on the practical implementation of the Protocol over time.

Q. Do I have to join any organization to give a Protocol Warranty?

A. No. Your ability to give a Protocol Warranty is not dependent on your membership in any organization.

2. Using the Protocol Warranty

Q. How do I provide a Protocol Warranty if I am a Seller of diamonds?

A. Include the following statement in a Commercial Document, such as an invoice: *“To Seller’s Best Knowledge, diamonds supplied under this [invoice] were not Obtained from [Country A] or from an SDNBP. This Warranty is given under Diamond Source Warranty Protocol, Release Number 1.0.”*

(An SDNBP is a “Specially Designated National and Blocked Person.” The Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury publishes a list of SDNBPs, which

consists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.)

Q. How do I provide Protocol Warranty if I am a Seller of diamond jewelry?

A. Include the following statement in a Commercial Document, such as an invoice: *“To Seller’s Best Knowledge, Industry Products supplied under this [invoice] do not contain diamonds that were Obtained from [Country A] or an SDNBP. This Warranty is given under Diamond Source Warranty Protocol, Release Number 1.0.”*

Q. How do I obtain a Protocol Warranty if I am a Buyer?

A. Specify to your Seller that goods will not be accepted without a Protocol Warranty as to a Subject Source that you specify. If you are contracting in advance of delivery, include the warranty statement that you wish to see in the Commercial Documents that you use for Commercial Transactions.

Q. What does a Protocol Warranty say about OFAC sanctions?

A. When you give a Protocol Warranty, you are also warranting, to your Best Knowledge that the goods were not Obtained from or Processed by an SDNBP.

Q. How do I get the list of SDNBPs?

A. It is available online at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Q. Is a Protocol Warranty meant for retail customers?

A. No. The Protocol is meant only for use between Industry Participants. It is not meant to be consumer-facing or to be included in advertising or promotional efforts. If you are a retailer, the warranty, if any, that you give to your retail customers is for you to determine, subject to applicable law and good business practice.

Q. Can I use a Protocol Warranty as a basis for giving a consumer warranty?

A. Yes, your receipt of a Protocol warranty would be a factor in whether or not to give a consumer warranty.

3. Sourcing Diamonds and the Protocol Warranty

Q. How can I, as Seller, know what is or is not a Subject Source?

A. Your Buyer should be informing you whether or not the Protocol is to be used as a purchasing requirement, and if so, what the Subject Source is (or multiple Subject Sources). As noted above, a Subject Source refers to a particular country or person that industry participants have agreed not to buy or sell diamonds from as part of their commercial negotiations.

Q. Why isn't the Protocol more specific as to what is or is not a Subject Source?

A. The Buyer determines the particular Subject Source and advises the Seller. Each Buyer may have one or more Subject Sources that may be unique (or not) to them. Note, if a Buyer has no Subject Source selection, there is no need to employ the Protocol.

Q. My Buyer says that he doesn't want to buy goods from "Country A." What must I do if I wish to provide my Buyer with a Protocol Warranty?

A. Since you must know whether or not your suppliers have sufficient control over their supply chains to exclude "Country A" goods, you must ask them to use the Protocol, and provide a Protocol Warranty with "Country A" listed as a Subject Source. In doing so, you are asking your suppliers to exclude "Country A" goods. In this case, you are the Buyer, and your supplier is the Seller. Now you would be able to give the Protocol Warranty to your Buyer.

Q. Can I sell goods from "Country A" to other Buyers if one of my Buyers specifies it as a Subject Source?

A. Yes. But goods from "Country A" cannot be sold with a Protocol Warranty that names "Country A" as a subject source.

Q. Can I give a Protocol Warranty for Unknown Source Products or USPs?

A. No. USPs are Industry Products that were acquired *without* Protocol Warranties. It would include diamonds and other Industry Products obtained from unknown sources and undocumented goods in your inventory.

Q. As a Seller of diamonds, can I give a Protocol Warranty if I have never seen the Source Documents that establish where the diamonds were Obtained?

A. Yes, if you have a previous Protocol Warranty covering those stones - in most circumstances you can rely on a previous Protocol Warranty from your Seller.

Q. Can I always rely on a previous Protocol Warranty given by my Seller?

A. No. You can rely on it only if to your Best Knowledge the previous Protocol Warranty is true and valid. You can only act with Best Knowledge if you have made a due inquiry of your Seller, you believe the Warranty to be true and you have no reason to believe it is untrue.

Q. What is an example of a situation where I would not have Best Knowledge that a prior Protocol Warranty was true and valid?

A. You call your Seller and ask if he can provide goods that are warranted not to be from “Country A” in accordance with the Protocol. He tells you no. You offer to pay more for warranted goods. Ten minutes later he calls you back and says that his brother-in-law can provide an Independent Audit Report and that you can do the deal with a Protocol Warranty. You would not be able to pass that warranty on.

Q. Do I need to know the identity of my Seller’s source in order to have made a due inquiry?

A. No.

Q. What kind of questions might you ask your Seller in order to make a “due inquiry”?

A. Examples of questions might be: Where does he buy – directly from miners or on a bourse? Which mines? Which bourse? Is he a sight-holder? Does he buy goods on the secondary market from consumers?

Q. If my Seller has not given me a Protocol Warranty can I give one?

A. Only if you have had sight of Source Documents as to the goods in question and to your Best Knowledge such Source Documents are true and valid.

4. Inventory Controls

Q. Will my Inventory Control Procedures need to be more complex if I want to sell goods from Subject Sources or USPs, as well as goods that I wish to sell with a Protocol Warranty?

A. Yes. You will need to keep Subject Source and USP goods separate from other goods in order to give a Protocol Warranty.

Q. What kind of Inventory Control Procedures will I need?

A. Different procedures will be adopted by different Sellers. Procedures must provide *reasonable assurances*, not absolute assurances, that a Protocol Warranty is accurate. (See the definitions of Inventory Control Procedures and Qualified Inventory Control Procedures at the end of the Protocol.) Essentially, Qualified Inventory Control Procedures provide for *identification* and *segregation* of diamonds from Subject Sources at all stages of Processing.

Q. Does “identification” mean I have to mark the diamond itself?

A. No. It refers only to identification during Processing. That might take the form of a tag or label or a bin number, for example.

Q. Does “segregation” mean that I cannot keep Subject Source goods and other goods in the same facility?

A. No. But it does mean that you will have to establish Inventory Control procedures to keep the goods separate throughout Processing. For a jewelry manufacturer, this may require batch processing or other disciplines.

Q. Does Processing include storage or warehousing of an Industry Product?

A. Yes. It is a comprehensive term.

5. Audit Requirements

Q. If I wish to provide a Protocol Warranty must I retain an Independent Auditor?

A. Yes.

Q. Why do I need an Independent Auditor to provide a Protocol Warranty?

A. If you provide a Protocol Warranty you must provide your Buyer with a Qualified Audit Certificate on or promptly following delivery. This certificate must be issued by an Independent Auditor (though you can send a copy of the original to your Buyer).

Q. Can the Independent Auditor be my employee?

A. No. See the definition of Independent at the end of the Protocol.

Q. Does the Independent Auditor have to be a certified public accountant?

A. No.

Q. Can the Independent Auditor be the same firm that does my financial or tax accounting?

A. Yes. However, you should discuss with your financial auditor whether or not a review of your Inventory Control Procedures would cause such auditor to be considered non-independent for other purposes.

Q. How often must I allow an Independent Auditor in my facilities to review my Inventory Control Procedures?

A. At least once a year. See the definition of Qualified Audit Certificate.

Q. Can I use the same Qualified Audit Certificate more than once?

A. Yes. See the definition of Qualified Audit Certificate. It is intended that you can use copies of the same certificate for multiple transactions and multiple Buyers until the certificate becomes stale.

Q. When does a Qualified Audit Certificate become “stale”?

A. When it has been more than one year since the Independent Auditor completed a review of the Seller’s Inventory Control Procedures. The Qualified Audit Certificate should state the date on which such a review was completed.