

# VIRTUAL SUMMIT

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## Refineries as the 'Gate Keepers'

### Speakers:

Sakhila Mirza, General Counsel, LBMA/Speaker 1

Dr Mark Pieth, Professor of Criminal Law & Criminology, University of Basel/Speaker 2

### Summary:

Dr Mark Pieth, a professor of criminal law and a specialist in international regulation is going to give an outsider's view on some key issues that gold refineries are currently facing. He will namely address the current tendency of de-risking amongst refineries, a problematic move towards informal boycotting of ASM or certain world regions. He will go on to ask what due diligence efforts can reasonably be expected of refineries and what would be the role of industry organizations. Finally, he will address the challenges facing auditing and reporting, and remind that self-regulation depends essentially on credible auditing.

### Speaker 1:

Hello, this is Sakhila Mirza, General Counsel of the LBMA. In today's webinar, I have the pleasure of introducing Dr Mark Pieth. Dr Pieth is a prominent anti-corruption expert, who has held notable roles internationally. This includes the head of section in economics and organized crime at the Swiss Federal Office of Justice, as well as 24 years chairing the OECD working group on bribery. Dr Pieth has been doing a lot of research into the global supply chain and today he will be sharing his recommendations based on his findings as to what it is that the gold market needs to be thinking about and also doing. So, with that, I'd like to turn over to Dr Pieth. It'd be great to get some insight from you as to what you think the gold market should be focusing on and how they should be addressing the risks that they face within the supply chain. Thank you, Dr Pieth.

### Speaker 2:

Thank you very much. Ladies and gentlemen, dear colleagues, I would have liked to talk to you face to face, but I'm very sorry we have to do it in the electronic fashion. I want to address three topics. I want to start off with the question, 'Is de-risking an option?' We're all acutely aware of the challenges posed by the gold supply chain, especially on ASM, we went over that. I merely want to indicate here that, of course, LSM also has some formidable challenges, but I won't belabour that. What I do want to say, though, is I don't consider de-risking, or if you want to another word for it, informal boycotts of certain world regions, or of ASM in general, a valid option. I think that, it's a route we should not go down. I rather think we should follow what the OECD is suggesting. If you look at step three of the gold supplement, it states: mitigation – risk mitigation – please, before disengagement. And I think that's a very valid point. After all, we have to think in ASM, we have 15 to 20 million miners, and possibly 100 million people worldwide depending economically on this area. And, frankly, from a purely economic point of view, I don't think refineries can simply dispense of 20-30% of the world's

freshly mined gold. My second point that I would like to transmit would be, what we definitely need is a credible due diligence in the supply chain. I think that's obvious. Much depends on whether the refineries are really able to track the gold, where it comes from. And now you all know, many NGOs have been criticizing even the best of refineries that they're not really up to speed here. And traditionally refineries have been reacting rather harshly to that critique. My point is a bit different. I would say, 'Well, let's accept that most refineries are in reality from what I've seen- I've visited a lot of them-kind of SMEs'. Certainly, they have limited resources if you look at the legal and compliance area, and I don't think we should blame them for that. And, so, if a refinery says, 'Look, we cannot clean up the whole world', I think they have a valid point. But my question would be, what can an industry organization like the LBMA do in such a situation? Why not encharge specialized third parties to do the due diligence of mines on behalf of everybody, of the entire community. It is something that the OECD would accept, and it comes kind of natural to me.

I have been creating, the last 20 years, a collective action in the banking area – the so called Wolfsburg Banking Group, and all these banks – the twelve biggest of the world – they had one big problem: geographic risk of money laundering. And what they did, they teamed together, and created something called The Bankers Almanac, telling them what regional risks they were facing. So, my idea would be why shouldn't LBMA take the lead here? Maybe you are doing that. I'm an outsider as you realize. That would be my second point. The third point I'd like to make is a bit tougher. I must say. It's about auditing and reporting. The OECD and the 2018 alignment assessment, which many of you will know has harshly criticized the state of auditing. If you read that report, they basically say, well, auditors lack crucial know-how. They also say, well many cases looking – based on their shadow auditing – they found that many auditors were overly lenient in their assessment. That's quite a harsh critique. And thirdly, they are saying, well the reporting frankly doesn't cut much ice. So, the question, what to do about this? Or, maybe before that I must say, I believe that they have a point here. I've been trying to speak to the Big Four. One of them was ready to speak – one of them who had a real problem, the other three simply were not ready to speak and it turned out that they had one person each for a country like Switzerland, the world's champion in refining. And my point is here, everything depends on self-regulation being credible. And, I think, that's what LBMA is about. It's self-regulation, but in a credible manner. And sound independent third party audience are absolutely crucial if you want to come across as being credible, and basically LBMA has a role here in telling auditor's what we're expecting of them and these audits really need to come across as sound third-party audits. I will stop here. Thank you very much.

### Speaker 1:

Thank you so much, Dr Pieth, for sharing some of your thoughts and even some recommendations. That's been very helpful. I guess, if it's okay with you, just maybe a few questions for those listening to this webinar, to really understand how some of those recommendations can perhaps be helpful. But before I ask you those questions, I want to also highlight that the LBMA is very much working currently on a three-year strategy in trying to identify key areas where we want to make sure we're pushing for better standards, more information and really getting that message across that it's about responsible engagement, rather than disengagement. And so we are doing a lot of work around this where we are going to be speaking to relevant stakeholders, market participants and understanding how can we achieve some of the objectives that we're going to highlight under that strategy. So, that's a piece of work that the LBMA will, most certainly be sharing and I'm actually doing a separate webinar to explain a lot of that in detail. But just a couple of questions and comments and I think I'll start backwards. So, taking your point on the auditing first. I absolutely agree with the point that the actual audit is as good as the auditor. Does the auditor have the right and relevant expertise in making sure that he or she is understanding what is being audited, what the risks are, how does the market function, and identifying and making sure that the right challenges are being put out there to the refiner? And it's a piece of work that we have been pushing to do more on and are going to be focusing a lot more on. So, what sort of tips, or advice, would you give to both the LBMA and a refiner when we are engaging with the auditors, and let's just take the large four, in – what are the expectations that we should have of these auditors, given that the risks along the supply chain are – there's a huge variety of them. You've mentioned anti-money laundering, human rights abuses, child labour, you've also got the ESG Agenda. So, there's a number of risks. How do we meaningfully get an audit that helps us give the confidence that those risks have been identified appropriately, and are being challenged, and the auditor is making sure that they're asking the right questions, and obviously pushing the refiner for more information? What is it that

you would suggest that we should be thinking about, and doing, with some of these auditors to help address all those risks? And many more? Because the OECD Annex 2 highlight a few more than what I've mentioned. It's a challenge, but a challenge that we need to address, and it'd be good to get your thoughts on that.

### Speaker 2:

Yes, well I think really, it's a very valid question because auditing is, I think the key point of the, at least of the menu that I put before you, and it's, it's actually quite funny, you know. If the big four don't want to speak to this nutty professor, uh, well, too bad. So, that's not necessarily a sign. The OECD on the other hand, if in their alignment assessment is saying, auditing could be better, that cuts much more ice. Interestingly, I was in a conference recently with all the Swiss refiners present and they said 'Yes, auditors are also our problem'. Obviously, they might have a different kind of problem with their auditors than what I am seeing here. But I think what you could do is, instil some courage to the big auditing firms and say, 'Look, we're expecting something, some real work here'. Do what you do in the other areas of work where you are. Take, for instance, money laundering, they are frequently helping bank supervisors to look at banking practice. And, frankly, if somebody says you are too lenient, just because somebody is paying you, that is detrimental. That is not what we're expecting of an auditor because it undercuts their credibility and independence. So, I think you are in the best position with 70 refiners to say, 'Look, it's no use if you are being nice and chummy with the people who are paying you. We need serious work here'. And, frankly, for me it is not serious if a very big – I will not give names – but the major auditing firm worldwide has one person for a country that is importing 70% of freshly mined gold every year. That is just the way of making little money. LBMA is top notch of the industry groups and you already have standards in this area. The question would be, now, how do we translate the standards into practice, and actually get these auditors to the table and tell them we mean business. But the point is not just refiners, we have similar issues with jewellers. We have similar issues in the very big mining area. So, the World Gold Council would have a very similar problem with their standards. They also rely there on voluntary independent auditing. And if that doesn't work, the whole standard is not worth what it should be, then it's mere paper.

### Speaker 1:

Thank you, Mark. Um, uh, for your comments. Now moving to your second point, of the three that you made, about credible due diligence, and your suggestion about engaging third parties to carry out due diligence. First of all, I would like to highlight on the LBMA perspective, our program has evolved. It was launched in 2012 and you know, what the program looks like today is quite a development from what it looked like in 2012, and that's to demonstrate that it's constantly evolving. We're asking for more, we're pushing for higher standards, and to continue on that journey, it has to be about market engagement, getting feedback from the stakeholders, working together and making sure that to what extent can we reflect some of that in the actual guidance itself, but making sure that what we're putting in the guidance that also gets reflected in practice. So, again, interesting in terms of your proposal on getting third parties to carry out our due diligence. I think having third parties on the ground certainly is helpful, but then there's a whole process around this that needs to be effectively monitored; surveillance needs to be in place. In terms of the effectiveness of the due diligence: How current is it? How frequently should we be going back in? Who can rely on it? How much reliance should be put on? Because, again, the issues are quite diverse, and no two mines are necessarily the same. So, there's a lot of considerations that you need to reflect on before engaging third parties and then, obviously, the ongoing commitment. So just given some of the challenges that I've raised with this potential recommendation, how is – I think you gave us an example within the banking community – how are they addressing some of this in terms of their reliance on third parties? And then, the frequency of those due diligence, and the standards because, again, no two banks may have the same standards; they may disagree with each other's standards. How do you get a consensus across different organizations? So maybe a couple of questions in that. I'll let you take it however you want.

### Speaker 2:

I'll start at the end. The banking community has this very good problem that when they are assessing money laundering risk, one risk factor everybody has to deal with is geographic risk. So, the question is, can I do business in Sudan nowadays? That is an issue that banks have to deal with, and how do I do that? And here they are mostly interested in having information. The question then 'How to deal

with the information?', that is up to them. But, instead of, for instance, going through the motions with every region of the world, they have specialists doing that for them, supplying the information and then the decision ultimately where to engage, and where to disengage, is left to the banks. There is a similar area with banking. It's called the issue of correspondent banking. Now imagine there are thousands of banks that big bank has to deal with, and they would want to know how good or bad are these individual banks. Now if every bank does that individually, that just costs millions. So, that's another area as an example. Now, turning to your area, obviously there is a macro and a micro perspective. I have my micro perspective. What I did was simply, as an amateur, walked into an area where risks are high. I produced this book here, and what I did to produce it, I went to Peru and to South Africa. When I went to Peru, I went to that very difficult area in Puno, everybody knows it, La Rinconada, but I didn't stay there. I went to see where does the gold from La Rinconada go? It's very easy actually. You can find the trail to different companies. I went to one specifically and they said, 'Yes, of course we take the gold of La Rinconada'. I was sitting in a row together with the miners from La Rinconada. They were telling me 'Yes, of course, that's where we come from'. And that's the collector, Minerales Del Sul, was actually sending up to 10 tonnes of gold to a Swiss refinery. And the supply chain was absolutely seamless and proven. That's not the problem. And then I was thinking, well, hang on, if I as an amateur can do this and find out about the supply chain in certain areas, there are much more complicated supply chains. Take Colombia, and the organized crime involvement and so on, it gets really complicated. Now, if I can do that, why cannot a company that has this as its job, following certain formats given by the refineries or, better, an organization representing refineries to do it in a standardized manner and find out has this mine, for instance, got children working there or not?

Obviously, the problem, it's problematic because you can't just turn up and see, and if you announce yourself, there will certainly be no children present on the premises. There are questions, but these are feasible, and companies can deal with them. And I think your role in my appreciation would be to help them with the format because the thing is that, the OECD actually demands from every refinery that they do this, that they know where the gold comes from and what are the problems of that area are. Now, if you do this collectively, there's no antitrust issue with that but just as a bracket. I believe you could do a very big step in advance, jointly for the whole group of refineries and I mean this seriously when I'm saying, individual refineries are frequently SMEs. They have like 150 or 200 employees. They have one legal person and one compliance person and they, with some rights, they're saying, 'Look, you're asking the impossible of us. Why should we roam the world now and find out what the problems are in every mine, for instance, in Africa?' So, my suggestion is, this would be something that, and possibly you are already on track, I may be mistaken here, I believe LBMA is the right partner. You don't have to do it yourselves. I think it's better if it's done by private organizations. It doesn't even have to be one. You could have several such organizations competing – that's useful competition. But I think that would be a very big step, in advance, to ensure thorough due diligence.

#### Speaker 1:

Great. Well thank you so much. I'm just conscious that we are running out of time. In fact, I think I could probably spend another hour talking to you and ask you more questions on it. I know there was another one I wanted to focus a little bit of time on – your comment about this, 'De-risking is not an option'. Absolutely, we want to encourage responsible engagement, and it's not something that we either encourage in terms of de-risking, but obviously making sure that you've got the right controls and systems in place to identify those risks and actually address those risks. But, perhaps, I know we've got a series of other webinars. What I might do is raise that question in another webinar and, perhaps, ask some of our other speakers, if that's okay with you, given that we have ran out of time. But again, thank you so much. Some really positive steps, good recommendations, you can sort of see some of the challenges. And, again, let's work together. I call to the rest of the market and to the stakeholders and to those who are obviously listening to this: it's about doing this together. I don't think any one individual organization can actually address this singlehandedly. So, thank you, Dr Pieth. Any parting comments before we close?

#### Speaker 2:

Thank you very much for inviting me to take part in this webinar.

## Interested in contributing?

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