

Doing business in the Democratic Republic of Congo

This note sets out a summary of certain legal issues to be taken into account when doing business in the Democratic Republic of Congo ("the DRC"). It is not intended to be exhaustive and is provided for information purposes only. For further information or legal advice, readers are invited to contact one of the lawyers of Clifford Chance or Kalamba & Associés listed at the end of this note.

1. General Information



(a) Political structure

Official name	République Démocratique du Congo
Form of government	Unitary multiparty republic with a bicameral legislature (108-member Senate and 500-member National Assembly)
Head of State	Joseph Kabila – President since 26 January 2001 Interim President between 2001-2006 Elected in 2006 – re-elected in December 2011
Head of Government	Augustin Matata Ponyo – Prime Minister since 18 April 2012

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Administrative subdivisions	11 provinces including the capital city, Kinshasa ¹
Legal system	Civil law (originally based on Belgian law and the Napoleonic Code)
Main regional and international memberships	International Monetary Fund (IMF), World Bank, United Nations (UN), World Trade Organisation (WTO), World Intellectual Property Organisation (WIPO), African Union (AU), African Development Bank (ADB), Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS)
Main political parties	Three main political parties (PPRD, UDPS, MLC)
Legislative elections	Legislative elections to the National Assembly were last held in November 2011; the next elections are due in 2016

(b) Basic data

Land area	2,344,858 sq km
Population	73,599,190 (July 2012 est.)
Main towns (in millions)	Kinshasa (8.4), Lubumbashi (1.5), Kolwezi (1.5), Mbuji-Mayi (1.5), Kananga (0.95), Kinsangani (0.8), Likasi (0.5)
Languages	French (official language), Lingala, Tshiluba, Swahili, Kikongo
Currency	Congolese Franc (CDF)

2. Financial data

(a) Annual data and forecast

	2011 (est.)	2012 (est.)	2013 (for.)	2014 (for.)
Gross Domestic Product				
Nominal GDP (USD billion)	15.7	18.6	21.7	25.3
Real GDP growth (%)	6.6	6.0	6.7	6.5
Income				
GDP per capita (USD)	231	267	304	345
Budget balance, % of GDP	-3.5	-3.4	-3.4	-3.4
Inflation rate	14.8%	15.1%	12.2%	
Prices and financial indicators				
Exchange rate CDF:USD	CDF919:USD1	CDF928:USD1	CDF938:USD1	CDF947:USD1
Consumer prices (end-period: % change)	15.6	14.4	11.5	11
Lending interest rate (av.%)	32.6	23.6	22.4	19.5
Current Account Balance (USD billion)	- 1.6	-1.4	-1.6	-1.4
Exports f.o.b* (% of GDP)	63.7	61.5	60.5	
Imports f.o.b* (% of GDP)	59.9	52.1	53.5	

¹ Pursuant to articles 2 and 226 of the Constitution adopted in February 2006, the current administrative subdivisions were to be replaced by 26 new provinces in 2009. This provision has not yet been implemented.

	2011 (est.)	2012 (est.)	2013 (for.)	2014 (for.)
Reserves of foreign exchange ex gold (USD billion)	1.1	1.1	1.2	1.3
Foreign Direct Investment rate (av.% of GDP)	14.8			
FDI (av.% of GDP)	1,940			
FDI (USD million)				

Est./for. = estimate/forecast. Sources: Afdb/BMI/IMF/World Bank/UN/Banque Centrale du Congo/BCC/AEO Outlook

* free on board

In 2009, the Executive Board of the IMF adopted a new three-year Poverty Reduction and Growth Facility (PRGF) plan aiming to reduce the DRC's foreign debt from USD 13.1 billion to USD 3.1 billion.

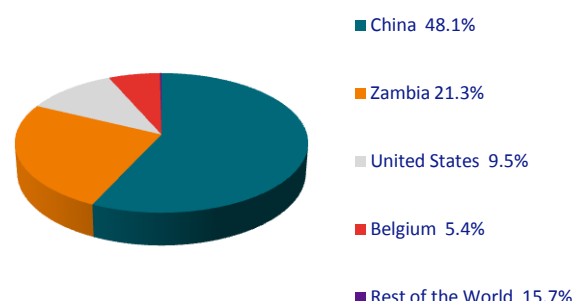
(b) Main exports (est. 2011)

Product	Value (in USD thousands)	% of total
Copper and articles thereof	2,012,939	31.79
Ores, slag and ash	1,803,350	28.48
Mineral fuels, oil, distillation products, etc.	1,227,139	19.38
Other base metals, cermets, articles thereof	487,563	7.7
Pearls, precious stones, metals, coins, etc.	233,017	3.68
Inorganic chemicals, precious metal compound, isotopes	196,292	3.1
Wood and articles of wood, wood charcoal	153,867	2.43
Others	217,820	3.44
Total	6,331,987	100.00

est. = estimate.

Source: International Trade Center (<http://www.intracen.org/country/democratic-republic-of-the-congo/>)

Exports - partners: 10.66 billion USD in 2011 (est.)



est. = estimate. Source: Central Intelligence Agency (<https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>)

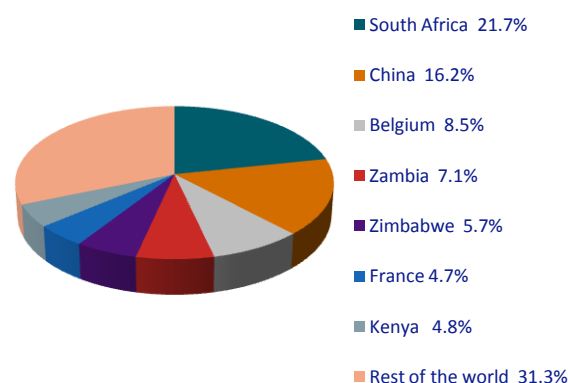
(c) Main imports (est. 2011)

Product	Value (in USD thousands)	% of total
Consumption goods	2,232,758.10	44.29
Manufactured products	1,965,573.24	38.99
Mineral fuels, oils, distillation products, etc.	231,392.18	4.59
Others	611,500.47	12.13
Total	5,041,224	100.00

est. = estimate.

Source: International Trade Center

(<http://www.intracen.org/country/democratic-republic-of-the-congo/>)

**Imports - partners:
8.721 Billion USD in 2011 (est.)**

est. = estimate. Source: Central Intelligence Agency (<https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html>)

3. Investment procedure

The National Agency for Investment Promotion (*Agence Nationale pour la Promotion de l'Investissement*) (ANAPI) was set up by the Investment Code, Law n° 004/2002 of 21 February 2002 (the "**Investment Code**"). ANAPI is a public establishment, with legal personality, under the supervision of the Ministry of Planning. Its missions are (a) to improve the climate of business in the DRC, (b) promote an "investor-friendly" image of the DRC, (c) showcase and promote investment opportunities in the DRC and the advantages for the investors, (d) offer a package of services to assist national and foreign investors, either public, private or both in all administrative matters related to their investments in order to facilitate the realisation of their investments and their transfer to the DRC, and (e) grant tax and customs incentives for investments that meet the required criteria within the Investment Code.

ANAPI has authority for investments in all the economic sectors of the DRC (ranging from agriculture to mining and infrastructure and energy). However, in the mining, hydrocarbon, banking and insurance sectors it should be noted that, while ANAPI is consulted for advice, it does not have the power or authority to grant tax and customs incentives. In these sectors, specific tax and customs regimes are set out in the Mining Code or the relevant banking, hydrocarbon and insurance legislation.

4. Business environment and Opportunities

Economic growth in the DRC reached **6.6% in 2011**, a slight drop from the 2010 figure of **7.2%**, as a result of global inflationary trends and caution on the part of businesses during the period of elections. Growth is particularly dependent on agriculture, the extractive industries, trade, construction and public works. **From 2011 to 2015, the DRC's GDP growth is expected to reach 7% per annum.**

In terms of macroeconomic policies, reforms were introduced to limit the net credit to the state, to contain inflationary pressures and maintain the value of the currency. In addition, the country benefited from a cancellation of remaining World Bank and International Monetary Fund debt after reaching the completion point in the Heavily Indebted Poor Country (HIPC) initiative in 2010.

(a) Mining

The market is dominated by the state-owned company "La Générale des Carrières S.A." ("**Gécamines**"), and companies from the United States, the United Kingdom and Australia, and more recently from Canada, South Africa and France. The potential for investment is enormous as the DRC has the **largest untapped deposits of raw mineral ores in the world**. Globally, it represents 58% of cobalt production (world's 1st producer), 30% of industrial diamond production and 2% of copper production. In addition, more than fifteen iron ore fields have been discovered and not yet exploited, and the DRC also holds new strategic minerals like cassiterite (world's 5th holder), bauxite, manganese, coltan (60% of world reserves), molybdenum and tantalum.

Furthermore, the currently applicable mining regulation, Law No. 007/2002 of 11 July 2002 (the "**Mining Code**"), is generally considered "investor friendly". Mineral prospecting in the entire DRC territory is subject to a prior declaration with the mining registry. Foreign investors are eligible to obtain mining and quarry rights provided that they elect domicile with an authorised mining and quarry agent located in the DRC (approved in advance by the Ministry of Mining) and act through its intermediary. In order to be granted a mining exploitation licence/mining concession, the investor must grant to the DRC (through Gécamines) a minimum **free carry participation of 5%** of the shares of the company applying for such licence/concession. In practice, the DRC's participation, through Gécamines, in mining companies holding exploitation permits is usually around 17% to 20%, noting that Gécamines is required to pay for any participation above the 5% free carry.

Moreover, the Mining Code provides investors with a guarantee of stability regarding the terms of investments (stabilisation regime), and allows international and domestic arbitration as a means of dispute settlement.

Gécamines plays an important role in the mining industry. Despite its transformation from a public entity into a private law company on 29 December 2010, Gécamines is wholly-owned by the DRC and acts as the investment vehicle for the state in the mining industry. Its corporate purpose includes, amongst other things, prospecting, searching for, producing and exploiting mining deposits. In addition to its rights to acquire shares in mining companies on behalf of the state, Gécamines – in its capacity as a commercial company -- is entitled to enter into freely negotiated partnership agreements with, or invest in, companies that have a similar corporate aim. **To date, Gécamines has entered into more than 35 such partnerships.**

However, systemic challenges still remain, including a lack of transparency, public governance and oversight, and physical safety and social instability, particularly in the diamond and coltan industries. Following the Extractive Industries Transparency Initiative (the "**EITI**")'s 2010 Report, the DRC was temporarily suspended from the EITI in April 2013 for a period of one year for failing to meet the EITI's standards for disclosure and reliability relating to data from the mining and oil sectors. The DRC is currently proposing changes to its legislation, tax regimes and transparency requirements, including in relation to the EITI, which should improve the potential for development in this sector.

(b) Telecommunications

Even if the telecommunications sector has already experienced tremendous growth in the last few years (**+110% from 2003 to 2006**), the potential for further growth is enormous, considering the current telephone (landlines and mobiles) **penetration rate is only 18.6%**. It is the second most dynamic market, after the mining sector, with annual profits of more than USD 800 million. At this stage, the market is dominated by four operators (Airtel, Vodacom, Tigo (Millicom), and Orange).

(c) Energy and Power

The potential of the DRC in the energy and power sector is also enormous. The DRC has **the potential capacity to generate 100,000 MW of hydropower**, of which only 6% is currently used. The hydropower sector in particular has a huge potential for growth since **52% of Africa's surface water reserves are located in the DRC**.

The sector is largely dominated by small private hydroelectric plants, but the government and state-owned Société Nationale d'Electricité ("**SNEL**") have begun to open the energy sector to more private investments for production, transport and sale of energy. However, distribution on the grid remains the monopoly of SNEL. Due to a lack of diversification of power sources, the energy sector currently remains highly dependent on fuelwood and charcoal, which accounts for more than 95% of total use. Following a meeting held in Paris on 18 May 2013, presided over by the Minister of Energy of the DRC, the

construction of the 4,800MW Inga III Hydroelectric Plant was announced. Work for the first phase is expected to begin in October 2015. Inga III is the next step in the creation of a 40,000MW Grand Inga complex, which would be the largest hydropower project in the world.

5. Taxation

The general tax system in the DRC integrates **national and municipal taxes** that are based on income derived within the DRC territory. By way of illustration:

- the corporate tax rate is 35%;
- the corporate tax rate for mining companies is 30%;
- dividends or other distributions made to a resident or non-resident are subject to a 20% withholding tax, while the rate for mining companies is 10%;
- the personal income tax rate is based on a sliding scale with a maximum applicable rate of 30%;
- property tax ranges from US\$0.30 to US\$1.50 per square metre of the property built;
- tax on rental income is 22%;
- domestic turnover tax for construction services is 18%; and
- tax on the local sale of locally manufactured product can reach up to 25%;
- a Valued Added Tax (VAT) is applicable as of 1 January 2012, at the rate of 16%.

6. Investment and export incentives

(a) General customs regime incentives²

The Investment Code provides for one general regime under which the various customs and tax benefits of the Investment Code may be granted.

Outside the mining, hydrocarbon, banking and insurance sectors, an investment will benefit from the following customs advantages if it is approved and classified by the ANAPI as an eligible investment in accordance with the Investment Code:

- with the exception of the administrative tax of 5%, companies enjoy a total exemption from all import duties on the import of machinery, new tools, equipment and new spare parts up to a maximum amount of 10% of the CIF (Cost, Insurance and Freight) value of the equipment in question if it is used for public utility investment purposes;
- a total exemption from export duties and taxes for all or part of finished, worked or semi-finished products; and
- a total exemption from all tax and customs duties on second hand heavy engines, ships and aircrafts.

Exemptions from duties and taxes on imports can only be granted if one of the following conditions is met (a) if the product concerned cannot be produced in the DRC; or (b) if the duty-free price of the product produced locally is 10% above the price of the same imported product.

(b) General tax regime incentives

(i) Overview of the general incentives regime:

- Total exemption from professional contributions on benefits realized by newly approved investments for a certain number of years, which is determined on a case by case basis;
- Total exemption from professional tax on income for profits made by approved investments;

² New Customs Code, approved by Law no. 10/002 of 18 February 2011.

- Digressive amortisation for socio-economic infrastructure investments, such as schools, hospitals, sporting facilities and roads, realised under approved projects;
- Exemption from corporate tax and tax on share capital;
- Exemption from ad valorem duty on the constitution or increase in the authorised share capital of a limited liability company;
- Exemption from land tax (on land concessions and developed properties); and
- Exemption from tax on turnover realised inside the country for products and services bought from local producers.

(ii) Conditions to benefit from the incentives:

Investors seeking to qualify for a tax incentive must fulfil the following conditions with regards to their investment:

- be registered in the DRC;
- the investment should be equivalent to USD 200,000 or more;
- agree to respect environmental regulations;
- observe national labour regulations; and
- pay the required VAT unless the transactions relate to exports or assimilated transactions, which are exempt from VAT.

Investors wishing to take advantage of any benefits under the Investment Code must submit one copy of an investment application for authorisation. The application must be submitted in a predetermined format determined by ANAPI, which can be found on ANAPI's website. The application is first reviewed by ANAPI and is then transferred to both the Ministry of Finance and the Ministry of Planning for their approval, which is granted in the form of an Inter-Ministerial Order by both Ministries.

Ministerial decisions are normally granted within 30 days following the submission to ANAPI. If an investor has not received a response by the end of the 30 day-period, the approval is considered granted with the authorities issuing a formal approval within 7 days.

(iii) Duration of exemption benefits

- 3 years if the investment is in Kinshasa;
- 4 years if the investment is in Bas-Congo, Lubumbashi, Likasi and Kolwezi; and
- 5 years if the investment is in other regions.

(c) Special incentives

(i) Special sectors

Each of the following sectors has its own investment regime, together with its tax and customs regime: **mining and hydrocarbon, banking, insurance and reinsurance, the arms industry and security services**. For an investment in any of these sectors, the specific tax and customs regimes which are applicable are set out in the relevant legislation.

For hydrocarbon activities, we note that the DRC is in the process of adopting new legislation. However, Article 87 of Law-Ordinance n° 81-013 of 2 April 1981 (*Ordonnance-Loi No 81-013 du 2 avril 1981*) relating to hydrocarbon activities (the "**Current Hydrocarbon Code**") provides that, by derogation to the general tax and customs law applicable in the DRC, and subject to the new taxes to be created by the Current Hydrocarbon Code, the tax and customs regime applicable to hydrocarbon activities is exclusively set out in the investment agreement (*convention*) entered into between the DRC and the investor pursuant to Article 79 of the Current Hydrocarbon Code. Accordingly, investment agreements relating to hydrocarbon activities need to be approved by an Ordinance of the President of the DRC to ensure their validity and effectiveness. This express cross-reference to the investment agreement for the applicable tax and customs regimes means that such an agreement can contain derogations from the general tax and custom regime, and such derogations shall prevail in case of any conflict between the two.

For mining activities, pursuant to Article 219 of the Mining Code, the tax and customs regimes which apply to mining activities in the DRC are those set out in the Mining Code, to the exclusion of all other forms of taxation, either present or in the future. The Mining Code lists the various taxes, duties, and charges, and the Mining Code, together with various administrative acts, determines the applicable rates and amounts. There is no cross-reference in the Mining Code to a tax and/or custom regime set out in a mining convention, which means that, in contrast to the Current Hydrocarbon Code, no derogation from the applicable tax and customs regimes of the Mining Code is allowed.

In addition, a new law regulating the electricity sector is being debated in Parliament. The draft bill has already been passed by the National Assembly and is currently under review by the Senate. If enacted, the law would liberalize all activities related to the production, distribution, transport and export of electricity of electricity. Consequently, the production, distribution, transport and export of electricity could be independently managed, subject only to a license granted by the Ministry of Energy in a form of a concession, license, authorisation or declaration (depending on the type of activities).

(ii) Special Economic Zone (SEZ) Program

The International Finance Corporation (IFC), a member of the World Bank Group, has been supporting the establishment of a privately-managed Special Economic Zone (SEZ) in the DRC to assist in arranging and implementing a pilot SEZ program in order to facilitate and promote private investment in the DRC. In addition, the SEZ program intends to bring the country into accounting, legal and regulatory compliance with international business norms.

The first pilot SEZ program was planned for 2012 in N'Sele, a suburb of Kinshasa, focusing on agro-industries. It is expected that additional SEZ programs will be developed in Katanga to focus on mining and in Bas-Congo to focus on the production of cement.

7. OHADA Law

On 11 February 2010, President Kabila promulgated Law No. 10/002 authorising the DRC's accession to the Treaty of the Organisation for the Harmonisation of Business Laws in Africa (the "**OHADA Treaty**"). The accession to the OHADA Treaty became effective as of 13 July 2012 and the DRC became the 17th member state³ of the OHADA Treaty from that date. However, the OHADA Treaty and the uniform acts adopted thereunder entered into effect and became the applicable law of the DRC for all OHADA subject matters 60 days after the accession date (i.e., on 12 September 2012).

The OHADA Treaty was signed on 17 October 1993 in Port Louis (Mauritius) and was revised on 17 October 2008 in Quebec (Canada). Its objectives (as set out in Article 1 of the OHADA Treaty) are to harmonise business laws in the member states through "common rules", establish appropriate judicial procedures and encourage arbitration as a means of settling contractual disputes. The OHADA Treaty achieves these objectives mainly through the enactment of uniform acts in various areas of business law and the establishment of a Common Court of Justice and Arbitration (CCJA) to ensure harmonised interpretation of the OHADA Treaty and the uniform acts.

Upon adoption by the Council of Ministers of the OHADA member states and the publication of a uniform act, it becomes directly applicable in all member states and supersedes contrary – subsequent or previous – national legislation on any subjects covered by such uniform act. The uniform acts cover a wide range of business law areas (security, bankruptcy, general commercial law, arbitration, corporate law, debt recovery and enforcement measures, accounting law, etc.).⁴

The accession of the DRC to the OHADA Treaty brings **substantial changes to the DRC's business laws**, which were outdated and not adapted to the modern business environment. For example, under the former DRC law on corporations, the authorisation of the President of the DRC was required to create or dissolve a limited liability company (*société par actions à responsabilité limitée*). Such authorisation is no longer required by virtue of the application of the OHADA uniform

³ Currently, the OHADA member states are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo and the Democratic Republic of Congo.

⁴ The OHADA Uniform Acts are: Commercial Companies and Economic Interest Group dated 17 April 1997, Simplified Procedures for Debt Recovery and Enforcement Measures dated 10 April 1998, Collective Proceedings for Wiping Off Debts dated 10 April 1998, Arbitration dated 11 March 1999, Accounting dated 23 March 2000, Carriage of Goods by Road dated 22 March 2003, General Commercial Law dated 15 December 2010, Security dated 15 December 2010, and Cooperative Companies dated 15 December 2010.

act on Commercial Companies and Economic Interest Group. Under the former DRC law on security, regulated mainly by the 1973 Property Law, it was not possible to exercise any self-help enforcement remedies under pledges, while the new OHADA law on security allows for the contractual attribution (*pacte comissoire*) of the pledged assets to the secured creditors under certain circumstances. In addition, it is now possible under DRC law (through the application of the new OHADA law on security) to grant security in favour of a security agent for the benefit of a changing pool of lenders (which is a significant advancement in structuring co-financings for loans in the DRC). The perfection formalities of security interests have also been modernised, and it is now possible to take security over future assets to guarantee future obligations.

The effective application of OHADA law in the DRC will bring **significant, immediate improvements to a number of outdated fields of DRC business law** such as corporate law, security interests, insolvency, the transport of goods by road, the recovery of debts, arbitration, etc. However, during this initial period, uncertainties as to the application of the OHADA laws in the DRC are to be expected, since its accession to the OHADA Treaty brought about profound changes to its laws. Due to the DRC's use of outdated Belgian statutes and case law and the fact that the OHADA laws are very similar to French law, courts, judges, scholars, practitioners and the legal community in general in the DRC might need some time to adjust to the changes brought by OHADA laws. That said, the DRC's membership of the OHADA Treaty gives exclusive jurisdiction to the Common Court of Justice and Arbitration (CCJA) to hear appeals and decide in the final instance on any OHADA related disputes. The CCJA acts as a supranational court for all OHADA related matters, but it can only be seized by a plaintiff once all possible recourse in the DRC have been exhausted. The exclusive jurisdiction of the CCJA over any OHADA related matter is a key feature toward the harmonisation of business laws in the OHADA countries.

8. Starting a Business

The process for registering a company in the DRC is considered complex and time-consuming. According to the World Bank's *Doing Business* Report 2012, it takes on average **65 days to start a new business and involves high costs, thereby ranking the DRC in 148th place (out of 183 countries) for corporate governance**. The procedure outlined below is governed by various decrees and ministerial orders of the DRC as they are administrative in nature. It is not governed by the OHADA laws on corporations.

(a) Procedure to start a business

N°	Procedure to Follow	Time	Associated Costs
1	Obtain a certificate confirming location of headquarters	7 days	CDF 1000
2	Notarise the articles of association	14 days	USD 53 per document, assuming 5 documents
3	Register with the Commercial Registry	5 days	USD 120 for the registry and USD 40 to deposit the document
4	Publication of the company's statutes in the official journal	1 day (receipt only)	CDF 300 per line
5	Obtain a national identification number from the Ministry of Economy	15 days	USD 50
6	Register the company for tax with the Direction Générale des Impôts	7 days	no charge
7	Declare the establishment of the company with the Department of Labour (l'Inspection du Travail) and the National Office of Employment (l'Office National de l'Emploi)	1 day	no charge
8	Receive inspection by the inspection officials from Ministry of Labour	1 day	no charge
9	Register with the National Institute for Social Security	7 days	no charge

N°	Procedure to Follow	Time	Associated Costs
10	Obtain operational permit from the Municipality	7 days	USD 250 for each permit

9. Exchange Control

The exchange control regime in the DRC is regulated by several parliamentary acts, presidential ordinances, and circulars of the Central Bank (together, the "**Exchange Control Regulations**"). The main texts are the Ordinance-Law n°67-272 of 23 June 1967 granting regulatory power to the Central Bank, the Central Bank Circular (*Circulaire de la Banque Centrale du Congo*) of 22 February 2001, and the Law n°78-017 of 11 July 1978 and Decree-Law n° 004 of 31 January 2002 in relation to national and foreign currencies in the DRC.

Under the Exchange Control Regulations, and based on our experience in transactions in the DRC, the DRC benefits from **liberal exchange control under the Exchange Control Regulations** aiming to attract foreign investment. We highlight the following key issues in relation to the Exchange Control Regulations:

- Transfers made abroad or currency exchanges are free in the DRC, but for any such transfer or exchange in an amount exceeding USD10,000, a "*Modèle RC*" form must be issued by the intermediary approved commercial bank and certain documents justifying the transfer must be provided;
- Subject to the relevant tax being paid, the filing of the "*Modèle RC*" form and the delivery of other supporting documents required by the Central Bank, commercial banks in the DRC are authorised to transfer dividends, capital gains, interest, principal, fees and commissions on foreign loans outside of the DRC. There is no exchange control restriction on the transfers abroad of profit by a foreign company;
- Upon closing or selling of their investments, foreign investors may freely remit their capital abroad without any restrictions;
- Residents of the DRC are authorised to hold foreign currency accounts with local commercial banks and with foreign banks with no obligation to repatriate funds held abroad back into the DRC, except in the mining sector where the Mining Code requires that companies must maintain a 60:40 split between their offshore and onshore accounts. Amounts held in foreign currency accounts can be used for any legal purposes;
- In terms of the detention of foreign currency, travellers in the DRC (residents and non-residents) can freely make use of foreign currency while travelling. However, travellers are required to declare any amount exceeding USD10,000 or the equivalent in any other foreign currency. A bank transfer must be used for any foreign exchange over the USD10,000 limit;
- Under Article 2 of the Exchange Control Regulations, transactions and services undertaken within the DRC are evaluated and paid for using national currency. However, such transactions can also be evaluated and paid for in foreign currency, and we note that US dollars are commonly used for payment of services and transactions in the DRC;
- An authorisation from the DRC Government is required for a Congolese company to enter into or borrow under facility agreements with foreign lenders. This authorisation is imposed by law n° 78-017 regarding State Guarantee for loans intended to finance mining activities of both private and state-owned companies. It is a guarantee of payment of the borrower's debt under the loans.

However, in practice this law is not applied as the DRC does not have the financial means to provide the relevant guarantees to all the Congolese borrowers borrowing from foreign lenders. The Ministry of Finance does not generally reply to the borrower's request for such guarantee. Nevertheless, as the law has never been repealed, companies are advised to formally comply with it by sending the request of guarantee to the Ministry of Finance.

Finally, it shall be noted that failure to obtain the State Guarantee under the law n° 78-017 has no impact on any express guaranties or warranties contracted specifically by the DRC in an investment agreement

with an investor or on any guarantees or security provided by a foreign investor or a Congolese borrower to its financiers for the purposes of developing or financing mining activities; and

- Regardless of the customer or the beneficiary, the Central Bank of Congo receives an exchange control fee of 2% on all transactions subject to its regulation. The fee cannot be less than USD1.

10. Investment Protection

The Investment Code guarantees the following investment protection rights for investors that have submitted applications to ANAPI:

- the tax system in the DRC does not draw a distinction, with respect to the taxation of business income, between individuals and companies and whether they are of foreign or Congolese nationality;
- the DRC assures a fair and equitable due process to all parties; and
- the rights to individual or collective property acquired by an investor are guaranteed by the Constitution of the DRC. An investor cannot be nationalised or expropriated by law, except for motives of public use and subject to the payment of a fair compensatory indemnity.

Despite the existence of this legal framework, **practical application of these protections is still weak**, with the DRC ranking 155th (out of 183 countries) for protecting investors. Improvements to the process of starting a business can have a positive impact in this regard, but will require system-wide reform, meaningful participation from the private agriculture sector, and government policies committed to change.

11. Dispute settlement

The parties to a dispute in relation to investments in the DRC can validly submit the settlement of such a dispute to a **foreign court or an international arbitration tribunal**, and seek the recognition or enforcement of the court decision or the arbitral award in the DRC.

Decisions rendered by a foreign court, such as an English court judgment, will be recognised and enforced by the High Court (*Tribunal de Grande Instance*) of the DRC pursuant to Article 10 of the Code of Civil Procedure and Article 117 of the Code of Judicial Organisation and Competence (the "**CJOC**"). According to Article 117 of the CJOC, the foreign court decision will have to meet the following conditions to be recognised and enforced in the DRC: (a) the foreign court shall not be competent "solely" by virtue of the nationality of the plaintiff; (b) the judgment of the foreign court shall not be contrary to public policy of the DRC; (c) the foreign judgment shall be final and not subject to any further appeal in the country where it was rendered; (d) certified copies of the foreign judgment shall be provided; and (e) the defendant's right to "due process" in the foreign jurisdiction where the decision was rendered was respected. Foreign court decisions that satisfy the conditions specified in Article 117 of the CJOC are enforced in the DRC, in the same manner as decisions rendered by local courts of the DRC.

Investors may also choose to resolve commercial disputes through international arbitration (pursuant to rules of the International Chamber of Commerce (ICC), the London Court of Arbitration (LCIA) or any other internationally-recognised arbitral institution). However, the resolution of commercial disputes arising out of investments in the DRC by international arbitral tribunals has been hindered as the DRC has not signed and ratified the New York Convention on the Recognition and Enforcement of Arbitral Awards of 10 June 1958 (the "**New York Convention**"), under which arbitral awards granted in one signatory state are prima facie enforceable in other signatory states. International arbitral awards are recognised in the DRC as foreign judgments issued by a state court, such state being the state of the arbitral seat, and will be subject to the procedure referred to in the preceding paragraph. Nevertheless, it should be noted that in April 2013, the National Assembly and the Senate in the DRC passed a law authorizing the President of the DRC to adhere to the New York Convention. The World Bank has also strongly encouraged the DRC to adhere to this convention to enhance investment protection and dispute resolution.

That said, although the DRC is now in the process of ratifying the New York Convention, it looks as though it will make certain reservations and limitations to its application in the DRC (although such reservations are not unusual). For example, arbitral awards rendered before the ratification of the New York Convention and decisions that are not related to commercial matters will not benefit from the procedure set forth in the New York Convention for their recognition and enforcement in the DRC. In addition, arbitral awards where the seat of the tribunal is located in a non-signatory country will not be recognised or executed in the DRC pursuant to the New York Convention enforcement regime.

In addition to the above, disputes between a foreign investor that is a national of a Member State of the International Centre for the Settling of Investment Disputes (ICSID) and the DRC can be resolved pursuant to ICSID arbitration. As there is no specific internal procedure for enforcement of ICSID arbitration awards, any awards rendered pursuant to ICSID arbitration will be enforceable in accordance with the exequatur procedures set out in domestic law.

Finally, as a result of the DRC's accession to OHADA, the parties can also choose to apply the arbitration procedures and rules set out in the OHADA Uniform Act on Arbitration (AUA) for disputes relating to claims arising after its entry into force. The AUA supersedes any existing national arbitration rules deemed to be incompatible.

12. Bilateral and multilateral treaties and agreements

The DRC has entered into investment promotion and reciprocal investment protection agreements with the following countries: South Africa, Switzerland, United States, France, Germany, Belgium, Italy, South Korea, South Africa, and China. Lebanon, the Ivory Coast, and Burkina Faso have negotiated BITs but they have not been signed yet.

In addition, the DRC has tax treaties with Belgium, South Africa and France (the treaty with France is limited to airspace transport).

13. International sanctions and US conflict minerals reporting requirements

International sanctions imposed on the DRC have been in force for more than a decade. In particular, the European Union (the "**EU**") maintains financial sanctions including asset freezing and related prohibitions against making funds or economic resources available, directly or indirectly, to or for the benefit of designated persons. For the purposes of the EU's financial sanctions, designated persons are primarily members of the paramilitary, rebel leaders or arms dealers. The EU also maintains an arms embargo (applying to items on the Common Military List of the European Union), including a ban on the provision of technical assistance or financing or financial assistance related to military activities, directly or indirectly to any non-governmental entity or person in the territory of the DRC.

The United States of America (the "**USA**") has also imposed financial sanctions, and an arms embargo on the DRC. The US sanctions are targeted at specific individuals and entities, including political or military figures determined to be involved in or to have supported armed conflicts and/or violations of international law in the DRC as well as individuals who have supplied arms or related material in violation of the United Nations arms embargo.

In addition, pursuant to Section 1502 of the Dodd-Frank Act, the Securities and Exchange Commission of the United States of America (the "**SEC**") has introduced new rules requiring the annual disclosure of the use of so-called "conflict minerals". These rules apply to entities which both (a) file reports with the SEC under Section 13(a) or 15(d) of the Securities Exchange Act and (b) use conflict minerals that are necessary to the functionality or production of a product manufactured or contracted by that entity to be manufactured. For these purposes, conflict minerals include columbite-tantalite (coltan), cassiterite, gold, wolframite and their derivatives tantalum, tin and tungsten.

In light of the measures referred to above, all entities and individuals in the EU and the USA, or otherwise subject to EU or SA laws, should seek advice prior to investing in the DRC, particularly in the natural resources sector.

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