

DR コンゴ 2018 年鉱業法

(英語仮訳)

2018 年 12 月
独立行政法人石油天然ガス・金属鉱物資源機構

はじめに

本レポートは、2018年3月に公示、同年5月に施行となったDRコンゴの2018年鉱業法を当機構が英語に仮訳したものである。当機構はこの英語訳の内容について、正確を期すよう最大限の努力をしているものの、この英語訳を利用したことによるいかなる損害に対しても責任を負いません。

また、本英語訳は、参照用のための仮訳であり、最終的な内容の確認、照会についてはその原文において行われるようお願い致します。仮に、本英語訳と原文との間で内容に齟齬があった場合には、原文が正しいものとします。原文については、DRコンゴ鉱山省ウェブページのURLを目次に記載してあるのでご参照ください。

本レポートが、DRコンゴでの鉱業投資の検討に際しお役に立てば幸いです。

平成30年12月
独立行政法人 石油天然ガス・金属鉱物資源機構
金属企画部調査課

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2018 年 DR コンゴ鉱業法（仏語原文）URL（平成 30 年 12 月現在）

[http://mines-rdc.cd/fr/wp-content/uploads/Code%20minier/J.O. n%C2%B0spe%C3%ACcial du 28 mars 2018 CO DE MINIER%20DE%20LA%20RDC.PDF](http://mines-rdc.cd/fr/wp-content/uploads/Code%20minier/J.O._n%C2%B0spe%C3%ACcial_du_28_mars_2018_CO_DE_MINIER%20DE%20LA%20RDC.PDF)

LAW No. 007/2002 of JULY 11, 2002 RELATING TO THE MINING CODE

The Constituent and Legislative Assembly, Transition Parliament has adopted,

The President of the Republic enacts the law whose contents are as follows:

TITLE I: GENERAL

CHAPTER I: DEFINITION OF TERMS, SCOPE OF APPLICATION AND BASIC PRINCIPLES

Section I: Definition of terms

Article 1: Definitions and terms

Under the terms of the present Code, the following definitions are used:

1. Purchaser:

Any authorized employee of a trading house, of a processing entity of gold, diamond or other mineral substances extracted by artisanal mining methods, who carries out his activities in accordance with the provisions of the present Code;

1 ter ACE, Agence Congolaise de l'Environnement [Congolese Environmental Agency]¹:

Public technical and scientific establishment which was created by decree no. 14/030 of 18 November 2014 pursuant to the law on the fundamental principles regarding the protection of the environment, and which exercises over the entire national territory the evaluation and approval of all environmental and social studies and the monitoring of the implementation thereof, and which ensures that environmental protection is taken into account when mining projects are executed;

2. Mining activities²:

All services, supplies or works related to the mining sector which are directly connected with exploration, mine exploitation and the processing and/or transformation of mineral substances, including development, construction and infrastructure works;

3. Mines Authority:

All the departments, divisions and other public mining and quarry services;

¹ [Note to draft: The new law does not include a 1 bis. Probable typo in amending law.]

² [Note to draft: I have changed the term used for this definition from the original term of "Exploration and Exploitation Activities" as such term was never used. It also tracks the French version more closely.]

3 bis. Protected area:

A clearly defined, recognized and dedicated geographical area that is managed by any effective means, legal or otherwise, for the purposes of ensuring long-term conservation of nature, ecosystem services and the cultural values relating thereto, in accordance with article 2.1 of law no. 14/2003 of 11 February 2014 relating to nature conservation;

4. Lease:

To rent for a fixed or indefinite period, without right to sublet, all or part of the rights relating to a mining right or quarry authorization in return for a payment agreed to by the lessor and the lessee;

5. Rightful holder³:

Any individual of Congolese nationality enjoying surface rights pursuant to customary law or any natural or legal person occupying the soil by virtue a land title;

5 bis. Signing bonus:

Non-reimbursable compensation required by the offeror, the State, and accepted by the candidate in respect of the access rights at the time of the invitation to tender in respect of a studied, documented or worked mine belonging to the State and paid to the Public Treasury;

5 quarter. Quadrangle⁴:

A minimum cadastral unit that may be granted, which is indivisible in nature and delineated by the meridians and parallels of the registry survey map coordinates system, having a surface area of 84.95 Ha;

6. Quarry:

Any deposit of mineral substances classified as quarries suitable for open cast mining and/or any plant for the processing of products relating to such exploitation located within the Perimeter of the quarry to transform them into products for sale, including installations, equipment and fixtures used in the exploitation process.

7. Artisanal exploitation card:

Document pursuant to which an artisanal operator carries out artisanal exploitation;

³ [Note to draft: Original paragraph 5 of law no. 007/2002 of 11 July 2002 (definition of “Prospecting Certificate”) repealed by article 31 of law no. 18/001 of 09 March 2018.]

⁴ [Note to draft: The new law does not include a 5 *ter*. Probable typo in amending law.]

8. Trader's card:

Document issued pursuant to the provisions of the present Code, which authorizes the person in whose name it is issued to carry out purchase transactions with authorized mining cooperatives over mineral substances originating from artisanal exploitation and to resell these substances to authorized trading houses and to processing entities;

9. Registry survey map:

An official topographical map indicating the limits of each mine or quarry Perimeter in force or those whose application is being processed, kept up to date for each province and zone by the Mining Registry pursuant to the provisions of Chapter II of Title I of the present Code;

9 bis. CEEC, *Centre d'Expertise, d'Evaluation et de Certification* [Center for Expert Assessments, Evaluation and Certification]:

Public establishment of a technical nature governed by the law on public establishments and having as its purpose the expert assessment, evaluation and certification of precious and semi-precious mineral substances and colored stones, precious and semi-precious metals, rare metals and mineral substances produced by artisanal exploitation;

9 ter. Environmental certificate:

Administrative document issued by the *Agence Congolaise de l'Environnement* after an environmental and social examination certifying that the execution of the project and the exploitation of the structures comply with environmental and social safeguard principles;

9 quater. Certification:

The group of mechanisms, procedures and processes seeking to establish the nature, physical and/or chemical characteristics, the origin and legal and lawful provenance of mineral substances, in accordance with national, regional and international standards in this domain, taking into account both the tracking and traceability of mineral substances throughout the entire supply chain;

9 quinquies. Local community:

Population that is traditionally organized on the basis of customs and unified by clan or kinship connections of solidarity that form the basis of its internal cohesion. It is characterized by, among other things, its attachment to the territory of the mining project;

10. Authorized Trader:

Any person authorized to purchase mineral substances extracted by artisanal mining methods from traders or artisanal miners, for the purpose of reselling

them locally or exporting them in accordance with the provisions of the present Code;

10 bis. Taxpayer

Holder of an exploration or exploitation mining right, a permanent quarry exploitation authorization as well as a sub-contractor that has been previously approved in accordance with the law on subcontracting;

10 ter. Mining cooperative:

Cooperative company governed by the Uniform Act of 15 December 2010 relating to the law on cooperative companies grouping together artisanal operators, accredited by the minister, and engaged in artisanal exploitation of mineral substances or quarry products within an artisanal exploitation zone;

11. Date of commencement of effective exploitation:

Date of delivery of the first load of products for sale regardless of the nature of the commercial sale, with the exception of samples sent abroad for analysis and assays;

12. Diversion of ores:

Any change in the destination of mineral substances which belong to third parties, by any means of transportation whatsoever;

13. Development and Construction:

Any activity by means of which a person carries out, via land development works, construction of infrastructure, setting up and testing of equipment, the development of its mining or quarry exploitation project in order to ensure its commercial viability.

14. Mining Rights:

Any right to carry out exploration and/or exploitation of mineral substances classified as mines pursuant to the provisions of the present Code. Exploration Permits, Exploitation Permits, Tailings Processing Permits and Small-scale Mining Exploitation Permits are mining rights.

15. Quarry Rights:

Any right to carry out exploration and/or exploitation of mineral substances classified as quarries pursuant to the provisions of the present Code. The Exploration Permit of Quarry Products, the Temporary Quarry Exploitation Authorization and the Permanent Quarry Exploitation Authorization are quarry rights;

16. Processing entity:

Any economic entity constituted in the form of an individual enterprise, a commercial company or a mining cooperative that, through mineralogical and/or metallurgical processes, obtains from ore marketable mineral products in the form of a concentrate or a refined metal;

17. Transformation entity:

Any economic entity constituted in the form of an individual enterprise, a commercial company or a mining cooperative that, through industrial processes, changes the form and the nature of the concentrate or refined metal and obtains therefrom marketable finished or semi-finished products;

18. State:

The Central Government, the Province, and the Decentralized Territorial Entity;

18 bis. Feasibility study:

A detailed report demonstrating the feasibility of the commissioning of a deposit discovered within the mining perimeter covered by exploration rights and describing the planned program for such commissioning, which must notably include:

- a. an assessment of the exploitable reserves, in accordance with internationally accepted standards;
- b. the choice of method of exploitation and the justification therefor;
- c. the choice of treatment process and the justification therefor, on the basis of the results from the processing tests;
- d. the construction schedule for the principal production facilities and ancillary infrastructure;
- e. the provisional operating statement, accompanied by details on operating expenses;
- f. the total investment cost, including the cost of capital to be outlaid in order to acquire and install all of the necessary production machinery, equipment and ancillary infrastructure;
- g. the specifications of the products to be produced and all intermediary products;
- h. the sequential program of exploitation operations in view of production objectives;
- i. the marketing plan with respect to the products and the related expenses;

- j. the fixed schedule for commencing commercial production, taking into account test periods.

19. Environmental and Social Impact Study, acronym ESIS:

Systematic process of identifying, forecasting, evaluating and reducing the physical, ecological, aesthetic and social effects preceding the development, structural, equipment or facility projects or the installation of a mining operation, permanent quarry, or processing entity, which allows the direct and indirect consequences thereof on the environment to be assessed;

19 bis. Artisanal operator:

Any individual of Congolese nationality having reached the age of majority who holds a valid artisanal exploitation card and who is a member of a mining cooperative who engages in artisanal mining for mineral substances within an artisanal exploitation zone;

20. Exploitation:

Any activity by means of which a legal person carries out, from an identified deposit, and by means of surface and/or underground works, extraction of mineral substances from a deposit or a non-naturally occurring deposit and, if applicable, processing thereof in order to use them or sell them;

21. Artisanal Exploitation:

Any activity by means of which an artisanal operator carries out within an artisanal exploitation area extraction and concentration of mineral substances using artisanal tools, methods and processes, in accordance with the provisions of the present Code;

22. Small-scale mining exploitation or small mine exploitation:

Any activity by means of which a legal person carries out permanent small-scale exploitation, requiring a minimum amount of fixed installations, by using semi-industrial or industrial processes, after a deposit has been found;

23. Tailings Exploitation:

Any activity by means of which a third party, a legal entity, extracts substances from a non-naturally occurring deposit, in order to process them and use them or sell them;

23 bis. Extinction of a mining right or quarry right:

End of the validity of a mining right or of a quarry right due to lapse, cancellation, withdrawal, renunciation or expiration of the right, in accordance with the provisions of the present Code.

24[sic]⁵. Category 1A classified facility:

Fixed or mobile source subject to authorization, irrespective of its owner or usage, that is liable to cause nuisances and compromise the environment, notably to soil, sub-soil, water and forest resources and to the air.

24. Deposit:

Any naturally- occurring mineral deposit which can be exploited at a profit under the economic conditions of the time.]

25. Artificial deposit:

Any non-naturally occurring deposit which can be exploited at a profit under the economic conditions of the time.

26. Artificial Substances:

Any artificial concentration of mineral substances on surface deriving from the mine and/or tailing exploitation resulting from mineralogical or metallurgical processing;

27. Geothermal deposit:

All naturally-occurring minerals classified at high or low temperature, from which energy can be obtained in thermal form, especially by means of the underground hot water and steam they contain;

28. Mineral Deposit:

Any abnormal and naturally- occurring concentration of mineral substances on surface or deep in the earth's crust;

28 bis. Law relating to the protection of the environment:

Law no. 11/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment;

28 ter. Law relating to public establishments:

Law no 08/009 of 07 July 2008 containing general provisions applicable to public establishments;

28 quater: Standard construction materials:

⁵ [Note to draft: Unclear if the definition of "Deposit" is meant to be deleted and replaced by the new para. 24 (definition of Category 1A classified facility"), or whether the definition of "Category 1A classified facility" is mis-numbered (e.g., should have been 24 bis) To be verified with HSF.]

All low-value non-metallic mineral substances, classified as quarries and used in the construction industry as ordinary, non-decorative materials, extensively exploited on a small scale, as listed by regulation;

28 *quinquies*. Base metals:

Metals that oxidize, blacken or corrode relatively easily when exposed to air or humidity. These include copper, tin, aluminum, nickel, zinc, and lead. Due to their natural abundance in the earth's crust, base metals have much lower prices than precious metals such as gold, rhodium, platinum, palladium and silver;

28 *sexies*. Ferrous metals:

Carbon steel and special steel (other than iron and cast-iron);

28 *septies*. Non-ferrous metals:

Base metals to which certain rare and semi-precious metals may be added, such as titanium, cobalt, vanadium and molybdenum. These metals are used in alloys made up of very little to no iron.

29. Mine:

Any deposit which can be exploited by means of open cast or underground mining that includes a plant for the processing or transformation of the products arising from such exploitation located within the perimeter of the mine, including the installations, movable equipment and fixtures used in the exploitation process.

29 *bis*. Separate mine:

A mine that is separate from another existing mine and therefore a new mine, which is the subject of a new mining exploitation right or a lease agreement, to the extent that it relates to a separate deposit requiring separate exploitation methods and processing processes and means of production that are clearly individualized, or due to its remoteness or exploitation conditions, require the creation of distinct mining facilities;

30. Ore:

Any rock containing one or more minerals made up of one or more chemical elements with economic value;

30 *bis*. Radioactive ore:

Any rock containing one or more radioactive minerals made up of one or more chemical elements with economic value;

31. Mineral:

Set of chemical elements forming a naturally-occurring substance, simple or complex, inorganic or organic, generally in a solid state, and in a few exceptional cases, in a liquid or gaseous state;

31 bis. Industrial minerals:

Substances and minerals, for the most part non-metallic, found in varying degrees of concentration in various types of natural rock and which are used as basic or additional raw materials in the manufacturing process in numerous industrial sectors. These are essentially clays, silica, kaolin, quartz, gypsum, talc, mica, feldspar and andalusite;

32. Minister:

The minister of the Government in charge of Mines and Quarries;

32 bis. Minister of Finances:

The Minister of the Government in charge of Finances;

32 ter. Minister of the Environment:

The Minister of the Government in charge of the Environment;

32 quater. Minister of the Province:

The Minister of the provincial government in charge of mines and quarries.

33. Trader:

Any individual of Congolese nationality having reached the age of majority and that holds a trader's card issued in accordance with the provisions of the present Code.

34. Non-resident:

A person who is not a resident of or domiciled in the Democratic Republic of the Congo;

35. Mining operation:

Any exploration and/or exploitation of mineral substances;

36. Public entity in charge of the valuation:⁶

⁶ [Note to draft: Unclear if the definition of "Public entity in charge of the valuation" is meant to be deleted and replaced by the new para. 36 (definition of "Entity specialized in exploration"), or whether the definition of "Entity specialized in exploration" is mis-numbered (e.g., should have been 36 bis, with following subparagraphs re-numbered accordingly. Note, however, that "public entity in charge of valuation is not used in the original version nor the amended version. To confirm with HSF.]

The technical service of the public administration, administrative and financially autonomous, which carries out the valuation of precious and semi-precious mineral substances.]

36. Entity specialized in exploration:

A public entity that is under the responsibility of the minister, created by decree of the Prime Minister in view of carrying out investigations of the soil or sub-soil for the purpose of improving geographical knowledge about the national territory or provinces for scientific purposes or the improvement and promotion of geological information;

36 bis. Pas de porte:

Non-refundable tax paid to the State in the context of an invitation to tender as compensation for efforts initially granted or furnished by the State or a mining company from the State's portfolio to discover a deposit considered as being studied, documented and worked, or a deposit taken over by the State after the extinction of an exploitation mining right, in accordance with the provisions of the present Code;

37. Perimeter:

An area demarcated on surface and of indefinite depth relating to a mining or quarry right.

38. Precious stones:

Precious mineral substances consisting of one or more chemical elements and possessing special properties which thereby give them high market value. These are: diamond, emerald, ruby, sapphire, chrysoberyl, and topaz;]

39. Person:

An individual or a legal entity;

39 bis. Precious stones⁷:

Precious mineral substances consisting of one or more chemical elements and possessing special properties which thereby give them high market value. These include: diamond, emerald, ruby, sapphire, chrysoberyl, topaz, andesine, tanzanite, corundum, tourmaline and any other jeweler's stone of comparable value generally traded in carats;

40. Mitigation and Rehabilitation Plan, acronym MRP:

⁷ [Note to draft: Unclear if the definition of "Precious Stones" (para. 38) is meant to be deleted and replaced by the new para. 39 bis (definition of "Entity specialized in exploration"), or whether the definition of "Precious Stones" in 38 should have simply been amended as set out in 39 bis (last paragraph). Likely the latter. To be confirmed by HFS.]

Plan required for the operations relating to a mineral or quarry exploration right or a Temporary Quarry Exploitation pursuant to which a holder undertakes to carry out certain mitigation measures of the impact of its activities on the environment, as well as rehabilitation measures where said activities take place, including the holder's undertaking to provide a financial guarantee to cover or guarantee the mitigation and rehabilitation costs of the environment;

41. Environmental and Social Management Plan, acronym ESMP:

Environmental specifications of the mining project consisting of a program for the implementation and monitoring of measures contained in the ESIS in order to eliminate, reduce and possibly offset the damaging consequences of the mining project on the environment;

41 bis. Full competition:

Principle according to which the prices applied for transactions between affiliated companies or any other agreed terms that apply to such transactions must be established with reference to the prices applied on the market by independent companies;

42. Product for sale:

Any marketable mineral substance legally extracted in an artisanal manner, semi-industrially or industrially, and any product processed in a concentration plant, metallurgic extraction plant or processing plant, in accordance with the nomenclature issued by the competent authority;

42 bis. Radioactive products:

Any product arising from the processing and/or transformation of radioactive substances;

42 ter. Project or mining project:

Any project established by the holder covering one or more or quarry activities in view of exploring or exploiting a deposit and the sale of products for sale.

42 quarter. Mining exploitation project:

Project established by the holder of a mining exploitation permit covering the exploitation of one or more mines located within the same mining perimeter or within the perimeter of a separate mine;

42 quinquies. Exploration mining project:

Any project established by the holder of one or more exploration mining rights covering the exploration for one or more mineral substances;

43. Prospecting

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

44. Exploration:

Any activity pursuant to which the holder of a mineral or quarry exploration right attempts, based on indications of the existence of a mineral deposit, and by means of surface or underground works, in particular using geological, geophysical and geochemical techniques, including various methods such as remote sensing, to identify the existence of a mineral deposit, to demarcate it, and to evaluate the quality and quantity of the reserves, as well as the technical and commercial possibilities of exploiting them;

44 bis. Ionizing radiation:

Radiation capable of producing ion pairs in biological matter;

45. Mining Regulations:

Set of measures implementing the provisions of the present Code, enacted by Decree of the Prime Minister debated within the Council of Ministers;

46. Mine Tailings:

The sterile or material rejected from the mining exploitation or any solid or liquid residue deriving from mineralurgical or metallurgical processing.

46 bis. Applicant:

Any person seeking the receipt of a mining or quarry permit.

46 ter. Service d'Assistance et d'Encadrement de l'Exploitation Minière à petite Echelle, or SAEMAPE [Small-Sale Mining Exploitation Assistance Unit]

Public service of a technical nature that has administrative and financial independence, the purpose of which is assisting and supervising small-scale artisanal exploitation of mineral substances;

47. Affiliated Company:

Any company which directly or indirectly holds more than 50% of the holder's voting rights or one in which the voting rights are directly or indirectly held by the holder. This term also includes all companies which have the common trait of having more than 50% of their voting rights directly or indirectly held by a company which holds that percentage of the holder, directly or indirectly.

48. Sub-contractor:

Any legal person governed by Congolese law having Congolese capital supplying equipment or carrying out works and/or providing relevant services on behalf of the holder within the context of its mining activities pursuant to its mining title and, in particular, including the construction of industrial, administrative, socio-cultural and other types of infrastructure necessary for the project, as well as all other services directly related to the mining project.

48 bis. Radioactive substance:

Any substance or matter containing unstable radioactive atoms that issue ionizing radiation when they disintegrate;

48 ter. Reserved substances:

Any mineral substance that, for requirements connected with the need to ensure national security and/or the security of the population, is declared as such in accordance with the provisions of the present Code, notably radioactive substances;

48 quater. Strategic substance:

Any mineral substances that, depending on the international economic climate at the time, is especially relevant, in the view of the Government, in view of the critical nature and the geostrategic context;

49. Mineral substance:

Any naturally- occurring inert or artificial substance containing one or more minerals in amorphous or crystalline form, solid, liquid or gaseous, of economic value. Quarry products are mineral substances within the meaning set forth under the present Code.

49 bis. Super-profits or excess profits:

Additional profits beyond the actual and normal profitability rates, and due to particularly favorable market conditions;

49 ter. Levy:

Any debit other than taxes and customs duties collected either to the benefit of the Government, the province, the decentralized territorial entity or in favor of other public entities of all levels;

50. National Territory:

The soil, sub-soil and waters comprising, as of June 30, 1960, the territory of the Democratic Republic of the Congo within the limits as of August 1, 1885, as modified by subsequent conventions, its territorial waters demarcated

pursuant to Law No. 74-009 of July 10, 1974, its exclusive economic zone as well as its continental shelf.

51. Quarry Titles:

The official certificates issued by the Mining Registry in accordance with the provisions of the present Code which evidence the existence of Quarry Authorizations. The Certificates of Exploration of Quarry Products, the Certificates of Permanent Quarry Exploitation and the Certificates of Temporary Quarry Exploitation are quarry titles.

52. Mining Titles:

The official certificates issued by the Mining Registry in accordance with the provisions of the present Code which evidence the existence of mining rights. The Certificates of Exploration, the Certificates of Exploitation, the Certificates of Tailings Exploitation and the Certificates of Small-scale Mining Exploitation are mining titles.

53. Holder:

Any legal person in whose name a mining or quarry right is granted and a mining title or a quarry title is issued in accordance with the provisions of the present Code. Nevertheless, the lessee is considered a holder.

53 bis. Traceability.

Mechanism put in place to ensure the tracking of the stages of the mining production process and the corresponding financial flows, starting from the site of extraction of the mining products up until their export, including their holding, transport, sale, processing and/or transformation;

54. Processing:

Mineralogic and/or metallurgical process applied to ore extracted which leads to the obtaining of a mineral substance for sale.

54 bis. Transparency:

Set of rules, mechanisms, and practices rendering mandatory statements and publications by the State and extractive enterprises (in particular those in the mining industry) regarding revenues and payments of all kinds, including, notably, mining exploitation and transaction revenues, the publication of production and sales statistics, the publication of contracts and the disclosure of the actual owners of mining assets, as well as data on the allocation of resources coming from the mining sector. This term also covers compliance with the procedural obligations relating to the acquisition and transfer of mining rights;

55. Transformation:

Any industrial process which changes the form and nature of a processed mineral substance in order to obtain finished or semi-finished products for sale.

55 bis. Gross commercial value:

Value of product for sale at the time of its exit from extraction or treatment facilities for transport. This value is equal to the average price for of the product for sale on the international market during the preceding month of such exit or, failing this, any other reliable market index;

56. Artisanal Exploitation Area:

A geographical area, demarcated on surface and at depth by the Minister.

Article 2: Scope of application

The provisions of the present Code apply, in their entirety and as a whole, to mineral substance exploration operations, industrial, semi-industrial and artisanal exploitation operations, and to mineral substance processing, storage, holding, transportation, sale and exportation operations.

The activity of transforming mineral substances and extracted or processed quarry products carried out by person other than the holder of a mining or quarry exploitation right is governed by the law and general rules applicable to industry.

Excluded from the scope of application of the present Code are prospecting, exploration and exploitation of liquid or gaseous hydrocarbons, as well as the activities or operations relating to thermal or mineral waters, which are governed by the general legal regime applying to hydrocarbons or by special laws, as applicable.

Section II: Basic principles

Article 3: Ownership of the mineral substances

The deposits of mineral substances, including artificial deposits, underground water and geothermal deposits on surface or in the sub-soil or in water systems of the national territory, are the exclusive, inalienable and imprescriptible property of the State on the basis of its sovereignty over natural resources.

However, the holders of mining or quarry exploitation rights acquire the ownership of the products for sale by virtue of their rights.

The ownership of the deposits of mineral substances, including underground water and geothermal deposits referred to in paragraph 1 of the present article, constitute a right which is separate and distinct from the rights resulting from the surface area. In no way may a holder of surface rights avail himself of its title to claim any right of ownership whatsoever over the deposits of mineral substances, including the underground water and geothermal deposits which its concession may contain.

Article 4: Classification of mineral deposits

Mineral deposits are classified as mines or quarries.

The following are classified as mines: deposits of mineral substances not classified as quarries, other than liquid or gaseous fossil fuels.

The following are classified as quarries: deposits of non-metallic mineral substances, which can be used as building materials, as ballasting and road building materials, in the ceramics industry, to improve land cultivation, including, in particular: sand, chalk, gravel, limestone and cement, laterite, fullers earth, smectic clay, fossil resins and diatomites, with the exception of marble, granite, phosphates, nitrates, alkaline salts and other associated salts which are classified as mines in the same deposits.

Notwithstanding the above classification, the Prime Minister may decide, by decree debated by the Council of Ministers or on the proposal of the minister, and after having obtained the opinion of the entity specialized in exploration, if applicable, to classify, declassify or reclassify a mine substance as a quarry product and vice-versa.

Article 5: Authorization for mining and/or quarry operations

Any legal entity is permitted to engage in non-artisanal exploration or exploitation of mineral substances throughout the national territory, provided that the person in question is the holder of a valid mining and/or quarry right granted by the relevant government entity in accordance with the provisions of the present Code.

Any individual of Congolese nationality who has reached the age of majority, with the exception of pregnant women, who wishes to engage in the artisanal exploitation of mineral substances throughout the national territory may do so only through an authorized mining cooperative, in accordance with the provisions of the present Code, and for which membership is conditioned upon the possession of an artisanal exploitation card.

The following are authorized to sell mineral substances:

- holders of mining and/or quarry exploitation rights;
- processing entities;
- authorized trading houses;
- authorized mining cooperatives;
- traders.

Nevertheless, only holders of mining and/or quarry exploitation rights, processing entities and authorized trading houses may export.

A miner who holds an artisanal exploitation card may only sell products arising from artisanal mining through the mining cooperative of which he/she is a member.

Article 5 bis: Drillings, underground works, excavations, geophysical surveys, earthworks, public works

Any person holding mining or quarry rights who undertakes exploration work outside the perimeter covered by such right, and in particular drillings, underground works, excavations whatever the purpose with the exception of wells for domestic use, the depth of which exceeds ten meters is required to make a prior declaration to the Geology Directorate.

Without prejudice to the provisions of the present Code, any person wishing to carry out geophysical surveys or any geochemical prospecting campaigns shall make a prior declaration to the Geology Directorate and shall inform the Geology Directorate of the results of such surveys and campaigns, which shall be kept confidential pursuant to article 324 of the present Code.

Any person holding mining or quarry rights outside the perimeter covered by such rights who wishes to carry out earthworks, wherever the place or whatever the purpose, is required to request and obtain prior authorization for earthworks from the Geology Directorate prior to such work.

Public works shall be reported in advance to the Geology Directorate.

The competent agents of the Geology Directorate shall have open access to all drillings, underground works, excavation works, earthworks and public works organized by this article and may cause to be delivered to them all samples and cause to be provided to them all documents and information of a geological, geotechnical, hydrological, topographical, chemical or mining nature in compliance with the provisions of article 324 of the present Code.

The conditions and procedures relating to the declarations referred to in paragraphs 1, 2 and 4 of this article and to the request for authorization for earthworks referred to in paragraph 3 of this article are determined in the Mining Regulations.

Article 6: Prohibited areas⁸

If national security, public safety, the incompatibility of mining and quarry activities with other existing or planned uses of the soil or sub-soil, the protection of the environment or the preservation of tourist sites so require, the Prime Minister may - on the proposal of the minister and of the ministers responsible for Regional Planning, the Environment and Tourism, respectively, or of the Governor of the Province, after having obtained the opinion of the Mining Registry and the entity specialized in exploration - declare an area to be off-limits for mining activities and/or quarry works.

The declaration of classification of an area as a prohibited area is made without a fixed term by decree debated by the Council of Ministers.

Where the conservation of fauna, flora, soil, water and, in general, of a sensitive environment is of special interest and requires that they be protected from any intervention likely to alter their appearance, composition and development, the Prime Minister may, by decree debated by the Council of Ministers, upon a joint proposal of

⁸ [Note to draft: The amendments refer to amendments to paras. 1-5, while the original law contains only four paras. Confirm that amendments have been accurately reflected.]

the minister and the ministers responsible for the Environment, Nature Conservation, and Tourism, demarcate a portion of the national territory as a protected area after having obtained the opinion of the Mining Registry and the entity specialized in exploration.

The decree demarcating the protected areas may determine their duration.

No mining or quarry rights may be granted in a protected area, nor may an artisanal exploitation zone be erected there.

Article 7: Reserved substances

If public safety so requires, the Prime Minister may, by decree debated by the Council of Ministers, on the proposal of the minister and after having obtained the opinion of the Mining Registry and the entity specialized in exploration, declare a mineral substance to be a reserved substance which he subjects to special rules.

The decree classifying a mineral substance as a reserved substance, shall specify the rules and provisions to which such substance is subject.

Uranium and thorium ores and, in general, all radioactive ores are governed by rules applicable to reserved substances referred to in the preceding paragraphs of the present article.

Article 7 bis: Strategic mineral substances

If the national or international economic situation so permits, the Prime Minister may, by decree debated by the Council of Ministers and on the advice of the concerned sectoral ministers, declare certain mineral substances to be strategic substances.

The access to, exploration, exploitation and sale of strategic substances are governed by specific regulatory provisions.

Article 7 ter: Transparency, traceability and certification

Specific legal or regulatory measures shall be enacted in accordance with national, regional and international standards regarding transparency in the mining industry, traceability and certification of mineral substances, and in particular the disclosure and publication of contracts and of the actual beneficiaries of mining assets and the declarations of all taxes, levies, duties and royalties due and paid to the State.

Article 7 quater: Publication

Mining contracts, their schedules and their amendments shall be published in the Official Gazette and on the website of the ministry of mines within 60 days of their signature date.

CHAPTER II: THE ROLE OF THE STATE AND THE DISTRIBUTION OF JURISDICTION

Section I: The role of the State

Article 8: The promotion and the regulation of the mining sector

The State's principal role is to promote and regulate the development of the mining sector.

The State will ensure the development of the mineral substances it owns by resorting, in particular, to the private sector in accordance with the provisions of the present Code.

For this purpose, the State may, through expert organizations set up for that purpose, carry out exploration activities of the soil or sub-soil with the purpose of improving the geological knowledge of the national territory, or for scientific purposes or for the improvement and the promotion of geological information about the country or the province which do not require a mining or quarry right to be obtained.

Article 8 bis. The mining fund for future generations

A mining fund is created for future generations. The resources of the mining fund for future generations are funded through a share of mining royalties.

A decree of the Prime Minister, debated in the Council of Ministers, creates and organizes the mining fund for future generations.

Section II: The competence of the central government

Article 9: The Prime Minister

Pursuant to the provisions of the present Code and other relevant texts, the Prime Minister has the competence to:

- a. enact or modify of the Mining Regulations in order to implement the present Code;
- b. classify, declassify or reclassify mineral substances as mines or as quarry products, or vice-versa.
- c. Confirm the reservation of a deposit which is subject to a call for tenders pursuant to a ministerial decree;
- d. declare a mineral substance as being a strategic mineral substance;
- e. declare an area as an area in which mining works, mining activities or quarry works are prohibited;
- f. declare the classification or declassification of a mineral substance as a reserved substance;
- g. reserve or classify a portion of the territory as a protected area.

The Prime Minister shall exercise the above powers by way of decree, debated by the Council of Ministers on the proposal of the minister and, where appropriate, the relevant ministers.

The exercise of the powers conferred on the Prime Minister under subparagraph a of the first paragraph of the present article cannot be delegated.

Article 10: The minister

Pursuant to the provisions of the present Code and other relevant texts, the minister has jurisdiction over:

- a. the granting or refusal of mining and/or quarry rights for mineral substances other than standard construction materials;
- b. the forfeiture of a holder, cancellation of mining and/or quarry rights, the acknowledgement of the declarations of relinquishments of mining and/or quarry rights and the certification of the expiry of mining and/or quarry rights, in accordance with the provisions of the present Code;
- c. the authorization, by derogation, of the export of unprocessed ores by inter-ministerial order debated by the Council of Ministers;
- d. the creation of artisanal exploitation zones;
- e. the granting and withdrawal of approval for authorized traders for the purchase of artisanal exploitation products, mining cooperative products, or the products of quarries and mineral substance processing entities;
- f. the authorization of the extension of exploitation works;
- g. the approval of mining mortgages;
- h. the supervision of specialized public services belonging to the ministry of mines;
- i. the reservation of deposits to be submitted for tender, to be confirmed by the Prime Minister;
- j. the acceptance or refusal of the extension of a mining or quarry right to non-associated substances;
- k. the issuing of authorizations for the processing of artisanal exploitation products;
- l. proposing to the Prime Minister the classification, reclassification or declassification of reserved substances, mineral substances classified as mines or quarry products and vice-versa, as well as Prohibited Areas.
- m. the appointment, upon the proposal of the sectorial ministers concerned, of the members of the Inter-ministerial Committee in charge of selecting the bids for the exploitation of a deposit subject to tender, as well as the members of the Inter-

ministerial Committee in charge of examining the lists of items to be imported for mining activities;

- n. the approval of mine and quarry agents; the accreditation of mineral substance analysis laboratories;
- o. the accreditation of geological survey offices;
- p. the approval or refusal of transfers of mining rights;
- q. the enactment (in collaboration with the ministers responsible for the economy and foreign trade) of the nomenclature of marketable products;
- r. deciding on the results of environmental audits jointly with the minister responsible for the environment;
- s. the approval (jointly with the minister in charge of finance) of the lists of assets to be imported under the preferential customs regime;
- t. fixing, jointly with the minister in charge of finance, the rates of the duties, levies and royalties to be collected on the initiative of the minister in charge of mines.

Article 10 bis: The Mines Authority

The Mines Authority comprises the Secretary General, the directorates, divisions and other administrative entities of the ministry of mines, including those involved in the administration of the Mining Code and all its implementing measures. They are governed in accordance with the applicable legal and regulatory texts relating to the public administration.

The technical directorates involved in the process of granting mining and/or quarry rights are:

- the Geology Directorate;
- the Directorate of Mines;
- the Directorate for the Protection of the Mining Environment.

The Mining Regulations define the responsibilities of each of the departments of the Mines Authority.

Section III: Provincial Jurisdiction

Article 11: The Governor of the Province

Without prejudice to the prerogatives recognized as belonging to the Governor of the Province, and notably the law on the free administration of the provinces and other laws on the subject, the Governor of the Province, in accordance with the provisions of the present Code, has jurisdiction over:

- a. developing and proposing to the provincial assembly, in accordance with the general national planning standards, the provincial policy relating to mining, mineralogical, industrial and energy programs of provincial interest;
- b. supervising the provincial government's enforcement of edicts relating to the provincial policy on mining, mineralogical, industrial and energy programs of provincial interest;
- c. proposing the creation of areas that are off-limits to mining activities;
- d. issuing an opinion when an area for artisanal exploitation is established.

The Mining Regulations set the general national planning standards in respect of mining and set the general framework of mining, mineralogical, industrial and energy programs of provincial interest.

Article 11 bis: The Minister of the Province

In accordance with the provisions of the present Code and without prejudice to the provisions of the law on the free administration of the provinces, the minister of the province, after notice of compliance from the head of the provincial mining division, has jurisdiction over:

- a. carrying out, under the supervision of the Governor of the Province and, as appropriate, in consultation with other provincial ministerial departments that are involved, the edicts relating to provincial policy in respect of mining, mineralogical, industrial and energy programs of provincial interest;
- b. issuing artisanal exploitation cards;
- c. issuing trader's cards for products of artisanal exploitation;
- d. authorizing the possession of mining products by jewelers, artists and dentists;
- e. supervising, in harmony with the technical services of the ministry of mines and establishments under the supervision of the minister, the activities of the departments of the ministry of mines located in the provinces;
- f. issuing a receipt to the holder of a mining or quarry right prior to the commencement of its activities in the province, in accordance with the provisions of article 215 of the present Code;
- g. granting artists accredited by the ministry in charge of culture and the arts the special authorization referred to in article 115 of the present Code;
- h. granting authorizations for exploration for quarry products and the authorizations for quarry exploitation for standard construction materials;
- i. deciding on the opening of quarries for public works on public lands.

The Mining Regulations set out the procedures for the issuance of artisanal exploitation cards and trader's cards, as well as the rules for collaboration between the technical services of the ministry in charge of mines and establishments under the supervision of the minister.

Article 11 *ter*: The Head of the Provincial Mining Division

In accordance with the provisions of the present Code and without prejudice to other prerogatives assigned to the Head of the Provincial Mining Division by the organic framework of the ministry of mines, the Head of the Provincial Mining Division has jurisdiction over:

- a. the control and supervision of mining activities in the province;
- b. receiving applications for the approval of mining cooperatives sent to the minister;
- c. the issuance of notices of compliance prior to decisions and acts of the minister of the province relating to the administration of the provisions of the present Code.

Section IV: Specialized Technical Services

Article 12: The Mining Registry

The Mining Registry is a public establishment in charge of the management of the mining industry and of mining and quarry titles and is placed under the supervision of the minister.

In order to cover its operating costs, the mining registry is authorized to collect and administer the costs of filing applications and a portion of the annual surface duties for each quadrangle.

A decree of the Prime Minister, debated by the Council of Ministers, determines its articles of association, organization and operation in accordance with the present Code and law no. 08/008 of 7 July 2008 on general provisions applicable to public establishments.

Article 12 *bis*: Entity specialized in exploration

A decree of the Prime Minister shall establish a specialized body in charge of exploration in the mining industry.

The decree shall determine the body's organization and operation.

Article 13: The Geology Directorate

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 14: Directorate of Mines

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 15: Department in charge of Protection of the Mining Environment

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 16: Restriction of Authority

Without prejudice to the provisions of article 46 of the present Code and the provisions of the Mining Regulations, apart from ministries in charge of mines, the environment and finance, the provincial governments, the public entities that depend on or are under their supervision, as well as State bodies expressly referred to in the Code or the Mining Regulations, no other public or government department or entity has the authority to apply the provisions of the present Code nor to act directly in the mining sector.

Article 16 bis: Training

The Government defines and implements employment and training policies for nationals in the mining sector.

The Mining Regulations shall establish the terms and conditions for the application of the present article.

CHAPTER III: PROSPECTING

Article 17: Access to Mineral Prospecting

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 18: Prospecting Certificates

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 19: Prospecting Activity

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 20: Conditions for Prospecting

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 21: Samples

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 22: Prospecting for quarry products

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

TITLE II: COMMON PROVISIONS

CHAPTER I: ELIGIBILITY

Article 23: Eligibility to obtain mining and quarry rights

Without prejudice to the provisions of article 27 below, the following are eligible for mining or quarry rights:

- a. any legal entity incorporated pursuant to Congolese law and which has its registered administrative office in the national territory and whose sole corporate purpose is mining activities.
- b. any legal entity incorporated pursuant to foreign law whose sole corporate purpose is mining activities and which complies with the laws of the Republic;
- c. any entity carrying out scientific activities;

The eligible persons under item b) of the present article are required to elect domicile with an authorized mining and quarry agent located in the National Territory, and to act through its intermediary.

The legal entities incorporated pursuant to foreign law and the entities carrying out scientific activities referred to under items b) and c) of the present article are only eligible for mineral and/or quarry prospecting rights.

Article 23 bis: Access to the exercise of mining and quarry rights

Legal entities wishing to invest in the mining sector are required to provide the following documents:

- a. a valid tax certificate or its equivalent issued by the competent institution of the applicant's country of origin;
- b. a valid certificate of good character and conduct and a valid criminal record excerpt regarding the legal entity's shareholders issued by the competent authorities of the country of origin;
- c. a written undertaking to declare in the Democratic Republic of Congo realized profits and revenues.

Article 24: Election of domicile

The election of domicile referred to in the preceding article must be expressly made and can only be done in writing.

All notifications, applications and actions for the execution of an instrument for which the domicile has been elected, are validly made at this domicile.

Article 25: Authorized mining and quarry agents

The mining and quarry agents are approved in advance by the Ministry for their integrity, ethics, competence and in-depth knowledge of the mining legislation or the management of mines or quarries.

In addition to the role of representation, the authorized mining and quarry agents also advise and/or assist any person interested in the granting and the exercise of mining and quarry rights as well as litigious matters relating thereto.

The Mines Authority keeps and publishes the list of the authorized agents and updates it every year.

The Mining Regulations set forth the conditions for approving the authorized mining and quarry agents.

Article 26: Eligibility for artisanal mining

Without prejudice to the provisions of article 27 below, only individuals of Congolese nationality who have reached the age of majority and who hold artisanal exploitation cards and are affiliated with authorized mining or quarry products cooperatives are eligible for artisanal exploitation.

Without prejudice to the provisions of article 27 below, only individuals of age who are Congolese nationals may obtain and hold traders' cards.

In strict compliance with the provisions of article 27 of the present Code, the following are eligible as authorized traders for mineral substances from artisanal mining:

- a. Any individual of age who is a Congolese national;
- b. Any individual of age and who is a foreign national and has a domicile in the National Territory;
- c. Any legal entity incorporated pursuant to Congolese law which has its administrative registered office in the National Territory and whose corporate purpose is the purchase and sale of mineral substances from artisanal mining.

Article 27: Non-eligible persons

The following are not eligible to apply for and obtain artisanal exploitation cards, trader's cards, approval as a mining or quarry products cooperative, as well as the approval as authorized traders for mineral substances from artisanal mining:

- a. government employees and civil servants, magistrates, members of the Armed Forces, National Police and Security Services officers, the employees of public entities that are authorized to carry out mining activities.

However, this incompatibility does not affect their ability to participate in the capital of mining companies;

- b. Any individual who does not have legal capacity as set forth in article 215 of law No. 87-010 of 01 August 1987, the Family Law Code, as amended to date;
- c. Any person who is legally excluded, in particular:
 - a person condemned by a valid non-appealable judgment for violations of the mining and quarry laws or those related to the economic activities concerning its mining or quarry rights and its affiliated companies, for a period of ten years;
 - the person whose artisanal exploitation or traders' card has been cancelled, for a period of 3 years;
 - The person whose approval to act as an authorized trader for the purchase and sale of mineral substances from artisanal mining has been withdrawn, for a period of five years.

Article 27 bis: Challenging eligibility for mining and quarry rights

The eligibility of the holder of a mining or quarry right may only be challenged and result in the cancellation of such right by the courts in accordance with the preceding article of this Code, at the behest of the Mining Registry, an officer of the public prosecutor or any injured third party, within three months following the publication of this law in the Official Gazette or, failing that, within three months following the date of becoming aware of its existence.

After the three-month period referred to in the preceding paragraph of this article, on the initiative of the Mining Registry, an officer of the public prosecutor or any injured third party, the ineligibility of the holder may be established by a final unappealable court decision which is reported to the Mining Registry by an officer of the public prosecutor, the judge or any injured third party. In such a case, the Mining Registry shall prepare and send to the granting authority within ten days following this notification a draft order withdrawing said right with retroactive effect to the date eligibility is lost.

CHAPTER II: MINING AND QUARRY PERIMETERS

Article 28: Form of the mining and quarry Perimeters

Mining or quarry rights are granted for mineral substances situated inside the Perimeter.

The perimeter is in the form of a polygon consisting of entire contiguous quadrangles subject to the limits relating to the borders of the national territory and those relating to prohibited areas and protected areas as set forth in the Mining Regulations.

The Perimeter does not include quadrangles which are not part of the Perimeter which relates to the mining or quarry rights.

Article 29: Location of the mining and quarry Perimeters

The geographical location of the Perimeter is identified by the coordinates at the center of each quadrangle which make up the Perimeter.

The Perimeters are indicated on maps with a scale of 1/200,000 which are kept by the Mining Registry.

The Mining Regulations set forth the conditions for the mining registry (cadastral) grid, as well as the rules governing the identification of the mining and quarry Perimeters.

Article 30: Overlapping of mining and quarry Perimeters

The Perimeters of the mining and quarry rights, as well as the artisanal exploitation areas are exclusive. They may not overlap with one another, except in the following circumstances:

- a. the Perimeter of a mineral exploration right may overlap with the Perimeter of a quarry exploration right or a temporary quarry exploitation right;
- b. the perimeter of a mining exploitation right may overlap with the perimeter of a quarry exploration right or a temporary quarry exploitation right. The right over the part of the perimeter of an exploration permit of quarry products with which the perimeter of a mining exploitation right overlaps is extinguished with fair compensation;
- c. the perimeter of an exploration permit of quarry products may overlap with the perimeter of a mineral exploration right with the consent of the holder of the exploration permit;
- d. the perimeter of an authorization for quarry exploitation may overlap with the perimeter of a mineral exploration right or, with the consent of the holder, over a part of the perimeter of an exploitation permit.
- e. the perimeter of an artisanal exploitation area may overlap with the perimeter of a mining or quarry right with the express written authorization of the holder. In all cases, the holder is required to simultaneously file a waiver request relating to the part of the perimeter encroached upon by the artisanal exploitation zone.

Article 31: Demarcation of the mining or quarry Perimeters

Within two months following the issuing of a mining or quarry exploitation title, the holder proceeds, at its own cost, to survey its Perimeter.

The survey consists in placing a survey marker at each corner of the Perimeter covered by its title and placing a post indicating the name of the holder, the number of its title and that of the identification of the survey marker.

The nature and form of the survey marker and the conditions for carrying out the survey are set forth in the Mining Regulations.

CHAPTER III: THE PROCEDURE FOR GRANTING MINING AND/OR QUARRY RIGHTS AND THE ISSUING OF MINING AND/OR QUARRY TITLES

Article 32: Principle of procedural transparency

With a view to providing transparency, objectivity, effectiveness and speed to the process of receiving, processing, decision making and notification relating to the applications for the granting of mining or quarry rights, as well as the issuing of titles relating thereto, the procedure set forth in the present chapter applies, subject to special provisions applicable to mining or quarry rights, to the granting of and quarry rights in the present Code.

The procedure for granting mining or quarry rights and issuing titles relating thereto shall be strictly applied.

Article 33: Mining and quarry rights subject to tender

The Government, through the minister, submits to tender (open or by invitation) mining and quarry rights relating to any deposit which has been studied, documented or possibly worked on by the State through its entities.

In this case, the minister reserves via decree the mining rights relating to the deposit to be submitted to tender. Prior to reserving quarry authorizations for tender, the minister shall consult the relevant provincial minister for mines and the local community in the context of a consultation procedure, the terms of which are defined by regulation.

The reservation of the mining rights and/or quarry rights relating to the deposit submitted to tender shall be confirmed by the Prime Minister within thirty days following the entry into force of the ministerial decree relating thereto.

The invitation to tender is concluded within nine months as of the reservation of the deposit to be submitted to the invitation to tender.

The invitation to tender, indicating the terms and conditions for the bids as well as the date on which and the address to which the tenders must be submitted, is published in the Official Gazette. It can also be published in the specialized local and international newspapers.

The bids submitted in accordance with the terms and conditions of the invitation to tender are examined promptly by an Inter-ministerial Commission whose members are appointed and convened by the Minister in order to select the best bid, on the basis of:

- a. Plan of work proposed and financial costs relating thereto;
- b. Available financial and technical capacity of the bidder;
- c. Previous experience of the bidder in carrying out the operations proposed;

- d. Various other socio-economic advantages for the State, the province and the surrounding community, including the signature bonus offered.

The invitation to tender shall take place in accordance with the procedures provided for by Congolese legislation regarding public procurement and procedures generally accepted or recognized by international mining practice.

At the end of the tender procedure, the Minister publishes the result of the selection and the removal of the reservation.

The Mining Regulations set forth the conditions of organization and functioning of the Inter-ministerial Commission referred to in paragraph 6 of the present article.

Article 33 bis⁹: Access to exploitation of a studied deposit

Access to the exploitation of a deposit that is studied, documented or worked on that belongs to the State that was obtained through an invitation to tender is subject to the payment of a pas de porte to the State representing 1% of the value of such deposit. The value of the deposit is defined as being the price obtained for such deposit in the framework of the invitation to tender.

In cases where the deposit has been studied, documented or worked on by a commercial company belonging to the State, 100% of such pas de porte is allocated to such company.

Article 34: Priority for Processing

Without prejudice to the granting of mining and/or quarry rights in accordance with the invitation to tender procedure provided for in article 33 of the present Code, and unless they are not admissible, the applications for mining and/or quarry rights for a given perimeter are registered in the chronological order of their filing.

As long as an application is being processed, no other application relating in whole or in part to the same Perimeter can be processed.

Article 35: Application for mining or quarry rights

All applications for mining or quarry rights are drafted on a form for the applicable right to be obtained at the Mining Registry, and includes the following information:

- a. the articles of association, registration in the Trade and Personal Property Credit Register and proof of publication in the Official Gazette;
- b. tax ID information;
- c. the capacity and authority of the person authorized to bind the legal entity and the identity of his agent if the application is submitted by the latter;

⁹ [Note to draft: Placement of this article unclear in respect of chapter headings/article numbers. To be confirmed.]

- d. the address of the registered headquarters of the legal entity, as well as all subsequent changes;
- e. the type of mining or quarry right applied for;
- f. the indication of the mineral substances for which the mining and/or quarry right is being applied for;
- g. the geographical location of the perimeter applied for;
- h. the number of quadrangles making up the surface area of the perimeter applied for;
- i. the identity of the applicant's affiliated companies;
- j. the nature, number and surface area of the perimeters of the mining or quarry rights already held by the applicant and its affiliated companies;
- k. the proof of financial capacity of the applicant.

The application file includes the application form, duly completed and signed, the applicant's identity card and the other documents required according to the type of right applied for. The applicant submits said file to the Mining Registry

The draft application form to be used for mining or quarry rights is included in the Mining Regulations.

Article 36: Language of the application

Applications for the granting, renewal, transformation or lease of mining and/or quarry rights or any other application prepared in the execution of the provisions of the present Code are drafted in the French language.

All other documents presented or documents annexed to the application are to be drafted in French or accompanied by a translation into French, duly certified by a translator approved by the courts.

Article 37: Filing costs

In consideration for the service, an amount is charged when filing applications for the granting, renewal, transformation or lease of mining and/or quarry rights

Any such application must be accompanied by the proof of payment of the filing costs as set forth in the above paragraph; failing that, it will not be accepted.

These costs are non-refundable regardless of the outcome of the application.

Article 38: Admissibility of the application

The application for mining or quarry rights can only be accepted if it fulfils the following conditions:

- a. having all information required by Article 35 of the present Code;
- b. proof of payment of the filing costs, as well as proof of tax number, national identification number and the Trade and Personal Property Credit Register number for legal entities;
- c. compliance with the provisions of articles 28 and 29 of the present Code as regards the form and the localization of the Perimeter;
- d. if it is an application for mining rights or permanent quarry exploitation:
 - the entire perimeter applied for must be situated inside the perimeter of the exploration right or the exploration permit for quarry products, in the case of an application for mining or permanent quarry exploitation rights;
 - proof of the applicant's registration with the Trade and Personal Property Credit Registry, if it is legally required to do so.

The Mining Registry determines the admissibility of the application at the time of filing.

If the application is declared admissible, the Mining Registry issues to the applicant a receipt indicating the day, hour and minute of filing which authenticates the application, and registers it in the corresponding registry book, indicating the day, hour and minute of the filing.

Article 39: Processing of the application

In accordance with the provisions of article 34 of the present Code, the processing of the application commences with the registrar's examination followed by the technical and environmental evaluations.

Article 40: Review by the Registrar¹⁰

The central or provincial Mining Registry proceeds with the registrar's examination within a maximum period of twenty working days as of the date of filing of the application.

For the purposes of the examination, the Mining Registry verifies:

- a. whether the applicant is eligible for the type of mining and/or quarry right applied for;

¹⁰ [Note to draft: There appear to be typos in the amendment instructions (for example, paragraph 2 is changed but the instructions do not refer to para. 2. Also, it is unclear whether the last paragraph of the original version of the law should be deleted. To be confirmed with HSF.)]

- b. the limits to the number of mining and/or quarry rights, whether the form and the surface area of the Perimeter applied for have been complied with;
- c. whether the perimeter applied for overlaps with a perimeter relating to a mining or quarry right or an application already being processed, except situations of overlap authorized in article 30 of the present Code.

At the time of the registry examination of the applications for mining and/or quarry rights, the following rules apply to situations of overlap other than those provided for in article 30 of the present Code:

- a. When an application for mining and/or quarry exploration rights relates to a perimeter more than 25% of which overlaps with a valid mining or quarry perimeter, or when said application is filed at the time when another application is being examined, the former shall be rejected.
- b. When an application for mining and/or quarry exploration rights relates to a perimeter 25% of which, at a maximum, overlaps with another mining or quarry perimeter which is valid, or is submitted during the period when an application is being examined, the situation is corrected so as to eliminate the overlaps.

In all cases, the following applications may not be rejected on the grounds of overlap during the registry examination:

- a. the application for mining or quarry exploitation rights of the holder of mining or quarry exploration rights for the same perimeter;
- b. a request for the transformation of mining or quarry exploration or exploitation rights into several mining or quarry exploration or exploitation rights for the same perimeter;
- c. the application for an exploitation permit for the tailings of the holder of a mining right covering the perimeter over which the tailings are stored.

[At the end of the registry examination, the Mining Registry proceeds to:

- a. provisionally register the Perimeter applied for on the registry survey map. This registration is valid for the period during which the application is being examined;
- b. display the outcome of the examination in the consultation room of its premises. The applicant is provided with a copy of the registrar's opinion;
- c. send the file, accompanied by the registrar's opinion, to the competent authority for its decision, should the opinion be unfavorable;
- d. send the file to the departments indicated for the technical and environmental evaluations of the applications for mining rights and permanent authorizations for quarry exploitation, should the opinion be favorable, or to the competent authority in case of applications for mining and quarry exploration rights.]

Article 41: Technical Evaluation

In accordance with the provisions of article 14 paragraph 5 item a), and for the purposes of the technical evaluation, the Directorate of Mines determines whether the conditions for the granting of mining or quarry rights applied for have been met. It sends its technical opinion to the Mining Registry within the deadline set forth for each type of application as provided for in the present Code.

Within a maximum period of five working days following receipt of the technical opinion, the Mining Registry proceeds:

- a. to display the technical opinion in the consultation room of its premises. A copy of said opinion is provided to the applicant;
- b. to send the file relating to the relevant application, together with the registrar's opinion and the technical opinion, to the appropriate authority for decision.

Article 42: Environmental and Social Evaluation

In accordance with the provisions of articles 16 and 185 of the present Code and the provisions concerning each type of mining and/or quarry right, the ACE (*Agence Congolaise de l'Environnement* [Congolese Environmental Agency]), the National Fund for Promotion and Social Services, in collaboration with the Directorate for the Protection of the Mining Environment and, where applicable, any other relevant State body, review the ESIS and the ESMP relating to the application for mining exploitation rights or MRP relating to an application for an authorization for temporary quarry exploitation, the application file for the transfer of mining rights or the authorization for permanent quarry exploitation, as well as the plan for the project's contribution to the development of surrounding communities.

A summary of the ESIS, ESMP or MPR, as the case may be, is published on the Mines Ministry's website within 15 days of receipt. The applicant for the mining and/or quarry right in question is required to publish this summary on its own website, if it has one. As applicable, at the conclusion of the completed environmental evaluation, the Congolese Environmental Agency provides its environmental certificate to the Mining Registry within the deadline/time period prescribed for each type of mining and/or quarry rights. A copy of the environmental certificate shall be sent to the applicant.

Within a maximum period of five working days following receipt of the environmental certificate, the Mining Registry:

- a. displays the Congolese Environment Agency's environment certificate in the premises set forth in the Mining Regulations. A copy of the environmental certificate is provided to the applicant.
- b. sends the file relating to the application, including with the registrar opinion, technical opinion and environmental certificate, as appropriate, to the competent authority for decision.

The Congolese Environmental Agency, in collaboration with the Directorate for the Protection of the Mining Environment, will also examine the MRP submitted by the holder of mining and/or quarry exploration rights and, on completion, will submit its environmental certificate to the Mining Register within the deadline/time limit set forth in the Mining Regulations.

Any person who, for the purposes of a mining activity, is forced to clear a portion of forest must first obtain a deforestation permit from the competent administration.

Article 43: The decision to grant rights

Upon receiving the file relating to the application, together with the favorable registrar opinion and, if applicable, favorable technical, environmental and social opinions, the competent authority makes its decision regarding the granting of the rights and sends it to the Mining Registry within the time period to render a decision for each type of application for mining or quarry rights.

In this case, the Mining Registry proceeds to register the right granted, notify the applicant of the decision to grant the rights and display it in the premises set forth in the Mining Regulations.

Should the competent authority not send its decision in accordance with paragraph 1 above, the decision to grant the mining or quarry right will be deemed to have been given.

The applicant shall, within sixty days of the expiration of the time limit granted to the competent authority, request that the Mining Registry proceed with the registration of its right and issue the title relating thereto. After such period, the right is automatically waived.

The Mining Regulations determine the terms of this automatic waiver.

Article 44: The decision to refuse to grant rights

Upon receiving the file relating to the application with unfavorable registrar opinion, and if applicable, unfavorable technical and environmental opinions, the authority makes its decision regarding the refusal of the rights and sends it to the Mining Registry within the time period to render a decision for each type of application for mining or quarry rights.

In this case, the Mining Registry proceeds to register the decision to refuse to grant the rights applied for, notify the applicant of the decision and to display it in the premises set forth in the Mining Regulations.

Should the competent authority not send its decision in accordance with paragraph 1 of the present article, the Mining Registry shall immediately erase the registration of the Perimeter on the registry survey map. The applicant is notified of the fact that the registration has been erased.

Article 45: Time period for deciding to grant or refuse rights

The time period for the competent authority to grant or refuse the granting of mining or quarry rights as set forth in the provisions of the present Code commences as of the date of receipt of the file sent by the Mining Registry, together with the required registry opinions, and if applicable, the required technical, environmental and social opinions.

The file is sent by the Mining Registry to the competent authority by letter with acknowledgement of receipt of same.

In all cases, the file sent is deemed to have been received at the latest the following working day in case of electronic mail or by fax, and within eight working days for the other means of communication.

However, in the case of delivery by courier, it is deemed to have been sent with an acknowledgement of receipt the same day.

The Mining Registry keeps a copy of the letter accompanying the file for the applicant.

The competent authority to which the Mining Registry has submitted the file will in turn, within 30 working days following receipt of said file, make a decision to grant or refuse the rights applied for and will notify the applicant.

Article 46: Registration via the judicial system

If the Mining Registry does not proceed to register the mining or quarry right in accordance with paragraph 4 of article 43 of the present Code within five working days as of the date of the request for registration, the applicant can obtain a judgment granting mining or quarry rights, as applicable, by submitting a request addressed to the Chairman of the Tribunal of the High Court who has territorial jurisdiction, with a copy and the documents of the file to the Officer of the Public Ministry of this jurisdiction.

Within forty-eight hours following receipt of the petition, the Chairman of the Tribunal of the High Court who has territorial jurisdiction will decide the matter at the first available hearing in his jurisdiction. The Court will notify the applicant, the Mining Registry and the Officer of the Public Ministry through a clerk of the day and the time of the hearing.

In accordance with the provisions of article 68 paragraph 2 and as an exception to article 69 paragraph 1 of organic law no. 013/011-B of 11 April 2013 on the organization, functioning and jurisdiction of the judicial courts, the Public Ministry issues its opinion orally from the bench, which is recorded by the clerk of the court.

Because there is no possibility of adjournment, the matter is docketed, processed, argued in court and the court adjourns for deliberation at the hearing set forth in the notice which notifies the hearing date.

Unless the request referred to in the previous paragraph fulfils the following conditions, it will be considered to be inadmissible:

- a. It must be submitted within a period of eight working days, commencing as of the expiry of the period of five days set forth in the first paragraph of the present article;
- b. It must contain the original or a certified copy, in addition to the requirements for the application set forth in article 35 of the present Code, receipt of its application, proof of payment of the filing costs, and the copies of the required registrar and technical opinions, and if applicable, the environmental opinion.

The Court's decision is made within 72 hours, as of the time the court adjourns to deliberate the matter and must:

- a. Determine that the decision to grant the rights by the competent authority has not been rendered within the deadline set forth by law;
- b. Determine the Perimeter relating to the mining or quarry rights applied for, its geographical location and also the number of whole grid quadrangles constituting the surface area;
- c. Instruct the Mining Registry to register the terms of the judgment in its registers and to issue the corresponding mining or quarry titles and to insert the mining or quarry Perimeter on the Mining registry map.

In any event, the judgment obtained is deemed to have the force of a mining or quarry title.

Article 47: The issuing of title

In the case of a decision to grant rights or in the event of a decision to register via the judicial system, as set forth in article 46 of the present Code, the Mining Registry issues to the applicant the mining and/or quarry titles evidencing the mining or quarry rights granted, provided that the annual surface rights fees per quadrangle relating thereto have been paid for.

For the purpose of issuing the title, the Mining Registry shall ensure the authenticity of the proof of payment of the annual surface rights fees per quadrangle and register the mining or quarry title in the corresponding registry book.

Without prejudice to the provisions of article 198 of the present Code, the annual surface rights fees per quadrangle must be paid for the first year, at the latest, thirty working days after notification that the rights applied for and the debit notes relating to annual surface fee rights per quadrangle have been granted. After this period, the rights granted are rendered null and void.

Article 48: End of the processing of the application

The processing of the application for mining and/or quarry rights ends on the day the applicant is notified of the decision to grant the rights or on the day of the judge's decision set forth in article 46 of the Mining Registry Code is notified to the Mining Registry.

In the event of a decision to refuse the granting of rights and subject to the provisions of articles 313 and 314 of the present Code, the processing of the application for mining or quarry rights ends on the day the applicant is notified of the decision.

After the titles have been issued, the mining and/or quarry rights granted are inserted on the mining registry survey map.

Article 48 bis: Beginning of the validity period of mining and/or quarry rights

The validity period of mining and/or quarry rights shall begin to run from the date the grant decision is notified to the applicant, or from the date automatic registration is notified or from the date the judge's decision provided for in article 46 of the present Code is served.

Article 48 ter: Extinguishment of mining and/or quarry rights

Mining and/or quarry rights are extinguished by:

- a. lapse;
- b. cancellation;
- c. expiration;
- d. renunciation;
- e. withdrawal.

Mining and/or quarry rights automatically lapse pursuant to article 47 paragraph 2¹¹ of the present Code.

Within three months following publication of the grant decision in the Official Gazette (or, failing this, within three months following the date of becoming aware of the existence of such publication), mining and/or quarry rights may be cancelled with retroactive effect pursuant to a decision of the administrative court to which a petition for annulment has been referred by an officer of the public ministry or by an injured third party, on the grounds of illegality, the incompetence of the granting authority, a defect as to form or in the granting authority misused its authority.

In accordance with articles 61, 78, 94, 106, 144 and 163 of the present Code, mining and/or quarry rights expire at the end of their term,

Mining and/or quarry rights are extinguished if fully renounced by their holder in accordance with articles 60, 79, 96, 108, 145 paragraph 4 and 164 of the present Code. In the event of a partial renunciation, the mining and/or quarry rights shall be extinguished in respect of the portion of the perimeter that is the subject of such renunciation, in accordance with the same provisions.

Once the holder loses its rights, the Exploration Permit, Exploitation Permit, Tailings Processing Permit and Small-scale Mining Exploitation Permit, the authorizations for permanent quarry exploitation (other than those for standard construction materials) are withdrawn by the minister and by the provincial minister of mines for Authorizations for Permanent Quarry Exploitation, in accordance with article 290 of the present Code.

¹¹ [Note to draft: Probable typo. Should likely refer to para. 3.]

Within three months following publication of the granting decision in the Official Gazette (or, failing this, within three months following the date of becoming aware of the existence of the granting decision), mining and/or quarry rights may be withdrawn or taken back without retroactive effect by the granting authority in the event of illegality at the time of the grant, either at the request of an injured third party or on the initiative of the granting authority.

The Mining Regulations determine the terms and conditions of application of this article.

Article 49: Extension of the validity of mining and/or quarry rights during processing

In the event an application for the transformation of a mineral exploration or quarry exploration right into an exploitation right, or an application for the renewal of a mineral exploration or quarry exploration right is in the process of being processed at the time when the rights expire, the validity of said rights is extended, as long as no decision is rendered in connection with said application.

TITLE III: MINING RIGHTS

CHAPTER I: MINERAL EXPLORATION

Article 50: Scope of the Exploration Permit

The Exploration Permit covers mineral substances classified as mines for which the permit has been granted as well as associated substances if the holder requests the permit to be extended to include these substances.

Article 50 bis: Rights granted by an Exploration Permit

The Exploration Permit confers on its holder the exclusive right to carry out, within the Perimeter for which it is issued and for the duration of its validity, exploration work for mineral substances classified as mines for which the permit is granted and for associated substances if the holder requests the permit to be extended to include these substances.

However, the holder of the Exploration Permit may not initiate field work without first obtaining approval of its MPR in accordance with the provisions of the present Code.

The holder of an Exploration Permit is authorized to take samples of the mineral substances within the Perimeter that is the subject of its Exploration Permit in order to carry out analyses or industrial assays in the laboratory or plant of its choice.

Any sample taken under the Exploration Permit is the property of the State.

Without prejudice to the provisions of the customs laws, if the holder wishes to send the samples abroad for analysis or assaying, it must first submit a description of said samples, indicating in particular the number, volume and weight, to the Geology

Directorate and obtain said department's consent on a copy of the description, which is deemed as a permit for the samples taken.

The Exploration Permit also entitles its holder to the right to obtain an Exploitation Permit for all or part of the mineral substances indicated in the Exploration Permit and the associated substances within the area covered by the Exploration Permit if it discovers a deposit which can be economically exploited.

Article 51: Nature of the Exploration Permit

The Exploration Permit is a real property and exclusive right, conveyable and transferable in accordance with the provisions of the present Code.

This right is evidenced by a mining title called "Exploration Certificate".

Article 52: Term of validity of the Exploration Permit

An Exploration Permit is valid for five years, renewable one time for the same term for all mineral substances.

Article 53: Restrictions

The surface area of the Perimeter of an Exploration Permit cannot exceed a maximum of 400 km².

An entity and its affiliated companies cannot hold more than fifty Exploration Permits.

In any event, the surface area granted to them may not exceed 20,000 km² on the entire National Territory.

Article 54: The preparation/drafting, submission and admissibility of the application for an Exploration Permit

The applicant must draft its application for an Exploration Permit and submit it to the Mining Registry for processing in accordance with the provisions of articles 35 to 42 of the present Code.

Proof of minimum financial capacity must be attached to the application.

Article 55: Technical and environmental evaluation of the application for an Exploration Permit

The application for an Exploration Permit is not subject to technical and environmental evaluations.

Article 56: Conditions for granting an Exploration Permit

In order to obtain an Exploration Permit, the applicant:

- must provide proof of financial capacity and the technical competence necessary to successfully carry out the exploration related to the requested Permit;
- must fulfill the requirements set out in articles 23 *bis* and 38 of the present Code.

Article 57: Granting or refusal to grant an Exploration Permit

Without prejudice to the provisions article 46 of the present Code, the Exploration Permit relating to a defined Perimeter is granted or refused by the Minister to the applicant who has met the conditions for granting of the Permit, within a period which may not exceed thirty working days, as of the date of receipt of the file sent by the Mining Registry.

Any refusal to grant the Exploration Permit must be explained and affords the right to appeal set forth in the provisions of articles 313 and 314 of the present Code.

Article 58: Proof of minimum financial capacity

In accordance with article 56 of the present Code, minimum financial capacity is based on the planned budget for carrying out the exploration program.

In all cases, minimum financial capacity cannot be less than fifty times the total amount of the annual surface rights fees payable for the last year of the first period of validity of the Exploration Permit applied for.

Funds representing this capacity are deposited into an account opened with an approved Congolese bank and are blocked during the entire period during which the file is being reviewed.

Article 59: Extension of the permit to other substances

Before proceeding to actively explore for mineral substances other than those for which the Exploration Permit has been granted, the holder must obtain an extension of his permit to include these other substances. Such an extension is as of right if:

- a. The Exploration permit is valid;
- b. The holder describes the information which leads it to believe in the existence of the mineral substances for which the extension of the permit is being applied.

The conditions of the extension procedure are set forth in the Mining Regulations.

Article 60: Renunciation of the Exploration Permit

The holder of an Exploration Permit may at any time, in whole or in part, renounce the right covering its Perimeter.

The declaration of a partial or total renunciation addressed to the minister, which is filed with the Mining Registry, indicates the coordinates of all or part of the renounced

or retained perimeter. It takes effect on the day the minister makes acknowledgement of it, or in any case, three months as of the date the declaration is submitted.

The part of the Perimeter to be renounced must be made up of whole quadrangles.

The remaining part of the Perimeter must comply with the form of a mining Perimeter as set forth in article 28 of the present Code.

The Perimeter covered by the Exploration Permit is free of any right, either wholly or partially as applicable, as of the date the Minister makes acknowledgement thereof.

The total or partial renunciation does not entitle to any reimbursement of any fees paid to the State for the granting or the maintenance of the permit. It does not relieve the Holder from its responsibility relating to the protection of the environment.

Article 61: Expiry of the Exploration Permit

The Exploration Permit expires on the final day of its last term of validity, or when it has not been renewed at the end of the first term of validity, or when it has not been transformed into an Exploitation Permit or a Small Mine Exploitation Permit.

In this case, the Perimeter covered by the Exploration Permit is free of any right as of the date the Permit expires.

When the Exploration Permit expires, the Mining Registry immediately notifies the holder of the expiry of its right, with a copy to the entity specialized in exploration and to the Geology Directorate.

However, the holder is not relieved from its responsibilities with regard to environmental rehabilitation after the expiry of its right.

Article 62: Conditions for the renewal of the Exploration Permit

The Exploration Permit is renewable, provided that the holder:

- a. has not breached its obligations to maintain the validity of the permit, as set forth in articles 196 to 199 of the present Code, and presents:
 - proof of the certification of the commencement of works duly issued by the Mining Registry;
 - proof of payment of the annual surface duties for each quadrangle and the taxes on the surface area of the mining and hydrocarbon concessions.
- b. submits a report on the exploration work performed during the prior term of validity of its title, and the results obtained;
- c. submits a schedule for carrying out the exploration work;
- d. gives evidence of the actual opening of an Exploration Center duly noted by the local authorities and the Provincial Mining Division;

- e. has not breached its tax, para-fiscal and customs obligations;
- f. defines the phases that remain to be carried out in order to reach the final stage for certifying reserves and the prepare the feasibility studies;
- g. presents the supplementary budget in relation to exploration work program that corresponds to the remaining phases listed above.

The application for renewal of the Exploration Permit is addressed by the applicant to the Mining Registry at least three months and not more than six months before the date the Permit expires, and must contain the following information:

- a. The information set forth in items b) and c) of article 35 of the present Code;
- b. The number of quadrangles to be renewed and their location;
- c. The identity of the companies;
- d. The nature, number and surface area of the perimeters of the Exploration Permits held by the holder and its affiliated companies;

When the renewal takes place, the holder of the Exploration Permit automatically relinquishes 50% of the perimeter covered by its permit and must develop and obtain approval of the revised Mitigation and Rehabilitation Plan relating to the proposed activity before proceeding with the mining exploration work.

The Mining Regulations determine the terms for the filing, admissibility or inadmissibility, evaluation, the decision to renew the Exploration Permit and its registration and posting.

Article 63: Partial transformation of the Exploration Permit into an Exploitation Permit or a Small-scale Mining Exploitation Permit

The holder of an Exploration Permit may at any time request its partial transformation into an Exploitation Permit or into a Small-scale Exploitation Permit, for a part of the surface area covered by its Exploration Permit, while still maintaining its exclusive right to explore on the rest of the surface area, on the condition that it complies with the provisions of articles 28 and 29, 69 to 76 and 103 to 105 of the present Code.

The holder of an Exploration Permit may also apply for an Exploitation Permit or a Small-scale Mining Exploitation Permit for a Perimeter which includes the surface areas of several Exploration Permit.

If need be, the holder of an Exploration Permit may request the transformation of its original Exploration Permit into multiple Exploration Permit on the part of the Perimeter which is not transformed into an Exploitation Permit or into a Small-scale Mining Exploitation Permit, in order to comply with the provisions of the present Code relating to the form of the exploration Perimeter. Failing that, the holder must comply with the limit on the number of Exploration Permit which a single person may hold.

The duration of the multiple permit is the period of validity of the initial permit which has not yet expired.

The part of the Perimeter which is not transformed remains subject to the terms and conditions of the Exploration Permit which is still valid.

CHAPTER II: MINING EXPLOITATION

Article 64: Scope of the Exploitation Permit

The Exploitation Permit authorizes its holder to exploit, within the perimeter it covers, the mineral substances for which it is specifically issued. These mineral substances are those which the holder identified and with respect to which it has demonstrated the existence of an economically exploitable deposit.

Without prejudice to article 33 of the present Code, the surface area of the perimeter that is the subject of the Exploitation Permit is the surface area of the Exploration Permit from which it arises, or the surface area of the portion of the perimeter of one or more Exploration Permits that have been transformed into Exploitation Permits or, still yet, the surface area of the perimeter of the Exploitation Permit in the event of the transformation of an Exploitation Permit into several other Exploitation Permits.

The Exploitation Permit may extend to associated or non-associated substances in accordance with the provisions of article 77 of the present Code.

The Mining Regulations define the conditions for such transformation.

Article 64 bis: Rights granted by the Exploitation Permit

The Exploitation Permit entitles its holder to the exclusive right to carry out, within the perimeter over which it has been granted and during its term of validity, exploration, development, construction and exploitation works in connection with the mineral substances for which the permit has been granted along with associated or non-associated substances if it has applied for an extension. In addition, it entitles, without restriction, to:

- a. Enter the exploitation Perimeter to conduct mining operations;
- b. Build the installations and infrastructures required for mining exploitation;
- c. Use the water and wood within the mining perimeter for the requirements of the mining exploitation, complying with the requirements set forth in the ESIS and the ESMP;
- d. use, transport and freely sell its products originating from within the exploitation Perimeter.
- e. proceed with concentration, metallurgical or technical treatment operations on the mineral substances extracted from the deposit within the exploitation Perimeter.

- f. Proceed to carry out works to extend the mine;

The Exploitation Permit holder has the obligation to process and transform on Congolese territory the mineral substances exploited by it.

Article 65: Nature of the Exploitation Permit

The Exploitation Permit is a real property, exclusive, conveyable and transferable right which can be leased, in accordance with the provisions of the present Code.

This right is evidenced by a mining title called “Exploitation Certificate”.

Article 66: Extent of the Exploitation Permit

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 67: Term of the Exploitation Permit

The term of the validity of the Exploitation Permit may not exceed twenty-five years.

It is renewable at the request of its holder for periods not exceeding fifteen years each period.

Article 68: Restrictions on/to the Exploitation Permit

The surface area of the Perimeter covered by the Exploitation Permit is that of the Exploration Permit from which it originates, or that part of the Perimeter of the Exploration Permit transformed into an Exploitation Permit.

A person and its affiliated companies cannot hold more than fifty Exploitation Permits.

Article 69: The preparation of the application for the Exploitation Permit

The applicant drafts its application for the Exploitation Permit and submits it to the Mining Registry in accordance with articles 35 and 37 of the present Code.

The following documents should be attached to the application:

- a. A copy of the valid Exploration Certificate;
- b. The report on the outcome of exploration work with regard to the nature, the quality, the volume and the geographical situation of the mineral resources identified;
- c. The feasibility study for the exploitation of the deposit;
- d. The technical framework plan for the development, construction and exploitation work for the mine;
- e. The EIS and EMPP for the project;

- f. The nature, number and surface area of the perimeters covered by the Exploration Permits held by the holder and its affiliated companies;
- g. The plan as to how the project will contribute to the development of the surrounding communities;
- h. The financing plan identifying the planned sources of financing;
- i. The proof of payment of the filing costs.

Article 70: Admissibility and processing of the application for the Exploitation Permit

The application for the Exploitation Permit is received and processed in accordance with the conditions and procedures set forth in the provisions of articles 38 to 45 as complemented by those of articles 74 to 76 of the present Code.

Article 71: Conditions for granting the Exploitation Permit

The granting of the Exploitation Permit is subject to the following conditions on the applicant's chief representative:

- a. Demonstration of the existence of a deposit which can be economically exploited, by presenting a feasibility study, accompanied by a technical framework plan for the development, construction and exploitation work for the mine.
- b. Demonstration of the existence of the financial resources required for the carrying out of its project, according to a financing plan for the development, construction and exploitation work for the mine, as well as the rehabilitation plan for the site when the mine is closed. This plan specifies each type of financing, the sources of planned financing and justification of their possible availability. In any event, the share capital contributed by the applicant cannot be less than 40% of such resources;
- c. Obtain in advance the approval of the project's ESIS and the ESMP.
- d. Transfer to the State 10% of the equity interests or shares making up in the registered capital of the company applying for the permit. These shares are free of all charges and cannot be diluted;
- e. create, at the time of each transformation, in the framework of a separate mine or a separate mining exploitation project, an affiliated company of which the applying company holds at least 51% of the equity interests or share capital;
- f. file an instrument undertaking to comply with the specifications defining the social responsibility vis a vis the local communities affected by the project's activities;
- g. have complied with the obligations relating to maintaining the validity of the permit contemplated by articles 196, 197, 198 and 199 of the present Code, by presenting:

- proof of the certification of the commencement of works duly issued by the Mining Registry;
 - proof of payment of the annual surface duties for each quadrangle and the taxes on the surface area of mining concessions;
- h. provide proof of capacity to process and transform the mineral substances within the Democratic Republic the Congo and to file an instrument undertaking to process and transform such substances on the Congolese territory.

Article 71 bis: Shareholding of individuals of Congolese nationality in share capital

Individuals of Congolese nationality are required to hold shares in the share capital of mining companies.

The persons referred to in the preceding paragraph must hold at least 10% of the share capital.

Article 72: Granting of the Exploitation Permit

Without prejudice to the provisions of article 46 of the present Code, the Exploitation Permit is granted by the Minister to the holder of the Exploration Permit who has complied with the conditions for the granting of the Permit within a period not exceeding thirty working days, as of the date the application sent by the Mining Registry is received by the Minister.

Any refusal to grant the Exploitation Permit must be explained and is subject to the right to appeal, set forth in articles 317 to 320 of the present Code.

Article 73: Reasons for the refusal to grant an Exploitation Permit

The Exploitation Permit can only be refused if:

- a. The feasibility study is rejected;
- b. The applicant's financial capacity is insufficient;
- c. The EIS has definitively been rejected in accordance with the provisions below.

The feasibility study can only be rejected for the following reasons:

- a. Its non-conformity with the directive of the Ministry of Mines which details its contents in accordance with generally recognized international practice;
- b. The presence of an obvious error; or
- c. Its non-conformity with the EIS.

The proof of the applicant's financial capacity can only be rejected for one of the following reasons:

- a. The non-conformity of the financing plan with the feasibility study; or
- b. The obvious insufficiency of evidence of the possible availability of financing which is obtained from sources identified by the applicant.

The proof of the financial capacity cannot be rejected if the applicant has produced, in the case of external financing, certificates from identified sources of financing which evidence the feasibility of the financing within the parameters envisaged by the applicant, and in the case of internal financing, the financial statements of the person or the company certified by a Certified Accountant or an Accountant approved by the courts, demonstrating its self-financing capacity.

Article 74: Deadline for the technical evaluation of the application for the Exploitation Permit

The technical evaluation of the application for an Exploitation Permit declared admissible is performed within a period not exceeding sixty working days as of the date the file containing the application sent by the Mining Registry to the Directorate of Mines is received.

Article 75: Time limit for the environmental and social evaluation for the application for the Exploitation Permit

The environmental and social evaluation of the ESIS and the ESMP relating to an application for an Exploitation Permit that is declared admissible is carried out within six months as of the date the file containing the application is sent by the Mining Registry to the *Agence Congolaise de l'Environnement* (Congolese Environmental Agency) and to the National Fund for Promotion and Social Services, in collaboration with the Directorate for the Protection of the Mining Environment, in accordance with environmental protection regulations.

Article 76: Ministry's decision

If the mining registrar, technical, environmental and social opinions issued subsequent to the evaluation of Exploitation Permit application are favorable, the minister must make his decision on the grant of the application within a period of thirty working days as of the date of receipt of the file containing the application sent by the Mining Registry.

If the registrar's opinion on an application for an Exploitation Permit is unfavorable, the minister makes a decision to reject the application within a period of thirty working days as of the date of receipt of the file containing the application sent by the Mining Registry.

If the technical opinion on an application for an Exploitation Permit is unfavorable but the registrar's opinion is favorable, the Minister makes a decision to reject it within a period of thirty working days as of the date of receipt of the file containing the application sent by the Mining Registry.

If the registrar and technical opinions following the evaluation of the application for the Exploitation Permit are favorable but the environmental certificate is unfavorable, the minister renders a decision to refuse it within a period of thirty working days as of the date of receipt of the file containing the application sent by the Mining Registry.

If the registrar and technical opinions following the evaluation of the application for the Exploitation Permit are favorable but the environmental certificate has not yet been issued, the minister renders a preliminary and conditional approval decision within a period of twenty working days as of the date of receipt of the file containing the application sent to it by the Mining Registry and postpones his final decision to grant or reject the Exploitation Permit until it has received the environmental certificate.

The minister's preliminary and conditional approval decision has the effect of definitively ratifying the registrar and technical opinions. The final decision on the granting of the application is conditional on receipt of a favorable environmental certificate.

The minister makes and sends the reasoned decision to grant or reject the Exploitation Permit to the Mining Registry for performance within a period of thirty working days as of the date it receives the environmental certificate sent by the Mining Registry.

Article 77: Extension to include associated mineral substances

Before proceeding to carry out exploration or exploitation activities relating to mineral substances other than those for which its Exploitation Permit has been granted, the holder is required to obtain the extension of its permit in order to include these other associated substances.

In the event the holder of the Exploitation Permit does not request such an extension, the Mining Directorate gives formal notice to it to request the extension within a period of sixty days.

Upon the expiration of this period, the provisions of article 299 of the present Code shall apply to the holder if it continues to exploit these substances.

Any associated mineral substance discovered and renounced by the holder of the Exploitation Permit in the framework of the extension automatically becomes property of the State.

Article 77 bis: Exploitation of non-associated mineral substances

The holder of an Exploitation Permit who wishes to exploit non-associated mineral substances must apply for a separate mining exploitation right with respect to such substances, in accordance with the provisions of the present Code.

If the holder of the Exploitation Permit does not request such an extension, the Directorate of Mines shall give the holder formal notice to make such request within a period of sixty days.

A holder which does not apply for the grant of a new title even though it exploits such substances in the framework of a separate mine shall have the provisions of article 299 of the present Code applied to it.

The Mining Regulations define the terms and conditions of such exploitation.

Article 77 *ter*: Extension of exploitation works

The holder of an Exploitation Permit that wishes to proceed with the extension of its works is required to seek the minister's authorization.

For this purpose, it shall present an additional feasibility study integrating the operations required for such extension.

The filing, admissibility and evaluation of the extension application shall be subject to the conditions set out in articles 37, 38, 39, 40, 41 and 42 of the present Code.

Article 78: Expiry of the Exploitation Permit

The Exploitation Permit expires at the end of the term of validity if no renewal is applied for in accordance with the provisions of the present Code, or when the deposit is exhausted.

When the Exploitation Permit expires, the Mining Registry immediately notifies the Holder of the expiry of its title, with a copy to the Mining Directorate.

In this case, the Perimeter covered by the Exploitation Permit is free of all rights, as of the date the Permit expires.

Article 79: Relinquishment of the Exploitation Permit

The holder of an Exploitation Permit may at any time, in part or in whole, relinquish the right covering its Perimeter by making a declaration addressed to the Minister.

The partial renunciation declaration indicates the coordinates of the part of the Perimeter relinquished and that which is retained. It becomes effective on the day the Minister records it or in any case, within three months as of the day the declaration is submitted.

The part of the Perimeter which is relinquished comprised of entire quadrangles.

The remaining part of the Perimeter must comply with the form of a mining Perimeter as set forth in article 28 of the present Code.

The Perimeter covered by the Exploitation Permit is free, in whole or in part, as applicable, as of the time the Minister records it.

The total or partial relinquishment does not entitle to any right to reimbursement of the fees and the costs paid to the State for the granting or the maintenance of the permit. It

does not relieve the holder from its responsibility relating to the protection of the environment and its obligations towards the local community.

Article 80: Conditions on renewal of the Exploitation Permit

The Exploitation Permit is renewable so long as the holder:

- a. Has not breached its obligations to maintain the validity of the Permit provided for in article 196 to 199 of the present Code;
- b. Presents a new feasibility study that demonstrates the existence of exploitable reserves;
- c. Demonstrates the existence of the financial resources required to continue to carry out its project, according to the financing plan and exploitation work in the mine, as well as the rehabilitation plan for the site when the mine will be closed. This plan details each type of financing planned and reasons of its probable availability;
- d. Obtains the approval for the updating of the ESIS and EMSP;
- e. Undertakes in to actively carry on with its exploitation;
- f. Demonstrates that the project is entering its profitability phase;
- g. Demonstrates the regular and uninterrupted development of the deposit;
- h. Transfer to the State, upon each renewal, 5% of the equity interests or share capital of the company, in addition to those previously transferred;
- i. has not breached its tax, para-fiscal and customs obligations;
- j. files an instrument undertaking to comply with the specifications defining the corporate responsibility vis-à-vis local communities affected by the project's activities.

The application for renewal of the Exploitation Permit is addressed by the holder of the Exploitation Permit to the Mining Registry at least one year and not more than five years before the date of expiry of the Exploitation Permit. This application shall include the following information:

- a. The requirements in items (a), (b) and (c) of article 35 of the present Code;
- b. The identity of the affiliated companies;
- c. The nature, number and surface area of the Perimeter held by the holder and its affiliated companies.

The Mining Regulation defines the terms for preparing, filing, the admissibility or inadmissibility, the mining registry, technical, environmental, and social examination

of the renewal application relating to the Exploitation Permit, as well as the renewal decision, its recording, notification and posting.

Article 80 bis. The transformation of the Exploitation Permit into several Exploitation Permits

In the event of necessity and if technical conditions permit, the holder of an Exploitation Permit may seek the transformation of its initial Exploitation Permit into multiple Exploitation Permits with respect to some or all of the perimeter of its permit by complying with the provisions of articles 28, 29 and 68 to 76 of the present Code.

The duration of the multiple Exploitation Permits arising from the transformation of the initial Exploitation Permit is equal to the unexpired term of the initial Exploitation Permit.

The Mining Regulation sets the terms applying to the transformation of an Exploitation Permit into multiple Exploitation Permits.

Article 81: Right to process or transform mineral substances

Subject to the provisions set forth in Article 10, item j), the processing or transformation of mineral substances may be done either by the holder of an Exploitation Permit or by a Processing or Transformation entity.

Article 82: Processing or Transformation Permit

Any person who wishes solely to transform mineral substances must apply for and obtain a processing or transformation Permit which is governed by specific legislation.

Article 83: Processing Plants or Transformation Plants

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 84: Transportation and storage of products deriving from mining exploitation

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 85: Sale of mining products

The sale of mining products which originate from the exploitation Perimeters is free. The holder of an Exploitation Permit may sell its products to the customers of its choice at freely negotiated prices.

CHAPTER III: EXPLOITATION OF TAILINGS

Article 86: Access to exploitation of tailings

The Exploitation Permit entails the right to exploit artificial deposits located within the mining Perimeter covered by the permit, unless this Exploitation Permit does not expressly exclude the exploitation of artificial deposits.

The holder of an Exploitation Permit may transfer the right to exploit artificial deposits located within its mining Perimeter to a third party, while retaining its underground rights. In this case, it requests the partial transformation of its Exploitation Permit into a Permit for the Exploitation of Tailings, as well as the transfer of this Permit to the transferee.

The Minister may also grant a Permit for the Exploitation of Tailings on an artificial deposit which is not covered by an Exploitation Permit.

Article 87: Exploitation Perimeters of tailings

The surface area comprising the Perimeter covered by the Permit for the Exploitation of Tailings must comply with the provisions of set forth in article 28 of the present Code.

The geographical situation of the mining Perimeter covered by the Exploitation Permit for Tailings is indicated in accordance with the provision of article 29 of the present Code.

Article 88: Scope of the Permit for the Exploitation of Tailings

The Permit for the Exploitation of Tailings covers the mineral substances for which it has been specifically issued. The Permit for the Exploitation of Tailings may be extended to other mineral substances in accordance with the provisions of article 77 of the present Code.

Article 88 bis: Rights conferred by the Permit for the Exploitation of Tailings

The holder of a Permit for the Exploitation of Tailings confers upon its holder the same rights as those granted to the holder of an Exploitation Permit by article 64 *bis* of the present Code.

However, the rights granted to the holder of a Permit for the Exploitation of Tailings are restricted to the surface it covers and do not extend in depth.

The Mining Regulations define the terms and conditions of application of the preceding paragraph.

Article 89: Nature of the Permit for the Exploitation of Tailings

The Permit for the Exploitation of Tailings is a real property, exclusive, conveyable and transferable right which can be leased, in accordance with the provisions of the present Code.

This right is evidenced by a mining title called “Certificate of Exploitation of Tailings”.

Article 90: Term of validity of the Permit for the Exploitation of Tailings

The term of validity of the Permit for the Exploitation of Tailings is five years renewable several times for the same duration.

Article 91: The preparation, submission, admissibility and processing of the application for the Permit for the Exploitation of Tailings

The applicant for a Permit for the Exploitation of Tailings prepares the application for its Permit and submits it to the Mining Registry for processing, in accordance with the provisions of articles 38 to 42 and 45 as complemented by those of articles 74 to 76 of the present Code.

Without prejudice to the provisions of the preceding paragraph, the partial transferee who is an applicant for an Exploitation Permit shall submit the instrument relating to the partial transfer to the Mining Registry for registration, to which its application for a Permit for the Exploitation of Tailings is attached.

Article 92: Conditions for the granting of the Permit for the Exploitation of Tailings

The conditions for the granting of the Permit for the Exploitation of Tailings and the granting of said Permit are governed by the provisions set forth in articles 71 and 72 of the present Code.

Article 93: Refusal to grant a Permit for the Exploitation of Tailings

The conditions for refusing to grant a Permit for the Exploitation of Tailings are set forth in the provisions of article 73 of the present Code.

Article 94: Expiry of the Permit for the Exploitation of Tailings

A Permit for the Exploitation of Tailings expires under the same conditions as an Exploitation Permit, as provided for in article 78 of the present Code.

Article 95: Renewal of the Permit for the Exploitation of Tailings

The provisions of article 80 of the present Code apply to the filing and evaluation of an application for, and to the grant or refusal of the renewal of, a Permit for the Exploitation of Tailings.

Article 96: Renunciation of a Permit for the Exploitation of Tailings

The holder of a Permit for the Exploitation of Tailings may at any time, either in whole or in part, renounce the Perimeter which is the subject of its Permit, in accordance with the provisions of article 79 of the present Code.

CHAPTER IV: SMALL-SCALE MINING EXPLOITATION

Article 97: Access to Small-scale mining exploitation

Without prejudice to the provisions of article 23 subparagraph a of the present Code, legal entities that intend to carry out small-scale mining may apply for and obtain a Small-scale Mine Exploitation Permit.

Article 98: Small-scale mining deposits

If the technical conditions characterizing certain deposits of mineral substances do not allow for a large-scale mining exploitation which is economically viable, but instead for a small-scale mining operation with a minimum of fixed installations using semi-industrial or industrial procedures, these shall be considered small-scale mining deposits.

These small-scale mining deposits can result from exploration work undertaken by the holder of an Exploration Permit or from works carried out by the State pursuant to Article 8 paragraph 2 of the present Code.

The small-scale mining deposits resulting from exploration work undertaken by the State are subject to an invitation to tender, in accordance with article 33 of the present Code.

The surface area of the Perimeter where the small-scale mining deposit is located coincides with that of the Exploration Permit from which it derives or the part of the Perimeter of the Exploration Permit transformed into a Small-Scale Mining Exploitation Permit.

If the small-scale mining deposit is the result of exploration work undertaken by the State, the Perimeter covered by the Small-Scale Mining Exploitation Permit is that determined by the State. It must be of such nature that it allows mining exploitation.

The form and the localization of the Perimeters containing small-scale mining deposits relating to the Small-Scale Mining Exploitation Permit are governed by the provisions of articles 28 and 29 of the present Code.

The Mining Regulations determine the conditions for small-scale mining, in particular the volume of the reserves, the level of investment, the production capacity, the number of employees, the annual added value and the degree of mechanization.

Article 99: Scope of the Small-Scale Mining Exploitation Permit

The provisions of article 64 of the present Code apply to the Small-Scale Mining Exploitation Permits.

Article 99 bis: Rights conferred by a Small-Scale Mining Exploitation Permit

A Small-Scale Mining Exploitation Permit confers upon its holder the same rights as those conferred upon the holder of an Exploitation Permit contemplated by for in article 64 *bis* of the present Code.

The holder of a Small-Scale Mining Exploitation Permit may transform such permit into an Exploitation Permit if the technical conditions of exploitation justify/warrant it.

Similarly, the holder of an Exploitation Permit may transform such permit into a Small-Scale Mining Exploitation Permit.

The Mining Regulations define the terms applying to the situations referred to in paragraphs 2 and 3 of the present article.

Article 100: Nature of the Small-Scale Mining Exploitation Permit

The Small-Scale Mining Exploitation Permit is a real property, exclusive, conveyable and transferable right which can be leased, in accordance with the provisions of the present Code.

This right is evidenced by a mining title called “Certificate of Small-Scale Mining”.

Article 101: Term of validity of a Small-Scale Mining Exploitation Permit

The term of validity of a Small-Scale Mining Exploitation Permit is five years and can be renewed once for the same duration.

However, at the holder’s request and after having received the favorable opinion of the Directorate of Mines, the minister may extend the duration of a Small-Scale Mining Exploitation Permit beyond ten years depending on the circumstances and for the substances which exploitation exceeds ten years.

Article 102: Scope of the Small-Scale Mining Exploitation Permit

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 103: The preparation, submission, admissibility and the processing of the application for the Small-Scale Mining Exploitation Permit

The preparation, submission, admissibility and the processing of the application for the Small-Scale Mining Exploitation Permit are governed by the provisions of articles 69, 70, 74 to 76 of the present Code.

Article 104: Conditions for the granting of the Small-Scale Mining Exploitation Permit

In addition to the conditions provided for under subparagraphs b through g of article 71 of the present Code, no person can obtain a Small-Scale Mining Exploitation Permit if it does not demonstrate the existence of a deposit whose technical factors do not allow an economically viable industrial exploitation, by submitting a feasibility study together with a technical plan for the development, construction of and exploitation of the mine.

In addition to the conditions listed above, any person of foreign nationality must set up a company pursuant to Congolese law in association with one or more persons of

Congolese nationality whose participation in the capital of the company cannot be less than 25%.

Article 105: The granting and refusal to grant a Small-Scale Mining Exploitation Permit

The granting or the refusal to grant a Small-Scale Mining Exploitation Permit are governed by the provisions of articles 72 and 73 of the present Code.

Article 106: Expiry of the Small-Scale Mining Exploitation Permit

The Small-Scale Mining Exploitation Permit expires under the same conditions as the Exploitation Permit as provided for in article 78 of the present Code.

Article 107: Conditions on the renewal of a Small-Scale Mining Exploitation Permit

An application to the minister for renewal of a Small-Scale Mining Exploitation Permit shall be filed with the Mining Registry not earlier than one year and at the latest six months before the expiry date of such Permit. This application shall include the information listed at the end of Article 80 paragraph 2 of the present Code.

The Small-Scale Mining Exploitation Permit is renewable so long as the holder:

- a. has not breached its obligations to maintain the validity of the permit contemplated by articles 196 to 199 of the present Code;
- b. presents a new feasibility study that demonstrates the existence of exploitable reserves;
- c. demonstrates that the has entered its profitability phase;
- d. demonstrates the regular and uninterrupted development of the deposit;
- e. demonstrates the existence of the financial resources required to continue to successfully carry out its project in accordance with the mine exploitation work financing plan and the rehabilitation plan for the site when the mine will be closed. Such plan details each type of financing referred to and support for their probable availability;
- f. obtains the approval for the updated ESIS and EMSP;
- g. undertakes to actively carry on with its exploitation;
- h. has not breached its tax, para-fiscal and customs obligations.

The Mining Regulations set out the terms and conditions for the establishment, filing, admissibility or inadmissibility, mining registrar, technical and environmental evaluation of the renewal application relating to the Small-Scale Mining Exploitation

Permit, as well as the decision to renew such permit, its registration, notification and posting.

Article 108: Renunciation of the Small-Scale Mining Exploitation Permit

The provisions of article 79 of the present Code on the renunciation of the exploitation Perimeter apply to the renunciation by the holder of all or part of the small-scale mining exploitation Perimeter

CHAPTER V: INDUSTRIALIZATION OF THE MINING SECTOR

Article 108 bis. the obligation of the holder to carry out the processing of mineral substances within the national territory

Without prejudice to article 64, paragraph 1, subsection e, and articles 88, 89 and 146 of the Mining Code, the holder of a mining exploitation right or a permanent quarry exploitation authorization is required to process or cause to be processed the mineral substances into products for sale within its own facilities or through authorized processing entities that are established on the national territory.

Any holder of a mining exploitation right or of a permanent quarry exploitation authorization must present to the Mining Directorate its industrialization plan containing a program for the processing of the mining products extracted from its perimeter within its own facilities or through authorized processing entities established on the national territory.

The Mining Regulation defines the contents of the industrialization plan as well as its terms for filing, examination, approval and monitoring.

Article 108 ter. The exceptional processing of unprocessed mineral substances outside the national territory

As an exception to the provisions of the preceding article, the holder of an exploitation mining right may be authorized, on a year to year basis, to cause its mining products to be processed outside of the national territory pursuant to an inter-ministerial decree of the minister and of the minister responsible for foreign commerce, debated within the Council of Ministers, subject to the payment of the related tax.

The authorization is granted only if the holder demonstrates (cumulatively):

- a. the inexistence of any possibility to process within the national territory at an economically profitable cost in the context of the mining project;
- b. the existence of an outside processing contract with respect to the processing of the mining products outside the national territory entered into with a firm established abroad;
- c. its acceptance that the statistics of the metal produced at the end of the processing abroad will be accounted for as exports by the Democratic Republic the Congo;

- d. its acceptance to be subject to the duties and levies due to the Public Treasury with respect to the exceptional processing abroad of the unprocessed mineral substances;

The Mining Regulation defines the terms for the application, issuance and renewal of the authorization for exceptional processing of unprocessed mineral substances outside the national territory.

Article 108 *quater*. Processing entities and transformation plants

1. Processing entities

Any person that does not hold a mining exploitation permit that proposes to carry out only the processing of mineral substances requires and must obtain a processing authorization from the minister, in accordance with the present Code and the Mining Regulation.

2. Transformation plants

Any person that proposes to carry out only the transformation of mineral substances must comply with the legislation applying to such domain.

Any person that does not hold a mining exploitation permit that proposes to carry out only the processing of mineral substances reserves at least 50% of the share capital for the Congolese.

Article 108 *quinquies*: Regarding sub-contracting

The sub-contracting activities referred to in article 1, paragraph no. 48 of the present Code are carried out in accordance to law no. 17/001 of 08 February 2017 setting the rules applying to sub-contracting in the private sector.

CHAPTER VI: REGARDING THE HOLDING, TRANSPORT, WAREHOUSING, STORAGE, SALE AND EXPORT OF MINING PRODUCTS

Article 108 *sexies*. The holding of mining products

Without prejudice to the provision of para. 3 of article 5 of the present Code, credit institutions that are duly established within the national territory, the Public Treasury, the Mining Administration and certain universities and research institutions are authorized to hold mining products.

The holding of mining products by jewelers, jewelry makers, artists and dentists is subject to an authorization issued by the governor of the province.

However, the province mining division grants artists approved by the ministry responsible for culture and arts the special authorization referred to in article 115 of the present Code.

Article 108 *septies*. Transport and warehousing of mining products

The persons referred to in para. 3 of article 5 of the present Code are entitled to transport or cause to be transported by the transporter of their choice the mining products from their exploitation sites, plants, trading houses or sales outlets for traders, as applicable. In such a case, in accordance with article 7 *ter* of the present Code, they are responsible for causing their transporter to be identified.

They also have the right to warehouse or store their mining products in enclosed sites arranged for such purpose and located around loading areas, subject to complying with regulations relating to site security and industrial pollution.

The Mining Regulation defines the terms and conditions for identifying transporters, the transport and the warehousing of mining products.

Article 108 *octies*. Sale and exportation of mining products

The sale of mining products originating from the exploitation perimeters or from authorized processing entities or transformation entities is carried out in accordance with the laws and regulations in force within the Democratic Republic of the Congo. The holder of an Exploitation Permit may sell its products to the customers of its choice at a fair price as compared to market conditions.

However, in the event of a local sale, it can only sell its products to a legal person conducting mining activities or to factories having a connection with mining activities.

Marketable mining products shall comply with the nomenclature as defined by applicable regulations.

TITLE IV: ARTISANAL EXPLOITATION OF MINES AND/OR QUARRIES

CHAPTER I: ARTISANAL EXPLOITATION PER SE]¹²

Article 109: Creation of an artisanal exploitation area

If the technical and economic factors which characterize certain deposits of mineral substances classified as mines or quarries do not make it possible to ensure industrial or semi-industrial exploitation of same, but permits artisanal mining, such deposits are established, within the limits of a geographical area covering no more than two quadrangles, as an artisanal exploitation area.

An artisanal exploitation area is created pursuant to an order issued by the minister after he has received the opinion of the entity specialized in exploration, the Governor of the province, the Head of the Provincial Mining Division, the authority of the decentralized territorial entity and the Mining Registry.

¹² [Note to draft: Conflict between article 4 and article 20 of the amending law with respect to changes to the titles of Title IV and its Chapter 1.]

A mining or quarry perimeter covered by a valid mining or quarry title cannot be transformed into an artisanal exploitation area. Such a perimeter is expressly excluded from the artisanal exploitation areas created in accordance with the provisions of this chapter.

The creation of an artisanal exploitation area is notified by the Secretary General for Mines to SAEMAPE for the supervision and assistance of artisanal mines affiliated with an accredited mining cooperative and to the Mining Registry, which proceeds to insert it in the registry survey map. As long as an artisanal exploitation area exists, no mining or quarry title can be granted over the area.

On the basis of relevant mineralization data and data on economic minability of ore (*gîtologie*) relating to an area of interest identified by the entity specialized in exploration, the SAEMAPE may require that an artisanal exploitation area be established.

However, the entity specialized in exploration may at any time proceed with prospecting and exploration work in the artisanal exploitation areas.

Article 110: Closure of an artisanal exploitation area

If the factors that justified the creation of an artisanal exploitation area have ceased to exist or if a new deposit which does not lend itself to artisanal mining has just been discovered, on the advice of the entity specialized in exploration, the SAEMAPE and the Governor of the Province concerned, the minister proceeds to close the artisanal exploitation area.

The Secretary General for Mines notifies the Provincial Division of Mines responsible for that area, the Mining Registry and SAEMAPE of the closure of an artisanal exploitation area. SAEMAPE so informs the authorized mining cooperatives or authorized quarry products cooperatives, as appropriate, and may take responsibility for re-localization to another legally established artisanal exploitation area. In this case, the authorized mining cooperatives or the authorized quarry products cooperatives are required to free the artisanal exploitation area within sixty days as of the date the notification of the decision to close.

The authorized mining cooperative or authorized quarry products cooperative working in the artisanal exploitation area concerned have a priority right to request a Permit for small-scale mining exploitation, in accordance with the provisions of the present Code.

This authorized mining cooperative or authorized quarry products cooperative has a period of one hundred and eighty days commencing upon the notification of the closure given by the Secretary General for Mines to advise if it intends to exercise its priority right in accordance with the provisions of the present Code.

An authorized mining cooperative or authorized quarry products cooperative shall comply, within the pre-emption period granted to it, with the conditions set out in article 69 of the present Code for obtaining an Exploitation Permit or a Small Mine Exploitation Permit.

The establishment, filing, admissibility and evaluation of an application for a Small Mine Exploitation Permit are governed by the provisions of article 103 of the present Code.

Article 111: Access to an artisanal exploitation area

In an artisanal exploitation area, only the members of authorized mining cooperatives or authorized quarry products cooperatives are authorized to access such area for the purpose of exploiting any mineral substance classified as mines or quarry products.

The terms and conditions of this authorization are set defined by the Mining Regulations.

Article 111 bis: Artisanal exploitation card for mines and/or quarry products

Artisanal exploitation cards for mines and/or quarry products are issued by the provincial minister for mines in the area to persons are eligible and who undertake to comply with the regulations on protection of the environment, health and safety in the artisanal exploitation areas, in accordance with the terms and conditions set forth in the Mining Regulations, after having reviewed them.

A fixed fee, which amount is determined by the regulations, is charged every time a card is issued.

The term of the artisanal exploitation card is one year, renewable for the same period of time, without restriction.

If the artisanal exploitation card is lost, destroyed or stolen, no duplicate will be issued. The holder is obliged to put a stop on it before applying for a new one.

The Mining Regulations set forth the conditions to issue artisanal exploitation cards.

Article 112: Obligations of the holder of the artisanal exploitation card

The mining or quarry product cooperative and the artisanal miner shall, as far as each is concerned, comply with the regulations regarding safety, health, use of water and the protection of the environment which apply to its mining activity, in accordance with the regulations in force.

The Mining regulations set forth the conditions of execution of the regulations regarding public safety, public health and the environment.

Article 113: Transformation of the products resulting from artisanal mining

Authorization as a mining or quarry products cooperative does not authorize its holder to transform the products resulting from artisanal mining.

However, the transformation of the products by the authorized mining or quarry products cooperative may be carried out if there is a prior authorization granted by the minister.

Article 114: Withdrawal of the artisanal exploitation card for mines and/or quarry products

The artisanal exploitation card for mines or quarry products may be withdrawn by the provincial minister of mines who has issued it, if the holder of the card does not remedy the breach of the obligations set forth in article 112 of the present Code within a period of thirty days.

Failing that, the person from whom the card has been withdrawn is not eligible to obtain a new artisanal exploitation card for mines or quarry products for three years.

The withdrawal of the artisanal exploitation card for mines or quarry products is subject to the right to appeal provided for in articles 315 and 316 of the present Code.

Article 114 bis: Authorized mining and/or quarry products cooperative

The authorized mining and/or quarry products cooperative is authorized to exploit any mineral substance that can be artisanally exploited and to sell such mineral substance locally in accordance with the provisions of the present Code and its implementing measures.

A fixed fee, the amount of which is determined by regulation, is collected at the time of authorization.

The application for authorization as a mining and/or quarry products cooperative addressed to the minister is filed with the jurisdiction's Provincial Division of Mines.

The application shall be accompanied by the following:

- a. the duly notarized articles of association of the artisanal miners' cooperative signed by the founders;
- b. a list containing the names and addresses of the founders;
- c. a certified true copy of each member's artisanal exploitation card;
- d. the minutes of the general meeting forming the cooperative;
- e. the names, addresses and professions of the directors;
- f. proof of each member's free membership in the group of artisanal miners;
- g. proof that the conditions on membership in the the group are not prohibitive;
- h. proof of payments made in respect of subscriptions to the share capital;
- i. the technical and financial means and the human resources that the cooperative intends to implement to achieve its objectives.

Obtaining an authorization as a mining and/or quarry products cooperative is subject to the following conditions:

- a. being formed in accordance with the Uniform Act on the Law of Cooperative Societies (*Acte uniforme sur le droit des sociétés coopératives*);
- b. being composed of at least twenty individuals of age of Congolese nationality holding artisanal mine exploitation and/or quarry products cards valid for a given province;
- c. having v as its principal corporate purpose p mining and/or quarry products activities.

The authorization as a mining and/or quarry products cooperative is granted or refused by the minister.

The Secretary General for Mines notifies SAEMAPE and the Mining Registry of the decision to grant or refuse the authorization.

Any refusal shall state the reasons on which it is based and shall allow for an appeal, in accordance with the provisions of articles 313 and 316 of the present Code.

Under penalty of withdrawal of an authorization by the minister, the authorized mining and/or quarry products cooperative is required to, in addition to the obligations provided for in article 112 of the present Code, transmit monthly to SAEMAPE the statistics on its production and to compensate farmers for any damage caused by its activity.

The Mining Regulations set out the terms and conditions applying to the evaluation of applications for authorization as a mining and/or quarry products cooperative.

CHAPTER II: POSSESSION, TRANSPORTATION AND SALE OF ARTISANAL MINING PRODUCTS

Article 115: Possession and transportation of artisanal mining products

Without prejudice to the provisions of paragraph 2 below, within the entire national territory, but outside the Perimeters which are the subject to exclusive mining titles, no person can keep or transport the products resulting from artisanal mining of mineral substances:

- a. if he does not have an artisanal exploitation card and is not acting in the name or on behalf of a mining or quarry product cooperative;
- b. if he does not have a valid trader's card;
- c. if he is not an authorized buyer of an approved trading house, or of a processing or transformation entity;
- d. if he is not a manager or agent of a mining cooperative.

Article 116: Sale of products resulting from artisanal mining

The artisan miners can only sell their mining products to traders, exchange markets, trading houses or entities approved or created by the State. They can also sell their mining products to artists approved by the Ministry of Culture and the Arts, within the restrictions to authorizations referred to in paragraph 2 of Article 115 of the present Code.

The approved traders can only sell the artisanal mining products to trading houses or entities approved or created by the State, as well as exchange markets.

The approved artists can only sell the artisanal mining products which have not been worked on, with special permission obtained for exceptional cases of liquidation of excessive stocks/inventory.

The Mining Regulations set forth the conditions for issuing special permissions.

Article 117: Traders in artisanal mining products

The holders of a trader's card for a valid artisanal exploitation area are authorized to buy gold, diamonds or any other mineral substance which can be extracted artisanally from persons who hold artisanal exploitation cards.

Trader's cards are issued by the provincial minister to persons of age of Congolese nationality who apply for such cards. In support of his application, the applicant for a trader's card shall provide proof of nationality and the proof of his declaration or registration with the Trade and Personal Property Credit Register.

A fixed fee, the amount of which is set forth in the regulations, is charged every time a card is issued.

The term of validity of the trader's card is one year. It is renewable for the same period of time and without restriction.

Should the trader's card be lost, destroyed or stolen, the holder is obliged to put a stop on it. However, he can apply for a new one.

The Mining Regulations set forth the conditions for issuing trader's cards.

Article 118: Obligations of holders of trader's cards

The approved trader must sell the artisanal mining products he buys to trading houses or entities approved or created by the State, as well as to exchange markets approved by the State. He must also provide the reports of his activity in accordance with the corresponding regulations.

Article 119: Withdrawal of the trader's card

A trader's card may be withdrawn by the Minister of the Province who issued it if, after thirty days' formal notice, the trader has not remedied the relevant breach imposed [*sic*]

on him under article 118 of the present Code. Failing that, the person from whom the card has been withdrawn is not eligible to obtain a new trader's card for three years.

The withdrawal of the trader's card is subject to the right to appeal set forth in articles 315 and 316 of the present Code.

Article 120: Authorized Trading Houses

The authorized trading houses are authorized to purchase, sell and export artisanal exploitation mineral substances pursuant to the provisions of the present Code and its implementing regulations.

The authorization as a trading house for the purchase and sale of artisanal mining mineral substances is granted by the Minister.

The authorization as a trading house for the purchase and sale of artisanal mining mineral substances is valid for one year, renewable without restriction.

A royalty, which amount is set by regulation, shall be paid to the Public Treasury upon the grant of the authorization and upon each renewal.

The applicant for authorization as a trading house is required to provide a deposit in accordance with the payment terms established by regulation.

Article 121: Number of Authorized Trading Houses

The number of authorized trading houses for the purchase of gold, diamonds and other artisanal mining mineral substances in the National Territory is unlimited.

However, the number of purchasers per trading house is limited by regulation.

Article 122: Purchasers from authorized trading houses

The purchaser of an authorized trading house exercises his activities in accordance with applicable regulations.

Article 123: Application for the authorization as a trading house for the purchase and sale of mineral substances

The application for the authorization as a trading house for the purchase and sale of artisanal mining mineral substances, by any person who is eligible according to paragraph 2 of Article 25 of the present Code, is addressed to the Directorate of Mines, and must include the following:

- a. proof of registration in the Trade and Personal Property Credit Register;
- b. notarized articles of incorporation, if it is a legal entity;
- c. excerpt from the police record of the first residence, no more than three months old, and the certificate of good conduct, good character, if it is an individual;

- d. National Identification number;
- e. tax ID number;
- f. proof that there is an open account in the name of the applicant with an authorized bank;
- g. letter of registration with the Central Bank of the Congo and the Import-Export number.

Article 124: Processing of the application for the authorization as trading house to purchase and sell artisanal mining mineral substances

The Directorate of Mines acknowledges receipt of the application, registers it in an ad hoc registry book, processes it and ensures that it complies with the requirements regarding form, and requests corrections or additions, as the case may be. It can make any enquiries it may deem necessary.

Should there be an enquiry, it requests the necessary information regarding the authentication of the documents attached from the public services which have issued them.

In any event, the processing of the application may not take longer than thirty days as of the date the application for authorization was submitted. After this period, the favorable opinion of the Directorate of Mines shall be deemed to have been given, without prejudice to the provisions of Article 123 above.

After the processing, the Directorate of Mines sends the file together with its opinion to the Minister for his decision. The Directorate of Mines notifies the applicant of his opinion and the fact that it has been sent to the Minister.

Article 125: Authorization or refusal of authorization

If the opinion of the Directorate of Mines is favorable, the Minister makes his decision within a period not exceeding thirty working days.

After this period, the applicant has the right to an appeal in accordance with the provisions of articles 313 and 314 of the present Code.

If the opinion of the Directorate of Mines is unfavorable, the Minister makes his decision to refuse authorization within a period not exceeding fifteen working days as of the date the file sent by the Directorate of Mines is received.

The decision to refuse is reasoned and is subject to the right to an appeal provided for in articles 313 and 314 of the present Code.

Article 126: Obligations of the authorized trading houses

The authorized trading houses must, on the one hand, subject themselves to the supervision of the Mines Authority and a government entity in charge of the expertise while buying and selling artisanal mining products, and on the other, submit reports of their activity in accordance with the present Code and its implementing regulations.

The authorized trading houses also have to comply with the following obligations:

- a. To Communicate to the Minister and to the Central Bank of the Congo, as of the date the authorization is granted, the fixed and monitored sites of the purchasing counters for the purchase of gold, diamonds and other artisanal mining mineral substances;
- b. To buy gold, diamonds and other artisanal mining mineral substances presented to the authorized trading houses, regardless of their size, quantity or quality;
- c. To pay the taxes and duties relating to their activities;
- d. To own at least one building made of durable materials in each center of operation within one year;
- e. To have within the company a share of at least 25% of the share capital reserved for Congolese.

Article 127: Withdrawal of the authorization as a trading house for the purchase and sale of artisanal mining mineral substances

The authorization as a trading house for the purchase and sale of artisanal mining mineral substances may be withdrawn by the minister after a thirty-day's formal notice provided by the Directorate of Mines, if the authorized trading house in question has not remedied any breach to comply with its obligations set forth in article 126 of the present Code. Failing that, the trading house stripped of its rights is not eligible for authorization as a trading house for five years.

The withdrawal of authorization as a trading house for the purchase and sale artisanal mining mineral substances is subject to the right to an appeal, as set forth d in the provisions of articles 313 and 314 of the present Code.

Article 128: Exchange markets

No exchange market for the buying and selling of other artisanal mining mineral substances can operate in the national territory without prior authorization from the Central Bank of the Congo and the minister.

The Mining regulations set forth the conditions for approval, organization and financing of the exchange markets.

TITLE V: QUARRY RIGHTS

CHAPTER I: GENERAL

Article 129: Authorization for quarry operations

The exploration activities for quarry products and the quarry exploitation activities are authorized by the State under the conditions set forth under the present title.

The Head of the Provincial Mines Division is authorized to grant the authorization for quarry exploration and the authorization for quarry exploitation for standard construction materials.

Only the Minister is authorized to grant the authorization for quarry exploitation for other quarry substances.

The Mining Registry is in charge of the issuing of titles to the applicants who have obtained the quarry authorizations applied for.

Article 130: Scope of the quarry authorization

The rights of the holder of a quarry authorization relate to the quarry substances which may be found on surface or in the subsoil, on an area the form of which complies with the provisions of article 28 of the present Code.

Article 131: Change in classification of a mineral substance

In case of a change in the classification from a mining substance into a quarry substance, the holder of a mining title issued for the substance in question retains all of the rights attached to its mining title relating to the substance until its title expires.

In case the classification of a quarry product relating to a Permanent Quarry Exploitation Permit is changed into the category of mining products, the holder of the Exploitation Permit has the right to obtain an exploitation permit for said substance in its name, provided it applies for it within a period of one year after the date of classification change. However, its Exploitation Permit remains in force.

Article 132: Classification of quarries

Quarries are classified in four categories:

- a. permanent open quarries, either on public land or on a Perimeter which land title is held by a third party for commercial exploitation by private individuals;
- b. quarries which are open temporarily, either on public land or on a Perimeter which land title is held by a third party for commercial exploitation by private individuals;
- c. quarries which are open temporarily on public land for public works;
- d. quarries which are open temporarily by the occupant who is properly authorized, or the owner of a property for non-commercial exploitation or exclusively for its own personal use.

The exploitation of each type of quarry is subject to a different form of authorization as set forth below.

Article 133: Authorization for the opening of quarries for public works

Based on the opinion of the competent department of the Ministry of Land Affairs and the opinion of the Provincial or Commune Administrative Authorities concerned, as well as the opinion of the Mining Registry, the Governor of the province may open a quarry for public works on public land which area is not covered by a mining Exploitation Permit.

The provincial Decree which set forth the opening of a quarry for public works indicates:

- a. The authority and the government department responsible for the exploitation work;
- b. The private company designated by said department which will carry out the work;
- c. The location of the quarry in accordance with the provisions of article 29 of the present Code;
- d. The substances whose extraction is authorized;
- e. The conditions of access to the quarry;
- f. The exploitation plan;
- g. The duration of the work and the conditions for the rehabilitation of the site after exploitation activities are over.

If the public works are carried out by a private company, it must pay the extraction duty, in accordance with the provisions of substantive law.

Article 134: Authorization of non-commercial exploitation of quarries for personal use

The exploitation of quarries which are open temporarily by the occupant who is properly authorized or the owner of a property for the non-commercial exploitation and exclusively for its own personal use does not require either an authorization or an advance declaration. However, this activity remains strictly subject to the regulations with regard to safety and protection of the environment.

Article 135: Exploration Permit and commercial exploitation of quarries

The exploration and commercial exploitation of quarries are authorized in accordance with the provisions of the following chapters of the present heading.

Any collection of materials on national public land or their dependencies, for use other than for personal use is deemed to be a quarry exploitation and is subject to the same conditions as the permanent quarry exploitation.

CHAPTER II: EXPLORATION OF QUARRY PRODUCTS

Article 136: Scope of the Exploration Permit of Quarry Products

The Exploration Permit of Quarry Products covers the mineral substances classified as quarries for which it has been granted.

Article 136 bis: Rights conferred by the Exploration Permit of Quarry Products

The Exploration Permit of Quarry Products entitles its holder the right to obtain an Authorization for Quarry Exploitation for all or some of the mineral substances covered under the exploration permit within the area covered by the Exploration Permit, if it discovers a deposit thereof.

However, a mining right may be granted for a Perimeter covered under an exploration permit of quarry products.

If a Perimeter is covered by an Exploration Permit of Quarry Products, no application for Authorization of quarries for the same Perimeter can be admitted, except for the application for the authorization for quarry exploitation applied for by the holder of such Exploration Permit.

If an Exploitation Permit is granted for the surface area covered by an Exploration Permit of Quarry Products, such Exploration Permit of Quarry Products is cancelled automatically. In such a case, the holder of the cancelled Exploration Permit of Quarry Products is entitled to fair compensation.

Article 137: Nature of the Exploration Permit of Quarry Products

The Exploration Permit of Quarry Products is a real, property, exclusive, non-transferable, non-transmissible right and cannot be leased.

This right is evidenced by a quarry title called a “Certificate of Exploration of Quarry Products”.

Article 138: Term of the Exploration Permit of Quarry Products

The term of the Exploration Permit of Quarry Products is one year, renewable once for the same period

Article 139: Restrictions

The surface area of the perimeter covered under an Exploration Permit of Quarry Products must not exceed a maximum of four quadrangles.

The Perimeter for the exploration of quarry products must not overlap with a surface area which is already covered by an Exploitation Permit. The existence of a Perimeter for mineral exploration does not preclude the setting up of a Perimeter for the exploration of quarry products on the same area.

A legal entity and its affiliated companies cannot hold more than ten authorizations for exploration of quarry products.

Article 140: Application for an Exploration Permit of Quarry Products

The applicant must prepare its application for Exploration Permit of Quarry Products and submit it to the Mining Registry for processing in accordance with articles 34 to 42 of the present Code.

Article 141: Conditions for the granting of the Exploration Permit of Quarry Products

Without prejudice to the provisions of articles 23 through 25 and 27, the granting of the Exploration Permit of Quarry Products is subject to the applicant's ability to prove its minimum financial capacity.

Article 142: Granting of the Exploration Permit of Quarry Products

Without prejudice to the provisions of article 46 of the present Code, the Exploration Permit of Quarry Products is granted or refused by the Head of the Provincial Mines Division, within a period not exceeding twenty working days as of the date of receipt of the file.

Any refusal of Exploration Permit of quarry products must be reasoned and is subject to the right of appeal provided for under articles 313 and 314 of the present Code.

Article 143: Proof of minimum financial capacity

The minimum financial capacity required must correspond to the aggregate amount of the planned budget for the execution of the exploration program.

In any case, the minimum financial capacity cannot be less than fifty times the total amount of the annual surface area fees per quadrangle payable for the term of validity of the Exploration Permit of Quarry Products applied for.

The proof of minimum financial capacity is made in accordance with the provisions of article 58 paragraphs 2 to 4 of the present Code

Article 144: Expiry of the Exploration Permit of Quarry Products

The Exploration Permit of Quarry Products expires on the last day of its last term of validity, or when it has not been renewed at the end of the first term of validity, or if it has not been transformed into an authorization for quarry exploitation, or when an Exploitation Permit is granted within the Perimeter of the exploration of quarry products.

Upon the expiry of the Exploration Permit of Quarry Products, the Mining Registry immediately notifies the holder of the expiry of its right, with a copy to the Directorate of Mines. In this case, except if an Exploitation Permit is granted, the perimeter covered by the Exploration Permit becomes free of any right as of the date the permit expires.

Article 145: Renewal and renunciation of the Exploration Permit of Quarry Products

The Exploration Permit of Quarry Products is renewable once for a period of one year if no Exploitation Permit is granted on the quarry exploration Perimeter.

The application for renewal must be submitted at least sixty days, and not more than ninety days, before the date of expiry of the Exploration Permit of Quarry Products. Any application for renewal duly submitted within this period which is not refused and notified to the applicant within a period of 30 days as of the date the application is submitted, is deemed to have been granted.

Any refusal to grant a renewal of the Exploration Permit of Quarry Products must be reasoned and is subject to the right of appeal provided for in articles 313 and 314 of the present Code.

The renunciation of the Exploration Permit of Quarry Products is governed by the same rules as those for the Exploration Permit provided for in article 60 of the present Code.

CHAPTER III: QUARRY EXPLOITATION

Article 146: Scope of the Authorization for Quarry Exploitation

The Authorization for Permanent or Temporary Quarry Exploitation covers the quarry products for which it has been specifically issued. These quarry products are those that the holder has identified and for which it has demonstrated the existence of an economically exploitable deposit.

Subject to the provisions of article 150, paragraph 2 of the present Code, the surface area of the perimeters covered by the Authorizations for Quarry Exploitation is the surface area of the Exploration Permits from which they derive or the surface area of the portions of the perimeters of the Exploration Permit for Quarry Products that have been transformed into Authorizations for Quarry Exploitation.

The Authorization for Permanent or Temporary Quarry Exploitation may be expanded to other quarry substances in accordance with article 162 of the present Code.

Article 146 bis: Rights conferred by the Authorization for Quarry Exploitation

The Authorization for Permanent or Temporary Quarry Exploitation entitles its holder to the exclusive right to carry out, within the Perimeter for which it is issued and for the duration of its validity, exploration, development, construction and exploitation works on the quarry substances for which the Authorization is issued and on other substances if it has requested an extension thereof.

The Authorization for Permanent or Temporary Quarry Exploitation also allows, without limitation:

- a. access to the Perimeter covered by the Exploitation Permit for the purpose of carrying out quarry operations;
- b. construction of the facilities and infrastructure necessary for quarry exploitation;
- c. use of water and wood resources within the quarry Perimeter for exploitation purposes, in accordance with the standards defined in the ESIS and ESMP or MRP, depending on whether it is a permanent or temporary quarry;
- d. free holding, transport and sale of its marketable products originating from the Exploitation Perimeter;
- e. carrying out processing or transformation operations on quarry substances extracted from the deposit within the exploitation Perimeter;
- f. the carrying out of quarry extension work.

Article 147: Restrictions on the Authorization for Temporary Quarry Exploitation

Without prejudice to the provisions of article 146 *bis* above, the authorization for temporary quarry exploitation sets forth the quantity of the substances to be extracted, the conditions for occupation of the sites necessary for sampling and related activities and indicates the duties to be paid. It also sets forth the obligations of the beneficiary, in particular with regard to the environment and the rehabilitation of the site after the sampling has been carried out.

However, a quantity exceeding the volume determined by the exploitation permit is to be reported to the department in charge of quarries and construction materials to be subject to additional taxation for the benefit of the Public Treasury under penalty of being confiscated.

Article 148: Nature of the authorizations for exploitation

The Authorization for Permanent Quarry Exploitation is a real, property, exclusive, transferable and transmissible right which can be leased, in accordance with the provisions of the present Code.

This right is evidenced by a quarry title called “Certificate of Permanent Quarry Exploitation”.

The Authorization for Temporary Quarry Exploitation is a real, property, exclusive, transferable and transmissible right which can be leased.

This right is evidenced by a quarry title, called “Certificate for Temporary Quarry Exploitation”.

Article 149: Term of the Authorizations for Quarry Exploitation

The term of validity of the Authorization for Permanent Quarry Exploitation is five years, renewable several times for the same period-

The term of validity of the Authorization for Temporary Quarry Exploitation is one year and cannot be renewed. However, its holder is entitled to apply for a new Authorization for Temporary Exploitation for the same Perimeter which would come into effect on expiry of the existing authorization. During the term of validity of its Authorization for Temporary Quarry Exploitation, only the holder thereof has the right to submit an application for a new Exploitation Permit on the same perimeter.

Article 150: Perimeters of the Authorizations for Quarry Exploitation

An Authorization for Permanent or Temporary Quarry Exploitation may be granted for the entire Perimeter covered by a valid Exploration Permit of Quarry Products granted to the applicant, or on part of the perimeter, in compliance with the provisions of article 28 of the present Code.

If the Perimeter has not been the subject of an authorization for quarry exploration, it must comply with the provisions concerning the form provided for in article 28 of the present Code and must not exceed a maximum of four quadrangles.

The Perimeter for an Authorization for Quarry Exploitation cannot overlap with a surface area which is the subject of an authorization for quarry exploration, nor a mining exploitation right held by a third party who has not given its consent in writing.

The existence of a Perimeter for mineral exploration does not preclude the existence of a Perimeter for quarry exploitation on the same site.

However, the minister can authorize the setting up of a perimeter for quarry exploitation on a perimeter which is the subject of an Exploitation Permit or a Small-scale Mining Exploitation Permit if the holder of the Permit has refused to give its consent in bad faith. Failing that, the application is processed and subject to an administrative litigation process to which the holder and the applicant are parties if the latter submits, together with its application, proof that the holder has refused to give its consent in bad faith.

The conditions of this procedure are specified in the Mining Regulations.

A legal entity and its affiliates may only hold a maximum of ten Authorizations for Permanent Exploitation of Quarry Products.

Article 151: Application for the Authorization for Quarry Exploitation

The applicant drafts its application for the Authorization for Permanent Quarry Exploitation and submits it to the Mining Registry, in accordance with the provisions of articles 35 to 37 of the present Code. The documents indicated in article 69 of the present Code must be attached to the application.

The contents of the application for an Authorization for Temporary Quarry Exploitation as well as the documents to be attached to it are specified in the Mining Regulations.

Article 152: Admissibility and processing of the application for Authorization for Permanent and Temporary Quarry Exploitation

The application for Authorization for Permanent or Temporary Quarry Exploitation is received and processed in accordance with the provisions of articles 38 to 42 as complemented by articles 156 to 158 of the present Code.

Article 153: Competent authority

The Authorization for Permanent or Temporary Quarry Exploitation is granted or refused pursuant to a decision made by:

- a. The Head of the Provincial Mines Division, for standard construction materials;
- b. The Minister, based on the technical advice of the Directorate of Mines and prior advice by the competent department of the Ministry of Land Affairs, as well as the local administrative authorities in case of the other quarry substances.

Article 154: Conditions for the granting of the Authorization for Permanent Quarry Exploitation

Without prejudice to the provisions of articles 34 to 42, the granting of the Authorization for Permanent Quarry Exploitation is subject to the following conditions:

- a. The demonstration of the existence of a deposit by submitting a feasibility study, together with a technical plan for the development, construction and exploitation work of the quarry.
- b. Proof of the existence of the financial resources required for carrying out the project in accordance with the financing plan for the development, construction and exploitation work of the quarry, as well as the rehabilitation of the site upon closure. This plan specifies each type of financing, the planned sources of financing and proof of their potential availability.
- c. Obtain the prior approval of the EIS and the EMMP of the project.
- d. Make a declaration of land vacancy established by the jurisdiction's Custodian of the Real Estate Titles or provide proof of the consent of the surface right holder, if the surface area which is the subject of the application is located within the Perimeter of his property;
- e. If the Perimeter applied for is located within the Perimeter of a valid exploitation mining right, provide proof of the consent of the holder of said right; or demonstrate that its consent was refused in bad faith;
- f. file an undertaking to comply with the specifications defining social responsibility vis-a-vis the local communities affected by the project activities.

Article 155: Reasons for the refusal of the granting

The Authorization for Permanent Quarry Exploitation can only be refused if:

- a. The feasibility study is rejected;
- b. The applicant's financial capacity is insufficient;
- c. The EIS has definitively been rejected;
- d. The surface rights owner refuses in good faith to give his consent to the opening of the quarry; or if,
- e. The holder of a mining exploitation right has refused in good faith to give its consent to the opening of the quarry.

The feasibility study for Authorizations for Permanent Quarry Exploitation can only be rejected for: non-compliance with the directive of the Ministry of Mines which specifies its contents in accordance with the practice generally accepted in the region; the presence of an obvious error; or, non-compliance with the EIS.

The proof of the applicant's financial capacity can only be rejected for non-compliance of the Financing Plan with the feasibility study or for the obvious insufficiency of the proof of potential availability of financing obtained from sources identified by the applicant.

The proof of the financial capacity cannot be rejected if the applicant has produced, in the case of external financing, certificates of the sources of financing identified by the feasibility of the financing, within the parameters envisaged by the applicant, and in the case of internal finance, the financial statements of the person or the company, certified by an approved auditor, demonstrating its self-financing capacity.

Article 156: Time limit of the technical evaluation of the application

The technical evaluation of an application for the Authorization for Permanent Quarry Exploitation is carried out within a period which may not exceed forty-five days as of the date the application file sent by the Mining Registry is received by the Directorate of Mines.

Article 157: Time limit of the environmental evaluation of the application

The environmental evaluation of the EIS and the EMMP relating to an application for the Authorization for Permanent Quarry Exploitation is carried out within a period not exceeding one hundred and eighty days as of the date the application file sent by the Mining Registry is received by the department responsible for the Protection of the Environment.

Article 158: The decision of the competent authority

If, following the evaluation of the application for an authorization for permanent quarry exploitation, the mining registrar, technical and environmental opinions are favorable, the competent authority renders its decision with respect to the grant of the authorization for permanent quarry exploitation.

If the registrar opinion concerning an application for the Authorization for Permanent Quarry Exploitation is unfavorable, the competent authority renders its decision to refuse the application within a period of fifteen working days as of the date the application file sent by the Mining Registry is received by the competent authority.

If the technical opinion concerning an application for the Authorization for Permanent Quarry Exploitation is unfavorable, the competent authority renders its decision to refuse within a period of thirty working days as of the date the application file sent by the Mining Registry is received by the competent authority.

If, following the evaluation of the application for the Authorization for Permanent Quarry Exploitation, the registrar and technical opinions are favorable but the environmental certificate is unfavorable, the competent authority renders its decision to refuse to grant the Authorization for Permanent Quarry Exploitation.

If the registrar and technical opinions following the processing of the application for an Exploitation Permit are favorable, but the environmental certificate has not yet been rendered, the competent authority renders its preliminary and conditional decision of approval within a period of twenty working days as of the date the application file is sent by the Mining Registry, and postpones its final decision to grant or to refuse the Authorization for Permanent Quarry Exploitation until it has received the environmental certificate.

The purpose of the preliminary and conditional decision of approval of the competent authority is to ratify the favorable registrar and technical opinions. Its final decision to grant (the rights) is subject to the favorable environmental certificate.

The competent authority renders and sends to the Mining Registry its decision to grant or its reasoned decision to refuse the granting of the Authorization for Permanent or Temporary Quarry Exploitation within a period of thirty days as of the date the environmental certificate sent by the Mining Registry is received by the competent authority.

Article 159: The granting of the Authorization for Temporary Quarry Exploitation

The Authorization for Temporary Quarry Exploitation is granted to the first eligible person who submits an admissible application in accordance with the provisions of articles 34 to 40 of the present Code, and who complies with the following conditions:

- a. Demonstration of the existence of a deposit which can be economically exploited by submitting a technical plan for the exploitation work in the quarry and an MRP relating to it;

- b. if the quarry is located on a Perimeter which is covered by a land title held by a third party, submission of the written consent of the latter to the opening of the quarry;
- c. if the quarry is located on a Perimeter which is covered by an Exploitation Permit held by a third party, submission of the written consent of the latter to the opening of the quarry, or proof that the consent was refused in bad faith.

Article 160: Time limit of the technical and environmental evaluation of the application

The technical and environmental evaluations of an application for the Authorization for the Temporary Quarry Exploitation are carried out within a period not exceeding fifteen days as of the date the application file is sent to the competent departments of the Ministry of Mines.

Article 161: Time limit to render the decision

The competent authority renders and sends its decision to grant or its reasoned decision to refuse the granting of the authorization for permanent or temporary quarry exploitation to the Mining Registry within a period of forty-five days as of the date the application file transmitted by the Mining Registry was received.

After this period of time, the authorization applied for is, subject to the provisions of Article 159 above, deemed to have been granted and paragraphs 2 and 4 of Article 43 of the present Code apply.

If need be, the applicant may resort to registration through the courts pursuant to the provisions of Article 46 of the present Code.

Article 162: Extension to include other substances

Before proceeding with the exploration or exploitation activities for quarry substances other than those for which the Exploitation Permit was granted, the holder is required to obtain an extension of its authorization to include these other substances. Such an extension is granted as of right if the holder applies for it in accordance with the provisions of this article.

In order to obtain an extension of its authorization to include substances other than those for which the authorization has been granted, the holder must follow the same procedure as that set forth for the granting of its valid Exploitation Permit. The extension is granted for the unexpired period of the term of the Holder's Exploitation Permit

Article 163: Expiry of the Authorization for Permanent Quarry Exploitation

The Authorization for Permanent Quarry Exploitation expires under the same conditions as those for the Exploitation Permit provided for in article 78 of the present Code.

Article 164: Renunciation of the Authorization for Permanent Quarry Exploitation

The holder of an Authorization for Permanent Quarry Exploitation may at any time, in whole or in part, renounce the right relating to the surface area covered by its authorization. The declaration of renunciation shall be addressed to the authority which granted the authorization.

The declaration of renunciation, made out on a form to be obtained and submitted to the Mining Registry, will indicate the co-ordinates of the part in question and those of the part which is retained.

The part subject to renunciation shall be comprised of entire and contiguous quadrangles, and the part which is retained must comply with the conditions on the form of an exploitation Perimeter as set forth in the present Code.

The renunciation becomes effective three months after the date the declaration of renunciation is received by the competent authority.

The total or partial renunciation does not entitle the holder to any right of reimbursement of the fees and costs paid to the State for granting or maintaining the authorization. In addition, the renunciation does not relieve the holder from its responsibility regarding the payment of the fees and taxes in relation to the authorized exploitation during the period which precedes the renunciation, the protection of the environment, nor its undertakings towards the local community.

Article 165: Renewal of the Authorization for Permanent or Temporary Quarry Exploitation

The Authorization for Permanent Quarry Exploitation is renewable as of right for successive periods of five years if the holder has not breached its obligations to maintain the validity of the authorization provided for in articles 196 to 199 of the present Code.

In support of its application for renewal, the holder must submit an update of the feasibility study which demonstrates the fact that the deposit is not exhausted as well as its undertaking to actively continue to exploit the deposit.

The processing of the file is done in accordance with the provisions of articles 39 to 42 of the present Code.

The review of the technical document provided by the applicant will be restricted to the verification of the update of the initial feasibility study, and an undertaking. The renewal of the Authorization for Permanent or Temporary Quarry Exploitation can only be refused for the same reasons as for the granting of an Authorization for Permanent Quarry Exploitation. However, the holder shall obtain the approval of an update of its ESIS and its ESMP in order to continue its work beyond the term of the initial Authorization and submit an undertaking to comply with the specifications defining social responsibility vis-à-vis the local communities affected by the project's activities.

The holder of an Authorization for Temporary Quarry Exploitation that is due to expire has the right to request, with respect to the same perimeter, a new Authorization, which shall take effect on the expiry of the initial Authorization.

The application for renewal duly submitted within this time limit, and which is not refused and notified to the applicant within a period of ninety days after the date when the application was submitted, is deemed as having been granted.

Any refusal to renew an Authorization for Permanent Quarry Exploitation must be contain the reasons for the refusal and confers on the holder the right to the recourse set forth in the present Code.

During the term of validity of its Authorization for Temporary Quarry Exploitation, only the Holder has the right to submit a new application for a new Exploitation Permit over the same perimeter.

CHAPTER IV: TRANSPORTATION, STORAGE AND SALE OF QUARRY PRODUCTS

Article 166: Transportation and storage of quarry products

The holder of an Authorization for Quarry Exploitation has the right to transport the quarry products covered by its authorization and which originate from within its exploitation Perimeter, or to have them transported by the transport company of its choice.

In addition, it has the right to store its quarry products in closed sites built to that end, located close to the places where loading takes place, on the condition that it complies with the regulations regarding safety of the site and the control of industrial pollution.

Article 167: Sale

The sale of marketable products which originate from within the Perimeters covered by its Exploitation Permit of those products, is free. The holder of an Exploitation Permit may sell its products to the customers of its choice at prices which are freely negotiated.

TITLE VI: SECURITIES

CHAPTER I: MORTGAGES

Article 168: Assets which can be mortgaged

The following can be mortgaged pursuant to the present Code:

- a. Exploitation Permits, Exploitation Permits for Tailings, Small-scale Mining Exploitation Permits and Authorizations for Permanent Quarry Exploitation, in whole or in part;

the movables by incorporation which are located within the mining exploitation Perimeter, in particular, factories, installations and machines built for the concentration, treatment and the transformation of the mineral substances contained in the deposits or in the artificial deposits;

- b. The fixtures used in mining exploitation;

Article 169: Procedure for the approval of the mortgage

Any mortgage contract concerning one of the assets referred to in article 168 of the present Code must be approved in advance by the Minister upon request of the mortgagee or the holder.

The application for the approval of the mortgage is addressed to the Mining Registry. The following should be attached to the application:

- a. The mortgage deed indicating the amount or the estimate of the debt guaranteed by the mortgage;
- b. A certified copy of the mining or quarry title which right is affected by the mortgage.

Subject to the paragraphs below, the application for the approval of the mortgage is processed in accordance with article 40 and 41 of the present Code.

The Mining Registry carries out the registrar examination of the application within a maximum period of seven working days. This registrar examination consists of verifying the existence of one or several previous mortgages, the authenticity of the mortgage deed which is the subject of the application and the validity of the title relating to the mining or quarry right covering the Perimeter subject to mortgage.

The technical evaluation is carried out by the Mines Directorate. It consists of the verification that the mortgage contract is properly drafted to guarantee the financing of the holder's mining activities within the Perimeter covered by its mining or quarry title.

The Mines Directorate sends its technical opinion to the minister and the Mining Registry within a period of ten working days as of the date the file sent by the Mining Registry is received by the Mines Directorate.

The minister renders and transmits his decision to approve or his reasoned decision to refuse to the Mining Registry within a period of forty-five days from the date the file sent by the Mining Registry is received by the minister.

After this deadline, the approval shall be deemed to have been given.

The Head of the Mining Registry or his representative has the power of a notary with respect to the authentication of mortgage contracts.

Article 170: Reasons for the refusal to approve mortgages

The Minister may only refuse to approve the creation of a mortgage if:

- a. The amount of the mortgage is lower than the guaranteed debt. In case there is a previous mortgage, the mortgage contract can only relate to the part of the asset which is not yet mortgaged;
- b. The mortgage guarantees debts which do not have any relation to the mining activity for which the mortgage has been approved;
- c. The amount of the financing obtained is insignificant;
- d. The mortgagee is prohibited from holding mining and/or quarry rights;
- e. The holder's mining or quarry exploitation right is no longer valid;

Any refusal to approve the mortgage must be reasoned and confers on the holder the right to the recourse provided for in the provisions of articles 313 and 314 of the present Code.

Article 171: Registration and enforceability of the mortgage deeds

The mortgage is registered in exchange for the payment to the Public Treasury of a registration fee (in Congolese franc equivalent), the applicable rate of which tracks the following sliding scale:

- 0.5%: from 1 to 100,000,000 USD;
- 0.3%: from 100,000,000 to 500,000,000 USD;
- 0.2%: from 500,000,000 to 1,000,000,000 USD;
- 0.1%: above 1,000,000,000 USD.

In order to be enforced against third parties, any mortgage approved by the Minister is compulsorily registered at the back of the mining or quarry title before being entered in a registry book set up and kept for this purpose at the Mining Registry, in accordance with the procedure provided for in the Mining Regulations.

The Mining Regulations defines the terms for the registration of the mortgage and the payment of the registration fee referred to in the first paragraph of this article.

Article 172: Execution of mortgages

In case of default by the holder of its obligations vis-a-vis the mortgagee, on the due date agreed to and specified in the mortgage deed, the latter may proceed with the procedure of forced execution in accordance with the provisions of the substantive law.

However, the mortgagee may take the place of the defaulting debtor and in this capacity require the partial or total transfer of the mining or quarry right onto its own name, if it complies with the conditions of eligibility provided for in article 23 of the present Code.

The letter of application for the transfer of the right in the name of the mortgagee is addressed to the Mining Registry. It must:

- a. Be accompanied by a certified copy of the mortgage deed;
- b. Certify that the mortgagee is eligible for the mining or quarry right affected by the mortgage which will be realized on;
- c. Contain its undertaking to assume the rights and obligations which arise from the mining or quarry right affected by/subject to the mortgage which will be realized on;

If the mortgagee is not eligible for the mining and/or quarry rights, it is granted a period of six months, either to comply with the rules of eligibility, or to be replaced by another person who is eligible for the mining or quarry rights subject to the mortgage.

Article 173: Mining registry examination in case of transfer

Subject to the provisions below, the Mining Registry proceeds with the mining registry examination in accordance with the dispositions of article 40 of this Code.

At the conclusion of the mining registry examination, the Mining Registry proceeds:

- a. To provisionally register the mining or quarry right subject to the mortgage on the mining registry survey map. This registration is valid for the entire duration of the examination;
- b. To display the result of the examination in a room specified in the Mining Regulations. A copy of the opinion is provided to the applicant.
- c. To reject the application in the event of an unfavorable opinion and to notify the applicant of the decision to reject its application.

In the event of a favorable opinion, the Mining Registry proceeds to register the transfer and to issue a new title issued in the name of the mortgagee or a third party in its place, within a period of five days.

The validity of the new title corresponds to the unexpired period of the term of validity of the initial title.

After the expiry of the period of five days provided for in paragraph 3 of the present article, the mortgagee or the third party in its place may exercise the provisions of article 46 of the present Code.

The transfer of the mining or quarry rights onto the name of the mortgagee or the third party in its place is made within a period of one month as of the date the application was received.

Article 174: Legal consequences of the transfer

In case of execution of the mortgage and transfer of the mining or quarry right into its name, the mortgagee or the third party in its place, commits to assume all of the obligations arising from the initial title vis-a-vis the State and third parties.

Article 175: Legal Mortgages

As an exception to the provisions of articles 169 and 170 of the present Code, the provisions of articles 253, 254 and 255 of law number 73-021 of July 20, 1973 on the general legal regime of assets, legal regime of land and real estate, and the legal regime of securities as modified and complemented to date for the mortgages of the Treasury and the rescue company, as well as those of articles 210 and 212 of the Uniform Act Organizing Security Interests in mortgages for creditors and for architects, contractors and other persons employed to build, repair or rebuild buildings, shall be registered and recorded in accordance with the provisions of this Code.

CHAPTER II: PLEDGE

Article 176: Pledges of marketable products

Marketable products originating from the deposits or artificial deposits may be pledged.

Pledges affecting marketable products are governed by the provisions of articles 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123 and 124 of the Uniform Act Organizing Security Interests.

The creditor having a possessory pledge over the marketable products is liable for the levies, taxes and environmental obligations arising from the possession of such products over which it has the right to store, hold, handle, transport, sell and export.

TITLE VII: LEASES AND TRANSFERS

CHAPTER I: LEASE

Article 177: Lease contracts

The lease consists of renting for a fixed or indeterminate period of time, without the right to sublet, of all or part of a mining exploitation right or an Authorization for Permanent Quarry Exploitation in return for a payment agreed to by the lessor and the lessee.

The mineral and/or quarry exploration rights cannot be leased.

In order to be valid, any lease contract must include an accelerated termination clause:

- a. In case the lessee fails to pay the taxes, duties and royalties owed to the State;
- b. In case of non-compliance with the laws and regulations which have financial or administrative consequences which are detrimental to the lessor.

In order to be valid, any lease contract must include clauses setting out the conditions for the maintenance and the reinvestment necessary for the appropriate exploration and development of the deposit.

Any lease contract must include the joint and several liability of the lessor and the lessee vis-à-vis the State. Notwithstanding any clause to the contrary, the lessee is liable for payment of the taxes and royalties due by virtue of a mining or quarry title. However, if the lessee defaults, the lessor is liable vis-a-vis the State, subject to its right of recourse against the defaulting lessee.

Article 178: Processing of the application for a lease

Subject to the provisions below, the Mining Registry carries out the mining registry examination in accordance with the provisions of article 40 of the present Code.

Upon conclusion of the mining registry examination, the Mining Registry proceeds:

- a. To provisionally register the Permit subject to the lease on the mining registry survey map. This registration is valid for the entire duration of the examination;
- b. to display the outcome of the examination in the room specified in the Mining Regulations. A copy of the opinion is provided to the applicant;
- c. to reject the application, in case of an unfavorable opinion, and to notify the applicant of the decision to reject it.

In case of a favorable opinion, the Mining Registry proceeds to record the lease contract within a period of five days, in accordance with the provisions of article 171 of the present Code.

Upon expiry of this period, the lessee may take advantage of the provisions of article 46 of the present Code.

The term of validity of the lease contract corresponds to the term of validity of the lessor's unexpired title.

Article 179: Registration of the lease contract

Prior to the conclusion of the contract, the lessee must demonstrate that it is eligible for the mining right or for the quarry authorization relating to its contract.

In order to be able to enforce it against third parties, any lease contract must be registered in the registry book set up and kept for this purpose at the Mining Registry, in accordance with the procedure provided for in the Mining Regulations.

The registration of the lease contract is only subject to the assessment by the Mines Administration of the lessee's eligibility according to the procedure provided for in the Mining Regulations.

The lease contract is registered by the Mining Registry against payment to the Public Treasury of a registration fee, the amount of which is defined by regulation.

Article 180: Lessor's rights

Notwithstanding any clause to the contrary, the lessor may, either personally or through any duly authorized expert of its choice, exercise the right to monitor and inspect the lessee's work.

The Mining Directorate notifies the lessor of the observations which it addresses to the lessee and must bring to its attention its inspection reports.

Article 181: Lessee's exemption from liability

Without prejudice to the provisions of the last paragraph of article 177 of the present Code, the lessee is liable for civil and criminal matters vis-à-vis third parties.

However, the lessee may be relieved from any liability if it proves that:

- a. The damage was caused before the entering into of the lease contract;
- b. The damage occurred after the entering into of the lease contract, but before the effective occupation by it of the place of exploitation.
- c. The damage is caused by a fraudulent exploitation, carried out either by the lessor or a third party.

CHAPTER II: TRANSFERS

Section I: Conveyances

Article 182: Conveyance deeds

The mining rights and valid Authorizations for Permanent Quarry Exploitation may be conveyed in whole or in part. This conveyance is final and irrevocable as of the endorsement of the title. In the absence of any provisions to the contrary, the substantive law on conveyance applies.

The conveyance deed must include the transfer price for the right as well as the undertaking by the transferee to assume all of the obligations of the holder vis-a-vis the State that arise from the exploration right or exploitation right, notably the obligation to transfer to the State the equity interests or shares contemplated by subparagraph (d) of article 71 of the present Code.

Notwithstanding the foregoing, the transferor is not responsible for assuming the environmental protection obligations for which the transferor is responsible prior to the transfer pursuant to paragraphs 3 and 4 of article 185 of the present Code.

When a portfolio company of the State contributes a mining deposit, either to an existing company or in view of the formation of a new company, the stake of such

company in the existing company or in the company to be formed is determined on the basis of the actual value of the mining deposit that is the subject of the contribution. The evaluation of the deposit is carried out in accordance with the provisions of the Uniform Act relating to the law of commercial companies and economic interest groups.

Article 182 bis: Conditions of conveyance

The conveyance of mining rights and authorizations for permanent quarry exploitation is subject to the following conditions:

1. For the transferee:

- a. Be in advance a person eligible to apply for and hold the mining rights or authorizations for permanent quarry exploitation in accordance with article 23 of the present Code;
- b. justify, in the event of a conveyance of an exploration permit, the financial capacity contemplated by articles 56 and 58 of the present Code;
- c. in the event of a conveyance of a mining exploitation right, fulfill the condition provided for in article 71 subparagraph d, article 71 *bis* and article 104 paragraph 2 of the present Code;
- d. in the event of a partial conveyance, comply with the provisions of articles 28 and 29 of the present Code.

2. For the transferor:

having complied with its environmental protection obligations provided for in the approved environmental plan.

Article 183: Processing of the application for conveyance

The processing of the application for conveyance is made in accordance with the provisions of articles 40, 41, 42 and 178 of the present Code.

Article 184: Partial conveyance

The partial conveyance of the mineral exploration right, mining exploitation right or Authorization for Permanent Quarry Exploitation is registered at the time the new right is granted by the competent authority, and the Mining Registry issues a new mining title.

Article 185: Technical evaluation and environmental audit

Without prejudice to the provisions of article 40, 41, 42 and 178 of the present Code, the technical evaluation of an application file for the conveyance of mining rights or the Authorization for Permanent Quarry Exploitation in the name of the transferee is carried out within a period of twenty working days as of the date the application file is sent to the Mines Directorate by the Mining Registry.

The technical evaluation consists of:

- a. Verifying the transferee's financial capacity;
- b. Verifying that the transferee assumes the obligations relating to the mining right or the Authorization for Permanent Quarry Exploitation and verifying that the obligations of the transferor have been assumed by the transferee;
- c. Determining, as applicable, that any change which the transferee proposes to make in the original documents on the basis of which the initial mining right or the Authorization for Permanent Quarry Exploitation was granted does not alter the technical conclusions of the project.

An on-site environmental audit is carried out by the Congolese Environmental Agency, in cooperation with the division responsible for the protection of the mining environment, within a period of 30 working days as from the date of the transmittal of the application file by the Mining Registry to the Congolese Environmental Agency in order to verify compliance with the environmental protection obligations undertaken by the transferor in the approved environmental and social management plan.

A certificate attesting to the satisfaction of the environmental obligations is issued and sent to the Mining Registry.

Article 185 bis: Decision approving or refusing the transfer of a right

Upon receipt of the application file with favorable or unfavorable registrar, technical, environmental and social opinions transmitted to it by the Mining Registry, the appropriate authority shall take and transmit its decision to approve or refuse the transfer of the right to the Mining Registry within ten working days.

In the event of a decision to approve the transfer, the Mining Registry shall register the conveyance within five working days in accordance with the provisions of article 171 of the present Code and shall notify the applicant of the decision.

After such deadlines, the transferee may avail itself of the provisions of articles 43 and 46 of the present Code.

If the transfer is refused, the Mining Registry shall notify the applicant of the decision of refusal.

Article 185 ter: Registration and enforceability of the conveyance deed

To be enforceable against third parties, the total or partial conveyance is registered by the Mining Registry against payment to the Public Treasury of a registration fee amounting to 1% of the immediately payable conveyance price. Where appropriate, the price may be subject to an *a posteriori* inspection by the competent departments.

The Mining Regulations shall define the terms and conditions for appraising the conveyed property in order to determine the fair price.

Article 185 quater: Transfer of rights

The transfer of the mining rights or the Authorization for Permanent Quarry Exploitation shall be entered in the appropriate register kept by the Mining Registry in accordance with article 172 immediately after notification of the decision approving the transfer to the transferor and the transferee.

The transfer may only concern the mining rights or Authorizations for Permanent Quarry Exploitation which are valid.

Article 186: Obligations of the transferor after transfer

Notwithstanding any clause to the contrary, the conveyance does not relieve the initial holder from its obligations vis-a-vis the State for the payment of the fees and charges in connection with its mining or quarry title during the period it was the holder, nor from its obligations regarding rehabilitation of the environment.

Section II: Transfer

Article 187: Transfer deeds

The mining rights and the Authorizations for Permanent Quarry Exploitation may be transferred, in whole or in part, by reason of death, in the case of sole proprietorship, by reason of merger, spin-off or partial asset contribution. In the absence of provisions to the contrary, the provisions of substantive law on transfers and the Uniform Act of 30 January 2014 relating to the law of commercial companies and economic interest groups shall apply.

The person in whose favor the transfer is made must meet the conditions contemplated by article 182 *bis* applicable to transfer.

Article 188: Partial transfer

In the event of a partial transfer of a mineral exploration right, the Mining Registry issues a new mining title.

In the event of a partial transfer of an exploitation right or an authorization for permanent quarry exploitation, the partial transfer is registered at the time the new right is granted.

The partial transfer of mining rights and Authorizations for Permanent Quarry Exploitation is made in compliance with the provisions of articles 28 and 29 of the present Code.

Article 189: Processing of the application for transfer

The processing of the application for transfer of the mining or quarry rights is made in accordance with the provisions of articles 40 and 178 of the present Code.

Article 190: Registration and enforceability of the transfer deeds

In order to be enforceable vis-à-vis third parties, the transfer deeds are registered in accordance with the provisions of articles 171 and 184 of the present Code.

Article 191: The act of conveyance by virtue of a contract of merger and for reason of death

The conditions and procedures for admissibility and processing of the acts of transfer pursuant to a contract of merger and for reason of death are those provided for in the deeds of conveyance of mining rights set out in the present Code.

Article 192: Obligations of the beneficiary of the conveyance

Notwithstanding any clause to the contrary, the person in whose favour the conveyance is made remains liable vis-à-vis the State and to third parties for all the obligations of the initial holder of the mining right or the Authorization for Permanent Quarry Exploitation.

Section III: Option contracts

Article 193: Option contract

The Exploration Permit may be the subject of an option contract. This contract is entered into freely between the parties and confers on the beneficiary the right to obtain a participation in the exercise of the mining exploitation right deriving from an Exploration Permit, or at the time of the entire or partial transformation of same if it makes a certain investment and/or carries out work in connection with the mining activities relating to the Exploration Permit at issue.

An option contract may also be entered into for exploration works undertaken in a perimeter covered by an Exploitation Permit.

Article 194: Registration of option contracts

The option contracts are registered in accordance with the provisions of article 171 of the present Code.

Article 195: Transfer of the rights

The provisions which apply to the transfer of mining rights also apply to the transfer of mining rights in case of an option

TITLE VIII: OBLIGATIONS OF THE HOLDERS OF MINING OR QUARRY RIGHTS

CHAPTER I: OBLIGATIONS RELATING TO THE VALIDITY OF THE MINING OR QUARRY RIGHTS

Article 196: Obligations to maintain the validity of the rights

In order to maintain the validity of its mining or quarry rights, the holder must:

- a. Commence the work within the time period specified in article 197 of this code;
- b. Pay the surface area fees per quadrangle relating to its title, each year before the deadline specified in article 199 of this code;
- c. Respect its commitments in respect of social obligations in accordance with the timetable set out in the specifications.

[If it fails to fulfil any of these obligations, the holder is deprived of its right pursuant to the procedure provided for in articles 286 to 291 of the present Code.]¹³

The holder's failure to comply with the obligations set forth in chapter II of the present Title is punishable by fines and/or possibly by an order to suspend the operations or, in case of breach of the law, by legal proceedings

Article 197: Obligation to commence the work

The holder of an Exploration Permit must commence the exploration within a period of one year as of the date the title evidencing its right is issued.

The holder of an Exploitation Permit must commence the development and construction work within a period of three years as of the date the title evidencing its right is issued.

The holder of a Small-scale Mining Exploitation Permit or an Exploitation Permit for Tailings must commence the development and construction work within a period of one year, as of the date the title evidencing its right is issued.

The holder of an Authorization for Permanent Quarry Exploitation must commence the work within a period of one year from the date the title evidencing its right is issued.

The holder of a mining and quarry right referred to in the previous paragraphs shall also be required to, before starting the work, open an exploration center or exploitation center within the prescribed time limits for each type of right mentioned above.

The holder of a mineral exploration right must attach to its certificate of commencement of work that is filed with the Mining Registry a works performance schedule.

Within five years from the date of issuance of the title, the holder of a mining exploitation right is required to construct a building housing its registered office in accordance with international standards in the capital of the province of exploitation.

Article 198: Obligation to pay the annual surface area fees per quadrangle

¹³ [Note to draft: Due to typos, it is unclear from instructions whether this paragraph should be maintained. To be confirmed with HSF.]

To cover the costs of the services and the management of the rights evidenced by the mining titles, annual surface area fees per quadrangle are charged for each mining or quarry title issued, to the benefit of the Mining Registry which pays a part thereof to the departments of the Ministry of Mines in charge of the administration of the present Code.

The holder of Exploration Permits, Exploitation Permits, Exploitation Permits for Tailings and Small –scale Mining Exploitation Permits, Exploration Permit of Quarry Products and the Authorization for Permanent Quarry Exploitation, pays for the surface area fees for the first year at the time when the mining or quarry title is issued.

The holder pays the annual surface area fees per quadrangle for each subsequent year before the end of the first quarter of the calendar year. However, the annual surface area fees are paid per quadrangle pro rata to the period of time since the issuing of the initial title, or to the last year of the term of validity of the title.

The annual surface area fees per quadrangle are paid at the counter of the Mining Registry which has issued the mining or quarry title. The latter provides the holder with a receipt upon payment of same.

The Mining Regulations determine the conditions for the collection of the annual surface area fees per quadrangle for each year.

Article 199: Calculation of the annual surface area fees per quadrangle

The amount of the annual surface area fees per quadrangle are specified in the Mining Regulations so as to be the approximate equivalent to the amount per hectare provided for in the paragraphs below.

The holder of an Exploration Permit pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 0.03 USD per hectare for the first two years of the first term of validity; the amount in Congolese Francs equivalent to 0.31 USD per hectare for the remaining years of the first term of validity; the amount in Congolese Francs equivalent to 0.51 USD per hectare for the second period of validity; and, the amount in Congolese Francs equivalent to 1.46 USD per hectare for the third period of validity of its title.

The holder of an Exploitation Permit pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 5.00 USD per hectare regardless of the term of validity of its title.

The holder of an Exploitation Permit for Tailings pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 8.00 USD per hectare, regardless of the term of validity of its title.

The holder of a Small-scale Mining Exploitation Permit pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 2.30 USD per hectare, regardless of the term of validity of its title.

The holder of an Exploration Permit of Quarry Products pays annual surface area fees per quadrangle in the amount in Congolese Francs equivalent to 0.05 USD per hectare, upon issuance of its title and upon renewal thereof, if applicable.

The holder of an Authorization for Permanent Quarry exploitation pays annual surface area fees per quadrangle in the amount in Congolese Francs equivalent to 2.00 USD per hectare, regardless of the term of validity of its title.

Article 200: Obligation to pay the annual surface area fees per quadrangle in the event of partial transformation of a mining right

In the event the holder requests a partial transformation of the Perimeter which is the subject of its Exploration Permit into a mining exploitation Perimeter, the quadrangles concerned follow, after the transformation, the system of rates applicable to the annual surface area fees per quadrangle payable for this Permit.

Article 201: Payment of the annual surface area fees per quadrangle in case of a preliminary and conditional decision

In the event of a preliminary and conditional decision, as set forth in article 76 and 158 of the present Code, the holder of a mining or quarry exploration right pays the annual surface area fees per quadrangle relating to its exploration title.

However, in case of mining or quarry exploitation rights granted, it pays the annual surface area fees per quadrangle at the rate set for such right, compensating for the fees previously paid for the mining or quarry exploration title, to make up for the remaining amount owing, to cover the annual surface area fees arising from the issuing of the Exploitation title.

CHAPTER II: OBLIGATIONS IN RESPECT OF ACTIVITIES UNDER A MINING TITLE OR QUARRY TITLE OR APPROVAL OF A PROCESSING OR TRANSFORMATION ENTITY

Section I: Protection of the environment

Article 202: During prospecting [*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 203: During exploration

Before commencing mineral exploration work or quarry products exploration work, the holder of an Exploration Permit or an Exploration Permit of Quarry Products must prepare and obtain approval of the MRP for the proposed activity.

The conditions of the MRP and its approval are determined by way of regulation.

The approval of the MRP is under the jurisdiction of the department responsible for the protection of the environment within the Ministry of Mines in collaboration with the Minister of the Environment.

Article 204: During Exploitation

Any applicant for an Exploitation Permit, an Exploitation Permit for Tailings, a Small-scale Mining Exploitation Permit, or an Authorization for Quarry Exploitation must submit an environmental impact study together with an environmental management plan for the project, and obtain the approval of its EIS and EMPP, as well as implement the EMPP.

The environmental impact study will include a description of the ecosystem before commencing mining operations, including the flora and fauna, soil and topography, air quality, underground and surface water. It specifies the aspects which may be affected qualitatively and quantitatively by the mining or quarry exploitation activity.

It will include as well, the measures planned for the protection of the environment, the elimination or the reduction of pollution, the rehabilitation of the sites, as well as the verification of the effectiveness of said measures.

The holder of mining or quarry rights must provide security in order to guarantee the compliance with the environmental obligations relating thereto during exploration and/or exploitation. In addition, the holder of a mining right is authorized to set up a provision for the site rehabilitation in accordance with the provisions of article 258 of this Code.

The conditions of application of this provision, including the financial guarantee, are specified in the Mining Regulations.

Section II: Protection of the Cultural Heritage

Article 205: Declaration of archaeological indications

The holder of a mining or quarry right must inform the local administrative authority and the authority in charge of Culture, Arts and Museums, of the discovery of archaeological indications if the exploration or exploitation works reveal the existence thereof.

Article 206: Discovery of elements of the national cultural heritage

The holder is prohibited from moving the objects which are contained in the updated national cultural heritage list, be they movables or other items. In this case, it must inform the local administrative authority and the authority in charge of Culture, Arts and Museums of this fact in writing, and without delay.

The Holder must remove, secure and keep these elements of national cultural heritage safe, as applicable, at the cost and on behalf the State if the local administrative authority and the authority in charge of Culture, Arts and Museums concerned do not remove them within a period of sixty days following notification of the discovery.

Section III: Safety and Health

Article 207: Special regulations

Mineral Exploitation is subject to the measures for safety, health and protection enacted by special regulations.

Article 208: Jurisdiction of the Mines Administration

The holders of the mining and or quarry rights must comply with the measures which are decreed by the Mines Administration with a view to preventing or removing the causes of the dangers which the work inflicts on the public safety and health, the preservation of the deposits, springs and public roads.

In the event of an emergency or refusal by those involved to comply with these measures, these will be taken and implemented by the administration without consultation at the expense of those involved.

In the event of imminent danger, the representatives of the Mines Administration empowered to do so will immediately take the measures required to remove the danger and may, if applicable and for this purpose, address all relevant requests to the local authorities and the miners.

The representatives of the Mines Administration, duly empowered, have the capacity of a Judicial Police Officer to investigate and ascertain any breach of the provisions of the present Code and its implementing measures.

Article 209: Notification of accidents in a mine or in a quarry

Any serious or fatal accident in a mine or in a quarry or in its related operations, must be immediately notified by the most rapid means of communication possible, to the Mines Directorate and the administrative and judicial authorities under whose jurisdiction the accident occurs.

Article 210: Publication of the safety instructions

Holders of mining or quarry exploitation rights must publish the safety instructions, taking into consideration the special conditions of its exploitation activities. These instructions are sent to the Mines Directorate and made known to its employees and the individuals who enter the mine site.

The Mining Regulations determine the conditions of publication of the safety instructions.

Article 211: Use of explosive substances

Holders of mining or quarry rights using explosive substances are subject to special regulations for these substances, which are appended to the Mining Regulations.

Section IV: Infrastructure

Article 212: Authorization for construction and the planning of infrastructure

Holders of mining rights or Authorizations for Permanent Quarry Exploitation must build and maintain all the infrastructures required for the activities relating to the titles or the environmental authorization relating thereto, in accordance with the provisions of the present chapter.

Any infrastructure to be built by the holder is subject to a plan submitted to the competent administrative authority for consent, and the prior consultation with the local authority which has territorial jurisdiction.

Article 213: Use of the infrastructure of the project

The roads built by the holder inside or outside the mining or quarry Perimeter may be used, provided it does not affect the exploitation and subject to the consent of the holder, by the neighboring mining, industrial and commercial establishments, at their request, on the condition that fair compensation is determined by mutual agreement by the parties, including participation by those involved in the maintenance of said roads.

The roads built outside and inside the Perimeter may be opened to the public under the conditions provided for in the preceding paragraph, subject to fair compensation to be agreed upon between the holder and the community or the local cadastral entity whose inhabitants make use of said roads.

Article 214: The right of the State over the infrastructure

Except for a written and express agreement to the contrary between the holder and the State, all public utility infrastructure built by the holder of a mining or quarry right which remains in place upon expiry of the term of validity of its right, becomes part of the State's public domain.

Section V: Various obligations

Article 215: Relations with the local authorities

Before commencing its activities, the holder of a mining or quarry right has the obligation to appear before the local authorities in whose jurisdiction it will carry them out, and hand in, against the issuing of a receipt, a copy of its mining or quarry title.

Article 216: Registers, reports and publications

The holder of mining or quarry titles and the holder of an authorization as a trading house or processing entity must keep the registers, prepare and submit the reports of its activities, in accordance with the Mining Regulations.

In addition, the holders of mining or quarry exploitation rights are required to publish at the end of each month on an ad hoc form the quantities of mineral substances produced, sold or exported, their qualities, their values, the amounts of various taxes, duties, levies and royalties due and payable to the Public Treasury, the decentralized territorial entities and State bodies.

Article 217: Inspections

Holders of mining or quarry titles must submit to inspections carried out by the representatives responsible for inspecting mining or quarry operations.

In all cases, these inspections take place during office, workshop or site opening hours.

The Mining Regulations set forth the conditions to carry out said inspections.

Article 218: Opening and closing of an exploration or exploitation center

Any opening or closing of an exploration center or mineral exploitation or permanent quarry exploitation center shall take place within the period provided for in article 197 of the present code and be notified to the Mines Administration in accordance with the terms set forth in the Mining Regulations.

TITLE IX: TAX, CUSTOMS AND NON-FISCAL INCOME REGIME APPLYING TO MINING ACTIVITIES

CHAPTER I: GENERAL PROVISIONS

Article 219: Taxpayers affected

The Holder is subject to the tax, customs and non-tax revenues legal regime set forth under the present title for all its mining activities carried out on the National Territory.

The following also benefit from the overall tax, customs and non-tax revenues legal regime provided for under the present Code:

- a. subcontractors, in accordance with law no. 17/001 of 08 February 2017 setting the rules applicable to sub-contracting in the private sector;
- b. the holder of a permanent quarry exploitation authorization, other than those relating to standard construction materials;
- c. the holders of the approvals in respect of approved processing entities.

The holders of exploration authorizations for quarry products and for temporary quarry exploitation, or permanent quarry exploitation authorizations that are not referred to in subparagraph b above are subject to the generally applicable tax, customs and non-tax revenue legal regime.

Article 220: Exclusive and exhaustive tax, customs and levies regime

Without prejudice to the provisions of article 221 of the present Code, the tax, customs and levies regime which apply to the holder's mining activities within the national territory is the regime that is defined exclusively and exhaustively under title IX of the present Code.

This regime concerns taxes, levies, duties, royalties and other para-fiscal charges collected for the benefit of the Government and of the provinces and decentralized territorial entities.

However, the Prime Minister may, by decree debated in the Council of Ministers, grant a number of incentives to provinces suffering from infrastructure deficits to boost their economic growth from mineral resources.

Article 220 bis: Regime of taxes, levies, duties and royalties and other para-fiscal charges collected for the Central Government

Relevant taxpayers are subject, for the benefit of the Central Government, within the framework of its mining activities:

- a. To taxes, levies, duties and royalties in accordance with the terms of the present Code:
 1. income tax;
 2. business tax on services rendered by individuals or legal entities not established in the Democratic Republic of Congo;
 3. tax on income from securities or property tax;
 4. business tax on compensation;
 5. exceptional tax on expatriate compensation;
 6. entrance fees;
 7. excise duties;
 8. proportional duty for mortgage approval and registration;
 9. proportional duty for approval and registration of conveyances;
 10. proportional duty for approval and registration of a lease contract, option contract or transfer;
 11. annual surface area duties per quadrangle;
 12. proportional duties for the transfer of interests and shares;
 13. mining royalty;
 14. royalties on ground transportation fuels and lubricants;
 15. signing bonus;
 16. pas de porte.

- b. To taxes, levies, duties and royalties in accordance with generally applicable law:
1. Value Added tax (VAT);
 2. levy on the authorization for temporary mining;
 3. levy on exports of samples intended for industrial analysis and testing - when such samples are exported in violation of article 50, paragraph 3 of the Mining Code - sold to third parties for the benefit of or by the holder before or after analysis or testing, and finally in the case of exports of a commercial nature;
 4. residence levy and annual compensatory environmental levy;
 5. deforestation levy;
 6. duty on the grant of a foreign worker's work permit;
 7. levies on telecommunications;
 8. levy for the authorization of an explosives depots;
 9. dredger registration fee;
 10. annual royalty and deposit for processing entities of all categories and for gem cutting;
 11. authorization of blasters.

Article 220 *ter*: Regime of public interest taxes and levies to be collected for the benefit of the provinces and other decentralized entities

Within the framework of its mining activities, the holder is subject, for the benefit of the provinces and other decentralized entities:

- a. To the following taxes:
1. property tax;
 2. vehicle tax;
 3. tax on rental income.
- b. To the following public interest taxes:
1. the special levy on road traffic;
 2. the surface area levy on mining concessions.

The taxes, duties, levies and royalties provided for in this article shall be collected in accordance with legislation on earnings of the provinces and decentralized territorial entities.

Article 220 *quater*: Regime of levies, fees and royalties applicable to activities of the holder other than mining activities

Without prejudice to the provisions of article 234, paragraph 3 of the present Code, the holder shall be subject, within the framework of the exercise of activities other than its mining activities, to the other duties, levies and royalties under the jurisdiction of the Central Government and that of the provinces and decentralized territorial entities provided for by the laws defining the nomenclature, as well as the royalties and remunerative duties that contribute to the operating costs of personalized public services.

Article 221: Modifications to the tax and customs regime

Subject to the provisions of article 222 below, the tax and customs regime specified in the present Code may only be modified in accordance with the provisions of article 276 of the present Code.

Article 222: Most favorable tax and customs provisions

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 223: Benefit of the regime which is applicable to the holder of mining titles

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 224: Tax and customs procedure

Without prejudice to the provisions of the present Code, the tax and customs procedure applicable is that of the substantive law.

CHAPTER II: CUSTOMS REGIME

Section I: General

Article 225: List of assets benefiting from the preferential regime

Before commencing works, the holder of a mineral exploration right or a mining exploitation right, the holder of an authorization for permanent quarry exploitation, other than one relating to standard construction materials, and the holder of an authorization as a trading house and/or processing entity submits a list including the number and the value of the movable property, equipment, gear directly related to mining techniques and extraction operations, and inputs which are governed by the preferential regime provided for in the present law. The list must be approved in advance by a joint order issued by the ministers responsible for Mines and Finance, within sixty working days following the date of receipt by the ministry of Mines of the letter of application for approval.

If upon expiry of this period, no reply is given, the list is deemed to have been approved, and the receipt of filing certifies this fact. In this case, the competent authorities must issue the Decree of approval, within seven days.

In case of refusal of approval of the list, the decision must be in writing and contain the reasons for refusal.

This list indicates the categories of equipment, non-obsolete goods and tools required respectively at the stage of exploration, construction and development, as well as at the stage of exploitation of the project which benefits from the advantages of the customs regime defined hereafter.

The supplies of consumer goods, reagents and maintenance products needed for everyday use, but not directly related to the mining activity, are excluded from said lists.

Imports by the holder or its sub-contractors of equipment, goods, tools and other goods which do not appear on the approved lists, are subject to the provisions of the substantive law.

The Mining Regulations determine the conditions of organization and operation of the Inter-ministerial Commission called to assist the Ministers referred to in paragraph 1 above.

Article 226: Exporting samples

In the context of the project, the holder's exports of samples for industrial analysis and assaying is exempt from any customs duty or other taxes, regardless of their nature, when leaving the National Territory.

Notwithstanding the provisions of article 234 of the present Code, samples exported in violation of article 50 paragraph 3 of the present Code are subject to all taxes pursuant to substantive law.

Samples sold to third parties to the benefit of or by the holder, before or after analysis, are taxable at the rate set forth under substantive law.

Any export of samples which is of a commercial nature is also taxable. This is the case, in particular, for samples exported in exorbitant quantities in comparison with the reasonable requirements of an analysis.

Without prejudice to the provisions of this article, exports of the samples referred to in paragraphs 2, 3 and 4 of this article shall be subject to the payment of a levy on the export of samples.

Article 227: Imports of personal items belonging to expatriates

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 228: Imported goods made available for consumption on the National Territory

The equipment, goods and the tools imported under the preferential customs regime may not be transferred on the National Territory without the authorization of the Customs Authority. Failure to comply with this provision exposes the holder to the penalties decreed by the customs regulations. If said equipment, goods and tools are made available for consumption, they shall be subject to the payment of charges and duties which remain due, at the rate in force on the date of transfer, calculated on the basis of the residual value brought up to date, based on the information on the initial import declaration.

Article 229: Consequences of halting the project on/before completion

In case the project is halted on/before completion, the materials, goods and tools which have benefited from the preferential customs regime must either be re-exported or be made available for consumption on the National Territory after complying with the customs regime by paying the charges and duties which remain due, calculated on the basis of the residual value brought up to date, based on the information on the initial import declaration.

The declaration indicating the halting of the work shall be made immediately to the Customs Authorities, the administration for non-tax revenue and for taxes and to the Mines Authority.

Article 230: Transfer of goods, equipment and/or tools

In the event of a plurality of mining titles held by the holder and/or the exploitation company, the transfer of goods, equipment and/or tools from one project to another must be previously notified in writing to the customs administration.

In the event of a transfer of equipment used in connection with a given mining title, to a project relating to another mining title belonging to a different holder, this holder-transferee must benefit from a customs regime similar to the one from which the transferor benefited, and in order to bring this about, the latter must obtain prior written authorization from the Customs administration.

Article 231: Temporary import free of duty

The goods, tools and equipment introduced by the Holder in the National Territory and destined to be re-exported, are admitted temporarily free of customs duty with the authorization of the Customs Authority for a period of six months. This term may be extended twice for the same period of time if, for reasons which are beyond the holder's control, it cannot be complied with.

Section II: Regimes applicable to the various phases of the project

Article 232: Import duties at preferential rates

Before the effective commencement date of exploitation work at the mine, evidenced in accordance with the provisions of the present Code and the Mining Regulations, all of the goods and equipment that are strictly for mining use and imported by the holder of a mining right, the holder of a permanent quarry exploitation authorization (other than those relating to standard construction materials), the holder of an approval in respect of an approved processing entity and/or transformation entity and the and the sub-contractor are subject to import duties at the rate of 2%, provided these goods appear on the list referred to in the first paragraph of article 225 of the present Code.

Upon the effective commencement date of exploitation work, evidenced in accordance with the provisions of the present Code and the Mining Regulations, during a period ending at the end of the third year as from the date of first production, all goods that are strictly for mining use and imported by the holder of a mining right, the holder of a permanent quarry exploitation authorization (other than one relating to standard construction materials), the holder of an approval in respect of an approved processing entity and/or transformation entity and the sub-contractor are subject to import duties at the rate of 5%, provided these goods appear on the list referred to in the first paragraph of article 225 of the present Code.

All intermediary goods and other consumables are subject to 10% customs duty.

In all cases, fuel and lubricants destined for mining activities are subject to a rate of 5%.

Excise duties are collected in accordance with generally applicable law.

Without prejudice to the provisions of article 233 of the present Code, the holder of an exploitation permit or a permanent quarry exploitation authorization (other than one relating to standard construction materials forming part of the production phase) cease to benefit from the preferential customs regime starting the sixth year after the date the title is granted. Approved processing entities, holders of approvals in respect of approved processing entities and subcontractors cease to benefit from the preferential tax regime starting the sixth year as from the date of the authorization.

Article 233: Imports during the extension work on the same perimeter

The holder of a mining title who makes an investment in order to extend, after the start of exploitation work at the mine, the holder of an Authorization for Permanent Quarry Exploitation, other than that relating to standard construction materials, and an authorized processing and/or transformation entity may benefit from the preferential customs regime provided for in paragraphs 2, 3 and 4 of article 232 of the present Code for the equipment, tools and items to be imported for the extension work, provided it files an application with the Mining Registry and demonstrates that the work to be carried out is for the purpose of increasing the production capacity of the mine or of the authorized processing and/or transformation entity in question by at least 30%.

The application shall indicate the date on which the extension works will be completed.

If the extension work is not completed in the manner or within the deadline indicated at the time of the application provided for in the first paragraph above, and/or if the production capacity does not actually increase by 30% in accordance with the terms

and conditions set out in the Mining Regulations, the holder is retroactively liable for the import duties on the imports made at the rate applicable during the exploitation phase.

However, in the event of fraud in the declaration at the time of import in relation to the present provision, the holder is subject to the import duties and Value Added Tax on the imports at the rate specified under substantive law.

Article 234: Export duty

Without affecting the validity of the application of the provisions of article 226 paragraphs 2 to 4 of the present Code, the holder is completely exempted from all customs duties and other taxes, regardless of their nature, for its exports in relation to the mining project.

However, in addition to the imposition of taxes pursuant to the substantive law, fraudulent and irregular exports made by the holder are subject to fines and penalties provided for in customs legislation.

The royalties and fees paid as remuneration for services rendered in connection with the export of commercial products or goods for temporary export for improvement, may not exceed 1% of their gross commercial value.

Article 235: Consumption and excise duties

The holder is liable for the consumption and excise duties in accordance with substantive law, except for mineral oils indicated in article 7 of Ordinance-Law no. 68/010 of January 6, 1968 and intended for and exclusively linked to mining activities.

CHAPTER III: FISCAL REGIME

Section I: Taxation

Article 236: Property tax

The holder is liable for property tax in accordance with the provisions of substantive law, only on the properties for which the tax on the surface area of mining concessions is not due.

Article 237: Tax on Vehicles

The holder is liable for taxes on vehicles in accordance with the provisions of substantive law. However, taxes on vehicles are not payable on vehicles used for transporting people or materials, vehicles used for handling or traction, which are used exclusively within the mining perimeter compound.

Article 238: Levy on the surface area of the mining concessions

The holder of an Exploration Permit is liable for the levy on the surface area of the mining concessions at the rates in Congolese Francs equivalent to US\$0.20 per hectare

for the first year, in Congolese Francs equivalent to US\$0.30 per hectare for the second year, in Congolese francs equivalent to US\$0.35 per hectare for the third year and in Congolese Francs equivalent to US\$0.40 per hectare for the subsequent years.

The holder of a mining exploitation right is liable for the levy on the surface area of the mining concessions at the rate in Congolese Francs equivalent to US\$0.40 per hectare for the first year, in Congolese Francs equivalent to US\$0.60 per hectare for the second year, in Congolese Francs equivalent to US\$0.70 per hectare for the third year and in Congolese Francs equivalent to US\$0.80 per hectare for the subsequent years.

Article 238 bis: Levies and royalties on the forestry sector and environmental protection

Without prejudice to the provisions of articles 257 and 258 of the present Code, the holder of mining and quarry rights is subject to the payment of the following levies and royalties:

- deforestation levy;
- residence levy on facilities classified in category 1A;
- annual remuneration levy on facilities classified in category 1A;
- pollution levy on facilities classified in category 1A.

Article 239: Special road tax

The holder is liable for the special road tax in accordance with the provisions of substantive law.

Article 239 bis: Tax on rental income

The holder is liable for the tax on rental income in accordance with the provisions of substantive law.

Section II: Mining Royalties

Article 240: Basis of the mining royalties

The holders of an Exploitation Permit, a Tailings Processing Permit, a Small-scale Mining Exploitation Permit, an Authorization for Permanent Quarry Exploitation, other than those relating to standard construction materials, and an authorized processing and/or transformation entity are subject to mining royalties which are calculated on the basis of the gross commercial value.

The holders referred to in the preceding paragraph of the present article are liable for these royalties on all marketable products as of the effective date the exploitation commences.

The mining royalties are calculated and due at the time of the exit of the marketable product from the mining extraction site or the shipping processing facilities.

Article 241: Rate of mining royalties

The mining royalties are:

- a. 0% for standard construction materials;
- b. 1% for industrial materials, solid hydrocarbons and other non-listed substances;
- c. 1% for iron and ferrous metals;
- d. 3.5% for non-ferrous metals and/or base metals;
- e. 3.5% for precious metals;
- f. 6% for precious stones and colored stones;
- g. 10% for strategic metals.

The Mining Regulation specifies the elements that are covered by the above classification.

Article 241 bis: Conditions for the collection of mining royalties

The conditions for the collection of mining royalties are determined by the legal texts establishing the nomenclature of the Central Government duties, levies and royalties and reforming procedures relating to the basis of assessment, control and conditions for the collection of non-tax revenues.

Article 242: Distribution of the mining royalties

The mining royalties are paid by the holder of the mining exploitation title, as follows:

- 50% in the hands of the Central Government;
- 25% is paid into an account designated by the Provincial Administration where the project is located;
- 15% into an account designated by the decentralized territorial entity in the area where the exploitation activities take place;
- 10% to the mining fund for future generations.

Article 243: Tax credit [*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 244: Business tax on salaries

The holder is legally liable for the Business Tax on salaries payable by the employees at the rate set forth in the substantive law.

Article 244 bis: Exceptional Tax on compensation paid to expatriate staff

The holder is liable for the exceptional tax on remuneration paid to expatriate staff at half the rate defined by the provisions of substantive law for the first ten years of the project and at the rate defined by the provisions of substantive law for subsequent years. It is deductible for income tax purposes.

Article 245: Tax on Rental Income

The holder is liable tax on rental income in accordance with the provisions of substantive law.

Section III: Income Tax

Article 246: Tax on Personal Property

The holder is liable for the tax on personal property, in accordance with the provisions of substantive law, with the exception of the following income:

- a. interest paid by the holder by virtue of loans contracted in foreign currency abroad which are exempted from the tax on personal property.

The interest paid by the holder to affiliates on loans contracted abroad are exempted from the tax on personal property only if the interest rates and the other loan conditions for the realization of the projects are established in accordance with the arm's length principle.

- b. dividends and other distributions paid by the holder to its shareholders which are subject to personal property tax at the rate of 10%.

Article 246 bis: Business tax on services

The holder is liable for business tax on the provision of services at the rate of 14% for amounts paid in remuneration for services of any kind rendered to it by individuals or legal entities not established in the Democratic Republic of Congo.

Article 247: Tax on profits

The holder is liable for the tax on profits at the rate of 30%.

Article 247 bis.

The provisions relating to generally applicable law in the area of income tax that are not referred to apply fully in accordance with their headings as of the date the present Code is promulgated.

Section IV: Determination of the taxable profit

Article 248: Taxable profit

The net profits from exploitation which are subject to Income Tax are determined in accordance with the general accounting plan and fiscal legislation in force, as well as the provisions of articles 249, 250, 251, 252, 253, 254, 255, 256, 257 and 258 of the present Code.

In any case, the financial statements and books shall be maintained in the French language.

Article 249: Depreciation

The rules applicable to depreciation are those of straight-line depreciation.

Article 250: Deferred depreciation

The depreciation made in loss periods is considered to be deferred. They may be accumulated and reported without any restriction in time over the subsequent tax years, to the amount of the taxable income.

Article 251: Tax loss carried forward

Losses in a tax year may be deducted from the profits made during the subsequent tax years until the fifth year that follows the loss tax year, in accordance with the terms of allocation defined under generally applicable law.

Article 251 bis. Special tax on excess profits

Excess profits or super-profits should be understood as the profits realized when the price for materials or commodities experience exceptional growth, exceeding 25% as compared to the prices used in the bankable feasibility study for the project.

Super-profits are determined using the gross operating surplus taken from the holder's accounting records. The provisions of article 252 do not apply when determining excess profits.

The special tax on excess profits is taxable at a rate of 50%. The revenues subject to tax on excess profits are not subject to the tax on revenues.

The Mining Regulations sets the practical terms for determining excess profits.

Article 252: Research and development expenditures

The amount of the research and development expenditures incurred by the holder, other than those relating to the acquisition of fixed assets, are converted to current value as of the day of the granting of the Exploitation Permit and amortized by the mining company during the following two tax years at the rate of 50% per year.

The loss in a given tax year resulting from the provisions of the preceding paragraph is reported without limitation in terms of time, over the subsequent tax years.

Article 253: Capital gain and capital loss on mining title transfers

The holder includes the capital gain or the capital loss realized at the time a mining title is being conveyed to the basis for the calculation of the income tax.

If the conveyance is between affiliated entities, the price and conditions of the conveyance must be at least equal to those that would have applied to an arm's length conveyance.

If the transferor has acquired the title of a person other than the person who incurred the exploration and development expenses, the business capital gain or capital loss is equal to the difference between the total transfer price and the acquisition cost.

[The capital gain or the capital loss so realized is equal to the difference between the transfer price and the non-amortized amount of the research and development expenditures.

The transferee of a mining title amortizes the price of the acquisition of the mining title acquired as a staggered charge.]¹⁴

Article 253 bis: Special tax on capital gains on the sale of shares or interests

Any transfer of shares or interests of a legal entity holding a mining or quarry title is taxed according to the capital gains regime.

The capital gain on the sale of a share or interest is the difference between the sale price of the share or interest and the net book value of such share or interest.

This capital gain recognized at the level of the legal entity that sold the shares or interests is deemed to be of a Congolese source insofar as the assets of the legal entity whose shares or interests were sold are located in the Democratic Republic of Congo. Where the assets are located in several jurisdictions, the capital gain is calculated only on the value of the assets owned by the subsidiary governed by Congolese law.

The tax is withheld at source by the transferee legal entity, which will forward such amount according to the terms and conditions of payment of taxes due to the Public Treasury. This withholding tax is payable at the time the income from the sale of shares or interests is collected or made available. Any conversion or exchange transaction in respect of shares or interests is treated as a receipt of income from the sale of initial shares or interests.

For the purposes of implementing this article, any proposed transfer of shares or interests shall be notified in advance to the company holding the securities and to its partners or shareholders.

¹⁴ [Note to draft: Unclear from instructions whether this bracketed language should be maintained. To be confirmed by HSF.]

The rules relating to the methods of calculation, declaration and payment of this tax are specified by regulation.

Article 254: Deduction of interest paid abroad

The interest paid abroad by the holder by virtue of external loans is only deductible from the income tax if:

- such loans were actually used to carry out the mining project;
- the interest rate does not exceed the annual average of the effective rates applied by the credit institutions of the country where the lending company is established, according to data provided by the Central Bank of Congo.

Article 255: Deduction of mining royalties

The mining royalties paid by the holder of a mining exploitation right, a processing entity or the holder of an Authorization for Permanent Quarry Exploitation who proceeds with the transformation of quarry products are deductible from the taxable basis of the income tax.

Article 256: Deductible expenses

Without affecting the application of the provisions of the present Code, the following are deemed expenses which can be deducted from taxable revenues:

- a. rent actually paid in arrears and rental charges relating to the buildings or parts of buildings used in carrying out the activities, and all general costs resulting, in particular, from their maintenance and lighting. However, the rental value of buildings or parts of buildings whose owner is the person liable for the tax is not considered as a rent or as a rental charge;
- b. The general expenses resulting from the maintenance of the equipment and the movables used for Exploitation;
- c. The wages, salaries, bonuses and allowances of the employees and the workers of the exploitation site, the advantages in kind if they have been added to the salaries;
- d. The interest on capital borrowed from third parties and destined for the exploitation, and all similar charges, interest or royalties relating to it;

The associates in the companies other than stock companies, are not considered as third parties.

Under no circumstances can the interest on mortgage debts relating to buildings which are rented out, in whole or in part, be considered as deductible expenses;

- e. The costs of transportation, insurance, brokerage, commissions. However, the expenses consisting of commissions, brokerage, commercial discounts or others,

vacations, occasional or non-occasional fees, bonuses and other rewards of any kind, will not be allowed to be deducted unless warranted by the exact indication of the name and the address of the beneficiaries as well as the date of the payments of the amounts allocated to each of them. Transportation costs in respect of the sale of mineral substances, however, are not allowed as deductible expenses.

- f. The amount of the profit distributed among the personnel of the company;
- g. The wages allocated in stock companies to the members of the board of directors provided it is evidenced that they correspond to normal remuneration in relation to the nature of the real and permanent functions performed in the company on National Territory.
- h. The amortization of fixed assets used in the performance of services;
- i. The actual tax being an exploitation charge settled within the period, to the extent it has not been determined automatically.

The amounts paid by the holder to an individual or a legal entity incorporated pursuant to foreign law with whom it is related, either by means of a direct participation in its capital, or through holdings held by one or more other companies of the same group, as payment for a service rendered, are not likely to be admitted as professional fees of the company unless on the quadruple condition that:

- a. The quality of the service rendered is clearly demonstrated;
- b. The service in question cannot be rendered on the national territory;
- c. The amount of the remuneration corresponds to the actual value of the services rendered;
- d. The beneficiary territory benefiting from favorable tax treatment.

Territory benefitting from favorable tax treatment means a territory where the rate of the income tax or the personal income tax is 30% lower than that applied in the Democratic Republic of Congo.

Article 257: Provision for restoration of the deposit

The holder is authorized to set aside, free of income tax, an amount for restoring the mineral deposit, up to a maximum equivalent to 0.5% of revenues for the tax year during the course of which it is set aside.

This provision shall be used in exploration activities on the national territory before the expiry of a period of three years as of the end of the tax year during the course of which it is set aside.

If the deposit is not used pursuant to the conditions set forth in the previous paragraph, the amount for restoring the mineral deposit is reintegrated into the taxable profits for the fourth tax year following the one during which it was set aside.

Article 258: Provision for site rehabilitation

The holder must make, free of income tax, a provision for rehabilitation of the site on which the mining activities take place.

The maximum amount to be allocated for this provision is equal to 0.5% of the turnover for the tax year during which it is made.

This must comply with the ESIS directive as provided for in the Mining Regulations.

In case the holder is required to make a provision or to fulfil other financial obligations in compliance with the regulations on the protection of the environment, the amount of this second provision or of these financial obligations shall be deducted from the maximum authorized amount of the provision for the rehabilitation of the site.

This provision must be used within a period of ten years as of the end of the tax year during which it was made. The unused amount of the provision is reintegrated into the taxable profits for the eleventh tax year following the one during which said provision was made.

The unused amount of the provision at the end of the last tax year of the project is reintegrated into the taxable profits for said tax year.

Article 258 bis: Endowment for contributions to community development projects

The holder of a mining exploitation right or an authorization for permanent quarry exploitation is required to set up, free of income tax, an endowment for contributions to community development projects, the minimum amount of which is equal to 0.3% of the revenues for the financial year in which it is established.

The endowment must be fully made available to local communities before the end of the financial year following the year in which it was established.

Section V: Application of Value Added Tax

Article 259: Value Added Tax

The holders of mining and/or quarry rights are subject to Value Added Tax in accordance with provisions of substantive law.

Section VI: Exceptional Tax on the remuneration of expatriates

Article 260: Preferential regime

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Section VII: Terms and conditions for non-tax revenue collection

Article 260 bis: Duties, levies and royalties

The terms and conditions for the collection of duties, levies and royalties provided for in the present Code shall be set out in the texts governing the procedures relating to the assessment, control and recovery of non-tax revenue.

CHAPTER IV: TAX AND CUSTOMS REGIME APPLICABLE TO ARTISANAL MINING AND TO SMALL-SCALE MINING EXPLOITATION

Article 261: Artisanal mining

The tax and customs regime applicable to artisanal miners, traders and approved trading houses is governed by regulations in accordance with the provisions set forth in the Mining Regulations.

Article 262: Small-scale mining exploitation

Small-scale mining exploitation is subject to the customs regime set forth in articles 225 to 235 of the present Code.

Without affecting the application of the provisions of substantive law, small-scale mining exploitation falls within a unique tax regime as regards the taxes for which the holder of the mining title is liable in connection with the mining activities.

The taxable rate for small-scale mining exploitation activities is fixed at 10 % of the turnover resulting from the sale price of the commercial products.

The payment of the flat rate provided for in the previous paragraph exempts the holder from the payment of the mining royalties, taxes on personal property, income tax, and the exceptional tax on expatriates' remuneration.

The flat rate is due at the time of the sale.

The share of the mining royalties to be apportioned is determined in accordance with the provisions of articles 240 to 242 of the present Code.

The conditions for the collection of taxes provided for in the preceding paragraphs are specified in the Mining Regulations.

The small-scale miner may opt either to remain in the unique taxation regime, or to be governed by the provisions of chapters I and III of the present Title.

The option so taken is irrevocable.

TITLE X: FOREIGN EXCHANGE REGULATIONS AND STATE GUARANTEES

CHAPTER I: FOREIGN EXCHANGE REGULATIONS

Section I: Conversion of foreign currency into Congolese Francs

Article 263: Freedom to convert at the market rate

The holder of the mining rights benefits from the freedom to convert capital contributions, the funds advanced by the shareholders, draw downs on loans and the earnings in foreign currency originating from the sale of the products, into Congolese Francs at the best rate of exchange offered by the authorized banks on the day of the exchange operation.

However, the holder of mining rights may resort, for the exchange of paper currency, to approved non-banking intermediaries other than financial services companies.

Section II: Transfer of funds abroad

Article 264: Settlements on goods and services, transfers of primary and secondary income and transfers of capital and financial operations

Without affecting the validity of the provisions of paragraphs 2, 3 and 4 of the present article, the holder of the mining rights is authorized to carry out in favor of non-residents, and vice versa, after paying for the taxes and charges owing, the settlements for goods and services, transfers of primary and secondary revenue, and transfers of capital and transfers on account of the financial transactions mentioned below, which are directly related to the activities authorized by virtue of its mining right, as follows:

- a. The payment for goods and services from foreign suppliers if it has been unable to find the same goods and/or services in the same quantity, quality and for the same price, as well as under the same conditions of delivery in the Congolese market.
- b. The acquisition or the lease of imported equipment;
- c. The payment of commissions to third parties for services rendered abroad;
- d. The payment of fees to third parties domiciled abroad for services rendered;
- e. The payment of royalties relating to the rights granted to the holder by foreign third parties;
- f. The training overseas of Congolese employees and the social security charges of expatriate employees, in particular, bonuses, insurance for professionals, transportation and moving expenses;
- g. The amounts corresponding to the dividends duly and legally declared, destined to be distributed to shareholders or to the holder's associates who are non-residents;
- h. The amounts corresponding to the income from the sale of shares, and all amounts originating from the transfer or the liquidation of the company's assets, as well as any compensation for expropriation;

- i. The repayment of advances on associates or shareholders current accounts, on the condition that the ratio of the funds borrowed against the amount of own funds does not exceed 75:25.

In addition, the foreign personnel residing in the National Territory, employed by the holder of a mining title, are guaranteed the free conversion and free transfer of all or part of the amounts owed to them, provided that the interested parties have paid for their taxes and various charges in accordance with the legislation in force in the Democratic Republic of the Congo.

The transfer of the funds required for the transactions listed above must be made solely through an approved bank, provided an exchange document is signed.

Any other transfer abroad is subject to the provisions set forth under the exchange regulations in force.

Article 265: Control of transfers in favor of affiliated companies

Notwithstanding the provisions of article 264, transfers in favor of the holder's affiliated companies as payment for the goods supplied or services rendered must be justified in relation to the ongoing market prices for similar goods or services.

Any commercial transaction between affiliated companies must be carried out in accordance with the arm's length principle.

CHAPTER II: HANDLING OF INCOME FROM EXPORT SALES

Article 266: Export of mining products

The holder is authorized to export and sell its production at market price, subject to the right of the State to determine the portion of production to be exported in light of the local industry's needs. The income in foreign currency relating thereto shall be cashed within forty-five calendar days as from the date the goods exit the national territory for a country in Africa or as from the loading for transportation of such goods for departure from the national territory or from an African country, unless the sales contract contains special provisions concerning the payment period.

The holder must sign an exchange document, in accordance with the exchange regulations in force, for all of its export operations.

The Mining Regulations defines the portion and the terms and conditions of the application of the exception specified in the first paragraph of this article.

Article 267: Main Account and accounts for the servicing of foreign debt

Contrary to the provisions of articles 1 to 9 of the Ordinance-Law no 67/272 of June 23, 1967, relating to the regulatory powers of the Central Bank of the Congo with regard to exchange regulations and its implementing measures, the holder who exports the authorized mining products has the right and also the obligation to:

- a. Open an account in foreign currency called the “Main Account” at a foreign bank with an international reputation which will have business dealings with a correspondent bank for the handling of funds which it is authorized to hold outside the National Territory;
- b. Communicate to the Central Bank of the Congo, in great detail, all of the coordinates of the main account;
- c. Pay the export earnings which it is authorized to hold outside the National Territory, in accordance with the provisions of article 269 below, into its main foreign account before any redistribution;
- d. Pay for the servicing of its foreign debt, including principal, interest, commissions and penalties from the main account according to the loan agreements concluded with the foreign money-lenders;
- e. Notify the loan agreements concluded with the foreign creditors to the Mines Administration in order to confirm whether the loan agreements correspond to the financing plan of a duly authorized mining exploitation. In case of loan agreements between affiliated companies, the holder also confirms that the loan conditions are no less favorable to the holder than the market terms between non-affiliated parties. It notifies the Central Bank.

The holder is authorized to open accounts in foreign currency at foreign banks with an international reputation where it manages or appoints a person to manage the funds paid from its main account necessary for the servicing its foreign debt, as well as the legal, statutory and free provisions and reserves.

Article 268: Foreign currency accounts

A holder who exports mining products can open and maintain an account or group of accounts in foreign currencies with approved commercial banks having a registered office in the Democratic Republic of the Congo, to handle the earnings and expenses in foreign currency relating to the project it is exploiting in connection with its mining right. It is free to keep in foreign currency all earnings from the export sale of products deriving from the project, without the obligation to convert them into national currency.

If it has opened several accounts with the national banking system, a holder of a mining right must repatriate export earnings into an account opened in an accredited bank with which the export was domiciled.

Article 269: Repatriation of receipts from exports

The holder who, during the amortization of its investment, exports commercial mining products:

- a. is authorized to keep and manage in its main account and accounts for the servicing of the foreign debt, the receipts from its export sales up to a limit of 40%. The terms and conditions for paying into the accounts for the servicing of the foreign debt, as well as the terms and conditions for paying for the servicing of the holder’s

foreign debt, are set out in the loan agreements entered into by the borrower with its foreign creditors;

- b. must repatriate into its account held in the Democratic Republic of the Congo, 60% of the receipts from exports within fifteen days of receipt of same in the Main Account as provided for in article 267 of this Code.

In the event of the amortization of its investment, the holder is required to repatriate 100% of the income from its export sales to its main national account in the Democratic Republic of the Congo within the period of time set forth in subparagraph b of the preceding paragraph.

Only a holder of mining rights that has communicated banking details and who sends to the Central Bank the Congo on a quarterly basis a report of its activities can maintain a share of export revenue or foreign pre-financing recorded in its main account, as provided for in article 271 of the present Code,

The re-patriated share is intended to cover domestic expenditures in favor of residents and cannot serve to finance the transactions listed in article 264 of the present Code.

Article 270: Payment of exchange monitoring duties

The holder must pay the Congo Central Bank exchange monitoring duties of 2/1000 on the following transactions:

- a. any payment abroad made by the approved banks from the holder's accounts in banks in the Democratic Republic of the Congo, both for revenue and for expenses, with the exception of repatriations of receipts originating from the main account;
- b. any debit or credit transactions made from its main account, with the exception of transfers in favor of accounts for the servicing of the foreign debt; payments made from these accounts for the servicing of the foreign debt are also exempted from the exchange monitoring duties.

The holder of mining rights must pay the Central Bank of the Congo or any person appointed by Central Bank of the Congo a foreign exchange monitoring duty of 2% on the totality of 100% of the amount of any realized export. This duty is calculated on total export earnings and is levied on the repatriated portion.

Article 271: Control of transactions in the main local account and main external account

The holder must submit a monthly report on the movements of funds paid into the main foreign currency account abroad, as well as the references relating to the export files regarding the earnings paid into said account. This report, together with a copy of the bank statement relating to said account, is submitted to the Mines Directorate and to the Central Bank of the Congo, in order to ascertain conformity with the provisions in the present chapter.

However, the Central Bank shall retain the right to dispatch its delegates to verify the regularity of the transactions recorded on the main account, with prior notice thereof in writing to the holder.

For this purpose, within thirty days of receipt of such correspondence, the holder of the mining rights must acknowledge receipt and transmit to the Central Bank of the Congo a legalized copy of the letter addressed to its banker authorizing the verification of the transactions executed on its main account.

The Mines Directorate is responsible for monitoring and exercising control over the holders of mining exploitation rights and quarry exploitation rights in respect of the compulsory repatriation of export earnings.

This verification power is also exerted on all banking institutions involved in such export earnings repatriation transactions, in collaboration with the Central Bank of the Congo.

Article 272: More favorable exchange provisions and the exchange regime applicable to the holder of quarry rights

If legislation or regulation on exchange under substantive law, enacted or promulgated in the National Territory after the date of entry into force of this Code, contains provisions more favorable than those contained in this Code, these new provisions are immediately applicable, as of right, upon their entry into force.

With the exception of the holder of an Authorization for Permanent Quarry Exploitation that produces cement and enjoys the provisions of the foreign exchange regulations provided for in the present Code, a holder of quarry rights is subject to the provisions of substantive law with regard to all its exchange transactions.

Article 272 bis:

Any foreign exchange matters not covered by the present Code shall be governed by the provisions of the Central Bank.

CHAPTER III: GOVERNMENT GUARANTEES AND CONTROL BY THE STATE

Article 273: Freedoms Guaranteed

Subject to compliance with the mining laws and regulations of the Democratic Republic of the Congo, the State will guarantee the holders of mining and quarry rights:

- a. compliance with the law and agreements or conventions executed with partners;
- b. The right to freely dispose of their assets and to organize their businesses as they deem fit;
- c. The freedom to recruit, provided that priority shall be given to employing Congolese personnel with equal qualification in terms of education and experience,

to carry out mining operations, and subject to the conditions of dismissal pursuant to the laws and regulations in force;

- d. Free access to raw materials within the limits of the mining or quarry rights;
- e. Free circulation within the national territory for their personnel and their products.
- f. The freedom to import goods and services as well as the funds necessary for their activities, provided Congolese firms are being given priority for any contract relating to the mining project, under conditions which are equivalent in terms of quantity, quality, price and delivery and payment dates.
- g. The freedom to dispose of the products in the internal markets, to export and dispose of the products on the external market, provided the provisions of the present Code are complied with;
- h. Peaceful enjoyment of the Perimeters relating to their mining and/or quarry rights;
- i. to facilitate the obtaining of all the documents required for their foreign personnel to access the places of exploration or exploitation, without affecting the validity of the laws and regulations governing the policing of foreigners.

Article 274: Repurchasing foreign currency

The State and the Central Bank of the Congo are forbidden to officially repurchase the foreign currency deposited in the currency accounts of residents and non-residents.

If the needs of the national economy so require, the State and the Central Bank of the Congo are authorized to buy back the foreign currencies from repatriated earnings at rates and in the amounts to be negotiated.

If foreign currency is purchased, the needs expressed by the holders of mining rights are treated and served on a priority basis.

The Mining Regulations determine the practical arrangements.

Article 275: Compensation for expropriation

The mine or quarry installations cannot be compulsorily expropriated by the State except in exceptional circumstances set by law, in exchange for fair compensation paid to the holder concerned at least six months prior to the compulsory execution of the decision to expropriate.

Within 48 hours following the date of notification of the decision to expropriate, the State will notify the affected holder of the proposed amount of compensation, and the precise or estimated date on which the actual expropriation will take place.

The expropriated holder must react within ten days from the date of receipt of the State proposal, unless it requests an additional extension.

In the case of acceptance, the compensation will be paid in accordance with the first paragraph of this article.

In case of any disagreement, the expropriated holder's reply must include the latter's proposal with regard to the actual level of compensation.

If the State rejects the expropriated holder's proposal, the latter may request that a ruling be made by the competent Court or by means of arbitration procedure set forth in Articles 315 to 320.

It is also possible to appeal through the courts or by arbitration if: there has not been any notification of the expropriation measure or the amount of the compensation, or in the event of late notification or, lastly, if the compensation for expropriation has not yet been paid and the execution of the decision to expropriate is nearing six months.

Article 276: Guarantee of stability

The State guarantees that the provisions of the present Code can only be modified if, and only if, this Code itself is the subject of a legislative amendment adopted by Parliament.

The State grants the holder of the rights granted under this law the guarantee of stability with respect to the tax, customs and exchange rate regimes, which regimes shall remain acquired and untouchable up until the end of a period of five years, as from the date of:

- a. the entry into force of the present Code, with respect the valid exploitation permits existing as of that date;
- b. the granting of the exploitation permit subsequently acquired by virtue of a valid exploration permit existing on the date of entry into force of the present law.

Article 276 bis. Transfer of equity interests and shares

Any transfer of equity interests or shares of a company that holds an exploitation permit that leads the beneficiary of the transfer to take control of such company is subject to prior State approval.

Any modification to the shareholders of a Congolese-law company or foreign-law company that controls a subsidiary that is a partner or shareholder of a company that holds an exploitation permit and that leads the controlled entity to being taken over is also subject to the State's prior approval.

Article 276 ter. Mergers

The State's prior approval is also required for any merger transaction that leads to the absorption of a company that holds an exploitation permit into another company.

Article 276 quater. Taking of control

Within the meaning of this article, a taking of control refers to the acquisition of the power – through the holding of the majority of voting rights – to determine the Company’s decisions, notably those decisions relating to appointing or dismissing the majority of the members of the company’s administrative, management or supervisory bodies.

Article 276 *quinquies*.

The Mining Regulation defines the terms of application of the provisions of the present chapter.

TITLE XI: RELATIONS OF HOLDERS OF MINING RIGHTS AND/OR QUARRY RIGHTS BETWEEN THEMSELVES AND WITH THE OCCUPANTS OF THE LAND

CHAPTER I: RELATIONS BETWEEN HOLDERS

Article 277: Works between two adjacent mines

In cases where it is acknowledged to be necessary to carry out works of common interest for two neighboring mines, the holders concerned cannot object to them. The parties concerned, heard by the Directorate of Mines, are each obliged to participate thereto prorata to their interest.

If the works at a mine cause damages to an adjacent mine, the party carrying out those works is liable for compensation.

If, on the contrary, these works bring about a reduction of the charges of a neighboring mine, indemnification is necessary.

A protective wall of sufficient size between two adjacent mines may be requested by the Directorate of Mines, but the maintenance thereof may not give rise to compensation.

Article 278: Servitudes

The holder of an exploitation or small-scale mining exploitation permit has the right of way over the tailings exploitation Perimeter for the purpose of gaining access to its own exploitation Perimeter.

Provided that they do not contravene the provisions of the present Code, the provisions of Articles 170 to 179 of Law No. 73-020 of July 20, 1973 relating to the general regime for assets, land and real estate and the regime concerning securities, shall apply in case of mining rights of way.

The holder of a Tailings Exploitation Permit is entitled to compensation if the right of way over the Perimeter of the Holder of an Exploitation Permit or Small-scale Mining Exploitation Permit causes it grave damage which translates into an additional burden on its mining activity.

The Mining Regulations set the terms and conditions for the creation of rights of way referred to in the present Article.

CHAPTER II: HOLDERS' RELATIONS WITH THE OCCUPANTS OF THE LAND

Article 279: Restrictions on the occupation of the land

Except with the consent of the competent authorities, no person may occupy land:

- a. Reserved for cemeteries;
- b. Containing archaeological remains or a national monument;
- c. Situated less than five hundred meters from the boundaries of a hydroelectric dam or a building belonging to the State;
- d. Close to National Defense installations;
- e. within an airport;
- f. Reserved for railway projects;
- g. Reserved for the planting of young trees or forest plantations;
- h. Situated less than eight hundred meters from the boundary of a village, a town, a municipality or a city;
- i. on a street, a road, a motorway;
- j. within a national park and tourist sites.

Unless there is consent from the owner or legal occupant, no person may occupy land situated less than:

- a. one thousand meters from occupied, unoccupied or temporarily unoccupied houses or buildings;
- b. eight hundred meters from land hoed and ploughed for farm cultivation;
- c. eight hundred meters from a farm breeding cattle, having a reservoir, a hydroelectric dam or a private water reserve.

The Governor of the Province, on the advice of the competent department of the Mines Authority may request the setting up of Perimeters of protection of any dimension within which exploration and exploitation of mineral substances may be subject to certain conditions or may be prohibited, without the holder of the mining or quarry title being able to claim any compensation whatsoever. Said Perimeters are for the protection of buildings and built-up areas, water sources, roads, civil engineering and

public utilities works, as in all other cases where it would be necessary in the general public interest.

Compensation representing the total expenses relating to the works or structures demolished or abandoned is however owed by the public entity concerned in the event the holder has to demolish or abandon works or structures duly erected by or commenced by it with a view to exploiting those Perimeters, prior to the setting up of said Perimeters.

Article 280: Actual liability for the occupation of the land

The holder or lessee must compensate for the damages caused by the works it carries out in connection with its mining activities, even if they are authorized.

In case of transfer of a mine exploitation right or an Authorization for Permanent Quarry Exploitation, liability for damages deriving from works prior to the transfer is joint and several for both the former and the new holder.

In case of transfer, the former holder must notify the new holder in writing. It also notifies it, in so far as it is aware of them, of the significant dangers or disadvantages resulting from exploitation. In the absence of this information, the beneficiary of the transfer has the option to request termination of the transfer or to have a portion of the price reimbursed to him. It may also request, at the expense of the former holder, elimination of the dangers or the removal of the disadvantages that may cause damage to third parties.

The holder may be required to provide a guarantee, to pay full compensation if these works are likely to cause a particular damage, and if it is suspected that its resources may not be sufficient to meet its potential liabilities.

The courts shall assess the need for this guarantee and shall determine the nature and amount thereof.

All damages caused to the assets of third parties shall be settled at their actual replacement value, plus 50%, unless the assets are returned to the condition they were in prior to the occurrence of said damage.

Article 281: Compensation for the occupants of the land

Any occupation of land depriving the rightful holders of enjoyment of the surface rights, any modification rendering the land unfit for cultivation, shall cause the holder or lessee of the mining and/or quarry rights, at the request of the rightful holders of the surface rights, and at their convenience, to pay fair compensation, corresponding either to the rent or the value of the land at the time of its occupation, plus fifty per cent.

Land, as referred to in the above paragraph, means the ground on which the individuals have always carried out or are effectively carrying out any activity.

Amicable settlement of the dispute may be made by any legitimate method other than resorting to the courts, especially by compromise, settlement, arbitration or before an Officer of the Judiciary Police or an Officer of the Public Ministry.

In the absence of an amicable settlement between the parties within three months from the date on which the dispute arises, the compensation shall be determined by the competent court pursuant to the rules on judicial organization and jurisdiction in force in the Democratic Republic of the Congo.

However, the usual occupant of the land may, in agreement with the holder, continue to exercise its right to cultivate the land provided that the work in the fields does not hinder the mining activities. The owner of the surface rights shall then no longer continue to construct buildings on it.

Lastly, the simply passing through the land does not entitle to any compensation if no damage results therefrom. The act of passing must take place with a view to best conserving the environment.

In case of displacement of the population, the mining operator must first indemnify, compensate and resettle the impacted populations.

The practical arrangements for applying the provisions of this article are determined by the Mining Regulations.

Article 282: Restricted access areas

At the request of the holder of an exploitation right or a permanent quarry exploitation authorization and after making the necessary investigation, the Minister may demarcate a zone around the holder's sites, as a restricted access area, in whole or in part, prohibiting any activities and/or the circulation of third parties.

Damages caused in that area by the mining or quarry exploitation works to third parties who might violate that prohibition, shall not entitle them to any compensation.

The Mining Regulations set forth the conditions to set up these areas, as well as the duration thereof.

Article 283: Authorized activities

Without prejudice to the State's ownership rights over its sub-soil, and subject to any rights of third parties over the surface concerned, the holder of an exploitation right or a permanent quarry exploitation permit has, in addition to the rights relating to its permit, with the authorization of the Governor of the province concerned, and on the advice of the competent department of the Mines Authority:

- a. Within its surveyed Perimeter, the right:
 - to occupy the land necessary for its activities and associated industrial activities, including the construction of industrial plants, dwellings and others of a social nature;

- to use the underground water, the water in non-navigable water courses, and water courses conducive, in particular in connection with a concession relating to a waterfall, to build a hydro-electric station intended to meet the power requirements of the mine;
 - to dig canals and channels;
 - to establish means of communication and transport of any type.
- b. Outside its demarcated Perimeter, the right to establish means of communication and transport of any type.

The rights of occupation set forth in the present article constitute legal encumbrances in the public interest. They cannot be infringed, directly or indirectly, by the granting of subsequent mining and/or quarry rights.

Article 284: Execution of public utility works or exploitation of quarries relating thereto

The authorization to occupy the land does not preclude the carrying out of public utility works or the opening a temporary quarry to provide the materials necessary for such works. The holder or lessee is entitled to compensation for the damages suffered.

CHAPTER III: INDUSTRIAL RESPONSIBILITY OF THE HOLDER

Article 285: Making use of mineral substances not specified in the mining titles

The holder of a mining right or quarry exploitation right is entitled to make use of, for the needs of its exploitation activities and associated industries, mineral substances other than those it is extracting, which the works necessarily involve the mining thereof. The occupant of the surface rights may request that it be permitted to make use of these substances, if they are not used by the mine operator, in return for fair compensation, if applicable, unless they derive from the processing of the mineral substances extracted.

Article 285 bis. Holder's industrial liability

Any holder of a mining right and/or a quarry right is responsible for the harm caused to persons, property and the environment as a result of its mining activities, even in the absence of any fault or negligence. The holder is responsible for repairing such harm.

The holder may be relieved of this obligation only if proves that such harm was caused by an event or circumstance that was not related to its mining activity.

The Mining Regulations define the terms for compensation.

Article 285 ter. Personal injury and damage caused to the environment due to pollution

The liability of a holder of a mining right and/or quarry right is also incurred in the event of direct or indirect pollution caused from mining activities that have an impact

on human health and/or causing damage to the environment and resulting notably in water pollution, ground pollution, atmospheric pollution and causing harm to humans and the fauna and flora.

Article 285 *quater*: Illness attributable to mining activities

The holder of a mining right and/or quarry right is bound to repair all harm caused by illnesses attributable to mining activities in accordance with generally applicable law.

The list of illnesses attributable to mining activities is defined in the Mining Regulations.

Article 285 *quinquies*. Statute of limitations applicable to claims for compensation for harm suffered

Claims for compensation of harm caused to humans or the environment due to mining activities cannot be time-barred.

CHAPTER IV: HOLDER'S SOCIAL RESPONSIBILITY

Article 285 *sexies*. Obligation to contribute to the financing of community development projects

Without prejudice to the provisions of articles 212, 213, 214 and 214, and paragraph 2 of article 242 of the present Code, the holder of mining exploitation rights and permanent quarry exploitation authorizations is required to contribute, during the term of its project, to the definition and completion of socio-economic and industrial development projects for the local communities affected by the project's activities, on the basis of specifications to improve the living conditions of such communities.

Article 285 *septies*. Specifications

In accordance with this law, the specifications define the social responsibility of the holders of mining exploitation rights and permanent quarry exploitation authorizations vis a vis the local communities affected by mining activities.

The specifications are intended to guide and organize the implementation of the undertakings of the holders of exploitation mining rights or permanent quarry exploitation authorizations with respect to the completion of the socio-economic infrastructures and social services in favor of the local communities affected by its mining activities.

The specifications also serve as an agreement framework is to allow the achievement of sustainable development actions seeking to improve the economic, social and cultural well-being of the local populations affected by the mining activities of holders of mining exploitation rights or permanent quarry exploitation authorizations during and after the exploitation.

The holder of exploitation mining rights or permanent quarry exploitation authorizations must, as from the issuance of its mining title and/or quarry title and, at the latest, within six months before the commencement of exploitation, prepare and file

the specifications defining social responsibility vis a vis the local communities affected by the mining activities and obtain approval thereof by the Provincial Government after having obtained the opinion of the technical services.

The Mining Regulations shall determine the rules governing negotiations and the practical terms for establishing, filing, the admissibility, processing and approval of the specifications defining social responsibility vis-à-vis local communities affected by mining activities.

Article 285 *octies*. Managing contributions to community development projects

In accordance with the principle of transparency in the mining industry required by the present law, a minimum grant of 0.3% of the turnover as a contribution to the community development projects provided for by article 258 *bis* of the present Code is made available and managed by a legal entity that shall include representatives of the holder and the neighboring local communities that are directly impacted by the project.

The Mining Regulation determines the legal nature of the entity responsible for the management of the grant, the number of members of each constituent group and the terms of their cooperation and control by the minister responsible for mining and social affairs.

Article 285 *nonies*. Precious mineral substances found on an occasional basis

Any individual of Congolese nationality that occasionally finds a precious mineral substance the trading of which is regulated is authorized to sell it to a trader to an approved trading house subject to the payment of an appropriate tax set by the minister, so long as the origins of such mineral substance are not illegal.

TITLE XII: FAILURE TO COMPLY WITH ADMINISTRATIVE AND SOCIAL OBLIGATIONS; PENALTIES

CHAPTER I: FAILURE TO COMPLY WITH ADMINISTRATIVE AND SOCIAL OBLIGATIONS

Article 286: Non-payment of surface rights fees, failure to start work within the deadline set forth under the law, and non-compliance with commitments to social obligations within the regulatory timeline

The following are considered breaches of administrative and social obligations:

- non-payment of the annual surface rights fees per quadrangle;
- failure to start the works within the deadline specified in articles 196, 197, 198 and 199;
- failure to correct within a period of 60 days after the official notification provided for by article 2 of the present Code;

- non-compliance with commitments to social obligations in accordance with the timetable set out in the specifications provided for by the Mining Regulations.

Article 287: Confirmation of non-payment of surface rights fees per quadrangle and processing of files

The Mining Registry confirms the cases of non-payment of surface rights fees per quadrangle at the end of the first quarter of each year. It notifies the holder concerned and displays in a room determined by the Mining Regulations, within fifteen working days following the end of the quarter, a list of those holders who have not paid the surface rights fees relating to their mining and/or quarry rights. This list will also be published in the press in the national capital and main city of each province concerned.

A holder whose name appears on the list may submit any document or grounds for its defense within forty-five (45) days from the date on which the list is displayed, which is also specified in the published notice. Only proof of payment or cause of force majeure are recognized as grounds for defense.

The processing of the defense documents shall be carried out by the Mining Registrar within a maximum period of thirty days following the end of the period for defense. The Mining Registry shall notify the holders concerned of its opinion and send it to the Minister, together with the defense documents as well as a draft opinion for the forfeiture of rights, in accordance with the provisions of Articles 40 and 41 of the present Code.

Article 288: Confirmation of failure to start the works and the processing of the files

Failure to commence the works within the deadlines is confirmed by the Directorate of Mines which sends the report on its findings to the minister and the Mining Registry. The Mining Registry give notice to the party concerned within ten working days following the end of the period during which the works should have commenced.

Article 288 bis: Finding of non-compliance with commitments in respect of social obligations

The non-compliance by the holder with its commitments in respect of social obligations in a timely manner shall be confirmed by the *Agence Congolaise de l'Environnement* [the Congolese Environmental Agency], in collaboration with the Directorate for the Protection of the Mining Environment, after on-site investigation and consultation with the impacted communities, which sends the minutes of its finding to the minister and the Mining Registry. The latter shall notify the person concerned within 10 working days following the end of the period during which its commitments should have been met.

Within a maximum period of one working day following receipt of the report, the Mining Registrar displays the findings from the *Agence Congolaise de l'Environnement* [the Congolese Environmental Agency], in collaboration with the Directorate for the Protection of the Mining Environment, in a room indicated by the Mining Regulations. A copy of this report is provided to the holder.

Each holder is responsible for obtaining the findings of the *Agence Congolaise de l'Environnement* [the Congolese Environmental Agency], in collaboration with the Directorate for the Protection of the Mining Environment, concerning its project.

A holder whose non-compliance with its commitments in respect of social obligations has been confirmed may present any document in its defense within forty-five days of the date on which the findings are displayed.

The *Agence Congolaise de l'Environnement* [the Congolese Environmental Agency], in collaboration with the Directorate for the Protection of the Mining Environment, processes the defense documents within a maximum period of thirty days as of the end of the period indicated in the previous paragraph, and it sends its technical opinion to the minister and the Mining Registry, who informs the holder concerned.

The Mining Registry sends the file relating thereto and the draft decision to the minister for his decision.

CHAPTER II: PENALTIES

Article 289: Causes of forfeiture and decision to deprive the holder of its rights.

Without prejudice to the provisions of Articles 299 to 311 of this Code, the breaches listed in article 286 constitute causes of forfeiture of a holder of an exploration permit, Exploitation Permit, Permit for Tailings Exploitation, Small-scale mining Exploitation Permit and Authorization for Permanent Quarry Exploitation.

The Mining Registrar immediately notifies the holder of the decision to cancel the rights and then proceeds to display it in a room indicated by the Mining Regulations.

Notification of the decision to forfeit the rights entitles the holder to the recourse as set forth in Articles 317 to 320 of the present Code. The recourse must be exercised within thirty days following the display of the decision in the offices of the local branch of the Mining Registry.

In the absence of any recourse pursued within the deadline set above, the decision to forfeit the rights is registered in the appropriate registry book and published in the Official Gazette.

In the event of an appeal against a forfeiture decision, the mining or quarry right remains valid throughout the duration of the procedure. However, a notice is made of the decision and of the appeal procedure initiated in the registry book of granted permits and authorizations.

Article 290: Withdrawal of mining rights and/or Authorization for Permanent Quarry Exploitation

The mining rights and the Authorization for Permanent Quarry Exploitation are withdrawn by the Minister if the holder does not appeal against the forfeiture decision, the recourse is not pursued within the time limit, or if the appeal is rejected.

The withdrawal decision takes place on the date on which the appeal is rejected or on the last day on which the appeal should have been made.

The withdrawal decision is notified to the Mining Registry, which proceeds to register it in the registry book of cancelled titles.

The Perimeter relating to a withdrawn mining or quarry right reverts to the public domain of the State and can be returned to areas reserved for geological exploration.

The Mining Regulations set the terms and conditions for the creation and management of areas reserved for geological exploration.

Article 291: Prohibition

The holders of mining rights and Permanent Quarry Exploitation Authorizations whose rights are forfeited and whose titles are withdrawn can obtain new mining rights or Permanent Quarry Exploitation Authorizations only after a period of five years as of the date the withdrawal was registered in the registry book held at the Mining Registry.

Furthermore, the withdrawal of the mining rights or the Authorization for Permanent Quarry Exploitation does not have the effect of relieving the Holder from its environmental and fiscal obligations.

Article 292: Suspension

Any serious offence defined in the Mining Regulations committed by the Holder is punishable by immediate suspension of works, decided by the Minister, with prior official notification.

The duration of the suspension is set by regulation depending on the extent of the gravity of the offence committed and of its impact on the environment, public health and safety.

In order to rectify this serious offence, the Mines Authority may, on its own initiative or upon request from the local authorities concerned, impose on the holder the carrying out of those works which it deems necessary for the protection of public health, the environment, workers or adjacent mines. If the holder fails to do so, the Mines Authority may have said work carried out by third parties at the holder's expense.

Article 293: Irregular keeping of documents

In the event of irregular keeping of the compulsory documents required pursuant to the provisions of the present Code as well as its implementing regulations, duly confirmed, the Mines Authority sends a written notice to the mine operator concerned, if the breach does not constitute an offence.

In the event of repeated breach, its activities may, after notice, be suspended by the Minister for a period of three months.

At the end of the suspension period, the Mines Authority proceeds with a verification. If the irregularity found has disappeared, then the suspension will be lifted. If not, the suspension is renewed for a period of 3 months.

If the notice has not yet resulted in a satisfactory response before the expiry of the second period of suspension, the holder shall be liable for a fine of an amount in Congolese Francs equivalent to US\$ 500 per day until the irregularity has disappeared, any day started deemed to be an entire day.

Article 294: Confiscation of the provision for rehabilitation of the site

If, on completion of the exploration and/or exploitation works, the holder of a mining or quarry right does not voluntarily execute the obligations agreed to in the EMPP or MRP, at the request of the Mines Authority and to its benefit, the competent court shall order the confiscation of the corresponding provision for rehabilitation set up by the holder.

If the value of the guarantee or provision thus confiscated is not sufficient to cover the costs necessary to return the site concerned to its original state, the Mines Authority may entrust execution of the pending work to a third party. The costs incurred for carrying out such additional works shall be borne by the defaulting mine operator.

At the request of the Mines Authority, the defaulting operator may be the subject of a ban on leaving the National Territory, ordered by the competent court, until completion of the works for rehabilitation of the site.

Article 295: Failure to provide reports

Failure by the holder of a mining or quarry title to provide the compulsory periodic reports within the statutory time limit, leads to a notification requesting the holder to do so within a maximum period of thirty days.

Upon expiry of this time limit, unless it is in a situation of force majeure, the defaulting holder is liable to a fine, the amount of which in Congolese Francs is equivalent to 1,000 USD per day for each day of delay starting on the last day of the regulatory time limit up until the submission of the reports, any day started deemed to be an entire day.

Article 296: Failure and fraud in paying duties, levies and royalties

Failure to pay, delay in payment and/or the payment of a reduced amount of the sum due constitute infractions sanctioned in accordance with relevant legislation.

Article 297: Force majeure

Any event which is unforeseeable, unavoidable, insurmountable and outside the control of the holder, preventing him, despite its best efforts, from executing its obligations in full or in part or causing a significant delay in the execution thereof, constitutes a case of force majeure. The following events are particularly considered as cases of force majeure: wildcat strike, riots, insurrection, civil unrest, social conflicts, government

action without legal support, sabotage, natural catastrophe, fire, acts of war or circumstances attributable to war.

The event of force majeure may be allowed only for breaches of those obligations which could not have been executed on account of the occurrence of this event.

An act or an omission attributable to the holder does not constitute a case of force majeure.

The conditions for application of the present article are specified in the Mining Regulations.

Article 298: Time limit for notifying a case of force majeure

If the holder finds it impossible to fully or partially execute its obligations due to an event of force majeure, it shall notify the Mining Registry immediately, or no later than fifteen days from occurrence of the event, specifying the reasons constituting the force majeure, the commencement date of the non-performance, and the means proposed to remedy the case of force majeure.

As of the date of the occurrence of an event of force majeure, the execution of the obligations affected is suspended for the duration thereof and for an additional period sufficient to enable the holder to act with the due diligence required to revert back to the same position as before said event occurred. The duration of the event of force majeure is added to the time limit for execution of its obligations.

TITLE XIII: OFFENSES AND PENALTIES

Article 299: Illegal mining activities

Any person who engages, without permission, in mineral exploration or exploitation work in mines or quarries in violation of the provisions of the present Code, shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$10,000 and US\$250,000.

The mineral substances extracted illegally shall be seized and their confiscation ordered by a competent court in favor of the State or the holder of the mining or quarry exploitation right concerned.

Article 299 bis: Human rights violations

The exploitation of and trade in mining products that come from a site where a violation of laws on the protection of human rights, children's rights, or women's rights has been the subject of a certified report by a competent authority is unlawful. The Mining Regulations set out the terms for the report.

Without prejudice to the provisions of article 299 of the present Code, any person who engages in mining exploitation in violation of the present article shall be punished by a fine equivalent in Congolese francs to USD 10,000 per day until the violation ceases.

Without prejudice to the provisions of article 302 of the present Code, any person who engages in trade in mining products in violation of the present article shall be punished by a fine equal to three times the commercial value of the products in question.

Article 300: Theft or possession of stolen mineral substances

Without prejudice to the special provisions regarding precious substances and the provisions of the Congolese Criminal Code, any person who has stolen or possesses (*recel*) stolen mineral substances shall be punished by a penalty of imprisonment of one month to two years and a fine of the equivalent in Congolese Francs of US\$5,000 to US\$20,000, or of only one of these penalties.

Article 301: Diversion of mineral substances

Any person who has diverted mineral substances shall be punished with five to ten years imprisonment and a fine in the amount in Congolese Francs equivalent to between US\$5,000 to US\$20,000.

Any person who has facilitated the diversion of mineral substances shall be punished with two to five years' imprisonment and a fine in the amount in Congolese Francs equivalent to between US\$ 5,000 to US\$10,000.

Article 302: Illegal purchase and sale of mineral substances

Any person who has bought or sold mineral substances in breach of the legal and statutory provisions in force shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$10,000 and US\$30,000.

The mineral substances relating to said transactions shall be seized and their confiscation ordered by the competent court in favor of the State.

Article 303: The illegal keeping of mineral substances

Any person who has illegally held mineral substances shall be punished with a maximum sentence of two months' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$ 2,000 and US\$20,000, or one of these penalties only.

Article 304: Illegal transportation of mineral substances

Any person who, without authorization, has transported or has organized the forwarding of mineral substances, shall be punished by two months' imprisonment and a fine of between US\$2,000 and US\$20,000, or one of these penalties only.

Article 305: Fraud

Any person fraudulently exporting or attempting to fraudulently export mineral substances in infringement of the customs regime and the excise duties provided for in

this Code is subject to the penalties and fines provided for by the customs and excise legislation in this matter.

Article 306: Infringements of health and safety regulations

Any person who has infringed the provisions of the mining regulations concerning public health and safety shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$ 5,000 to US\$10,000, or only one of these penalties.

Article 307: Corruption of State civil servants

The persons who, being empowered to carry out mining operations to execute the provisions of this Code are found guilty of violations to the provisions of Articles 147 to 149 of the criminal code volume II, are subject to criminal sanctions as set forth in said provisions, as well as a fine in the amount of Congolese Francs equivalent to US\$1,000.

Article 308: Destruction, degradation and damage

The following persons are punishable by five to six years' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$5,000 to US\$10,000, or only one of these penalties:

Any person who has fraudulently or maliciously:

- a. placed false information on a post or a survey marking;
- b. placed, removed or damaged a post or a survey marking;
- c. made a false declaration or used documents he knew to be false or wrong for the purpose of either obtaining or arranging to obtain a mining right or quarry permit, or to prevent others from obtaining or exploiting mining rights or quarry permits.

Article 309: Offences or violence against agents of the Mines Authority and specialized mines services

Without prejudice to other provisions provided for by generally applicable law, any person who has committed an offence by means of an act, words, gestures or threats or attacks against an agent of the administration or of the specialized mines service, who is exercising or on the occasion of exercising his duties, shall be punished by a maximum of six months' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$1,000 and US\$5,000 USD, or one of these penalties only.

Article 309 bis: Non-repatriation of export earnings

A holder who does not repatriate 60% of export earnings in accordance with the provisions of article 268 paragraph 2 of the present Code shall be punished by a fine equal to 5% of the amount not repatriated.

Article 310: Hindering the activity of the Mines Authority

Any person who hinders the execution of works ordered or authorized by the Mining Department as set forth by the present Code and the Mining Regulations, shall be punishable with six months' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$ 2,000 to US\$10,000, or one of these penalties only.

Article 311: Contravening the decrees of the Minister and the decisions of the Governor of the Province

Any offender who contravenes the provisions of ministerial decrees notified by the Secretary General of Mines and decrees of the Governor of the Province in connection with the artisanal or industrial mining sector relating to measures implementing the present Code, shall be punished by between seven days to one month imprisonment and a fine the amount of which in Congolese Francs does not exceed US \$1,000 in the artisanal mining sector and USD \$10,000 in the industrial mining sector, or one of these penalties only.

Article 311 *ter*¹⁵: Fraud and looting of natural mineral resources

Any person who has, by any act whatsoever, any agreement, convention, arrangement or any other circumstance that results depriving the nation, individuals or legal entities of all or part of their own means of existence derived from their mineral resources or wealth shall be punished by a penalty of ten to twenty years' imprisonment and a fine amounting to the equivalent in Congolese francs of USD 250,000 to USD 500,000, in addition to the confiscation of property and assets arising from such offense..

Article 311 *quater*: Obstruction of transparency and traceability in the mining industry

Any person who, by any act, agreement, convention, arrangement or other circumstance, obstructs transparency and traceability in the mining industry shall be liable for a fine amounting to the equivalent in Congolese francs of USD 100,000 to USD 1,000,000.

Article 311 *quinquies*: Failure and refusal to communicate change of domicile

Any person who, following formal notice issued by the Directorate of Mines or the Mining Registry, as the case may be, has failed or refused to report any change in the location of such person's domicile or registered office or administrative office to the Directorate of Mines or the Mining Registry, as applicable, within fifteen days of such notice shall be liable to a fine amounting to the equivalent in Congolese francs of USD 5,000 per day

The period runs from the date such formal notice is sent to the last address provided to the services in question.

TITLE XIV: APPEALS

¹⁵ [Note to draft: No article 311 *bis*.]

CHAPTER I: GENERAL PROVISIONS

Article 312: Recourse

The holder and the State are afforded the right to appeal through administrative, judicial and/or arbitration as set forth by the present Code.

CHAPTER II: ADMINISTRATIVE APPEALS

Article 313: Implementation of the rules of substantive law

Subject to the provisions of articles 46 and 315 of this Code, appeals made against administrative acts by the administrative authorities pursuant to or in breach of the provisions of the present Code or the provisions of the Mining Regulations are governed by the relevant provisions of substantive law, in particular, by the provisions of Articles 146 to 149 and 158 of Ordinance-Law No. 82-020 of March 31, 1982 relating to the code organizing and setting the jurisdiction of the courts as modified and by Ordinance-Law No. 82-017 of March 31, 1982 relating to the procedure before the Supreme Court, as modified and supplemented up to this date.

Article 314: Shortening the time limits

Contrary to the provisions of Articles 79, 88 and 89 paragraph 1 of the aforementioned Law/Decree No. 82-017 of March 31, 1982, the prior claim of the claimant, actionable before the Administrative Section of the Supreme Court of Justice, must be lodged within thirty days following the date of publication or personal notification of the administrative act, to the authority who is able to revoke or modify said act. The petition for annulment (of the act) must be lodged within twenty days from the date on which total or partial rejection of the claim has been notified.

The time limit for filing a reply and for filing the administrative documents is fifteen working days from the date of serving of the petition. The same time limit applies to the opinion of the Public Prosecutor. The extension of time limits imposed on parties for sending the petition and the reply may be decided by reasoned order of the Head of the Administration Office of the Supreme Court, and may not exceed twelve working days.

The shortening of the time limits set forth in the previous paragraph relate only to the refusal to grant mining and/or quarry rights as well as approval or execution of mortgages.

In any event, the sentence of the Supreme Court shall be rendered within thirty working days from the date on which the case is heard.

CHAPTER III: APPEALS VIA THE JUDICIAL SYSTEM

Article 315: Matters subject to court appeals

Without prejudice to the provisions of Article 46 of the present Code, the following are subject to court appeals, in particular:

- the withdrawal and the refusal to renew artisanal exploitation and trader's cards;
- the refusal to transfer titles in cases of transfer or lease, by the person in charge at the Mining Registry or his local representative,
- overlaps between holders of mining rights,
- disputes between the holders or with the occupants of the land,
- confiscation of the guarantee or the provision for site rehabilitation in favor of the Mines Authority,
- disputes concerning compensation for expropriation,
- appeals against fines decided by the Mines Authority in case of irregular keeping of documents,
- the ban on leaving the National Territory,
- the imposition of a fine in case of failure to submit reports,
- the increase of penalties for late payment of the mining royalties and disputes due to cases of force majeure, as well as civil actions relating to the infringements provided for by this Code.

Article 316: Applicable rules

The courts in charge of deciding a dispute or an appeal against a judicial decision concerning the matters set forth in the previous article, shall apply the procedure pursuant to substantive law as set forth in the Congolese Code of Civil Procedure, the Criminal Procedure, the procedure before the Supreme Court of Justice, as well as all the general principles of law which apply to judicial matters.

CHAPTER IV: APPEAL VIA ARBITRATION

Article 317: Arbitration

Subject to the provisions relating to administrative and judicial appeals, and subject to the breaches, penalties and sanctions set forth by the present Code, disputes which might arise from the interpretation or application of the provisions of the present Code may be settled by arbitration as specified in Articles 318 to 320 of the present Code.

Article 318: Domestic arbitration

Disputes arising from the interpretation or application of the provisions of the present Code shall be subject to arbitration according to the procedure set forth in the provisions of Articles 159 to 174 of the Congolese Code of Civil Procedure.

Article 319: International arbitration

Notwithstanding the provisions of Article 318 of the present Code, disputes which might result from the interpretation or application of the provisions of the present Code may be settled, at the request of the party who proceeds first, by arbitration in accordance with the Convention on the Settlement of Disputes Relating to Investments between the State and Nationals of other States, provided that the holder is a “National” of another contracting state according to the terms of Article 25 of said convention.

As a result of accepting the issuance of a mining or quarry title by the Mining Registry, the holder is deemed to have given its consent to such arbitration pursuant to said convention, and both on its own behalf and that of its affiliated companies. It also accepts that such affiliated company should be considered as a “national” of the State of which the Investor is a national or of another Contracting State.

If the investor has invested through an affiliated company governed by Congolese law, such a company is considered, for the purposes of the ICSID Convention, as a national of the State of which the investor is a national.

Without prejudice to the provisions of paragraph 5 of this article, holders who are not nationals of another Contracting State may submit disputes resulting from the interpretation or application of the provisions of the present Code to any competent arbitral tribunal of their choice, provided that such tribunal is not governed by the laws of their country nor seats therefrom.

Holders who are not nationals of another Contracting State shall notify to the Mining Registry, within thirty days of the issuance of the mining title, the names, contact details and regulations of three arbitral tribunals chosen by them. The State shall approve one of the three proposed arbitral tribunals, provided, however, that it may object, for the reasons mentioned at the end of the preceding paragraph, within three months from the date the choice of the arbitral tribunals is notified.

Failing approval or objection by the State within the three month period, the holder shall notify the Mining Registry, within a period of thirty days, of the arbitral tribunal of its choice from among the three proposed.

Article 320: Arbitration rules and decisions

In accordance with the previous article, arbitration shall take place in French at the place agreed to by the Government and the holder.

For arbitration purposes, the arbitration proceedings shall refer to the provisions of the present Code, the laws of the Democratic Republic of the Congo and to its own rules of procedure.

The decisions rendered by the arbitrator are enforceable and their enforcement may be requested before any competent court within the National Territory according to the procedure stipulated by the Congolese Code of Civil Procedure, or in the holder’s country of origin.

In the event of application of the provisions of the previous paragraph, the Government waives its right of any immunity from jurisdiction or enforcement.

CHAPTER V: THE REPRESENTATION OF THE STATE AND THE SERVING OF NOTICE

Article 321: The representation of the State

In all administrative, arbitration and judicial proceedings where the State is involved, the person in charge of the Mines Authority or his local agent shall represent it, either as a claimant or as a defendant, both within the country and abroad.

Article 322: Serving of notice

Any appeal, judgment, order or other procedural instruments shall be served on the State at the Office of the Minister or at the Office of its local representative.

Any notice served at any other location in the National Territory or abroad is null and void.

Article 323: Consultation by the public of the registers and registry survey maps at the Mining Registry

The registers relating to mining and quarry rights, as well as the registry survey maps may be consulted by the public free of charge at the Mining Registry.

However, the collection of data is subject to payment of the charges set forth in the Mining Regulations.

Article 324: Confidentiality

The technical, geological and mining information submitted by the holder are confidential for a maximum period of ten (10) years. After this period, they shall be available to the public.

However, this information may be used and published globally for documentary purposes before the expiry of this period, without disclosing personal information.

The information is no longer confidential upon expiry of the mine or quarry exploration title, if the holder renounces it, or if it has been deprived thereof.

Article 325: Adjustment of amounts

The amounts expressed in foreign currency in the present law are expressed at the value of that currency on the date on which the present Code comes into force. These amounts are adjusted annually by decision of the person in charge at the Mining Registry, on advice of the Central Bank of the Congo, in order to keep their value up to date.

Article 326: Matters not regulated by the present Code

Associated matters not expressly stipulated, defined or regulated by the provisions of the present Code shall be governed by the Mining Regulations.

TITLE XV: VARIOUS PROVISIONS

Article 326 bis: Ownership of personal property and real property

Without prejudice to the obligations to rehabilitate the site provided for in its environmental and social management plan, the ownership of real property of any kind acquired by the holder of mining and/or quarry rights in the context of its activities and located within the perimeter shall be transferred to the State in the event of expiry, withdrawal, cancellation or total renunciation of the mining and/or quarry title.

The Mining Regulations determine how this provision is to be applied.

TITLE XVI: TRANSITORY AND FINAL PROVISIONS

CHAPTER I: MINING AND QUARRY RIGHTS IN FORCE

Article 327: The list of mining and quarry titles held by the State

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

CHAPTER II: PENDING APPLICATIONS RELATING TO QUARRY RIGHTS

Article 328: Pending applications on the date on which the present Code is enacted.

Applicants who have applications for the granting of mining and/or quarry rights which are being processed on the date on which the present law is enacted, must resubmit them pursuant to the provisions of the present Code within three months of its entry into force.

Pending applications are applications for mining and quarry rights filed in the Mining Registry that are undergoing registrar, technical and/or environmental evaluation.

Article 329: Pending applications for renewal and transformation on the date on which the present Code is enacted

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 330: Applications for renewal or transformation of mining and/or quarry rights which expire after the date on which the present Code is enacted

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 330 bis: Quarry rights

Within three months of the entry into force of the present Code, the Head of the Mining Division shall draw up a list of quarry rights granted in his province as from 2003.

Within the same period, he shall draw up an inventory of archived closed files, files in the course of review and pending disputes before it, in view of their transfer to the provincial minister responsible for mines, who shall act in the month following the entry into force of the revised Mining Regulation.

CHAPTER III: PARTNERSHIPS WITH THE STATE

Article 331: Option to maintain partnerships entered into with the State

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 332: Renewals of mining or quarry rights

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

Article 333: Issuing of new titles

[Repealed; article 31 of law no. 18/001 of 09 March 2018]

CHAPTER IV: IMPLEMENTATION OF THE NEW PROVISIONS

Article 334: Conditions for the application of the present law

The conditions for application of the provisions of the present Code are specified in the Mining Regulations, as amended and supplemented, and by other implementing decrees issued within 90 days following the promulgation of the present law.

Pending the publication of the measures provided for in the preceding paragraph of this article, urgent implementing measures may be taken by ministerial or inter-ministerial order, as the case may be.

Article 335: Suspension of applications for mining and quarry rights, artisanal exploitation and approval cards

New applications for the grant of mining and quarry exploration rights, artisanal exploitation and trader's cards, as well as applications for approval as authorized trading houses for mineral substances, processing entities and mining cooperatives shall be suspended during the period running from the promulgation of the present law until the entry into force of the revised Mining Regulations.

Applications for the grant of mining or quarry exploitation rights, applications for renewals, transfers, leasing, extension, security interests relating to valid mining or quarry rights, and the implementation of all other legal acts and procedures concerning such rights shall be carried out during the period referred to in the preceding paragraph in accordance with the provisions of the present Code and other regulations in force.

During the period referred to in the first paragraph of this article, an ad hoc commission established by the minister shall draw-up an inventory of the mineral deposits whose mineral and quarry rights have been placed in the public domain in accordance with the provisions of the present Code.

Article 336: Validation of mining and quarry rights in force [*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 337: Procedure for the validation of mining and quarry rights in force

[*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 338: Commission for validation of mining and quarry rights

[*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 339: Transformation of existing mining or quarry rights

[*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 340: Validity of mining agreements

All mining agreements in force upon the promulgation of the present law shall be governed by the provisions of the present Code.

Article 341: Approval of Agents for mines and quarries

[*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

Article 342: Mining and Quarry rights affected by force majeure

[*Repealed; article 31 of law no. 18/001 of 09 March 2018*]

CHAPTER IV: IMPLEMENTATION OF THE NEW PROVISIONS

Article 342 bis. Guarantee of stability

The provisions of the present law apply immediately to all holders of mining rights that are valid on the date this law comes into force.

In the event of a legislative modification within five years as of the entry into force of this Code, the holders of mining rights referred to in the preceding paragraph benefit from the guarantee of stability with respect to the tax, customs and exchange rate regime of this Code.

Article 342 ter. Time period applying to the obligation to processes and transform within the Democratic Republic the Congo for current holders of mining rights

Holders of valid mining rights have a period of three years to carry out, within the Democratic Republic of the Congo, the processing and transformation of mineral substances they have exploited.

The time-period provided for in the first paragraph of the present article can only be reduced or extended by an amendment of this provision by the two chambers of Parliament.

This provision shall be effective upon the entry into effect of the present law.

TITLE XVII: REPEAL AND FINAL PROVISIONS

Article 343: Repeal provisions

Upon enactment or entry into force of the present Code, as applicable, the following are repealed:

- a. Decree/Law No. 81-013 of April 2, 1981 relating to the general legislation on mines and hydrocarbons, as modified and supplemented up to that date, with the exception of the provisions applying to hydrocarbons, and except where they concern the mining agreements duly signed and approved upon promulgation of the present Code.
- b. Article 4 of Law No. 77-027 of November 17, 1977 relating to general measures for the reassignment of Zairian or radicalized assets concerning mines and quarries;
- c. Law No. 74-019 of September 15, 1974 relating to the creation of a mining squad;
- d. Decree-Law No. 72-005 of January 14, 1972 intended to reinforce the protection of certain substances against theft;
- e. Decree No. 84-082 of March 30, 1984 relating to the regulation of the activities of trading houses of precious minerals;
- f. Order No. 0012 of January 12, 1997 bringing in the new tariff of duties and taxes on imports relating to mines and quarries;
- g. Order No. 121 of September 11, 1998 relating to the creation of a public service of a social nature called the Department of Purchasing of Precious Mineral Substances (the "S.A.S.M.I.P." and its implementing measures;
- h. Law no. 78-017 of July 11, 1978, regarding loans intended to finance mining activities of private companies within the framework of the enjoyment of their mining rights;
- i. all legal and statutory provisions contrary to the provisions of the present Code.

Article 344: The entry into force of the present Mining Code

*[Repealed; article 31 of law no. 18/001 of 09 March 2018]*¹⁶

Drafted in Kinshasa on 9 March 2018

Joseph KABILA KABANGE

¹⁶ *[Note to draft: Article 32 of law no. 18/001 of 09 March 2018 states: “This Law shall come into effect on the date it is promulgated.”]*