

Democratic Republic of Congo reforms Mining Code

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Executive summary

The Democratic Republic of Congo's (DRC) law n°18/001 of 9 March 2018, reforming the Mining Code (MC), was assented to by the President on 9 March and published in the *Official Gazette* on 28 March 2018.

The implementing provisions of the Mining Regulations are currently under discussion with the State and major mining operators in the DRC. These provisions must be adopted within 90 days after publication of the new law (MC) (art. 334 MC revised).

The MC is now applicable to all mining conventions (art. 340 MC revised).

Under the amended MC, the stability clause is reduced to a period of five years (art. 276 revised and new art. 342 *bis* MC).

Sub-contracting is reserved for Congolese legal entities with Congolese capital (Paragraph 1, art. 48 MC revised and the law n°17/001 of 8 February 2017 on sub-contracting in the private sector).

The profits of the tax and customs regime provided by the MC are granted to the sub-contractors defined in the law on sub-contracting in the private sector (art. 219 MC revised).

The duration of the Exploration Licenses are standardized to all minerals substances and granted for a period of five years, renewable for one period (art. 52 MC revised).

The duration of the initial Exploitation Licenses is reduced from 30 to a maximum period of 25 years and renewable for period not exceeding 15 years each (art. 67 MC revised).

This Alert summarizes the key changes on the tax, customs, exchange rules and corporate law related to the MC.

Detailed discussion

Customs provisions

There is a new tax on the exportation of a sample for analysis to be determined in the implementing provisions (art. 226, al. 5 MC revised).

In addition, there is a new entry tax for imports at preferential rates for intermediary goods and other consumables from 3% to 10%; for fuel and lubricants, the rate is 5% (art. 232 MC revised).

Tax provisions

Mining royalty

The scale of the mining royalty has been increased (from 0 to 6% depending the type of mineral; 10% for strategic minerals to be determined by the Government).

The computation of the royalty is now calculated on the basis of the gross commercial value (art. 240, 241 MC revised).

Corporate Income Tax (CIT)

- ▶ The CIT remains at the rate of 30% (compared to 35% for common law; art. 247 MC).
- ▶ There is a new special tax of 50% on windfall profit (new art. 251 *bis* MC).
- ▶ The depreciation method is now the straight line method (art. 249 MC revised).
- ▶ The loss carryforward is limited to five years and the imputation is carried out in accordance with the provisions of common law (art. 251 MC revised).
- ▶ The transfer of mining titles between affiliates must now meet the arm's-length principle (art. 253 MC revised).
- ▶ The amended MC clarifies the conditions of deductibility of interest paid abroad (art. 253 MC revised).

- ▶ The deductibility requirements for certain professional expenses has been tightened (art. 256 MC revised).
- ▶ The provision for restoration of the mineral field has been amended to 0.5% of the turnover (compared to 5% in the prior code) (art. 257 MC revised).
- ▶ There is now an obligation to book a provision for site rehabilitation without any delay of usage (art. 258 MC revised).

Bookkeeping in CDF currency required

The option to keep the accounts in foreign currency has been withdrawn (art. 248 MC revised).

Special tax on expatriate wages and salaries

The rate of special tax on expatriate wages has been increased to 12.5% for the first 10 years of the project and at the common law rate for the following years (new art. 244 *bis* MC).

Capital gains on rights disposals

There is a new tax on capital gains made on the sale of shares or stocks to be determined by regulatory procedures (new art. 253 *bis* MC).

Area rights (art. 238 *bis* MC revised)

The scale of area right has been multiplied by 10.

Registration fees on mortgages (art. 171 MC revised)

There is a new scale of the registration fees on mortgages.

Allocation of contributions to local community development projects

There is a new allocation amount for contributions to local community development projects: 0.3% of the turnover of the period in which it has been made (new art. 258 *bis* MC).

Exchange regulations

New regulations related to the repatriation of earnings in foreign currencies (art. 268, 269 MC revised)

During the amortization phase, the exporting holder must repatriate 60% of exportation earnings in the account maintained in the DRC. However, the export holder can keep 40% of these earnings for any foreign debt.

As soon as the investment been amortized, the exporting holder must repatriate 100% of any exportation earnings in the DRC.

Royalties for exchange (art. 270 MC revised)

A royalty in respect of the exchange control must be paid to the Central Bank of Congo as follows:

- ▶ 2‰ on foreign payments (not including the repatriation of earnings) and all operations (credit or debit) made on the principal account except for transfers in favor of foreign debt accounts.
- ▶ 2‰ on all exportation earnings.

Repurchasing foreign currencies (art. 274 MC revised)

If the national economy requires such, the State and the Central Bank are authorized to repurchase foreign currencies of repatriated earnings at a rate and amount agreed with the holder of the mining rights.

Corporate matters (M&A)

The amended MC requires prior authorization from the State in the event of a transfer of ordinary shares or of shares of a company holding an Exploitation License leading to a takeover by the beneficiary (new art. 276 *bis* MC). Prior authorization of the State is also required in the case of a merger.

The compulsory Government shareholding has been increased to 10% of share capital of the mining company (art. 71 MC revised).

Furthermore, the mandatory participation of Congolese individuals is increased to 10% of the capital (new art. 71 *bis* MC).

Future Alerts will report on new developments on the revised mining code, its application and implications.

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