



ACCESS AND ADMISSION OF FOREIGN INVESTORS IN THE DEMOCRATIC REPUBLIC OF CONGO

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1.1 Foreign Investment & Capital Mobility

1.1.1. Investment Legislation and its Reasoning

The Government modified its political and economic approach since 2001 and therefore also decided to adapt its legislation to comply with the new vision and strategies for the economic development of the country. The old investment law from 1986 was replaced in 2002 by the new *Investment Code, Law no.004/2002 from February 21, 2002*.

The following main objectives are pursued with the new legislation:

- a) To advance the establishment of civil engineering companies that will construct and maintain highways and streets, but also target the public transport of people and goods in terms of transport on soil, water and in the air;
- b) To advance investments that will develop the agricultural sector and agro-industry through mechanisation in order to assure food self-sufficiency which will reduce import of basic goods at the same time as increasing income of rural communities, improve the supply of primary materials to the agro-processing industry, and enlarge the national market of consumer goods in circulation;
- c) To advance/ attract investments in the heavy industry to secure a stable industrial basis on which economic growth can be based sustainably;
- d) To advance investments which add value to national primary resources in order to increase value-added within the country and export volumes.

1.1.2. Investor Definitions, Requirements and Obligations

The Investment Code (Law no.004/2002) defines the different terms relevant to investment operations in Article 2.

- ***Direct Investment:***

All Investment coming from the field of application of this law envisaged through a new enterprise or existing enterprise whose objective is to put in place a new capacity or to increase production capacity; expand the range of products or to improve the quality of products and services.

- ***Direct Foreign Investment:***

All Investment whose foreign participation in the share capital of an enterprise in which the investment realised is at least equal to 10%.

- ***Direct Investor:***

All natural persons, public or private doing direct investment in the DRC.

- ***Direct Foreign Investor:***

All natural persons who are not of Congolese nationality or of Congolese nationality and resident in a foreign country and all natural persons public or private whose cooperate headquarters is not within the Congolese territory and is carrying out a direct investment in the Congo.

1.1.3. Requirements & Obligations

Every investor/ investment that wants to qualify for benefits under Law no. 004/2002, the *Investment Code*, has to fulfil the following requirements:

- Being an economic entity of Congolese rights;
- Should have a minimum amount equivalent to 200.000 American Dollars;
- Do respect the laws as far the protection of the environment and nature is concerned;
- Engage in training local personnel for specialised technical posts, and management posts;
- Guarantees a value added rate equal to or more than 35%.

Once approved, investors have to follow certain obligations stated in Article 31, Investment Code:

- To implement the agreed programme as approved by the system of the code according to the description and within the periods agreed by the Decree;
- Maintain regular accounting, which is conform to the General Congolese Accounting Plan;
- Accept all inspections conducted by the relevant department;
- Ensure the training and promotion of personnel according to the agreed programme;
- Respect the regulations on foreign exchange and the protection of the environment as well as nature conservation;
- Submit half-yearly relevant data to ANAPI that indicates the degree of realization of investment and exploitation while the company is under the system of the code;
- Respect the regulation in force for employment, i.e. to give first preference to nationals;
- To be compliant to local and international standards on quality of goods and services produced.

Empowerment of nationals, training and skill transfer is an important aspect of the new policies. The *Investment Code* states explicitly in Article 31 the obligation for investors to employ preferably nationals over expatriate workers, train and upgrade the skill levels of nationals to specialised positions and management level.

1.1.4. Implementation Delay

If the investor has not started the investment project within a year after the official start as stipulated in the Decree and cannot provide valid reasons causing the delay, the withdrawal of the license will be pronounced by an Interministerial Decree from the Ministries of Planning and Finance (Investment Code Articles 35, 34).

1.2 Foreign Investment Establishment, Registering and Licensing Processes

1.2.1. Investment Application

The Investment Code (Article 5) specifies that all investors that want to take advantage of benefits granted under the Code need to provide a complete file including all relevant project information and proofs according to the prescribed format to ANAPI. ANAPI will examine the project proposal and transfer it to the Ministries of Planning and Finance for the issue of the approval in form of a

Ministerial Decree.

The decision related to the decree shall not take longer than 30 days from the date of submission of the file to ANAPI. If the investor has not received response until the end of this period, the decree can be considered as granted (Article 6). In that case, the authorities are obliged to grant the decree within 7 days. In case of disapproval, the decision has to be communicated in written form and shall express the reasons why the application is not eligible (Article 6).

According to Article 7 of the *Investment Code* (Law no. 004/2002), the Interministerial Decree should specify:

- The object, the place of investment and the date for the commencement of activities;
- The identification of the investor and his mandate/capacity;
- The investment programme, the duration, and the realization plan;
- The production objectives which should normally be achieved at the end of the investment programme;
- The nature and duration of advantages granted.

Respective to which kind of investment is intended, the website of ANAPI describes both in English and French the processes for setting up a company, a bank, as well as how are the processes for investing in Mining and Forestry. The website is: <http://www.anapi.org/>.

Please note that even though ANAPI is not responsible for approving investment project in all sectors of investment, a completed file with all relevant project information has to be provided to ANAPI.

1.2.2. Registering a company

The process for registering a company/ business in DR Congo is considered complex and time-consuming. According to the World Bank Doing Business Report 2010, it takes on average 149 days to start a business and involves high costs. Hence, DRC is on rank 154 out of 183 countries. The US Commercial Service (2009) recommends to engage a local competent lawyer for the process. Furthermore, numerous information on commercial rules and practices shall be collected as regulations can change quickly and without official publication.

The steps to undertake to establish a business are the followings:

- (1) Certification of Business to be received from the Municipality where the business is located.

- (2) An authentication of the Statutes (the Memorandum and Articles of Association) has to be obtained from the Notary office.

- (3) The investor may register with the New Trade Register at the clerks office of the Municipal Court (Greffé au Tribunal de Commerce).

- (4) Publication of the company statutes in the Official Journal, the Government Gazette through the office of the Official Journal.

- (5) A national identification number is to be obtained from the Office of the Secretary General of the Ministry of Economy for companies (sociétés) and Établissements.

- (6) Acquisition of an import-export number from the Secretary General of the Ministry of Commerce.

- (7) The final step then covers the registration with the Office of the Tax Authority (DGI) to acquire the tax number (free of charge).

Documents that will be required in the process are, among others:

- A copy of the identity cards;
- Extract of the criminal record from the Criminal Investigation Body;
- A non-civil servant certificate from the commune.

1. Establishing a Bank

For the establishment of a bank, one can state the process as following:

On the legal level:

1. Formation of a limited liability company (SARL) ;

2. Company's shareholders and managers should be in harmony ;
3. Get approval from the Central Bank of Congo.

On the economic level:

Approval is granted on the conditions hereafter:

1. Provide evidence for payment of the capital of: US\$1,500,000 ;
2. Present a coherent and reliable feasibility study.

On the practical level

1. Submission of completed file by the investors without the Presidential Order granting the legal status;
2. Setting up the bank into a Limited Company (SARL) ;
3. Registration of the bank on the list of banks.

Official fees for the process are.

1. Project Study fee;
2. Agreement fee (Governor of the Central Bank acceptance of the project);
3. Final agreement fee (Presidential decree) 1% of the share capital.

Relevant laws for the banking sector are Law no. 002/2002 on the applicable dispositions to Thrift Institutions and Credit Cooperatives, Law no.003/2002 relating to the activity and control of Credit Institutions, and Law no.005/2002 relating to the constitution, organization and functioning of the Central Bank of Congo. The Central Bank of Congo is responsible for oversight of the banking sector and the regulation of banks, credit unions, and other financial services.

1.2.4. Investing in the Mining Sector

The basic law in the Mining Sector is *Law no. 007/2002 from 11 July 2002* stating the *Mining Code* . In addition to this law, different Ministerial Decrees and Orders were issued for specifications.

1.2.5. Mining Prospecting

The company must be registered under Congolese law. A prospecting permit shall be acquired from the Mining Land Registry (CAMI) for a fee of US\$2.55 to US\$124.03 per square metre. Conditions for this license are that the company is eligible according to the mining laws, can prove his/her financial capacity equal at least ten times the total amount of annual superficiary duties per square to be paid for the last year of the 1st validity period of that duty; and that it has prepared and got approval for the buffering/ lightening and rehabilitation plan within the six months of delivery of the prospecting permit.

1.2.6. Mining Exploration

The company must be registered under Congolese law and obtain a prospecting permit from the Mining of Land Registry (CAMI). Conditions for this license are that the company can show evidence of the existence of an economically exploitable deposit (providing a feasibility study); the company can prove the necessary financial resources, and that it has obtained a prior approval of the environmental impact study and of the plan of project environmental management. The cost for this license will be US\$195.4 to US\$679.64 per square meter.

1.2.7. Gold Desk

A company registered under Congolese law needs to receive an Approval Order from the Direction of Mines in the Ministry of Mines. For that, the investor has to show evidence of a bank account held in an approved bank, the registration letter from the Central Bank of Congo, and pay the annual tax :of US\$50,000.

1.2.8. Diamond Trading post

Being a company registered under Congolese law, an Approval Order from the Direction of Mines in the Ministry of Mines is required. It can be obtained by providing an evidence of a bank account held in an approved bank, a registration letter from the Central Bank of Congo, payment of the guarantee at US\$25,000, and payment of the annual tax of US\$200,000.

1.2.9. Investing in the Forestry Sector

The basic law for the forestry sector is the *Law from 29 August 2002 stating the Forestry Code*. In addition to this basic legal document, diverse decrees, amendments and ministerial orders were issued on specified topics.

For forest exploitation, an investor has to register an enterprise under Congolese law, obtain a forest operating permit from the Forest Management Department, in the Ministry of Environment, Nature Conservation and Tourism, and pay the forest concession tax of US\$0.10 to US\$0.50 per hectare.

Companies engaging in Timber Export require a timber purchase contract and have to pay a tax which varies between 1-2% of the FOB value. Please see the Forest Management Department of the Ministry of Environment, Nature Conservation and Tourism for more details.

Investors pursuing reforestation need to hold a concession contract, pay the timber felling tax of US\$2/ hectare and the reforestation tax of:

- 4 % of ex-works value per m³/rough timber
- 2 % of ex-works value per m³/exported rough timber (tola and other species to be promoted).

Please see the Forest Management Department at the Ministry of Environment, Nature Conservation and Tourism for more details and the acquisition of the concession contract.

1.3 Foreign Employment & Residence.

The Ministry of Labour is in charge of expatriate/ foreign labour permits.

It is allowed to employ a maximum of 5% foreign workers (expatriates) of the total staff. For any additional expatriate employed an extra tax is charged and it is required to provide a justification for the higher percentage of foreign workers. With this regulation, the hiring of local employment is encouraged.

1.4 Foreign Investor Access to Land and Property Rights.

Land issues and processes are regulated by the Law No. 73-021 of 20 July 1973 stating the Ownership of Land, Property, Constructions and Securities which is completed by Law No. 80-008 of 18 July 1980.