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2. INSTITUTIONAL AND LEGAL FRAMEWORKS IN CONGO

The institutional and legislative frameworks which have to be taken into account throughout the planning and assessment process of the Project are described below. This characterisation was drawn up on the basis of consultations carried out in September 2006 with the ministries concerned, as well as of a review of the literature. It is important to note that this section cannot be referred to as a legal document or as a valid interpretation of legal texts currently enacted in the Republic of Congo (ROC).

The characterisation of the institutional framework presents the current organisation of the government, following the structural reforms which were made after the war ended and after the Sovereign National Conference was held in 1991. This section also presents an overview of the Poverty Reduction Strategy which, in many respects, is at the root of the efforts undertaken by the Congolese Government and various international partners for economic and social development.

The characterisation of the legal framework covers the areas of jurisdiction which *a priori* have to be considered in the analysis of the Project's impact, *i.e.*:

- The Environment;
- The Landownership System;
- The Family Code;
- The Labour Code;
- The Investment Code.

2.1 Description of the Institutional Framework

2.1.1 General Description

In the 1990s, the return to a multi-party system, after the Sovereign National Conference of 1991, was a key milestone in the political history of the ROC. The democratisation process was however severely disrupted by recurring socio-political troubles between 1993 and 1998. A transition period was initiated in the aftermath of the war which took place from June to October 1997, and came to an end in 2002 with the organisation of general elections.

Articles 56, 89 and 133 of the Constitution of January 20, 2002, established a presidential system comprising three powers:

- An executive power represented by the President of the Republic;

- A legislative power represented by the General Assembly and the Senate;
- A judicial power exercised by the Supreme Court, the Court of Accounts and Budgetary Discipline, the Courts of Appeal and other national jurisdictions.

The President of the Republic, who has a seven-year mandate, renewable once, is the head of the executive power. He appoints the ministers. The Constitution provides for a parliament with a National Assembly of 137 members elected for a period of 5 years and a Senate of 66 members appointed for 6 years. There is no provision in the Constitution for a censure motion against the Government, in order to ensure the continuity of the institutions. The Assembly cannot dismiss the President of the Republic and the latter cannot dissolve the Assembly.

The Constitution makes provision for other institutions, such as the Council for Freedom of Information and Communication, the High Court of Justice, the Court of Auditors, the Supreme Court, the Constitutional Court, the National Commission for Human Rights and the Economic and Social Council.

2.1.2 Evolution of Structural Reforms

Law no. 21-94 (Loi n° 21-94) dated August 10, 1994 set the regulatory framework for the privatisation of state-owned companies following the structural adjustment program negotiated with the International Monetary Fund (IMF) and the World Bank Group (WBG).

The structural reforms followed their course after the socio-political troubles. These reforms include, amongst other things, the privatisation of state-owned companies and the reorganisation of the institutional and regulatory frameworks, with a view to establishing an environment which encourages development of private initiative and direct foreign investment.

Overall, there were two major concerns which characterised the orientation of the Congolese economy:

- Implementing the Interim Post-Conflict Program (PIPC) 2000-2002;
- Drawing up the Poverty Reduction Strategy Document (DSRP).

The aim of the PIPC was the reconstruction of the economic and social infrastructure in order to stimulate the Congolese economy. It also had to bring together and enable the necessary conditions to establish a program for the reduction of poverty and to stimulate economic growth which could be sustained by the international financial community.

Fighting poverty is at the heart of the government's development strategy. It involves taking action against the direct causes of poverty, whilst keeping in mind growth stimulation and development of a favourable framework, both from the standpoint of macroeconomic balances and entrepreneurial freedom.

2.1.3 Organisational and Administrative Structures

There are 35 ministries in the current government structure (Table 2.1). Socio-economic aspects are addressed by the Ministry of Health and Population which has a bridging role in the coordination of health services offered at a regional and national level. Education is addressed by three ministries, with each having responsibility for specific levels, *i.e.* primary and secondary education, technical and professional education, and higher education.

Law no. 3-2003 (Loi n° 3-2003) dated January 17, 2003, lays down Congo's territorial administrative organisation, and creates a national territorial structure of departments, communities, boroughs, districts, urban communities, rural communities, quarters and villages. The country is thus split administratively into 12 departments, 6 communities, 19 boroughs and 86 districts.

The Constitution of January 20, 2002 recognises the existence of local authorities which are distinct from the State, in particular the department and the community. Since January 11, 2003, they have been freely administered by executives elected by departmental or municipal councils.

The department is placed under the authority of the Prefect. The districts, communities and boroughs are administered respectively by Subprefects, Mayors, Administrators and Deputy Mayors. Each department has a departmental council and each community a municipal council.

2.1.4 Poverty Reduction Strategy

The Poverty Reduction Strategy Document (DSRP), completed in January 2007, presents the characteristics of poverty and its determining factors, the short and medium term visions for development, as well as the main strategic policies for promoting and stimulating a sustainable and fair economy whose aim is the gradual reduction of poverty. Finally, the DSRP presents the implementation, evaluation and monitoring of the poverty reduction strategy.

Table 2.1 Ministries of the Government of Congo in 2007.

<p>Health, Education, Social Affairs</p> <ul style="list-style-type: none"> • Ministry of Health, Social Affairs and Family • Ministry of Work, Employment and Social Security • Ministry of Primary and Secondary Education, and Literacy • Ministry of Technical and Professional Education • Ministry of Higher Education • Ministry for the Promotion of Women and Women's Integration into Development • Ministry of Culture and Arts • Ministry of Sport and Youth Redeployment • Ministry of Scientific Research and Technical Innovation
<p>Resources, Industries and Commerce, Agriculture, Economy</p> <ul style="list-style-type: none"> • Ministry of Hydrocarbons • Ministry of Mines, Mining Industries and Geology • Ministry of Energy and Hydraulics • Ministry of Forestry Economy • Ministry of Tourism and Environment • Ministry of the Economy, Finance and Budget • Ministry for Industrial Development and Promotion of the Private Sector • Ministry for Small and Medium-Sized Business and Crafts • Ministry of Trade, Consumption and Supplies • Ministry of Agriculture and Animal Husbandry • Ministry of Marine and Freshwater Fishing
<p>Development and the Landownership System</p> <ul style="list-style-type: none"> • Ministry of Planning and Development • Ministry of Construction – Urban Development and Housing • Ministry of Procurement and Public Works • Ministry for Landownership Reform and the Preservation of the Public Domain
<p>Transport and Communications</p> <ul style="list-style-type: none"> • Ministry of Maritime Transport and the Merchant Navy • Ministry of Communication • Ministry of Post and Telecommunications, New Technologies and Communication • Ministry of Transport and Civil Aviation
<p>Government Administration and Others</p> <ul style="list-style-type: none"> • Ministry of Foreign Affairs and French-Speaking Countries • Ministry of Justice and Human Rights • Ministry of Security and Public Order • Ministry for Public Services and State Reform • Ministry for Sub-Regional Integration and NEPAD • Ministry of National Defence, Veterans and War Injured • Ministry Delegated to the Presidency of the Republic, Responsible for Cooperation, Humanitarian Action and Solidarity

The main policies in the DSRP are as follows:

- Policy 1: Consolidation of peace, security and good governance;
- Policy 2: Promotion of a strong, sustainable and fair growth;
- Policy 3: Promotion of sustainable human development and improvement of living standards.

The choice and implementation of the priority policies and actions decided on in this document are consistent with the Government's desire to stimulate the country's economy on solid fundamentals, while taking into consideration the Millennium Development Goals (MDGs) of the New Partnership for Development (NEPAD) and of the aims it has been assigned within the Government Program called *Nouvelle Espérance*.

The strategic policies for stimulating the economy and fighting poverty were formulated on the basis of conclusions of participatory consultations which were broadened out to include civil society, technical ministries involved in the DSRP process, NGOs, religious groups, trade unions and the private sector. The conclusions of all the consultations presented in the Interim Poverty Reduction Strategy Document (DSRP-I) were adopted on July 28, 2004 by the Government and the various development partners, as well as by the representatives of organisations from civil society and the private sector.

The final DSRP fills in the gaps that were in the interim document and those noticed in the course of its joint assessment by the International Monetary Fund (IMF) and World Bank administrations, namely: the lack of dependable statistical data, the lack of sector strategies, the limited consultations with development partners, the limited involvement in the process by decision-makers and the limited participation by civil society and communities.

2.2 Description of the Legal Framework

The analysis of the legal framework covers five areas, *i.e.*:

- The Environment;
- The Landownership System;
- The Family Code;
- The Labour Code;
- The Investment Code.

2.2.1 Environment

There has been longstanding environmental concern in the ROC dating back to the 1960s, with the first laws having been enacted in 1962. Since then, the regulatory services have continually improved, leading to the creation of an institutional

framework adapted to the current context of development. This framework now enables the meeting of the challenges imposed by the implementation of Agenda 21¹.

The institutional framework for the environment in Congo is governed by the Ministry of Tourism and Environment, which is supported by central and consultative administrations (Figure 2.1).

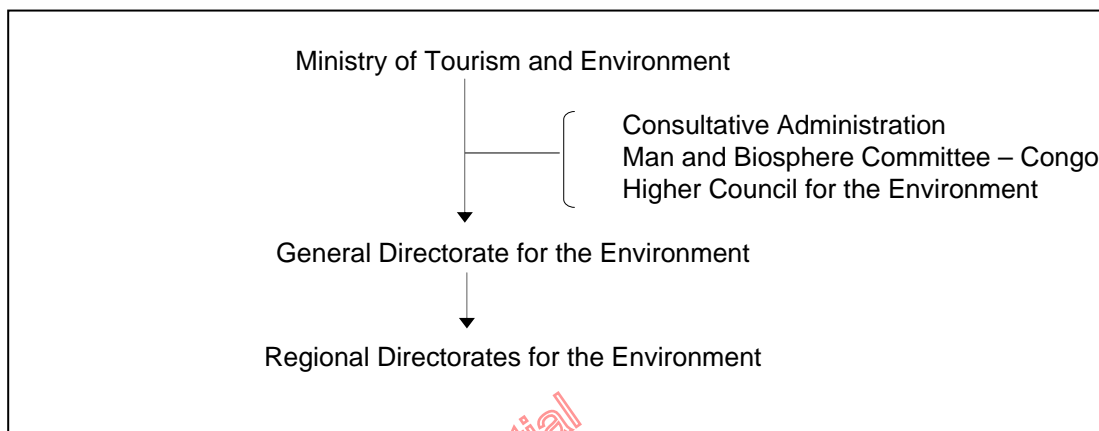


Figure 2.1 Institutional Framework for the Environment in Congo.

2.2.1.1 Central Administration

The General Directorate for the Environment, created by Decree no. 98-148 (Décret n° 98-148) dated May 12, 1998, assists the Minister responsible for the environment in the exercise of his powers. In particular, it is responsible for:

- Orienting, coordinating and controlling the activities of the central and regional directorates and of bodies and institutions specialising in the field of the environment;
- Maintaining cooperation with national and international bodies in the area of the environment;
- Ensuring proper application of the national environmental policy;
- Maintaining collaborative relationships with the general directorates of other ministries and other sectors involved in the management of the environment;
- Ensuring protection of the national natural, cultural and historical heritage, and studying measures likely to guarantee balance of the ecosystems;

¹ Agenda 21 is an action plan which must be implemented on a global, national and local scale by United Nations organisations, governments and major groups in each domain which has human impacts on the environment. It was adopted at the United Nations Conference on the Environment and Development (UNCED), held in Rio de Janeiro in Brazil in 1992.

- Preparing the agreements for the consultants responsible for carrying out impact assessments or other studies;
- Integrating environmental concerns into macroeconomic policies.

In addition to the Secretariat of the Directorate and the Document Archive Department, the General Directorate for the Environment comprises several directorates, including the Directorate for Pollution Prevention and the Urban Environment, the Directorate for the Conservation of Natural Ecosystems, as well as the departmental directorates.

2.2.1.2 Consultative Administration

The Higher Council for the Environment, created by Decree no. 99-280 (Décret n° 99-280) dated December 31, 1999, is a consultative body which gives advice on general questions linked to the environment, in particular on the National Environmental Policy.

This Council comprises a chairperson, who is also the minister responsible for the environment, a vice chairperson, *i.e.* the minister responsible for the economy, along with several representatives of ministries, of chambers of commerce, of NGOs, as well as the General Director of the Environment and the Chancellor of Marien Ngouabi University.

2.2.1.3 Legal and Regulatory Framework

Article 2 of the Congolese *Law pertaining to the Protection of the Environment* no. 003/91 adopted on April 23, 1991, stipulates that all economic development projects in the ROC must include an Environmental Impact Assessment (EIA).

Article 4 of Decree no. 86/775 (Décret n° 86/775), adopted on July 6, 1986, which makes EIAs mandatory, stipulates that the EIA must include the following elements, subject to Orders of the Ministry of Tourism and Environment which detail them:

- A brief description of the Project and the various possible options;
- An analysis of the baseline condition of the environment, *i.e.* the original environmental condition;
- An analysis of the foreseeable consequences, both direct and indirect, for the environment;
- The measures proposed to mitigate, eliminate or compensate these impacts;
- The rationale behind these choices.

In addition, Appendix II of this Decree provides, for information purposes, a list of criteria to consider when carrying out EIAs.

In the case of the Kouilou Potash Project, no Orders have been issued by the Ministry of Tourism and Environment. Nonetheless, an Environmental Scoping Study (ESS) was submitted on February 1, 2006 to the Ministry of Tourism and Environment – at that time called the Ministry of Forestry, Economy and Environment.–. This ESS proposed terms of references to conduct the ESIA for the Kouilou Potash Project. It defined the approach, methodology and scope of the ESIA and identified the major potential social and environmental issues regarding the Project. The ESIA was conducted accordingly.

The Congolese legislation does not specify a formal review process for EIAs. However, Article 6 of Decree no. 86/775 (Décret n° 86/775) stipulates that the EIA documentation must be submitted in seven copies to the Minister of Tourism and Environment, who must render his decision within three months.

2.2.1.4 Laws and Regulations for the Protection of the Environment

The cornerstones of Congolese Environmental Law are the Constitution of January 20, 2002 and the Law no. 003/91 (Loi n° 003/91) dated April 23, 1991 pertaining to the Protection of the Environment, from which comes legislation set by decree at the Council of Ministers.

The Constitution of January 20, 2002

According to the Constitution, every citizen has the right to a healthy, sustainable environment and has the duty to defend it. For its part, the State ensures the protection and conservation of the environment.

According to the Constitution, the conditions for storage, handling, incineration and disposal of toxic waste coming from plants, industrial units or cottage industries are set by law. Any pollution or destruction resulting from economic activity gives rise to compensation, whose nature and terms of implementation are determined by law. This is called the “Polluter Pays” concept. In addition, the transport, import, storage, burial, discharge of toxic waste into inland waters and maritime areas under national jurisdiction along with the aerial spreading of such waste, constitute a crime punishable by law.

Law no. 003/91 (Loi n° 003/91) dated April 23, 1991 pertaining to the Protection of the Environment

The Congolese institutional framework was strengthened in 1991 by the enactment of a law specific to the environment, covering almost all areas of use of resources favourable to economic, social and cultural development (UNDP, 2004).

As described in the Environmental Code (Emmanuel-Adouki, 2004), the aim of this law is to:

- Strengthen the existing legislation which essentially deals with the protection and conservation of wild fauna and flora, of marine and river resources and with the operation of dangerous, insalubrious or unsuitable installations, development and town planning;
- Manage, maintain, restore and protect or conserve natural resources and the cultural, natural and historical heritage;
- Prevent and fight harm to the environment and to the health of the public or to their property.

According to Article 2 of Law no. 003/91 (Loi n° 003/91) dated April 23, 1991 pertaining to the protection of the environment, “any economic development project in the People’s ROC must include an environmental impact assessment” and Order no. 835/MIME/DGE (Arrêté n° 835/MIME/DGE) dated September 6, 1999 sets the approval conditions for carrying out environmental impact studies or assessments.

2.2.1.5 Institutional Reform of Environmental Administration

Over 2007-2008, the Congolese Government, including the Ministry of Tourism and Environment, has initiated a process of reviewing the entire institutional framework for the environment. Amongst other things, this process is part of a desire to give more support to the National Action Plan for the Environment (PNAE) and to enable Congo to act according to the objectives established within the framework of international agreements which have been ratified.

It is too early to establish the impact which the current review process might have on the organisational structures which are in place. According to the partial information which was obtained, the reform could lead to setting up a National Committee for Sustainable Development and a National Environment Agency, as well as maintaining the General Directorate for the Environment. The National Agency would be responsible, amongst other things, for the coordination and assessment of impact studies, environmental audits and research. For its part, the General

Management would ensure coordination of the PNAE, international cooperation and environmental legislation. However, none of these new agencies are apparent as of first quarter 2009.

2.2.1.6 Protection of Natural Resources

Several laws, orders and decrees are designed to protect natural resources, including fauna, flora and water resources, along with mining resources (Table 2.2). They provide a framework for the management of wild fauna and flora, addressing conservation, conditions of exploitation, permits issuing and penalties provisions. Water resources are regulated according to the Water National Policy and Water Code, which include dispositions for the protection and exploitation of surface and groundwater water resources, the supply of drinking water and the management of other water usages. The exploitation of mining resources is regulated by the Mining Code.

Forestry Code (Law no. 16-2000 [Loi n° 16-2000] dated November 20, 2000)

The Forestry Code establishes an appropriate legal framework to provide sustainable management of the forests and forestry lands on the basis of rational planning of resources. The law also defines the national forest domain, determines the criteria and the standards for organisation and cooperative and participatory management, and reconciles exploiting forestry products with the demands of conservation of forestry heritage and biological diversity with a view to sustainable development.

The law stipulates that the national forest domain comprises the State's forest domain, made up of forests belonging to the State, to local authorities and public corporations, along with the forest domain of private individuals.

On the one hand, the State's forest domain comprises the permanent forest domain, which is made up of land allocated to forest as well as to habitat for wild fauna, and the non-permanent domain, *i.e.* made up of protected forests, which have not been subject to classification.

The classification involves the procedure by which a forest, or a part of said forest, which is protected or belongs to a private individual, is incorporated into the permanent forest domain. The classification project set up by the forestry administration shows, if applicable, the rights of third parties to expropriate. Expropriation is carried out in compliance with the procedure provided for under the law. A declassification process is also defined. It describes the procedure by which a forest, which is part of the permanent forest domain, is disposed of for public interest. There can only be declassification to implement a project in the public interest, which cannot be carried out successfully outside the limits of the forest concerned.

Table 2.2 Legislation developed for the Protection of Natural Resources.

Legislation	Objective
<i>Wild Fauna</i>	
Law no. 48/83 (Loi n° 48/83) dated April 21, 1983	Conservation and use of wild fauna
Decree no. 85/879 (Décret n° 85/879) dated July 6, 1985	Conservation and use of wild fauna
Law no. 49/83 (Loi n° 49/83) dated April 21, 1983	Taxation (taxes on the issuing of permits or certificates, for killing animals)
Order no. 3863/MEF/SGEF/DCPP (Arrêté n° 3863/MEF/SGEF/DCPP)	Partially and fully protected animals
Order no. 3772/MAEF/DEFNR/BC-1701 (Arrêté n° 3772/MAEF/DEFNR/BC-1701)	Hunting seasons
Order no. 0103/MEF/SGEF/DCPP/SCPF BG-17-33 (Arrêté n° 0103/MEF/SGEF/DCPP/SCPF BG-17-33)	Export of wild fauna and flora
<i>Forests and Trees</i>	
Law no. 16-2000 (Loi n° 16-2000) dated November 20, 2000	Forestry code
Decree no. 98-175 (Décret n° 98-175) dated May 12, 1998	General Directorate for Forestry Economy
Decree no. 2002-434 (Décret n° 2002-434) dated December 31, 2002	Forestry Fund
Decree no. 2002-435 (Décret n° 2002-435) dated December 31, 2002	National Centre for the Inventory and Development of Forestry and Fauna Resources
Decree no. 2002-436 (Décret n° 2002-436) dated December 31, 2002	Department for the Control of Forestry Products for Export
Decree no. 2002-437 (Décret n° 2002-437) dated December 31, 2002	Management and Use of Forests
Decree no. 2002-433 (Décret n° 2002-433) dated December 31, 2002	Organisation and operation of the water and forestry agency force
Decree no. 2002-438 (Décret n° 2002-438) dated December 31, 2002	Distribution of the surface area tax
Order no. 6378 (Arrêté n° 6378) dated December 31, 2002	Rate of tree felling in natural forests
Order no. 6379 (Arrêté n° 6379) dated December 31, 2002	Tax on forestry by-products
Order no. 6380 (Arrêté n° 6380) dated December 31, 2002	Tax on clearance of natural forests
Order no. 6381 (Arrêté n° 6381) dated December 31, 2002	Tax on tree felling in private industrial plantations
Order no. 6382 (Arrêté n° 6382) dated December 31, 2002	Methods of calculating the surface area tax
Order no. 6383 (Arrêté n° 6383) dated December 31, 2002	Export tax on forestry products, primary or processed
Order no. 6384 (Arrêté n° 6384) dated December 31, 2002	Tax on imported timber products and products derived from timber.
Order no. 6385 (Arrêté n° 6385) dated December 31, 2002	Management and distribution of the proceeds from contentious cases
Order no. 6386/MEFPRH/CAB/DGEF (Arrêté n° 6386/MEFPRH/CAB/DGEF)	Forestry taxation areas
Order no. 6387 (Arrêté n° 6387) dated December 31, 2002	FOB value for calculating the tax for tree felling and for timber exports
<i>Water</i>	
Law no. 13-2003 (Loi n° 13-2003) dated April 10, 2003	Water Code

Table 2.2 (continued) Legislation developed for the Protection of Natural Resources.

Legislation	Objective
<i>Dry-shaft and Solution Mines</i>	
Law no. 4 (Loi n° 4) dated April 11, 2005	Mining Code
Decree no. 85/723 (Décret n° 85/723) dated May 17, 1985	Quarrying
Order no. 8238/MME/SGMME/DM (Arrêté n° 8238/MME/SGMME/DM)	Quarrying prohibition
Law no. 24-94 (Loi n° 24-94) dated August 23, 1994	Hydrocarbon Code
Decree no. 2001-615 (Décret n° 2001-615) dated December 31, 2001	National Emergency Intervention Plan
Order no. 3857/MME-PTT/SGMH/DMG (Arrêté n° 3857/MME-PTT/SGMH/DMG) dated July 15, 1989	Security of exclusion zones for oil exploitation
Law no. 4-98 (Loi n° 4-98) dated August 28, 1998	Dismantling of hydrocarbon production installations and rehabilitation of sites
Decree no. 99-98 (Décret n° 99-98) dated June 14, 1999	Dismantling of hydrocarbon production installations and rehabilitation of sites
Law no. 3-2000 (Loi n° 3-2000) dated February 1, 2000	Conditions for subcontracting for all sectors of activity

Sources: Emmanuel-Adouki, 2004; Emmanuel, 2005.

On the other hand, the forest domain of private individuals comprises private forests and private forestry plantations. Private forests are those which are located on lands belonging to physical persons, held individually or jointly or to corporate entities governed by private law.

2.2.1.7 Protected Areas

Law no. 003/91 (Loi n° 003/91), dated April 23, 1991, set the principles of a coherent policy for the conservation of flora and fauna through the creation of 18 protected areas, subdivided into 4 national parks, 11 reserves and 3 hunting parks. Amongst the reserves, there is a biosphere reserve, a hunting reserve, a community reserve, a forest reserve, three natural reserves and four wildlife reserves.

It should be noted that none of these protected areas is in the Study Area. The nearest protected area is the Tchimpounga Chimpanzee Sanctuary located 50 km north of Pointe-Noire.

2.2.1.8 Marine and Urban Environment, and Protection of the Atmosphere

Several laws, orders and decrees concern the marine and urban environments, electricity and protection of the atmosphere (Table 2.3). More specifically, they are addressing the control of maritime transport, provisions against the pollution of marine environment and the management of marine fisheries. They also provide the legal framework for urban planning, land development, construction activities and electricity services. Provisions for the protection of the atmosphere cover, among others, the management of ozone depleting substances and gaseous fluid pressure equipments.

Table 2.3 Legislation pertaining to the Marine and Urban Environments, to Electricity and to the Protection of the Atmosphere.

Legislation	Objective
<i>Marine Environment</i>	
Law no. 9-2004 (Loi n° 9-2004) dated March 26, 2004	State Domain Code
Order no. 967 (Arrêté n° 967) dated December 31, 1998	Fees for recognised experts and bodies for controlling ships within the framework of preventing and combating marine pollution
Order no. 968 (Arrêté n° 968) dated December 31, 1998	Conditions for sea transport and control of dangerous goods
Order no. 969 (Arrêté n° 969) dated December 31, 1998	Control procedures for preventing and fighting pollution from ships
Order no. 970 (Arrêté n° 970) dated December 31, 1998	Specifications and functions of recognised bodies acting on behalf of the maritime administration in terms of inspection visits and issue of certificates
Order no. 971 (Arrêté n° 971) dated December 31, 1998	Port State control procedures for ships
Law no. 2-2000 (Loi n° 2-2000) dated February 1, 2000	Organisation of marine fishing in the Republic of Congo
<i>Urban Environment</i>	
Law no. 021/88 (Loi n° 021/88) dated September 17, 1988	Development and urban planning
Decree no.. 91-460 (Décret n° 91-460) dated May 20, 1991	Construction permit
Law no. 11-2004 (Loi n° 11-2004) dated March 26, 2004	Expropriation for reasons of public interest
Order no. 1450/MIME/DGE (Arrêté n° 1450/MIME/DGE) dated November 14, 1999	Classified installations
<i>Electric Code</i>	
Law no. 14-2003 (Loi n° 14-2003) dated April 10, 2003	Electric Code: production, transport, distribution, supply, exportation, and sale
<i>Protection of the Atmosphere</i>	
Decree no. 88/616 (Décret n° 88/616) dated July 30, 1988	Gaseous fluid pressure apparatus
Order no. 4217/MIME/DGE (Arrêté n° 4217/MIME/DGE) dated August 8, 2002	Use of dichlorodifluoromethane R-12 in cooling and air conditioning equipment
Order no. 4218/MIME/DGE (Arrêté n° 4218/MIME/DGE) dated August 8, 2002	Substances which deplete the ozone layer and products and equipment based on these substances
Order no. 609/MIME/CAB (Arrêté n° 609/MIME/CAB) dated March 22, 2000	Use of certain substances in cooling equipment, in air-conditioning and in industry
Order no. 2057/MIME/CAB (Arrêté n° 2057/MIME/CAB) dated May 13, 2002	Importation, exportation and re-exportation of substances which deplete the ozone layer and products and equipment containing such substances

Source: Emmanuel, 2005.

2.2.2 Landownership System

2.2.2.1 Context

Law no.17-2000 (Loi n° 17-2000) pertaining to the establishment of a system for landownership was enacted by the Congolese Government in 2000. The legislation, which was designed to establish the general principles applicable to public and private landownership, was however ratified in 2003-2004. It was also at this time that legislation concerning the organisation of the Directorate General of

Publicly-Owned Land, Land Registry and Topography was established. The introduction of management mechanisms for the landownership system is therefore relatively recent and today still remains in a very embryonic state (Table 2.4).

In general, land use in rural areas is determined by customary law. In the majority of cases, "ownership" of land by large families goes back a long way and, in most cases this is not supported by a formal deed of ownership.

It is in this context that the Government of Congo (GOC) initiated various reforms in order to recognise customary law. Thus, the government legislated in June 2006, to set up an *ad hoc* body to represent the interests of inhabitants at a departmental or a community level.

In the case of the Department of Kouilou, landowners joined together to form the Kouilou Landowners Association (ATK). The aim of this body, recognised by the Ministry of the Interior, responsible for security and urban development, is to represent landowners' interests. It also deals with issuing ownership or occupation certificates in order to provide a better structure and better document the process for recognition of customary law.

In practice, land tenure in rural areas must be perceived and analysed taking into consideration four categories of people involved or land users, *i.e.*:

- The landowner, who has a formal deed of ownership, which is issued by the Directorate for Mortgage Holding, Directorate General of Taxation. The cost of obtaining this deed is 200,000 CFA francs, *i.e.* about USD 390, for a 400 m² piece of land, which constitutes a deterrent for many landowners.
- The legal occupant who has an occupation permit issued by the mayor or subprefect;
- The customary law occupant who can benefit from a certificate issued by the Departmental Association of Landowners. In the current context, few customary law occupants have this type of certification, as a number of these agreements are verbal and not documented;
- The illegal occupant who has settled there without any approval or certification. According to the information obtained during the consultation and enquiry process which was carried out in the field, the proportion of illegal occupants may be as high as 30 % of the total number of occupants in the Department of Kouilou.

Table 2.4 Laws, Decrees and Orders pertaining to the Landownership System.

<i>Establishing the Principles and Mechanisms of the Landownership System</i>	
Decree no. 91-460 (Décret n° 91-460) dated May 20, 1991	Amendment of Decree 64-181 (Décret 64-181) dated May 20, 1964 pertaining to construction permits
Finance Law no. 17-2000 (Loi de finances n° 17-2000) dated December 30, 2002	Introduction of the landownership system
Law no. 16-2000 (Loi n° 16-2000) dated November 20, 2000	Forestry Code
Decree no. 2000-15 (Décret n° 2000-15) dated February 29, 2000	Approval of the articles of association of the Congo-Ocean Railway
Law no. 10-2004 (Loi n° 10-2004) dated March 26, 2004	General principles applicable to public and private landownership
Decree no. 2003-165 (Décret n° 2003-165) dated August 8, 2003	Allocation and organisation of the Directorate General of Publicly-Owned Land, Land Registry and Topography
<i>Recognition of Customary Law</i>	
Decree no. 2006-255 (Décret n° 2006-255) dated June 28, 2006	Establishment, composition and operation of an <i>ad hoc</i> body for recognition of customary landownership rights
<i>State Domain (Public and private)</i>	
Law no. 9-2004 (Loi n° 9-2004) dated March 26, 2004	State Domain Code
Decree no. 2005-515 (Décret n° 2005-515) dated October 26, 2005	Terms of occupation of the public domain
Decree no. 2005-518 (Décret n° 2005-518) dated October 26, 2005	Organisation and operation of the national commission for assessment of property of the State's private domain
Decree no. 2005-552 (Décret n° 2005-552) dated November 7, 2005	Terms for assignment of real estate of the State's private domain
<i>Expropriation for Reasons of Public Interest</i>	
Law no. 11-2004 (Loi n° 11-2004) dated May 26, 2004	Expropriation procedure for reasons of public interest
Decree no. 2005-516 (Décret n° 2005-516) dated October 26, 2005	Conditions for organisation of the preliminary enquiry
Decree no. 2005-514 (Décret n° 2005-514) dated October 26, 2005	Composition and operation of the Commission for Conciliation with regard to the expropriation procedure for reasons of public interest
<i>Compensation Awards</i>	
Decree no. 61-252 (Décret n° 61-252) dated October 7, 1961	Allocations due in the case of destruction of fruit trees and damage to food crops
Decree no. 86/970 (Décret n° 86/970) dated September 27, 1986	Compensation scale pertaining to the destruction of plants in force in the People's Republic of Congo
<i>Tariffs and Taxes</i>	
Order 2042 / MCUHRF/MEFB (Arrêté 2042 / MCUHRF/MEFB) dated May 28, 2003	Setting fees for land registry and topography work
Order 2041 / MCUHRF/MEFB (Arrêté 2041 / MCUHRF/MEFB) dated May 28, 2003	Setting the tax for project management of construction, planning and architecture work
Order 2040 / MCUHRF/MEFB (Arrêté 2040 / MCUHRF/MEFB) dated May 28, 2003	Setting the tax for project management of land registry, topography, cartography, photogrammetry and topographic surveying work
Order 2039 / MCUHRF/MEFB (Arrêté 2039 / MCUHRF/MEFB) dated May 28, 2003	Setting the tax on authorisation for parcelling out property
Source: Emmanuel, 2005.	

Legislation concerning the establishment of the Public Domain Code was ratified in 2004 and the decree pertaining to the terms of occupation was ratified in 2005. The law and the decrees concerning expropriation for reasons of public interest were also ratified in 2004 and 2005.

2.2.2.2 Principles and Mechanisms of the Landownership System

Amendment of Decree no. 64-181 (Décret n° 64-181) dated May 20, 1964 pertaining to construction permits (Decree no. 91-460 [Décret n° 91-460] dated May 20, 1991)

Decree no. 91-460 (Décret n° 91-460) pertains to the acquisition of a construction permit for whoever wishes to undertake construction work in durable materials, whether for use as a dwelling or not. Three categories of construction permit are defined as:

The category 1 permit involves strictly single-level structures that take up no more than 300 m² of space. This includes houses for dwelling, additions, lot fences constructed from sustainable materials, garages, shops, craft workshops, commercial premises, latrines, sunos and septic tanks.

The category 2 permit involves multi-level structures. This includes gas stations, mini-markets and supermarkets, administrative buildings, public facilities, tourist complexes, hotels, motels, housing operations, churches and temples.

Finally, the category 3 permit involves constructions which are of national interest. In particular, this involves hospitals, airports, plants, administrative complexes and industrial complexes.

Approval of the articles of association of the Congo-Ocean Railway (Decree 2000-12 [Décret 2000-12] dated February 29, 2000)

Decree no. 2000-12 (Décret n° 2000-12) lays down the organisation and operation of the Congo-Ocean Railway (CFCO). The latter is a public institution of an industrial and commercial nature, which has civil status and financial and managerial independence. More especially, the decree specifies the management and development of the public railway area.

The State makes freely available the public domain which CFCO needs to operate and expand. The public railway domain includes the tracks themselves and the area surrounding them, along with the stations and marshalling yards, protection and access structures, engineering structures, in particular bridges, tunnels, viaducts,

box culverts and ducts, telecommunications, signalling and power installations, along with the earth reserves adjoining the tracks and, in general, the State property allocated to the public railway service.

Management of the public domain which is made available to them is provided by the CFCO which grants authorisations for occupation of this land, through a normal lease or a long-term lease, and collects charges for usage and rents for its own financial benefit.

In addition, the law stipulates that draft projects, for works which involve an extension of the railway or which have an impact on the natural and human environment which goes beyond the network, must be the subject to the approval of the board of directors and to an authorisation from the Minister of Transport and Civil Aviation and by the other competent authorities concerned.

General principles applicable to public and private landownership (Law no. 10-2004 [Loi n° 10-2004] dated March 26, 2004)

Law no. 10-2004 (Loi n° 10-2004) lays down the general principles applicable to public and private landownership, in particular to the rights of physical persons and corporate entities to land.

National land comprises the publicly-owned land of public corporations and the land held by private individuals. Public corporations are the State, decentralised local authorities and public institutions. Landownership covers the rights *in rem* relating to it, the rights arising from transfer of ownership, between living people and in the case of inheritance, and the constitution, of collateral.

In addition, specific legal provisions determine the State's system for publicly-owned land, the landownership system, the agricultural landownership system, the urban landownership system, the mining ownership system, the forestry ownership system and the organisation of the expropriation procedure. For the expropriation procedure, the requirements of the law involve allocation of lands and plots for economic development, allocation of urban plots for planning and development operations and the protection of individual's property and rights *in rem* in immovable property.

Besides this, the law specifies the State's prerogatives for allocation of land areas. The State and local authorities, along with, in general terms, any public corporations or private individual, are required to respect in their entirety the legal attributes of private ownership of lands and the rights *in rem* in immovable property linked to it, which physical persons and corporate entities are acknowledged to have. However,

public corporations are authorised to have recourse to expropriation for reasons of public interest, in compliance with the law.

The State's prerogatives are justified through the implementation of land development and environmental conservation policies in rural and urban areas, and policies for collective procurement and for the improvement of areas which are determining factors in terms of satisfying the needs of the population. The objective of the allocation of lands is to enable optimal use of the natural resources of the soil and subsoil, and economic and social usage, which is in keeping with the public interest. The latter is assessed by any administrative authority established for this purpose which includes, in addition to representatives of the appropriate authorities, landowners and village authorities, who have the greatest influence in rural areas.

On the other hand, the State is authorised to carry out progressive enumeration, demarcation, assessment and classification of lands in rural and periurban areas, along with marine areas, in particular under the seabed, whether they are part of the domain of corporate entities or the subject of private appropriation. In particular, this State classification must include assessment of the pedological value of the soils, taking into consideration the legal implications which might arise from exchange or replacement of soils following exploration procedures implemented in rural areas.

Allocation and organisation of the Directorate General of Publicly-Owned Land, Land Registry and Topography (Decree no. 2003-165 [Décret n° 2003-165] dated August 8, 2003)

Decree no. 2003-165 (Décret n° 2003-165) describes the allocation and organisation of the Directorate General of Publicly-Owned Land, Land Registry and Topography. It includes, in addition to the Secretariat of the Directorate, the informatics services, archives and documentation department, Publicly-Owned Land, Land Registry, Topography and Photogrammetry Directorates, those for Administrative and Financial Affairs and the Departmental Directorates.

It is the Publicly-Owned Land Directorate which is responsible for contributing to the assessment of appropriation costs, when a process of this kind occurs.

2.2.2.3 Recognition of Customary Law

Decree no. 2006-255 (Décret n° 2006-255) dated June 28, 2006 – Establishment, composition and operation of an ad hoc body for recognition of customary landownership rights

The aim of the reform of the Congolese landownership system is recognition of customary landownership law. Decree no. 2006-255 (Décret n° 2006-255) establishes an *ad hoc* body for recognition of customary landownership rights in

each department and community, which is called the *ad hoc* Commission for Recognition of Customary Landownership Rights.

The aims of the Commission are:

- To draw up the provisional ownership certificates after opinions have been given by the departmental technical services of land registry, land development, urban planning, agriculture, public works, forestry economy and hydraulics;
- To receive appeals.

The Commission can only issue a provisional certification of ownership for lands or plots whose area is less than 100 ha. For land larger than this threshold, validation is made by an order of the Minister for Landownership Reform and the Preservation of the Public Domain.

Plots of land which are the subject of customary law can only be registered after their development or improvement, duly recognised by the land registry, agriculture and forestry economy services. For rural lands, improvement consists in carrying out one of the following activities: growing crops, animal husbandry, fishing activities or generally in undertaking productive work.

2.2.2.4 Public and Private State Domain

State Domain Code [Code du domaine de l'État] (Law no. 9-2004 [Loi n° 9-2004] dated March 26, 2004)

Law no. 9-2004 (Loi n° 9-2004) deals with the State Domain which is defined as all the property and rights, both movable and immovable, tangible and intangible, belonging to the State, to decentralised local authorities and to public institutions. The law lays down the constituent parts of the domain of public corporations and determines their make-up, the methods of administration, management and use of state appurtenances by public corporations and private individuals and the financial and penal provisions applicable within the framework of the management of public property.

The law specifies that the State domain comprises the public and private domain. On the one hand, the public domain is all the properties and rights of the public authorities and institutions which are either made directly available to public users, or allocated to a public service, provided that in this case they are, by nature or through special developments, exclusively or essentially adapted for the particular purpose of these services. On the other hand, the private domain comprises all

movable and immovable property and rights *in rem* in immovable property of the State domain, of the decentralised local authorities and public institutions, which, by their nature or their purpose, are not considered to be appurtenances of the public domain.

There are two references to the expropriation process in Law no. 9-2004 (Loi n° 9-2004). On the one hand, it is laid down that when, by reason of its duration or its importance, an easement requires the dispossession of the landowner or causes him/her serious harm, there is good cause to carry out expropriation. On the other hand, it is specified that the selling back of expropriated real estate is carried out in accordance with the descriptions of the law pertaining to expropriation for reasons of public interest (Law no. 11-2004) [Loi n° 11-2004]).

Terms of occupancy of the public domain (Decree no. 2005-515 [Décret n° 2005-515] dated October 26, 2005)

Decree no. 2005-515 (Décret n° 2005-515) describes the forms and conditions of occupancy of the public domain. This occupation may be by assignment or by explicit authorisation of occupancy.

Assignment is the act by which the public domain is made available to a public service to enable it to carry out its mission. In the five years following the assignment, the appurtenance can be declared “de-assigned” if it has remained unused.

In addition, the explicit authorisation of occupancy is the act by which the State or the decentralised local authority grants possession of an appurtenance of the public domain to physical persons or corporate entities governed by private law. There are special clauses for the occupation of port areas, of the public marine or river domains as well as of the public traffic domain. The duration of explicit authorisation of occupancy of the public domain is set in the decree which grants it. This duration may not exceed 20 years, unless there is a definite public interest. In exceptional circumstances and for reasons of public interest, explicit authorisations of occupancy may be granted free of charge to corporate entities governed by private law who apply for them.

Organisation and operation of the national Commission for assessment of property of the State’s private domain (Decree no. 2005-518 [Décret n° 2005-518] dated October 26, 2005)

The national Commission for assessment of property of the State’s private domain comprises the ministers responsible for finance and the preservation of the State

domain and the Director General of Taxation. Representatives of other ministries and public bodies are also members.

The Commission is responsible for assessing improvements of whatever kind, carrying out related expert appraisals, assessing the compensation when there are immovable asset exchanges by public corporations and assisting with referrals for adjudication.

Terms for assignment of real estate of the State's private domain (Decree no. 2005-552 [Décret n° 2005-552] dated November 7, 2005)

Decree no. 2005-552 (Décret n° 2005-552) lays down the terms for assignment of real estate of the State's private domain. The appurtenances of the State's private domain can be allocated through assignment, transfer, allocation of interest in companies, exchange area, provisional authorisation of occupancy and ordinary lease or emphyteutic lease. Moreover, the real estate of the State's private domain can be:

- Allocated to public services;
- Transferred to corporate entities governed by public law;
- Allocated for possession or ownership to corporate entities governed by private law or to physical persons;
- Allocated as an interest in companies with right to reincorporation in the State's private domain in the case of the said companies being wound up, going bankrupt or going into receivership;
- Allocated for possession or ownership to international bodies of which Congo is a member;
- Allocated for possession or ownership and, subject to reciprocity, to diplomatic or consular missions accredited in Congo.

The ordinary lease granted by the State gives the lessee a right of enjoyment for a period which may not exceed 18 years, under certain conditions. However, the long-term lease is granted for a period of between 18 and 99 years, under certain conditions. As far as the long-term lease is concerned, in the case of an expropriation for reasons of public utility during the period of the lease, the lessee can claim compensation under the conditions provided for by the law.

2.2.2.5 Expropriation for Reasons of Public Interest

Expropriation procedure for reasons of public interest (Law no. 11-2004 [Loi n° 11-2004] dated May 26, 2004)

Law no. 11-2004 (Loi n° 11-2004) describes expropriation as a procedure, in the form of enforced transfer to the benefit of the State, which enables the State to obtain all or part of a piece of real estate with a view to achieving an objective of public interest and in return for payment of fair prior compensation. Plots which are empty, have been developed, have been built on, cultivated or planted, which are necessary for all public works and all other works and structures recognised to be in the public interest, can be the subject of expropriation for reasons of public interest. The expropriation procedure comprises administrative and legal phases.

The administrative phase, which begins with the publication of a notice in the Official Journal and by other means of communication, comprises four stages: the preliminary enquiry, the public utility declaration, the plot enquiry, as well as the deed of transferability and demand for full expropriation.

The preliminary enquiry enables the interested members of the public to be informed and consulted about a project which is likely to lead to an expropriation. The dossiers – plans, quotations and draft projects – must be submitted to the town halls and main towns of the administrative constituencies concerned by the works for consultation over a 40-day period as from the submission date.

The public utility declaration comprises the act by which the State affirms that carrying out an operation involves a general interest which is sufficient to justify recourse to the expropriation procedure. The declaration may be the subject of *ultra vires* proceedings in the presence of an administrative judge. Public utility is declared by a decree or ministerial order which lays down its period of validity, the nature of the works, the area involved and the timescale within which the expropriation must be carried out. The timescale cannot be longer than three years, but can be extended for a period of not more than two years.

The plot enquiry enables the administration to determine, by hearing all parties, the plots to be expropriated, to search for the owners, those who hold the rights *in rem* in immovable property and others concerned. The expropriator must draw up the parcel plan, make an expert appraisal of the elements which embody the improvements and carry out the demarcation of the land. The schedule of condition must be drawn up within a period of two months.

The ministerial decree or order of transferability is the act by which the appropriate authority draws up the list of plots to be expropriated, along with the rights *in rem* in immovable property with which it is encumbered. The act of transferability is aimed at the portion of the properties which are effectively incorporated in the works or essential to the operation. The act is published in the Official Journal and notified by the expropriator to those having their property expropriated or to their duly empowered representatives. A conciliation commission is then formed and tries to achieve the agreement of the parties regarding the amount of compensation. The transfer of ownership can be carried out either through mutual agreement, or by the expropriation judge's decision. Amicable transfer can take place even before the public utility declaration has been made; this avoids implementation of the expropriation procedure and of the demand for full expropriation. In this case, a contract of sale is drawn up, which is subject to the conditions of common law and which can be contested before the civil judge.

Furthermore, the legal phase is subsequently made up of five sections described hereafter, which deal with jurisdiction and competence, setting the compensation, transfer of property and rights *in rem* and urgency, along with methods of recourse.

The section dealing with jurisdiction and competence stipulates that, when an expropriator leaves the party having property expropriated with an unusable part, this party can oblige the expropriator to acquire the remaining part. If no amicable transfer can be agreed, the case is referred to the expropriation judge to pronounce the expropriation and set the compensation award.

Where there is no conciliation, the compensation award is set by the court, whereas, if conciliation occurs, the judge draws up a binding report. The expropriation compensation is set according to the make-up of the property on the date of the schedule of condition affidavit. Improvements of any kind that might have been made to the property for the purpose of obtaining a higher compensation award will not give rise to any compensation. The properties are assessed according to the value they have acquired by reason of their possibilities for effective use one year before the preliminary enquiry is started, unless an urban planning or development plan has been approved within the last five years. In this case, the possibilities to be taken into consideration are those which existed one year before this approval. The amount of compensation which applies to the immovable property and rights *in rem* cannot exceed the most recent estimate, provided that the estimate is no more than five years old with respect to the date when the enquiry was started. In all cases, the estimate made is revised according to the variation in construction costs between the reference date or estimate date and the date when the compensation award is set.

The section dealing with transfer of ownership and rights *in rem* stipulates that the expropriator may, in return for a consignment payment of the provisional compensation which is consigned and set by the expropriation decision, take possession of the immovable property immediately, when viewing by the court is not ordered, or, if it is ordered, on expiry of a period of 15 days as from the date of the said viewing by the court. On the date of amicable transfer or the expropriation decision, all rights *in rem* and personal rights relating to the immovable property are annulled. If the expropriated immovable properties are not used for the purpose foreseen for expropriation within a period of five years, or if the expropriator decides not to proceed in the meantime, the ex-owners or their beneficiaries can request retrocession.

Urgency can be set by the declaration of public utility act. In this case, the timescale set for taking possession of the properties to be expropriated for court viewing is reduced to one month. The judge may either set the compensation amount, or, if he deems the situation not to be clear enough, set the provisional compensation amount, and authorise the expropriator to take possession in return for the compensation set in this way.

The last section deals with appeals. An appeal against the decision can be lodged within a period of one month, as from the date when the said decision was pronounced. The appeal has no suspensive effect.

Conditions for organising the preliminary enquiry (Decree no. 2005-516 [Décret n° 2005-516] dated October 26, 2005)

The enquiry prior to the public utility declaration is an administrative procedure whose aim is to inform the interested members of the public and consult them about a project which is likely to lead to an expropriation. The enquiry enables assessment of the public utility nature of the expropriation project and the discovery of the immovable assets which meet the objectives being pursued.

The expropriator launches the expropriation process by sending a dossier to the Minister for Landownership Reform and the Preservation of the Public Domain, for submission to the enquiry, comprising:

- When the public utility declaration is requested with a view to carrying out work or structures:
 1. An explanatory note;
 2. The site plan;
 3. The general plan of the works;

4. The main characteristics of the most important structures;
 5. The overall evaluation of expenditure;
 6. The impact assessment when the structures or works are not exempt from this.
- When the public utility declaration is requested with a view to acquiring immovable property, or when it is requested with a view to carrying out an important development or urban planning operation and it is necessary to acquire immovable property before the project can be set up:
 1. An explanatory note;
 2. The site plan;
 3. The demarcation plan for the area to be expropriated;
 4. The overall evaluation of the acquisitions to be made.
 - When the public utility declaration is requested for operations or acquisitions provided for by the local urban development plans or by the documents serving this purpose:
 1. An explanatory note;
 2. An approximate assessment of expenditure.

In the three cases above, the explanatory note must indicate the objective of the operation and the reasons why the project submitted to the enquiry was selected from an environmental point of view.

On sight of the dossier, the Minister for Landownership Reform and the Preservation of the Public Domain nominates a commission of enquiry by order. The order also specifies the objective of the enquiry, its opening date and its duration, which may not be less than 40 days, as well as the venue and timing for the public to be able to find out about the project dossier comprising the quotations and draft projects. At least 8 days before the enquiry, a public notice must also be published in the Official Journal, or a journal for legal announcements, and on the national radio stations.

The preliminary enquiry is carried out by a commission of enquiry. During the timescale set by the latter, the people concerned can record their statements and comments on the public utility of the operation or the project in the enquiry registers opened for this purpose. They can also send them in writing. If needs be, a meeting bringing together the commission and the members of the public concerned can be held. Grounds which can give rise to expropriation are provided.

After examining the statements and comments of the people concerned, the commission of enquiry draws up the conclusions with their justifications and sends the enquiry report to the Minister for Landownership Reform and the Preservation of the Public Domain, the minister responsible for land administration and the minister responsible for the project. These ministers then assess whether to carry out the project or not on the site targeted or whether to change its location.

If there is a favourable decision, public utility is declared by a decree or ministerial order which lays down the period of validity, the nature of the works, the area involved and the timescale within which the expropriation must be carried out.

The costs relating to the organisation of the preliminary enquiry and to the operation of the commission are the responsibility of the expropriator or the project owner.

Composition and operation of the Commission for conciliation with regard to the expropriation procedure for reasons of public interest (Decree no. 2005-514 [Décret n° 2005-514] dated October 26, 2005)

Decree no. 2005-514 (Décret n° 2005-514) describes the composition and operation of the Commission for conciliation with regard to the expropriation procedure for reasons of public interest.

The commission comprises the following members: three local elected officials from the place where the immovable property to be expropriated is located; three representatives of civil society: an architect, a representative of the private agricultural sector and an officially designated private land surveyor.

The expropriator brings the matter before the commission by simple request. In the 15 days following the submission of the request, the commission invites the parties to appear. Following this, the commission ascertains or tries to achieve the agreement of the parties regarding the amount of compensation calculated. If an agreement is reached, an amicable transfer report is drawn up. If no agreement is reached, a refusal of amicable transfer report is drawn up. If no amicable transfer can be agreed, the case is referred to the expropriation judge, which is the court of first instance which has jurisdiction over the area where the immovable property is located, to pronounce the expropriation and set the compensation award. Bringing the case before the judge has no suspensive effect on the expropriation process.

The commission's operating costs are the responsibility of the expropriator.

2.2.2.6 Compensation

According to the results of the document search carried out within the framework of the mandate, there are few recent legal texts in existence which enable compensation measures to be established for loss of property. The most relevant decree and the most recent to have been found dates from 1986, and pertains to compensation when plants are destroyed.

Compensation scale in force pertaining to the destruction of plants in the People's Republic of Congo (Decree no. 86/970 [Décret n° 86/970] dated September 27, 1986 amended Decree no. 61-252 [Décret n° 61-252] dated October 7, 1961 - Allocations due in the case of destruction of fruit trees and damage to food crops)

Decree no. 86/970 (Décret n° 86/970) amended Decree no. 61-252 (Décret n° 61-252), which sets the amounts of compensation to be paid in the case of destruction of fruit trees and damage to food crops (Table 2.5).

The types of trees and fruits involved are oil palms, coconut trees, bush banana trees, cacao trees and coffee trees, citrus fruits, such as, orange trees, lemon trees, mandarin trees and grafted grapefruit trees, along with other tree species, such as, cola trees, avocado trees, grafted mango trees, safou trees, soursop trees, carambolas, bread fruit trees, ordinary mango trees and food crops, such as, manioc, potatoes, peanuts and sugar cane.

2.2.3 Family Code

The elements of the Family Code which concern ownership, either directly or indirectly, are presented here.

The Congolese Family Code stipulates that the “human person is sacred. He/she is a legal subject from conception to death, provided that he/she is born alive and viable” (Article 1).

2.2.3.1 Appropriation of a Domicile

Heading IV of the Family Code defines the methods of appropriation of a domicile. The domicile of any physical person is a place where that person has made his or her main residence. When the main residence cannot be established with certainty, the domicile is at the place where the person carries on their main professional activity.

Table 2.5 Compensation Pertaining to the Destruction of Plants in the Republic of Congo.

Industrial Crops (CFA francs/m ²)			
Oil Palm:		Lychee:	
0 to 10 years	630	0 to 10 years	4,800
11 to 18 years	36.75	11 to 18 years	31.5
18 years and over	10.50	19 to 30 years	49.5
Coconut Tree:		Cola Tree:	
0 to 10 years	468	0 to 10 years	300
11 to 18 years	27.3	11 to 18 years	17.5
18 years and over	27.3	19 to 30 years	27.5
Cacao Tree:		Bread Fruit Tree:	
0 to 10 years	144	0 to 10 years	150
11 to 18 years	8.4	11 to 18 years	8.75
19 to 50 years	13.2	19 to 30 years	13.75
Coffee Tree:		Mango Tree:	
0 to 10 years	81	0 to 10 years	780
11 to 18 years	47.25	11 to 18 years	45.5
19 to 30 years	7.42	19 to 30 years	71.5
Rubber Tree:		Papaya Tree:	
0 to 10 years	324	0 to 10 years	300
11 to 18 years	19	11 to 18 years	17.5
19 to 30 years	29.7	19 to 30 years	27.5
Others:			
Sugar Cane:	31		
Tobacco:	3		
Cotton Tree:	52.5		
Soya:	20		
Food Crops (CFA francs/m ²)			
Manioc:	37.5	Beans:	21
Maize:	13.6	Potatoes:	163
Peanuts:	12.3	Yams:	140
Paddy:	15	Sweet Potatoes:	200
Fruit Crops (CFA francs/m ²)			
Citrus Fruit:		Safou Tree:	
0 to 10 years	540	0 to 10 years	810
11 to 18 years	31.5	11 to 18 years	49.25
19 to 30 years	49.5	19 to 30 years	74.25
Avocado Tree:			
0 to 10 years	600		
11 to 18 years	35		
19 to 30 years	55		
Market Garden Crops (CFA francs/m ²)			
Aubergines:	240	Cress:	400
Tomatoes:	277.5	Lettuce:	120
Leeks:	500	Carrots:	210
Cabbages:	260	Beetroots:	400
Green Beans:	120	Radishes:	156
Peppers:	375	Spring Onions:	120
Onions:	1250	Mourelle:	280
Parsley:	1200	Okra:	25
		Fodder Crops:	100

Source: Decree no. 86/970 (Décret n° 86/970).

Any person who exercises a profession has a place of business for this purpose. This place is where that person exercises their main profession.

A change of domicile only takes place through transfer of the main residence, or, if applicable, of the main professional activity, to another place (Article 104).

Any person, whose current domicile cannot be established with certainty is deemed to be domiciled at the place of their last domicile, or, if the existence of a prior domicile cannot be established, at the town hall of their place of birth.

2.2.3.2 Legal Establishment of Domicile

With regard to legal establishment of domicile, the following are domiciled according to Article 10 of the Family Code:

- A married woman at the husband's domicile, or at the one they have chosen mutually, unless there is legal authorisation of separate domicile;
- A non-emancipated minor, unless there is legal authorisation of separate domicile;
- An adult of the age of maturity who is under guardianship at their guardian's home.

“For a specific activity or case, the parties can agree on a place which will have the effects of a domicile, or just some of these.”

2.2.3.3 Inheritance

Heading XII of the Family Code deals with inheritances. Inheritance begins with death and with legal declaration of death in the case of a person being missing or having disappeared. The person's inheritance is opened at the place where, at the time of their death, they had their main residence, or, if this place is not known, at the place where their property, or the majority of their property, is to be found.

Nullity actions or actions to reduce the deceased person's testamentary dispositions, partition actions, claim actions and hereditary rights actions are brought before the judge of this domicile.

Seisin

The heirs take full legal possession as of right of the property, rights and shares of the deceased with the obligation to settle all the costs of the inheritance. They acquire all or part of the inheritance without any acceptance declaration whatever or any other prior deed.

When several people, who are respectively appointed to inherit one from the other, die in an event, without it being possible to determine who died first, the inheritance of each of them devolves to the heirs or legatees who would have been appointed

as heirs to it, instead of the person who died in the said event with the other. The proof that one of the persons survived the other can be made by any means.

Power of Encroachment

In the case where an inheritance is shared between joint foreign and Congolese heirs, the latter heirs will collect from the property located in Congo a portion equal to the value of the property located abroad, from which they would be excluded from inheriting on whatsoever basis.

Various Types of Inheritance

Inheritance may be legal. It may be both legal and testamentary. It may be partially legal or partially testamentary.

2.2.3.4 Special Rules for Hand to Hand Donation

Heading XIII of the Family Code deals with hand to hand donation. Hand to hand donation is the gift of tangible movable property made by simple tradition, by dispensation from the rules relating to gifts of movable and immovable property which stipulate: "Any contract pertaining to the donation of immovable property or rights to immovables must be signed in the presence of the notary or the Presiding Judge of the neighbourhood or village of the place where the contract was concluded" (Article 648).

"Any contract pertaining to the donation of movable effects may be made either by notarial deed or by private agreement, duly registered. The contract is only valid in so far as it has been drawn up as an estimate of the property donated, signed by the donor and the recipient, or by those accepting on his/her behalf" (Article 649).

Tradition

Hand to hand donation is only achieved insofar as tradition has transferred the real possession of the object given to the recipient, either directly from the donor, or through a third party responsible for handing over the object to the recipient. Tradition must have effect during the lifetime of the donor.

Hand to hand donation can only concern tangible movables, whose ownership may be acquired by simple tradition. The proof of hand to hand donation by the recipient, who is in possession of the object given, comes as a result of possession as owner and without defects.

Uncertainty of possession must be proved in writing. It can be done by witnesses in all cases where this method of proof is allowed by the law.

Possession defects can be proved by any means. If the recipient is not in possession of the thing given, he/she must, to prove the hand to hand donation, provide proof of tradition and donation agreement. Tradition can be proved by any means. Donation agreement is subject to methods of proof allowed for by the law. The proof of hand to hand donation by the donor is made by the rules of written proof.

The donor's heirs can prove hand to hand donation by any means. The constituent parts of the donation are:

- Donative intent;
- Transfer without *quid pro quo* of an item of property from the donor's estate to that of the recipient;
- The direct causal link between the donor's impoverishment and the recipient's enrichment.

2.2.4 Labour Code

Law no. 6-96 (Loi n° 6-96) dated March 6, 1996 amends and supplements some provisions of Law no. 45/75 (Loi n° 45/75) dated March 15, 1975 establishing a Labour Code for the People's Republic of Congo. An overview of the main rules and practices which define the labour conditions which are currently valid in Congo is presented here (Table 2.6). This section deals with:

- Redundancy;
- Health, safety and medical services;
- The National Consultative Labour Commission;
- Appointment of staff delegates;
- Union freedom;
- Conciliation before the labour and social law inspector.

2.2.4.1 Economic and Technical Redundancy

Economic redundancy is a measure to suspend individual employment contracts taken by the employer for reasons of an economic nature. Any employer wishing to make part or his entire workforce redundant for economic reasons is required to send an economic and financial dossier, along with the written opinion of the social partners within the company, to the appropriate Regional Labour Director.

Table 2.6 Overview of Labour Legislation in Congo.

Working time:	40 hours in the private sector, 35 hours in the public sector.
Cost of overtime (normal working days, rest days or public holidays):	Variable, depending on the sectors and the collective agreements applicable to them.
Number of rest days per week:	One in the private sector and two in the public.
Number of paid public holidays:	9
Length of paid annual leave:	26 days according to the Congolese Labour Code. Variable, depending on the sectors and the collective agreements applicable to them.
Length of paid sick leave:	Variable, depending on the sectors and the collective agreements applicable to them.
Length of paid maternity leave:	15 weeks
Minimum wage:	Variable, depending on the sectors and the collective agreements applicable to them.
Length of trial period:	Variable, depending on the sector of activity, determined by the private sector collective agreements. The Congolese Labour Code provides for a maximum length of 6 months.
Notice period in the case of breach of contract and compensation:	Variable, depending on the sectors and the collective agreements applicable to them.
Legal retirement age:	In principle 55, with the possibility of dispensation.
Social security contributions – Employer's Contribution:	Registration with the National Social Security Fund is mandatory. Social security costs add around 25 % to the gross salary. Family allowances: 10.03 % Accident at work: 2.25 % Old age pension, invalidity, death: 8 % Real estate promotion and management company: 2 % National Office for the Workforce: 0.50 %
Social security contributions – Employee's Contribution:	Old age pension, invalidity, death: 4 %

Compiled by GENIVAR

The Regional Labour Director must convene a meeting of the Conflicts Commission at the latest within the 15 days following the submission of the economic redundancy authorisation request; beyond this time period, authorisation is deemed to have been given. The Conflicts Commission ascertains the true nature of the given facts and either authorises or rejects the requested measure. If the Conflicts Commission authorises the measure, the latter can only be imposed on the workers subject to their agreement expressed on an individual basis, prior to the Commission giving its opinion. If the worker refuses to do so, the breach of the employment contract which may arise from this is the responsibility of the employer. Economic redundancy lasts for a period of three months and this can be renewed once.

Technical redundancy is a measure to suspend individual employment contracts due to the employer being in a situation which makes it impossible in practical terms to

provide work. In particular, technical redundancy can be the result of an act of God or an event caused by a government act, of bad weather of an exceptional nature, of difficulties with the procurement of raw materials or power supply, of a disaster, of a fire or of any other circumstances of an exceptional nature. Technical redundancy cannot last for a period over six months, including any renewal period.

During periods of economic or technical redundancy, the employer cannot reduce the number of hours in the working week or overtime, for workers remaining in the company, or take on new workers. However, these periods of redundancy must be considered as effective working time, in particular for assessing the right to notice and the amount of the redundancy payment.

Workers who have been made economically or technically redundant are paid a monthly allowance by their employer, which is one third of their sectorial salary plus all the benefits which are not linked to the effective provision of labour. Workers also benefit from medical and pharmaceutical costs and other social security services provided for by the collective agreement in force. Workers who have been made economically or technically redundant can, if they find another job, leave their last employer, without being liable to pay them any compensation payment.

When the economic or technical redundancy measure leads to full redundancy, the basis for calculating the compensation payment due from the employer is the worker's salary before the economic or technical redundancy measure. The same applies to calculation of the payments due throughout the duration of the measure.

2.2.4.2 Health, Safety and Medical Services

Within the Ministry of Work, Employment and Social Security, a National Commission for Health, Safety and Occupational Risk Prevention has been established to look into questions concerning health, workers' safety and occupational risk prevention. A decree sets the make-up and the workings of the commission.

According to the Law, any installation or any redevelopment of companies, workshops, construction sites, workers' camps, warehouses for machines or production equipment must be subject to the prior technical appraisal of the labour inspector responsible for the area. The company's management, at its highest level, must consider promotion of safety and improvement of working conditions as an essential part of its role.

All employers are required to adopt an occupational risk prevention policy which is integrated into the corporate economic and financial policy. They must make any

provisions or take any measures which are necessary or useful to ensure occupational risk prevention. In particular, these provisions or measures deal with the location and installation of the company, the acquisition and installation of equipment or machinery, the organisation of the working environment and the organisation of work.

In each workplace, each morning after roll call, there is a medical consultation for workers who report sick; legitimate spouses and children, if they request to do so, can attend this consultation to be examined and, if applicable, to receive the necessary care and treatments. A medical consultation register is kept for this purpose whose content is specified by an order from the Minister of Work, Employment and Social Security. The results of this consultation are recorded in a special register the model of which is set by order of the Minister of Work, Employment and Social Security, after an opinion expressed by the National Technical Commission for Health, Safety and Occupational Risk Prevention.

2.2.4.3 National Consultative Labour Commission

The National Consultative Labour Commission, chaired by the Minister of Work, Employment and Social Security is a tripartite body made up in equal numbers of employers, workers and Public Administration Representatives. A decree sets the conditions as to how the National Consultative Labour Commission is organised and how it operates, along with the number of members it has.

2.2.4.4 Staff Delegates

Staff delegates have to be elected in companies or establishments which are set up in the ROC and which have at least seven recognised workers in accordance with the definition provided by Article 2 of the Labour Code.

The role of the staff delegates is to:

- Present any individual or collective complaints to the employers which have not been directly dealt with and which concern working conditions and workers' protection, the application of collective agreements, professional classifications and salaries;
- Give their prior opinion on any collective or individual redundancies caused by a reduction in the establishment's activities or by internal reorganisation and in accordance with the procedure laid down by Article 39 of this Code;
- Bring any complaint or claim before the Labour and Social Laws Inspectorate concerning application of the legal or statutory provisions which the inspectorate is responsible for controlling;

- Ensure the application of provisions concerning workers' health and safety and social security, and propose any useful measures in this area;
- Communicate any useful suggestions aimed at improving the company's organisation and performance to the employer.

In order to carry out their role, the staff delegates have 20 hours per month of paid working time available to them.

2.2.4.5 Union Freedom

In all companies set up in Congo, the right of all employees to be free to belong to a union is recognised, in compliance with the rights and freedoms guaranteed by the Constitution. Likewise, trades unions have the right to organise themselves freely within the said companies.

In companies with at least 30 employees, each of the unions representing the employees which have at least one active staff delegate, can constitute union branches responsible for ensuring their members' professional interests are represented with the employers.

The essential role of the union branch is:

- Display union communications;
- Publication and distribution of documents giving union or professional information for the workers;
- Collection of union membership fees within the company;
- Holding periodic meetings with the members within the company site;
- Negotiation of agreements with the establishment or the company.

In companies where there is a workforce of at least 50 people, a common area must be made available to the union branches by the employer, so that they can fulfil their role. The conditions for using this area are determined by consent with the head of the company.

2.2.4.6 Conciliation

Any worker or any employer may request the Labour Inspectorate Services to settle a dispute amicably. As soon as this request is received, the Labour Inspector summons the parties for the purpose of conciliation. Due to this, the time limit provided for in Article 99 is interrupted until the date when the attempt at conciliation

is ended by the report. The parties are required to appear before the Labour Inspector on the dates and at the times set in the summons. In the case of refusal to obey, the Labour Inspector notes the breach in a report. The Labour Inspector verifies whether the parties are disposed to immediate conciliation on the basis of the standards set by the law, the regulations or the collective agreements and the individual contract.

If conciliation takes place, the enforcement order is apposed by orders of the Presiding Judge of the Labour Tribunal taken at the request of the most diligent party to the conciliation report drawn up by the Labour Inspector. Enforcement is carried out as for a Labour Tribunal judgement.

2.2.5 Investment Code

Congo has chosen a market economy with the State as guarantor of freedom and facilitator of private initiatives. Private business is now at the heart of the development strategy. This option involves economic legislation being rewritten with a view to creating an environment with greater incentives.

It comprises two complementary texts:

- Law no. 008-92 (Loi n° 008-92) dated April 10, 1992 pertaining to the Investment Code;
- Law no. 7-96 (Loi n° 7-96) dated March 6, 1996, which amends some provisions of Law no. 008-92 (Loi n° 008-92) dated April 10, 1992 pertaining to the Investment Code.

Congo's Investment Code is essentially based around the following principles:

- Degression of benefits, to enable progressive and less brutal reintegration into the common law system;
- Equity, to avoid any discrimination between national and foreign, private and public investors;
- Tax benefits which are differentiated, degressive and linked to the company's performance;
- Opening up the Code to all activity sectors and the SME Scheme to foreigners;
- Splitting the territory of Congo into five economic zones and differentiating the benefits with respect to these zones;
- Simplification of the procedures for obtaining administrative authorisations for accredited companies.

The Investment Code comprises three privileged schemes and six incentive measures. The privileged schemes are:

- The General Scheme (G Scheme);
- The Small and Medium Enterprises Scheme (SME Scheme);
- The Free Zone Scheme (Z Scheme).

The incentive measures deal with:

- Development of activity and employment;
- Reinvestment of profits;
- Research and technological innovation;
- Setting up in Less Developed Economic Zones (ZEMODs);
- Setting up in priority development zones;
- Export incentives.

2.2.5.1 General Scheme

The General Scheme applies to any accredited company, whatever specific characteristics it may have. For the companies which are accepted into it, it entails the following benefits and rights:

- During the set-up period:
 - Application of customs import duties and taxes on equipment goods, in compliance with the customs rates in force.
- During the operating period and for a non-renewable length of time:
 - Application of customs import duties and taxes, in compliance with the customs rates in force on raw materials and packaging;
 - Exemption from the tax on profits according to the terms defined in Article 27.2;
 - Exemption from the special corporation tax, according to the terms defined in Article 27.2;
 - Exemption from real estate tax and factory entry tax;
 - Exemption from factory exit taxes for treated timber for the first five years;
 - Carrying over to the results of the following five financial years of the deficit arising from amortisations, which are normally entered into the accounts during the first three financial years;

- Exemption from the flat rate tax on salaries paid to employees of Congolese nationality during the first five years of operation. Under any circumstances, the benefits granted on the basis of this article may not be lower than those provided for by the common law system in force at the time of the agreement.
- During the agreement period:
 - 50 % reduction in the registration and amendment duties at the time the company is created or extended or when capital is increased.

2.2.5.2 Differentiation of Benefits by Zone

The duration of the benefits provided for in the privileged schemes is set at seven years. In this time period, the accredited companies benefit from a degressive reduction of their results subject to profit tax depending on the zone where they are set up. To this end, the Congolese territory is split into five economic zones, A, B, C, D and E, designed in such a way as to encourage the maximum number of investors to establish themselves in the least developed zones.

These Zones are defined as follows:

- Zone A, which includes the Communities of Brazzaville and Pointe-Noire within a 20 km radius;
- Zone B, which includes the Communities of Dolisie and Nkayi over a 10 km corridor and the peri-urban areas of Brazzaville within a radius of between 20 and 50 km;
- Zone C, which includes the localities located within a 50 km radius surrounding the railway axes (CFCO-COMILOG);
- Zone D, which includes the rest of the country, except for the Likouala and Sangha regions;
- Zone E, which includes the Likouala and Sangha regions.

The Kouilou Potash Project is located in Zone A.

Depending on development strategies at the time, priority development zones could however be created. These priority development zones may either coincide with or be different from the ZEMODs.

The advantages defined for the General Scheme and the SME Scheme apply for:

- The first five financial years for companies set up in Zones A and B;

- The first seven financial years for companies set up in Zones C and D;
- The first eight years for companies set up in Zone E.

In addition, there will be a minimum tax of 10 % applied to the industrial and commercial profits over the two years following the aforementioned periods.

2.2.5.3 Incentives for Development of Activity and Employment

Any business which develops an extension or development program can benefit from an exemption from the set rate tax on salaries adjusted depending on the number of permanent jobs created and according to the zones, as follows:

Zones A and B

- 5 years for more than 150 permanent jobs;
- 4 years for 101 to 150 permanent jobs;
- 3 years for 51 to 100 permanent jobs;
- 1 year for 10 to 20 permanent jobs.

Zones C, D and E

- 5 years for more than 90 permanent jobs;
- 4 years for 51 to 90 permanent jobs;
- 3 years for 31 to 50 permanent jobs;
- 2 years for 11 to 30 permanent jobs;
- 1 year for 5 to 10 permanent jobs.

Businesses can also benefit from exemption from the set rate payroll tax for expatriate staff responsible for carrying out a training program for Congolese local managers and supervisors for management positions and their access to positions of authority. The exemption period cannot be more than three years.

2.2.5.4 Incentives for Reinvestment of Profits

All companies covered by the scope of application of this Code benefit from:

- A 50 % exemption from the tax due on the basis of industrial and commercial profit (BIC);
- The exceptional amortisation provided for by the General Taxation Code for set assets acquired through this reinvestment;

- Exemption from registration duties for capital increase deeds.

2.2.5.5 Incentives for Research and Technological Innovation

Any company which develops technological innovation has the right to a tax deduction of one third of the costs incurred for the acquisition or enhancement of the said innovation, of the taxable income on the industrial and commercial profit or on corporation tax, in the financial year during which the innovation is introduced. Under this Code any company which fulfils at least one of the following conditions is considered to be a company developing innovation:

- Investing at least 1 % of its turnover in research in the form of a contract with a Congolese research company or body;
- Presenting an investment program aimed at using the results of research of a Congolese company, a Congolese body or a Congolese researcher;
- Businesses which carry out research and development are eligible for the incentives for technological innovation scheme under certain conditions, which will be set by decree;
- Businesses which implement training program contracts with universities, institutes, specialised schools, consultancies and design and engineering offices, with a view to hiring staff, are also eligible for incentives for technological innovation schemes, subject to conditions which will be set by decree.

2.2.5.6 Incentives for Establishment in Less Developed Economic Zones

Under this Code, ZEMODs are the C, D and E Zones. Companies which establish themselves in economically less developed zones, in addition to the advantages provided for under Articles 21 and 22 of this Code, benefit from:

- During the establishment period:
 - Exemption from amendment and registration duties for land which supports the investment.
- During the operation period and for a non-renewable period of ten years along with, if applicable, factory exit taxes on processed timber:
 - Deduction from the taxable income of the company of an amount that cannot be carried over, equal to a percentage of internal transport costs for raw materials, semi-finished products and non-reusable packaging. This percentage is set as follows:
 - 20 % for companies based in Zone C;
 - 40 % for companies based in Zone D;

- 60 % for companies based in Zone E.

2.2.5.7 Incentives for Establishment in Priority Development Zones

When they invest more than twice their capital stock, businesses which establish themselves in ZEMODs, or any other priority development zone designated by the Government according to the development strategies at that time, benefit from the following advantages:

- Granting, as of right, of the advantages of the General Scheme or the SME Scheme, as applicable;
- Stabilisation of the legal and taxation scheme for ten years;
- Freedom to hire and free movement, as a priority, of Congolese labour;
- Free choice of suppliers and service provision and free choice of methods for despatching products to their place of embarkation;
- Priority in the use of hydraulic, electric and other resources needed for operational purposes.

The benefit period cannot be more than ten years. However, businesses which extend their activities into priority development zones are accredited, subject to this activity being the subject of separate accounting, independent of the business' other activities and to this separate accounting enabling this new activity to be individualised.

2.2.5.8 Incentives for Companies to Export

For the year of the said export, any business whose exported finished or semi-finished products have been processed in Congo, benefits from:

- Full or partial exemption from export duties and taxes as well as, if applicable, factory exit taxes on processed timber;
- Deduction from the company's taxable income of an amount that cannot be carried over, equal to the percentage of turnover relating to exports during a financial year, with respect to the company's pre-tax turnover. The deduction cannot however apply above a 25 % level for export turnover as a percentage of overall turnover;
- The special temporary admission scheme provided for under Article 207 of the Customs Code for equipment;
- The normal temporary admission scheme provided for under Articles 202 to 206 of the Customs Code for raw materials and packaging.

2.2.6 Potash Investment Agreement

In order to carry out the Kouilou Potash Project, MagMinerals will comply with the current legal framework of the ROC. To that end, MagIndustries, MagMinerals Potasses Congo and the Government of the ROC have signed a Potash Investment Agreement (PIA). The PIA sets out the legal framework and the conditions under which the project will operate. The most relevant aspects of the PIA, with regards to the ESIA, are presented hereunder.

2.2.6.1 Exploitation Works Programme, Transportation and Processing of Extracted Minerals

The PIA stipulates that exploitation works, processing of the minerals, storage and transportation of the minerals to the potash plant and, finally, their transformation into marketable products will be performed in accordance with the PIA, the applicable legislation, good international mining practices, in particular with respect to health, safety, hygiene and the protection of the environment.

2.2.6.2 Operation of the Pipeline and Supply of Water

The PIA describes the Operating Company's right to operate a water pipeline under its responsibility and at its own expense and risks in accordance with the PIA, the applicable legislation, good industry practice, in particular with respect to safety and respect for the environment.

The Operating Company has the right to carry out the works required to supply enough water for its personnel, the implementation of the Project, the Project facilities and activities. The exploitation of water resources by the Operating Company will be free of charge and tax-free at all times, in compliance with good industry practices, in particular with respect to the protection of the environment.

The Operating Company may also acquire its water supplies from any totally or partially State-owned company, in which case the State guarantees the supply of enough drinking or industrial water for the implementation of the Project and the Project activities, at non-discriminatory tariffs and conditions.

2.2.6.3 Training of the Personnel

The Operating Company will implement a training and promotion programme for Congolese nationals and/or residents who form part of the personnel so as to allow

them to gain the necessary experience to hold down management positions within the Operating Company and to ensure their promotion based on equal qualification, expertise and experience.

In accordance with the Mining Code, an annual fixed lump sum shall be discharged for the benefit of the general administration of the mines for the professional development of mining inspectors and auditors.

2.2.6.4 Priority Employment of Congolese Personnel

Agreements on hiring, dismissal and remuneration are provided in the PIA. The Operating Company will also ensure that its affiliated companies and subcontractors will:

- Employ Congolese nationals and/or residents in priority, subject to the availability of Congolese personnel having the adequate training, competence and experience;
- Progressively replace the expatriate personnel by Congolese nationals and/or residents having acquired the same training and experience as the expatriate personnel, subject to the availability of Congolese personnel having adequate training and competence; and
- Provide medical and housing assistance for the personnel, in compliance with the applicable legislation.

2.2.6.5 Protection of the Environment and Cultural Heritage

Protection of the Environment

The PIA requires that an ESIA be conducted by the Operating Company and validated by the State. The Operating Company will also:

- Take appropriate measures to protect the environment;
- Dispose of derivative substances in strict accordance with applicable legislation;
- Carry out the Project activities in accordance with the standards accepted in the mining, industrial and port sectors;
- Develop a Closure and Rehabilitation Plan for the Project.

The Operating Company is authorised to book a provision for the decommissioning of an annual fixed sum which shall be ordered by the Board of Directors and deductible from the net operation results calculated before income tax deductions.

Cultural Heritage Protection

All treasures, archaeological wealth and other elements protected under the applicable legislation and discovered within the context of Project activities are, and will remain, the exclusive property of the State. It was agreed that such discoveries will be subject to an immediate notification by the Operating Company to the Authority that the State has appointed.

2.2.6.6 Infrastructure

Access to the infrastructure may be subject to specific agreements with competent legal entities. With regards to railway and port infrastructure, a Port Contract and a Railway Access Contract were signed.

The Operating Company has a free access and the right to use all existing infrastructure necessary for the implementation of the Project activities.

Infrastructure required for the Project which will be implemented by the Operating Company will be the property of the Operating Company unless otherwise stated.

In order to avoid any ambiguity, the Project facilities and infrastructure will not be subject to the designation of public works. Related administrative law regulations, in particular with respect to public land ownership and responsibility, will not apply to the Project and to its infrastructure.

2.2.6.7 Administrative, Land and Mining Warranties

The State owns the land situated in the Mengo area which is required for the purpose of the implementation of the Project and of its infrastructure. The Operating Company has however the exclusive right to occupy, use and explore the area and any other land which is required for the implementation of the Project activities, in compliance with applicable legislation. The Operating Company will have the total ownership of the minerals extracted as well as the derivative substances originating from the potash plant.

All authorisations and permits required for the Project facilities shall be issued within 60 days from the filing of the request, to the extent necessary, to any company involved in the construction of these facilities. This includes the approval of the ESIA, which was submitted to the Ministry of Tourism and Environment and the Ministry of Mines, Mining Industries and Geology in July 2008. 60 days from signature of the PIA, the ESIA is deemed approved. An approval document will nonetheless be sought.

The terms of occupancy of the sites, the possible movement and expropriation of the inhabitants whose presence in the mining and industrial zones may hinder the Project activities are defined in the PIA.

The State gives to the Operating Company the rights required for the implementation of the Project and the carrying-out of the Project activities in the mining and industrial zones as well as in the port zone.

2.2.6.8 Freedom of Employment

The Operating Company has the freedom to employ expatriate personnel for the purposes of Project activities subject to the provisions of the Article pertaining to the priority employment of Congolese personnel. Authorisations and permits required for expatriate personnel will be issued by the relevant Authorities, in compliance with applicable legislation.

2.2.6.9 Lack of Obstruction to the Proper Functioning and Operation of the Project Facilities and Equipment

The State will cooperate with the Operating Company to fight the illegal exploitation of natural resources, animal or vegetable, in all the zones covered by the Project activities. These provisions will apply to all affiliated companies and subcontractors.

2.2.6.10 Authorisations

All authorisations, rights of way and administrative measures required for the implementation and operation of the Project, the Project activities and the rights resulting from the PIA, will be granted and set up as soon as possible, in compliance with the conditions provided for in the PIA and those set out in the applicable legislation.

2.2.6.11 Housing and Ancillary Facilities

The PIA allows the Operating Company to own, maintain and operate:

- A base camp and other housing to lodge employees. The health, hygiene and safety conditions of such camp and housings will comply with the applicable legislation;
- A store for the sale of food, drinks and other consumables for personal purposes and for exclusive consumption by the employees. The sale of merchandise will be performed according to the applicable legislation;

- A restaurant for the employees. The sale of meals will be tax-free and in accordance with the applicable legislation;
- A medical facility providing medical assistance to the employees built according to international standards;
- An education infrastructure for the local communities as well as any cultural and leisure infrastructure to answer the needs of the local community.

2.2.6.12 Tax Provisions relating to Benefits Available to Companies

The Operating Company will have a tax exemption period.

On the expiry of the exemption period, the Operating Company will constitute a provision for the protection of the environment pursuant to Article 162, Paragraph 5 of the Mining Code. Such provision shall not exceed USD 2 M per accounting year (see Closure and Rehabilitation Plan). Payments of 2.5 % of the net earnings from the marketing of the marketable products calculated after the payment of corporate income tax shall be made to a special account. The amounts drawn on this account will be used solely for the purposes of financing the protection and rehabilitation of the environment.

2.3 International Conventions, Protocols and Agreements relevant to the Project

Some international conventions, involving the protection of the environment, are implemented in Congo. These concern the marine, wetland and atmospheric environments, protection of wildlife and biodiversity, inland water resources, waste and chemicals, as well as cultural heritage (Table 2.7).

2.3.1 International Conservation Areas

There are two types of international conservation areas in ROC, *i.e.* Ramsar sites and Important Bird Areas (IBAs) (Section 8.7 in Chapter 8).

The five Ramsar sites in ROC are Conkouati-Douli, Cayo-Loufoualéba, *Grands affluents*, Libenga, Lac Télé Community Reserve. The Cayo-Loufoualéba site is the only one located, although only partially, in the south-east of the Study Area.

Among the six IBAs in ROC, none is located in the Study Area. Three are located in national parks, one in a faunal reserve and one in a biosphere reserve. The latter is the nearest from the Study Area, about 30 km away to the north-west.

Table 2.7 International Conventions, Protocols and Agreements relevant to the Project.

Convention ¹	Main Characteristic	Congo's Participation ²
MARINE ENVIRONMENT		
<i>Pollution by ships</i>		
United Nations Convention on the Law of the Sea (UNCLOS) (Montego Bay, December 10, 1982)	Defines a comprehensive regime of law for the world's oceans and seas and establishes detailed rules concerning all uses of the oceans and access to their resources (United Nations, 2003).	S = December 10, 1982
Marpol Convention, Prevention of Marine Pollution from Ships (London, November 2, 1973), amended by the Protocol of the International Convention for Prevention of Pollution from Ships (London, February 17, 1978)	Aims to preserve the marine environment and to eliminate intentional pollution by oil and other harmful substances and to minimise accidental discharge of these substances into the marine environment (Ministry of Foreign Affairs and International Trade of Canada, 2002).	AA = Law no. 06/83 (Loi n° 06/83) dated January 27, 1983
Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan, March 23, 1981)	Aims to strengthen national capacities with a view to assessing the values and threats to marine living resources and their ecological role in the oceans, and to strengthen regional coordination mechanisms and to build an effective regional framework for action (UNEP, 2005).	AR = Law no. 021/85 (Loi n° 021/85) dated July 19, 1985 R4 = December 19, 1987
Protocol concerning Cooperation in Combating Pollution in Cases of Emergency (Abidjan, March 23, 1981)	Aims to protect the marine and coastal environment and the related inland waters, falling within the jurisdiction of the States of the West and Central African Regions, against pollution in cases of emergency (Ministère de l'Économie forestière et de l'Environnement de la République du Congo, 2004).	AR = Law no. 021/85 (Loi n° 021/85) dated July 19, 1985 R = December 19, 1987
1992 Brussels Convention, International Compensation Fund for Damage due to Oil Pollution	Aims to provide adequate, prompt and effective compensation for people who are victims of damage due to oil spillages from oil tankers (European Union Portal, 2006).	AA = Law no. 02/2002 (Loi n° 02/2002) dated July 1, 2002 A = July 29, 2002
International Convention of 1992 on Civil Liability for Oil Pollution Damage (CLC Convention, 1969)	Its objective is to guarantee fair compensation for people suffering oil pollution damage resulting from maritime accidents involving ships carrying oil. It places the liability on the owner of the ship from which the oil escaped or was discharged (IMO, 1999).	AA = Law no. 19/2001 (Loi n° 19/2001) dated July 29, 2002 A = July 29, 2002
International Convention on Maritime Search and Rescue of 1979 (SAR Convention)	Its main objective is to facilitate cooperation between governments and all those involved in search and rescue operations at sea by developing an international search and rescue plan. Through the Convention, the oceans have been divided into various search and rescue regions and, in each of these, the countries have endeavoured to define each country's areas of responsibility (IMO, 1999).	AA = Law no. 17/2001 (Loi n° 17/2001) dated July 1, 2002 A = July 29, 2002
Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) of May 12, 1954 and amendments of April 11, 1962 and of October 21, 1969	The 1954 Convention prohibited the discharge of waste contaminated by oil within a certain distance from land and in "special areas" whose environment was especially vulnerable. In 1962, these limits were extended by means of an amendment. The amendment of 1969 incorporates the "load on top" method developed by the oil industry, which enables oil to be saved and, at the same time, pollution to be reduced (IMO, 1998).	A = December 10, 1985
<i>Safety</i>		
International Convention for the Safety of Life at Sea (SOLAS Convention, 1974)	The main objective is to set the minimum standards for the construction, equipment and operation of ships so that they are compatible with safety. Flag states are responsible for ensuring that ships under their flag comply with the requirements of the Convention and a certain number of certificates have to prove that this has been done (IMO, 1999).	A = September 10, 1985
Convention on the 1972 International Regulations for Preventing Collisions at Sea (COLREG Convention, 1972)	Aims to update and replace the 1960 rules for preventing collisions at sea which were appended to the SOLAS Convention adopted in the same year (IMO, 1999).	A = Law no. 11/83 (Loi n° 11/83) dated January 27, 1983
ATMOSPHERIC ENVIRONMENT		
<i>Pollution</i>		
The Vienna Convention for the Protection of the Ozone Layer, March 22, 1986	Aims to establish a framework for cooperation, the development of policies and the taking of measures agreed, in order to protect human health and the environment against adverse effects resulting from, or likely to result from, human activities which modify, or are likely to modify, the ozone layer (Environment Canada, 2006).	AA = Law no. 01/94 (Loi n° 01/94) dated March 1, 1994 concerning accession
Protocol on Ozone Depleting Substances (Montreal Protocol) (September 19, 1985) and its two amendments:	Aims to take precautionary measures to control equitably all global emissions of ozone depleting substances (ODSs), with the ultimate objective of eliminating them. The Parties must gradually eliminate the production and consumption of ODSs, as well as reduce and cease trade in these substances (Environment Canada, 2006).	S = August 15, 1988 AR = Law no. 03/94 (Loi n° 03/94) dated March 1, 1994
London Amendment (June 29, 1990)	It accelerates the calendar for reduction of chlorofluorocarbons (CFCs) and halons produced and consumed, by taking 1989 as the reference year. It extends the field of application of the protocol to new substances which have been shown to be harmful to the ozone layer. In view of the difficulties encountered by developing countries with regard to ratification of the Montreal Protocol, it sets up a mechanism for technical and financial support for some countries (Sénat français, 2006).	LR = November 16, 1994
Copenhagen Amendment (November 25, 1992)	Carries out new adjustments with regard to substances which are already controlled. Extends the scope of application of the Montreal Protocol to other substances (Sénat français, 2006).	
United Nations Framework Convention on Climate Change (UNFCCC) (Rio de Janeiro, June 1992)	Aims to stabilise concentrations of greenhouse gases in the atmosphere at a level which prevents any dangerous anthropogenic interference with the climate system. This level must be achieved within a timeframe sufficient to allow ecosystems to be able to adapt naturally to climate change, to ensure food production is not threatened and to enable economic development to proceed in a sustainable manner (Environment Canada, 2004).	AA = Law no. 26/96 (Loi n° 26/96) dated June 25, 1996 A = October 14, 1996

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Table 2.7 (cont.) International Conventions, Protocols and Agreements relevant to the Project.

Convention ¹	Main Characteristic	Congo's Participation ²
PROTECTION OF WILDLIFE AND BIODIVERSITY		
Convention relating to the Preservation of Flora and Fauna in their Natural State, especially in Africa (November 8, 1933, London)	The Convention's objective is the preservation of the natural fauna and flora in certain parts of the world, especially in Africa, by creating national parks and reserves and by controlling hunting and the capture of certain species (Centre d'échange de la République de Guinée, 2005).	AR = Law dated November 8, 1937 R = Decree dated May 31, 1938
African Convention on the Conservation of Nature and Natural Resources (Alger, September 15, 1968)	Its objective is to enhance protection of the environment, foster the conservation and sustainable use of natural resources and to harmonise and coordinate policies in these fields with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programs (IUCN, 2002).	AR = Law no. 27/80 (Loi n° 27/80) dated April 21, 1980 R = Decree dated April 29, 1981
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973	Aims to control the trade in species of wild fauna and flora which are, or may be, endangered as a result of international trade. It applies to specimens which are dead or alive as well as to parts of them and to products derived from them (Environment Canada, 2004).	AR = Law no. 34/82 (Loi n° 34/82) dated July 7, 1982 R = Decree no. 82/050 (Décret n° 82/050) dated November 2, 1982
Agreement on Cooperation and Dialogue between Central African States on the Conservation of Wild Fauna (Libreville, April 16, 1983)	Aims to strengthen the combat against international trade in endangered species of wild fauna, by stressing their role in natural ecosystems. This Agreement does not contain any specific obligation for the States; it is limited to reaffirming the importance of wild fauna, in particular its aesthetic, scientific, economic and recreational value, which makes it a vital resource (Doumbé-Billé, 2001).	AR = Law no. 047/84 (Loi n° 047/84) dated September 7, 1984
International Tropical Timber Agreement, November 18, 1983	Provides a framework for cooperation and consultation between countries producing and consuming tropical timber. Aims to develop and diversify international trade in tropical timber and to improve the tropical timber market situation. Encourages and supports research work with a view to improving forest management and use of timber. Encourages development of national policies for the protection of tropical forests and the preservation of the ecological balance (UNCTAD, 2002).	AR = Law no. 41/84 (Loi n° 41/84) dated September 7, 1984 R = March 28, 1985
Convention on Wetlands of International Importance (Ramsar Convention, 1971)	Aims to ensure the rational and sustainable use of resources in wetlands, particularly by designating wetlands of international importance, and to guarantee the conservation of these resources now and for the future (Environment Canada, 2002).	AR = Law no. 28/96 (Loi n° 28/96) dated June 25, 1996 R = June 18, 1998
Convention on the Conservation of Migratory Species of Wild Animals (CMS), Bonn, 1979	The CMS focuses its action on special lists of migratory species which are either endangered or under threat. As a priority, it seeks to protect the species and pays particular attention to habitats. Each Party agrees to prohibit or restrict the catch of migratory species, to restrict the degradation of habitats, introductions of invasive exotic species and any other activity or condition which might impede migrations or interfere with migratory species, and to conclude distinct international agreements concerning certain special migratory species or certain groups of species whose range and migratory paths extend into areas under the Party's jurisdiction (CITES Secretariat, 2006).	AR = Law no. 14/99 (Loi n° 14/99) dated March 3, 1999
United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, June 17, 1994)	Aims to combat desertification and alleviate the effects of drought in countries seriously affected by this problem, in particular in Africa, through international cooperation and effective measures at all levels. The combat against desertification involves actions aimed at preventing and/or reducing land degradation; at rehabilitation of partly degraded land; at reclamation of desertified land (Europa, 2004).	AR = Law no. 8-99 (Loi n° 8-99) dated January 8, 1999 LR = July 12, 1999
Convention on Biological Diversity (CBD) (Rio de Janeiro, June 5, 1992)	The most global convention in terms of its approach to conservation of plant, animal and microbial species. The objectives are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of certain utilisations (CITES Secretariat, 2006).	AA = Law no. 29/96 (Loi n° 29/96) dated June 25, 1996 LR = August 1, 1996
Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (1994)	Since the conservation of wild fauna and flora is essential for the overall maintenance of biological diversity in Africa and that they are vital for the sustainable development of the African Continent, the agreement aims to eliminate illegal trade by establishing a permanent task force. The main functions are facilitating cooperative activities among the National Bureaux, investigating violations of national laws, collecting, processing and disseminating information pertaining to illegal trade (Centre de gravité de droit de l'environnement, 2005).	AA = Law no. 82/96 (Loi n° 82/96) dated August 28, 1996
Cooperation Agreement between the Governments of the Central African Republic, the Republic of Cameroon and the Republic of Congo relating to Setting Up the Sangha Tri-National Park	Aims at cooperation with a view to setting up and managing a complex of transfrontier protected areas called the Sangha Tri-National Park, so as to preserve the forestry ecosystem of the Congo Basin and to ensure good coordination of conservation actions taken on either side of their common international borders. The forestry ecosystem of the Congo Basin not only constitutes a rich universal heritage, but also an important economic development centre and an irreplaceable living environment for the river communities (COMIFAC [Central Africa Forests Commission], 2000).	R = July 29, 2002
INLAND WATER RESOURCES		
Niamey Convention, March 1960, Inter-African Committee for Hydraulic Studies (ICHS)	n. a.	P = 1967

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Table 2.7 (end) International Conventions, Protocols and Agreements relevant to the Project.

Convention ¹	Main Characteristic	Congo's Participation ²
WASTE		
Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, January 30, 1991	Defines the nature of the waste concerned, the fields of application of the Convention and the obligations along with inter-african cooperation in this area. Aims to improve and ensure ecologically rational management of hazardous waste by advocating the creation of a secretariat to act as intermediaries between the Parties, the creation of a renewable fund to deal with emergency situations and the establishment of a Conference of the Parties to examine the application of the Convention on a permanent basis (NOE, 2006).	AA = Law no. 27/96 (Loi n° 27/96) dated June 25, 1996 LA= March 19, 1997
CHEMICALS		
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, September 11, 1998	Aims to promote shared responsibilities and common action amongst the Parties in the international trade of certain hazardous chemicals and pesticides. The Prior Informed Consent Procedure (PIC) enables countries to prevent shipments of certain hazardous chemicals from coming into their territories, if they have not explicitly authorised their import (FAO, 2005).	S = September 10, 1998
Stockholm Convention on Persistent Organic Pollutants (POP), May 23, 2001	Its objective is to control, reduce or eliminate discharges, emissions or losses of persistent organic pollutants (POPs). Three types of measures are mandatory, depending on the nature of the substances: elimination of their production and use, considerable restriction of their use and, in the case of substances produced unintentionally during incineration or treatment processes, reduction of their total annual emissions (Environment Canada, 2003).	S = December 4, 2001
CULTURAL HERITAGE		
Convention Concerning the Protection of the World Natural and Cultural Heritage (World Heritage Convention, WHC) (Paris, November 16, 1972)	Its objective is to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods (NOE, 2006).	AR = Law no. 19/86 (Loi n° 19/86) dated July 19, 1985 R = December 10, 1987
GOVERNANCE		
"Extractive Industries Transparency Initiative" (EITI)	The EITI supports improved governance in resource rich countries through the full verification and publication of company payments and government revenues from oil, gas and mining. The EITI aims to build partnerships between the stakeholders in developing countries in order to increase the accountability of governments regarding the conversion of large revenues from extractive industries for economic growth and poverty reduction.	Candidate Country since February 22, 2008.

¹ The conventions applicable to Congo are taken from Emmanuel-Adouki, 2004.

² Signature = S; Ratification = R; Accession = A; Authorisation for Ratification or Accession = AR AA; Letters of Ratification = LR; Participation = P; Letters of Accession = LA

n. a.: information not available.

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2.3.2 OECD Anti-Bribery Convention

The Organisation for Economic Co-Operation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is an anti-bribery convention of which Canada is a member.

In this regard, MagIndustries has an existing internal policy on Code of Conduct and Business Ethics, dated Nov 2006. The Company also has a Corporate Governance and Nominating Committee. This policy will be reviewed in the context of the OECD Convention and any changes considered necessary by the Committee will be addressed at the next Board Meeting, scheduled for May 2009.

2.3.3 Extractive Industries Transparency Initiative

Congo is also interested in the implementation of an international initiative, the Extractive Industries Transparency Initiative (EITI). The EITI supports improved governance in resource rich countries through the full verification and publication of company payments and government revenues from oil, gas and mining. The EITI aims to build partnerships between the stakeholders in developing countries, in order to increase the accountability of governments regarding the conversion of large revenues from extractive industries for economic growth and poverty reduction.

According to EITI (2008), Congo was accepted as a Candidate Country on February 22, 2008. The country has until March 9, 2010 to undertake validation to become Compliant.

The GOC announced its intention to join the EITI in June 2004. Since October 2007, real progress has been made in the ROC. The three stakeholder groups have started to co-operate in a constructive way, with sufficient guarantees for civil society to participate freely and independently. An Executive Committee and a Consultative Committee were set up and its members appointed on October 4, 2007. A work plan was finalised and accepted on December 28, 2007.

The Executive Committee has recently extended the work plan to cover a period of three years 2008 – 2010. The most recent work plan and other EITI documents will soon be available at www.mefb-cg.org.

EITI implementation is governed by a multi-stakeholder Executive Committee. It has 25 members: six representing civil society, six the industry and 13 the government. The President of the Executive Committee is the Head of the Hydrocarbons Unit in

the Ministry of the Economy, Finance and Budget, Mr. Florent Michel Okoko. The Vice Presidents are the Head of PWYP Congo (civil society) and the Representative of Total (industry). The Executive Committee is supported by a multi-stakeholder Consultative Committee. The day-to-day implementation of the work program is ensured by an Executive Secretary.

The implementation of EITI must be consistent with the criteria below:

- 1) Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies to a wide audience in a publicly accessible, comprehensive and comprehensible manner;
- 2) Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards;
- 3) Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified;
- 4) This approach is extended to all companies including state-owned enterprises;
- 5) Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate;
- 6) A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

While EITI in ROC is geared towards the oil sector, as this is by far the largest mineral resource sector in the country, MagIndustries will continue to follow the progress of the validation process and to offer appropriate support and encouragement to the activities outlined in the workplan, and as outlined in the EITI Business Guide: *How Companies Can Support Implementation*. MagIndustries will also consider reporting its material mining payments in a format compatible with EITI reporting, until EITI is implemented in the country. M. Okoko, the EITI National Coordinator and Focal Point, was one of the officials involved in the negotiation of the PIA, and MagIndustries representatives have met with him in that context.

2.4 Authorisation Procedures and Permits

Taking into consideration the institutional and legal frameworks, an overview of the permits and authorisations required within the framework of the Project has been prepared (Table 2.8). The final list of required permits and authorisations will be

dependent on the project activities to be carried out; and conditions and administrative procedures to obtain these will be agreed upon with the respective Ministries involved. As outlined above, permits will be granted within 60 days of the application under the terms of the PIA.

Table 2.8 List of Permits and Authorisations Required for the Project.

Timing	Required Permit	Ministry in Charge	Application Submitted	Authorisation Granted	Comment
	Construction of industrial facilities	Ministry for Industrial Development and Promotion of the Private Sector Industry Department		2008-09-02	Temporary authorisation
	Construction of base camp and other facilities	Ministry of Mines, Mining Industries and Geology Ministry of Construction, Urban Development and Housing	Under preparation		
	Construction and operation of a water well near the Mengo plant and all related facilities	Ministry of Energy and Hydraulics Hydraulics Department		2008-09-25	Temporary authorisation
	Use or removal of vegetation and trees in soil or subsoil in the mining, industrial and port areas	Ministry of Mines, Mining Industries and Geology Ministry of Forestry Economy	2008-09-23	2008-08-20: Authorisation for clearance of 21 ha. 2008-12-01: Authorisation for an additional 78.81 ha at plant site.	Other areas will be submitted as they are required.
	Extension of Mengo base camp	Ministry of Mines, Mining Industries and Geology Ministry of Construction, Urban Development and Housing	2008-09-23	2008-10-29	
	Authorisation for service providers to drill production wells (<i>autorisation d'exercer dans le domaine minier</i>)	Ministry of Mines, Mining Industries and Geology	2008-10-13	2008-10-31	
	Import, storage and use of radioactive material required for drilling operations	Ministry of Mines, Mining Industries and Geology	2008-10-24	2008-10-31	Additional request for the construction of the safe (sent on Dec. 2, 2008)
	Authorisation to start the drilling works	Ministry of Mines, Mining Industries and Geology	2008-10-09	2008-10-31	
	Use of roads and communication infrastructure for transporting oversize cargo or equipment and other heavy loads	Ministry of Transport and Civil Aviation			

Table 2.8 (cont.) List of Permits and Authorisations Required for the Project.

Timing	Required Permit	Ministry in Charge	Application Submitted	Authorisation Granted	Comment
	Construction of special branch tracks to connect: - the potash terminal in the port to the CFCO railway at the Pointe-Noire station; - the plant to the main CFCO railway line	Ministry of Transport and Civil Aviation			
	Construction and operation of facilities necessary for the independent production of energy including: - the power stations; - the power lines from Mengo to the port and to the pumping station on the Loémé River	Ministry of Energy and Hydraulics Energy Department			
	Construction and operation of a freshwater pipeline from the pumping station on the Loémé River to the Mengo site	Ministry of Tourism and Environment			Need approval of the ESIA – an environmental compliance certificate counts as an authorisation
	Construction and operation of a submarine brine effluent pipeline of 1.1 km from the shore	Ministry of Tourism and Environment			Need approval of the ESIA – an environmental compliance certificate counts as an authorisation
	Construction and operation of a brine effluent pipeline from the plant to the sea – the route following the CFCO railway line –	Ministry of Tourism and Environment			Need approval of the ESIA – an environmental compliance certificate counts as an authorisation
	Authorisation to discharge or retain liquid and solid waste on-site in keeping with the environmental management plan	Ministry of Tourism and Environment			Need approval of the ESIA – an environmental compliance certificate counts as an authorisation

Table 2.8 (end) List of Permits and Authorisations Required for the Project.

Timing	Required Permit	Ministry in Charge	Application Submitted	Authorisation Granted	Comment
	Construction and operation of roads inside the mining, port and industrial areas	Ministry of Mines, Mining Industries and Geology Ministry of Transport and Civil Aviation			
	Construction of all the facilities for the industrial activities – treatment and exploitation –	Ministry of Construction, Urban Development and Housing			
	Construction and operation of the port facilities for exporting products	Ministry of Construction, Urban Development and Housing Ministry of Maritime Transport and the Merchant Navy			
2010	Authorisation to discharge sodium chloride in the spent caverns – authorisation to discharge brine effluent from the plant to sea	Ministry of Tourism and Environment Ministry of Mines, Mining Industries and Geology			
	Pumping station – water extraction from the Losmé River and all related facilities	Ministry of Energy and Hydraulics			
	Operation of gas turbine	Ministry of Hydrocarbons			

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