



Official Document Of the Democratic Republic of Congo

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

The Constituent and Legislative Assembly, Transition Parliament has adopted,

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

TITLE 1: GENERAL

CHAPTER 1: DEFINITION OF TERMS, SCOPE OF APPLICATION AND BASIC PRINCIPLES

Section 1: Definition of terms and scope of application

Article 1: Definition of Terms

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

1. **Purchaser:** Any employee of a trading house which purchases gold, diamond or other mineral substances extracted by artisanal mining methods, who carries out his activities in the office of an authorized trader in accordance with the provisions of the present Code;
2. **Exploration and Exploitation Activities:** All services, supplies or works related to the mining sector which are directly connected with prospecting, exploration, mine and mineral substances exploitation, including development work, construction and infrastructure;
3. **Mines Authority:** All the public administration entities in charge of mines and quarries;
4. **Lease:** to rent for a fixed or indefinite period, without right to sublet, all or part of the rights relating to a mining right or quarry authorization in return for a payment agreed to by the lessor and the lessee;
5. **Prospecting Certificate:** An administrative instrument evidencing the declaration of adjudication of prospecting rights issued by the Mining Registry in accordance with the provisions of the present Code;
6. **Quarry:** Any deposit of mineral substances classified as quarries suitable for open cast mining and/or any plant for the processing of products relating to such exploitation located within the Perimeter of the

quarry to transform them into products for sale, including installations, equipment and fixtures used in the exploitation process.

7. **Artisanal Exploitation Card:** the document authorizing any person of Congolese nationality in whose name it is issued, to extract and concentrate the mineral substances by using artisanal tools, methods and processes pursuant to the provisions of the present Code;
8. **Trader's card:** document issued pursuant to the provisions of the present Code, which authorises the person in whose name it is issued, to buy gold, diamonds or any other substances classified as mines, from persons holding a valid artisanal miners' card, and to resell these substances to authorized traders;
9. **Registry survey map:** An official topographical map indicating the limits of each mine or quarry Perimeter in force or those whose application is being processed, kept up to date for each province and zone by the Mining Registry pursuant to the provisions of Chapter II of Title I of the present Code;
10. **Authorized Trader:** Any person authorized to purchase mineral substances extracted by artisanal mining methods from traders or artisanal miners, for the purpose of reselling them locally or exporting them in accordance with the provisions of the present Code;
11. **Date of commencement of effective exploitation:** date of delivery of the first load of products for sale regardless of the nature of the commercial sale, with the exception of samples sent abroad for analysis and assays;
12. **Diversion of ores:** any change in the destination of mineral substances which belong to third parties, by any means of transportation whatsoever;
13. **Development and Construction:** Any activity by means of which a person carries out, via land development works, construction of infrastructure, setting up and testing of equipment, the development of his mining or quarry exploitation project in order to ensure its commercial viability.
14. **Rights:** Any right to carry out exploration and/or exploitation of mineral substances classified as mines pursuant to the provisions of the present Code. Exploration Permits, Exploitation Permits, Tailings Processing Permits and Small-scale Mining Exploitation Permits are mining rights.
15. **Quarry Rights:** Any right to carry out exploration and/or exploitation of mineral substances classified as quarries pursuant to the provisions of the present Code. The Quarry Product Exploration Authorisation, the Temporary Quarry Exploitation Authorisation and the Permanent Quarry Exploitation Authorisation are quarry rights;
16. **Processing entity:** Any entity carrying out mineral processing;
17. **Transformation entity:** any entity carrying out transformation of mineral substances;
18. **State:** The Democratic Republic of Congo, including its administrative subdivisions, as well as its public entities.
19. **Environmental Impact Study, acronym EIS:** A priori scientific analysis of the foreseeable potential effects a given activity will have on the environment, as well as the analysis of the acceptable levels thereof and the mitigating measures to be taken to ensure the conservation of the environment, subject to the best technology available, at a viable economic cost;

20. **Exploitation:** Any activity by means of which a person carries out, from an identified deposit, and by means of surface and/or underground works, extraction of mineral substances from a deposit or a non-naturally occurring deposit and, if applicable, processing thereof in order to use them or sell them;
21. **Artisanal Exploitation:** Any activity by means of which a person of Congolese nationality carries out extraction and concentration of mineral substances using artisanal tools, methods and processes, within an artisanal exploitation area limited in terms of surface area and depth up to a maximum of thirty metres.
22. **Small -scale mining exploitation:** Any activity by means of which a person carries out permanent small-scale exploitation, requiring a minimum amount of fixed installations, by using semi-industrial or industrial processes, after a deposit has been found;
23. **Tailings Exploitation:** Any activity by means of which a third party, whether an individual or a legal entity, extracts substances from an non-naturally occurring deposit, in order to process them and use them or sell them.
24. **Deposit:** Any naturally- occurring mineral deposit which can be exploited at a profit under the economic conditions of the time.
25. **Artificial deposit:** Any non-naturally occurring deposit which can be exploited at a profit under the economic conditions of the time.
26. **Artificial Substances:** Any artificial concentration of mineral substances on surface deriving from the mine and/or tailing exploitation resulting from mineralogical or metallurgical processing;
27. **Geothermal deposit:** All naturally-occurring minerals classified at high or low temperature, from which energy can be obtained in thermal form, especially by means of the underground hot water and steam they contain;
28. **Mineral Deposit:** Any abnormal and naturally- occurring concentration of mineral substances on surface or deep in the earth's crust;
29. **Mine:** Any deposit or artificial deposit of mineral substances classified as mines, which can be exploited by means of open cast or underground mining, and/or any plant for the processing or transformation of the products of such exploitation located within the Perimeter of the mine, including the installations, movable equipment and fixtures used in the exploitation process.
30. **Ore:** Any rock containing one or more minerals made up of one or more chemical elements with economic value;
31. **Mineral:** Set of chemical elements forming a naturally-occurring substance, simple or complex, inorganic or organic, generally in a solid state, and in a few exceptional cases, in a liquid or gaseous state;
32. **Minister:** The Minister in charge of mines and quarries;
33. **Trader:** Any individual of Congolese nationality who purchases and sells mineral substances from artisanal exploitation in accordance with the provisions of the present Code;
34. **Non-resident:** A person who is not a resident of the Democratic Republic of the Congo;
35. **Mining operation:** Any exploration and/or exploitation of mineral substances;

36. **Public entity in charge of the valuation:** the technical service of the public administration, administrative and financially autonomous, which carries out the valuation of precious and semi-precious mineral substances.

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

38. **Precious stones:** Precious mineral substances consisting of one or more chemical elements and possessing the special properties which render them a product of high market value. These include: diamond, emerald, ruby, sapphire, chrysoberyl and topaz;

39. **Person:** An individual or a legal entity;

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

41. **Environmental Management Plan of the Project, acronym EMPP:** Environmental specifications of the project consisting of a programme for the implementation and monitoring of measures contained in the EIS in order to eliminate, reduce and possibly offset the damaging consequences of the project on the environment;

42. **Products for sale:** Any mineral substances, in any form whatsoever, extracted for commercial purposes pursuant to mining and/or quarry exploitation right and/or any products obtained from these substances in the concentration, processing or transformation plants;

43. **Prospecting:** Any activity pursuant to which a person carries out exploratory work, by studying the information available, by close or remote observation, by taking and analysing samples found on surface, in sub-surface areas or in the water system, in particular by using geological and geochemical techniques, including various methods such as remote sensing, in order to discover indications of the existence of a mineral deposit for economic or scientific purposes;

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

45. **Mining Regulations:** Set of measures implementing the provisions of the present Code, enacted by Decree of the President of the Republic;

46. **Mine Tailings:** The sterile or material rejected from the mining exploitation or any solid or liquid residue deriving from mineralogical or metallurgical processing.

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

48. **Sub-contractor:** Any person supplying equipment or carrying out works and/or providing relevant services on behalf of the holder within the context of his mining activities pursuant to his Mining Title and, in particular, including the construction of industrial, administrative, socio-cultural and other types of infrastructure necessary for the project, as well as all other services directly related to the mining project.
49. **Mineral substance:** Any naturally- occurring inert or artificial substance containing one or more minerals in amorphous or crystalline form, solid, liquid or gaseous, of economic value. Quarry products are mineral substances within the meaning set forth under the present Code.
50. **National Territory:** The soil, sub-soil and waters comprising, as of June 30, 1960, the territory of the Democratic Republic of the Congo within the limits as of August 1, 1885, as modified by subsequent conventions, its territorial waters demarcated pursuant to Law No. 74-009 of July 10, 1974, its exclusive economic zone as well as its continental shelf.
51. **Quarry Titles:** The official certificates issued by the Mining Registry in accordance with the provisions of the present Code which evidence the existence of Quarry Authorizations. The Certificates of Exploration of Quarry Products, the Certificates of Permanent Quarry Exploitation and the Certificates of Temporary Quarry Exploitation are quarry titles.
52. **Mining Titles:** The official certificates issued by the Mining Registry in accordance with the provisions of the present Code which evidence the existence of mining rights. The Certificates of Exploration, the Certificates of Exploitation, the Certificates of Tailings Exploitation and the Certificates of Small-scale Mining Exploitation are mining titles.
53. **Holder:** Any person in whose name a mining or quarry right is granted and a mining title or a quarry title is issued in accordance with the provisions of the present Code, and who carries out, directly or through third parties, the operations authorized pursuant to his mining or quarry title. Nevertheless, the lessee is considered a holder.
54. **Processing:** Mineralogical and/or metallurgical process applied to ore extracted which leads to the obtaining of a mineral substance for sale.
55. **Transformation:** Any industrial process which changes the form and nature of a processed mineral substance in order to obtain finished or semi-finished products for sale.
56. **Artisanal Exploitation Area:** A geographical area, demarcated on surface and at depth by the Minister, and containing one or more Artisanal Exploitation deposits.

Article 2: Scope of application

The prospecting, exploration, exploitation, processing, transportation and sale of mineral substances are governed by the provisions of the present Code which apply only in its entirety and as a whole.

The artisanal exploitation of mineral substances as well as the sale thereof are also governed by the provisions of the present Code.

The preliminary geological work, exploration and extraction of liquid or gaseous hydrocarbons, as well as the activities or operations relating to thermal or mineral waters, are excluded from the scope of application of the present Code. They are governed by special laws.

Section II: Basic principles

Article 3: Ownership of the mineral substances

The deposits of mineral substances, including artificial deposits, underground water and geothermal deposits on surface or in the sub-soil or in water systems of the National Territory, are the exclusive, inalienable and imprescriptible property of the State.

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

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

Article 4: Classification of mineral deposits

Mineral deposits are classified as mines or quarries.

The following are classified as mines: deposits of mineral substances not classified as quarries, other than solid, liquid and gaseous hydrocarbons.

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

Notwithstanding the above classification, the President of the Republic may decide, on his own initiative or on the proposal of the Minister, and after having obtained the opinion of the Directorate of Geology of the Ministry of Mines, if applicable, to classify, declassify or reclassify a mine substance as a quarry product and vice-versa.

Article 5: Authorization for mining and quarry operations

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

Any person of Congolese nationality is authorized to engage in artisanal exploitation of mineral substances in the National Territory, provided that he is the holder of an artisanal miner's card, issued or granted by the relevant government entity in accordance with the provisions of the present Code.

Any person is authorized to sell mineral substances in the National Territory provided that he is the holder of a trader's card or an authorization as a trading house issued or granted by the relevant government entity in accordance with the provisions of the present Code.

Article 6: Prohibited areas

If national security, the safety of the population, the incompatibility of the mining and quarry activities with other existing or planned uses of the soil or sub-soil, as well as in the case that the protection of the environment so requires, the President of the Republic may, on his own initiative or on the proposal of the Minister, after

having obtained the opinion of the Mining Registry, declare an area to be off-limits for mining activities and/or quarry works.

The declaration of classification of an area as a prohibited area is without a fixed term. The Decree which includes the declaration is published in the Official Gazette.

The Mining Registry compiles and keeps up-to-date the map indicating the Prohibited Areas where mining activity and quarry works are forbidden, the largest scale being 1/200,000.

Mining or quarry rights which exist prior to the declaration of an area as a prohibited area continue in full force in terms of the rights they confer and the obligations they impose, pursuant to the provisions of the present Code.

Article 7: Reserved substances

If the safety of the population so requires, the President of the Republic may, by Decree, on the proposal of the Minister, after having obtained the opinion of the Geology Department, declare a mineral substance a 'reserved substance' which he subjects to special rules.

The decree, which classifies a mineral substance as 'reserved', shall specify the rules and provisions to which that substance is subject. It will be published in the Official Gazette.

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

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

Article 8: The role of the State and its institutions

The State will ensure the development of the mineral substances it owns by resorting, in particular, to the private sector in accordance with the provisions of the present Code. Its principal role is to promote and regulate the development of the mining industry by the private sector.

However, the State may, through expert organisations set up for that purpose, carry out exploration activities of the soil or sub-soil with the sole purpose of improving the geological knowledge of the National Territory, or for scientific purposes which do not require a mining or quarry right to be obtained.

The State may also, through public entities or expert organisations set up for that purpose, either by itself or in association with third parties, carry out an activity governed by the present Code. In such cases, the public entities and the expert organisations of the state specialising in mining matters shall be subject to the provisions of the present Code in the same way as private persons are.

Article 9: The President of the Republic

Pursuant to the provisions of the present Code, the President of the Republic has jurisdiction over:

- a) the enactment of the Mining Regulations in order to implement the present Code;
- b) Classify, declassify or reclassify mineral substances as mines or as quarry products, or vice-versa.
- c) Declare, classify or declassify an area as a prohibited area for mining activities or quarry works;
- d) Declare, classify or declassify a mineral substance as a 'reserved substance'.

e) Confirm the reservation of a deposit which is subject to tender pursuant to a Ministerial Decree;

The President of the Republic shall exercise the above powers by Decree made on his own initiative or on the proposal of the Minister, after having obtained the opinion of the Geological Department or the Mining Registry.

The exercise of the powers conferred on the President of the Republic under item a of the present article cannot be delegated.

The Decree of the President of the Republic is published in the Official Gazette.

Article 10: The Minister

Pursuant to the provisions of the present Code, the Minister has jurisdiction over:

- a) the granting or refusal of mining and/or quarry rights for mineral substances other standard construction materials;
- b) the cancellation of mining and/or quarry rights, the withdrawal of a holder's mining or quarry rights, the acknowledgement of the declarations of relinquishments of mining and/or quarry rights and the certification of the expiry of mining and quarry rights;
- c) the authorization of the export of unprocessed ores;
- d) the creation of artisanal exploitation zones;
- e) the granting and withdrawal of approval for authorized traders for the purchase of artisanal exploitation products;
- f) the supervision of the institutions, public or semi-public entities which carry out mining activities and quarry works;
- g) the reservation of deposits to be submitted for tender;
- h) the approval for the creation of mortgages;
- i) the acceptance or refusal of the extension of a mining or quarry title to associated or non-associated substances;
- j) the issuing of authorizations for the processing or transformation of artisanal exploitation products;
- k) the proposal to the President of the Republic regarding the classification, reclassification or declassification of reserved substances, mineral substances classified as mines or quarry products and vice-versa, as well as Prohibited Areas.
- l) the setting up of restricted access areas;
- m) the appointment and convening of the members of the Interministerial Committee in charge of selecting the bids for the exploitation of a deposit subject to tender, as well as the members of the Interministerial Committee in charge of examining the lists of items to be imported for mining activities;
- n) the approval of mine and quarry agents;

With the exception of the powers set forth under item k of the present Code, the Minister shall exercise the above-noted powers by way of Decree.

The Minister's Decree shall be published in the Official Gazette.

Article 11: The Governor of the Province and the Head of the Provincial Authority of Mines

Pursuant to the provisions of the present code:
the Governor of the Province has jurisdiction over:

- a) the issuing of traders' cards for artisanal exploitation products;
- b) the decision to open quarries for the purposes of carrying out public utility works on public land;

The Governor of the province exercises the abovementioned powers by means of a provincial Decree. The provincial Decree is published in the Official Journal.

The Head of the Provincial Mining Division has jurisdiction over:

- a) the issuing of artisanal miners' cards;
- b) the granting of exploration rights for quarry products, and of permanent or temporary quarry exploitation rights for standard construction materials.

Article 12: The Mining Registry

The Mining Registry is a public entity with legal status and financial autonomy. It is under the supervision of the Mines and Finance Ministers. Its statutes, its organisation and operation are determined by Presidential Decree. In order to cover its operating costs, the Mining Registry is authorized to collect and administer the costs of filing applications and the annual surface duties for each quadrangle.

The Mining Registry is responsible for registering:

- a) the application for the granting of mining and/or quarry rights;
- b) mining and/or quarry rights granted, as well as and the refusals to grant them;
- c) cases of withdrawal, cancellation and expiry of mining or quarry rights;
- d) transformation and lease of rights;
- e) Securities on mining assets.

It is also in charge of the processing of applications for mining and/or quarry rights, the extension of mining or quarry rights to other substances, the co-ordination of the technical and environmental evaluation of applications for mining or quarry rights, as well as the issuing of Prospecting Certificates.

The Mining Registry certifies the minimum financial capacity of the applicants who apply for the mineral and quarry exploration rights. It is the guardian of mining and quarry titles. It maintains, on a regular basis, its registry books and survey maps in accordance with a specific national registry open to the public for consultation. It establishes the renewals of mining and/or quarry rights in accordance with the provisions of the present Code.

It notifies the applicants concerning the notifications relating to the processing of their filings, and issues the mining and quarry titles pursuant to the rights granted by the competent authority.

It issues its opinion in the event of classification, declassification or reclassification of a prohibited area.

It is the authority in charge of deciding the transformation and lease of mining and quarry rights, and registers them.

It cancels the registration of mining or quarry Perimeters on the registry map.

It has the power of a notary with regard to authentication of mortgage and lease deeds and deeds for the transformation of mining and quarry rights.

The Mining Regulations set forth the conditions for the registration of deeds provided for in the present Code, for the co-ordination of the technical and environmental evaluation of the applications, for the notifications to interested parties regarding the processing of filings, and for the models of the mining or quarry titles.

Article 13 : The Geology Directorate

The Geology Directorate is responsible for the promotion of the mining sector through basic geological research, the compiling and publication of information about geology and also the publication and the dissemination of said information.

The Geology Directorate conducts research activities and studies provided for in article 8 paragraph 2 of the present Code. It is the only entity entitled to receive or to request the submission of duplicate samples from all samples or sample batches taken in the National Territory for analysis or assaying, by giving consent pursuant to the provisions of the present Code.

The Geology Directorate issues its opinion in the event of :

- a) Classification, declassification or reclassification of mineral substances as mines or as quarry products and conversely;
- b) Opening and closing down of an artisanal exploitation area;
- c) Classification or declassification of a substance declared to be a "reserved substance".

The Mining Regulations set forth the organization and the operation of the Geology Directorate.

Article 14 : Directorate of Mines

The Directorate of Mines is responsible for inspecting and supervising mining activities and quarry works with regard to safety, health, work procedures, production, transport, sale and social matters.

The Mining Directorate is responsible for compiling and publishing statistics and information about the production and sale of products from mines and quarries.

It is the only entity authorized to control and inspect the industrial mining exploitation or the small-scale mining exploitation and the artisanal mining exploitation.

It receives and processes the applications for approval of authorized traders.

It issues its opinion in the event of :

- a) the granting of mining and quarry exploitation rights;

- b) the opening of an artisanal mining exploitation area;
- c) the processing of the applications for approval of authorized traders for gold, diamonds and other artisanal mining mineral substances.

The Mining Regulations set forth the organization and the operation of the Directorate of Mines.

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

In co-ordination with the other State entities responsible for the protection of the environment, the Department in charge of the Protection of the Mining Environment within the Ministry of Mines exercises the powers which are devolved to it by the present Code and by all other regulations regarding the protection of the environment, in particular :

- a) The definition and the implementation of the mining regulations concerning environmental protection with regard to :
 - The rules governing exploration;
 - The rules governing artisanal miners;
 - The guidelines for exploration and exploitation activities for mines and quarries
 - The conditions to supervise the obligations with regard to environmental protection.
- b) The technical evaluation of the MRP in relation to the prospecting operations for mineral substances classified as mines and quarries; and,
- c) The technical evaluation of the EIS and the EMPP presented by the applicants requesting mining or quarry exploitation rights.

Article 16 : Restriction of Authority

Apart from the Ministry of Mines, its departments and its entities responsible for administering the code, as set forth in the present Code, no other public or government department or entity has the authority to apply the provisions of the present Code and its implementing regulations.

CHAPTER III : PROSPECTING

Article 17 : Access to Mineral Prospecting

Mineral prospecting is free over the entire National Territory, except in:

- a) Protected areas and natural reserves of flora and fauna, as well as in the protected areas governed by special laws;
- b) Areas declared to be prohibited areas according to article 6 of the present Code;
- c) Restricted and restricted access areas according to articles 279 and 282 of the present Code;
- d) Perimeters of existing mining and/or quarry rights.

Any person who wishes to undertake mineral prospecting in the National Territory must make a preliminary declaration with the Mining Registry.

The Mining Regulations set forth the conditions of the declarations required to be made prior to carrying out Prospecting activities.

Article 18 : Prospecting Certificates

Within five days following the receipt of the Prospecting declaration, the Mining Registry issues a Prospecting Certificate which is valid for the extent of an administrative territorial unit for a duration of two years, and cannot be renewed. However, an individual can obtain successive Prospecting Certificates for the same plot of land.

Should the Mining Register fail to issue a Prospecting Certificate within the time limit /deadline set forth in the above paragraph, the receipt for the declaration of prospecting will be deemed as a Prospecting Certificate.

The Prospecting Certificate is not a mineral or mining right. It is not exclusive and does not confer any priority for the obtaining of a mining or quarry right.

Article 19 : Prospecting activity

Any individual may freely carry out Prospecting operations which do not noticeably affect the local topography within the plot of land indicated on its Prospecting Certificate, including the taking of samples for analysis in the laboratory of his choice.

The quantity and the volume of the samples to be taken by a holder of a Prospecting Certificate are set forth in the Mining Regulations.

Article 20 : Conditions for Prospecting

The holder of the Prospecting Certificate has the obligation:

- a) To comply with the applicable regulation which applies with regard to protection of the environment;
- b) To inform the local authority of his arrival in and his departure from each administrative district where he is carrying out his Prospecting work;
- c) Not to carry out any exploration or exploitation activities;
- d) To comply with the regulations with regard to the taking of samples.

Article 21 : Samples

Any individual who undertakes Prospecting activities may send the samples which he has taken in the plot of land indicated on his Prospecting Certificate for assaying outside the National Territory, provided he has submitted a duplicate sample and a description, stating the number of samples, their volume and weight to the Geology Directorate of the Ministry of Mines or the local office of the latter, and has obtained consent from this office on a copy of the description.

The individual who obtains the consent from the Geology Directorate on a copy of the description of the samples which he has taken in accordance with the preceding paragraph acquires the ownership of the samples described therein. The samples submitted (to the Geology Directorate) are the property of the State.

The Mines Authority guarantees the holder of the Prospecting Certificate who has submitted samples confidentiality with regard thereto.

Article 22 : Prospecting for quarry products

The provisions of the present chapter also apply to Prospecting for quarry products.

The conditions for applying these provisions are set forth in the Mining Regulations.

TITLE II : COMMON PROVISIONS

CHAPTER ONE : ELIGIBILITY

Article 23 : Eligibility to obtain mining and quarry rights

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

- a) Any individual of age who is a Congolese national, as well as any legal entity incorporated pursuant to Congolese law and which has its registered administrative office in the National Territory and whose corporate purpose is mining activities.
- b) Any individual of age of foreign nationality, as well as any legal entity incorporated pursuant to foreign law;
- c) Any entity carrying out scientific activities;

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

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

Article 24 : Election of domicile

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

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

Article 25 : Authorized mining and quarry agents

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

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

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

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

Article 26 : Eligibility for artisanal mining

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

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

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

Article 27 : Non-eligible persons

The following are not eligible to apply for and obtain mining and/or quarry rights, artisanal miners' cards, traders' cards, as well as the approval as authorized traders for mineral substances from artisanal mining

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

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

- b) Any individual who does not have legal capacity as set forth in article 215 of law No. 87-010 of 01 August 1987, the Family Law Code;

- c) Any person who is legally excluded, in particular:

- A person condemned by a valid non-appealable judgment for violations of the mining and quarry laws or those related to the economic activities concerning his mining or quarry rights and his affiliated companies, for a period of ten years;
- The person whose artisanal miners' or traders' card has been cancelled, for a period of 3 years;
- The person whose approval to act as an authorized trader for the purchase and sale of mineral substances from artisanal mining has been withdrawn, for a period of five years.

CHAPTER II : MINING AND QUARRY PERIMETERS

Article 28 : Form of the mining and quarry Perimeters

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

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

The National Territory is divided into mining cadastral grids in accordance with the appropriate coordinates system set forth in the Mining Regulations. This grid defines the uniform and indivisible quadrangles which sides are oriented North-South and East-West.

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

Article 29 : Location of the mining and quarry Perimeters

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

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

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

Article 30 : Overlapping of mining and quarry Perimeters

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

- a) The Perimeter of a mineral exploration right may overlap with the Perimeter of a quarry exploration right or a temporary quarry exploitation right;
- b) The Perimeter of a mining exploitation right may overlap with the Perimeter of a quarry exploration right or a temporary quarry exploitation right. The part of the Perimeter of an exploration right for quarry products with which the Perimeter of a mining exploitation right overlaps is cancelled by the administration without consultation;
- c) The Perimeter of a quarry exploration right may overlap with the Perimeter of a mineral exploration right;
- d) The Perimeter of a quarry exploitation right may overlap with the Perimeter of a mineral exploration right or, with the consent of the holder or by decision of the Minister, partially with the Perimeter of an exploitation right.

Article 31 : Demarcation of the mining or quarry Perimeters

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

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

The conditions to carry out the survey are set forth in the Mining Regulations.

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

Article 32 : Principle of procedural transparency

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

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

Article 33 : Mining and quarry rights subject to tender

If the public interest so requires, the Minister submits to tender, in exceptional cases, open or by invitation, mining and quarry rights relating to a deposit which has been studied, documented or possibly worked on by the State or its entities and which is considered as an asset with considerable known value.

In this case, the Minister reserves the mining rights relating to the deposit to be submitted to tender.

The reservation of the mining rights relating to the deposit submitted to tender must be confirmed by the President of the Republic within thirty days following the entry into force of the Ministerial Decree relating thereto.

The invitation to tender is concluded within a period of one year as of the date of entry into force of the Decree relating to the reservation of the deposit to be submitted to the invitation to tender.

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

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

- a) Plan of work proposed and financial costs relating thereto;
- b) Available financial and technical capacity of the bidder;
- c) Previous experience of the bidder in carrying out the operations proposed;
- d) Various other socio-economic advantages for the State, the province and the surrounding community, including the signature bonus offered.

The selection and the notification of the bids are made in accordance with the procedures generally accepted or recognized by international mining practice.

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

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

Article 34 : Priority for Processing

Notwithstanding the granting of mining or quarry rights in accordance with the invitation to tender procedure provided for in the preceding article, and unless they are not admissible, the applications for mining or quarry rights for a given Perimeter are registered in the chronological order of their filing.

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

Article 35 : Application for mining or quarry rights

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

- a) The identity, the nationality, the domicile and the coordinates of the applicant and/or of his agent if the application is submitted by the latter;
- b) In the case of a legal entity, the name of the firm , its nationality, the registered headquarters and, if applicable, the location where exploitation takes place and/or the identity of its agent if the application is submitted by the latter;
- c) The professional and legal status of the applicant and the address of the registered headquarters of the legal entity, if applicable;
- d) The type of mining or quarry right applied for;
- e) indication of the mineral substances for which the mining or quarry right is being applied for;
- f) The geographical location of the Perimeter applied for;
- g) The number of quadrangles making up the surface area of the Perimeter applied for;
- h) The identity of the applicant's affiliated companies;
- i) The nature, number and surface area of the Perimeters of the mining or quarry rights already held by the applicant and its affiliated companies.

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

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

Article 36 : Language of the application

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

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

Article 37 : Filing costs

A fee is charged when filing applications for the granting, renewal, transformation or lease of mining and/or quarry rights

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

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

Article 38 : Admissibility of the application

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

- a) accuracy of the information required by Article 35 of the present Code;
- b) proof of payment of the filing costs;
- c) compliance with the provisions of articles 28 and 29 of the present Code as regards the form and the localization of the Perimeter;
- d) If it is an application for mining rights or permanent quarry exploitation:
 - The entire Perimeter applied for must be situated inside the Perimeter of the exploration right or the Exploration Permit for Quarry Products;
 - Proof of the applicant's registration with the New Commercial Registry, if he is legally required to do so.

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

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

Article 39: Processing of the application

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

Article 40: Review by the Registrar

The Mining Registry proceeds with the registry's examination within a maximum period of ten working days as of the date of filing of the application.

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

- a) whether the applicant is eligible for the type of mining or quarry right applied for;
- b) the limits to the number of mining or quarry rights, whether the form and the surface area of the Perimeter applied for have been complied with;
- c) whether the Perimeter applied for overlaps with a Perimeter relating to a mining or quarry right or an application already being processed.

At the time of the registry examination of the applications for mining and/or quarry rights, the following rules apply to situations of overlap:

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

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

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

Article 41 : Technical Evaluation

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

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

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

Article 42 : Environmental Evaluation

In accordance with the provisions of article 15 of the Present Code and the provisions concerning each type of mining and/or quarry right, the department responsible for the protection of the mining environment evaluates the EIS and the EMPP relating to the application for mining exploitation rights or Permanent Quarry Exploitation Authorization, as well as the MRP relating to an application for a Temporary Quarry Exploitation Authorisation in accordance with the provisions of the present Code.

At the end of the evaluation, it provides its opinion on the environmental aspects to the Mining Registry, within the deadline/time period set forth for each type of mining and/or quarry right.

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

- a) to display the opinion on environment aspects provided by the department responsible for the mining environment, in the premises set forth in the Mining Regulations. A copy of the opinion on the environmental aspects is provided to the applicant.
- b) to send the file relating to the application, including with the registrar and the technical opinion, to the competent authority for decision.

The department responsible for protection of the mining environment will also examine the MRP submitted by the holder of a mining right or quarry exploration right and, on completion, will submit its opinion on the environmental aspects to the Mining Register within the deadline/time limit set forth in the Mining Regulations.

Article 43 : The decision to grant rights

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

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

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

The applicant may request the Mining Registry to proceed to register his right and to issue the title relating thereto.

Article 44 : The decision to refuse to grant rights

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

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

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

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

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

The file is sent to the competent authority by all means of communication such as electronically, by fax, registered mail or by courier with acknowledgement of receipt of same.

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

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

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

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

Article 46 : Registration via the judicial system

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

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

Pursuant to the provisions of article 9 of ordinance no 82-020 of March 31, 1982, relating to the Code for the Organisation and Jurisdiction of the Magistrates, as amended, the Public Ministry issues its opinion orally from the bench. This opinion is recorded by the clerk of the court.

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

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

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

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

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

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

Article 47 : The issuing of title

In the case of a decision to grant rights or in the event of a decision to register via the judicial system, as set forth in article 46 of the present Code, the Mining Registry issues to the applicant the mining or quarry titles evidencing the rights applied for, provided that the annual surface rights fees relating thereto have been paid for. Upon delivery of the title, the Mining Registry provides to the applicant a receipt of payment of the annual surface rights fees and registers the mining or quarry title in the corresponding registry book.

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

Article 48 : End of the processing of the application

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

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

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

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

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

TITLE III : MINERAL AND MINING RIGHTS

CHAPTER I : MINERAL EXPLORATION

Article 50 : Scope of the Mineral Exploration Licence

The Mineral Exploration Licence entitles its holder the exclusive right, within the Perimeter on which it is granted and for the term of its validity, to carry out mineral exploration work for mineral substances classified as mines, substances for which the licence has been granted, and associated substances if the holder applies for the licence to be extended to include these substances. However, the holder of the Mineral Exploration Licence cannot commence work on the property without having obtained approval in advance of its MRP, in accordance with the provisions of the present Code.

The holder of the Mineral Exploration Licence is authorized to take samples of the mineral substances within the Perimeter indicated on his Mineral Exploration Licence in order to carry out analyses or industrial assays in the laboratory or plant of his choice.

Without prejudice to the provisions of the customs laws, if the holder wishes to send the samples abroad for assaying, prior to that he must submit a description of said samples, indicating the number, volume and weight,

to the Geology Directorate of the Ministry of Mines, and obtain said department's consent on a copy of the description, which it is deemed as a licence for the samples taken.

The holder of a Mineral Exploration Licence is required to submit to the Geology Directorate of the Ministry of Mines a duplicate sample of all of the samples or samples batches taken within the Perimeter of his title.

In no event may the exploration work become exploitation work.

As long as a Perimeter is subject to a Mineral Exploration Licence, no other application for mineral rights for all or part of this Perimeter can be processed, except for the application for an Exploitation Licence from the holder of the said Mineral Exploration Licence.

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

Article 51 : Nature of the Exploration Licence

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

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

Article 52 : Term of Validity of the Exploration Licence

The period of validity of the Exploration Licence is :

- a) Four years renewable twice for a period of two years each renewal, for precious stones;
- b) Five years renewable twice for a period of five years each renewal, for other mineral substances.

Article 53 : Restrictions

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

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

In any event, the surface area granted to them may not exceed 20,000 Km² on the entire National Territory.

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

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

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

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

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

Article 56 : Conditions for granting Exploration Licences

In order to obtain an Exploration Licence, the applicant must provide proof of his minimum financial capacity as defined in article 58 of the present Code.

Article 57 : Granting or refusal to grant an Exploration Licence

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

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

Article 58 : Proof of minimum financial capacity

In accordance with article 56 of the present Code, the minimum financial capacity required is equal to ten times the total amount of the annual surface rights fees payable for the last year of the first period of validity of the exploration licence applied for.

The applicant is required to prove that he has his own funds, borrowed funds or a bank guarantee which could cover the Perimeters of both his former and new Exploration Licences applied for, in order to carry out his mineral exploration work programme.

Any person who is eligible for an Exploration Licence may request certification of his minimum financial capacity from the Mining Registry at any time without applying for an Exploration Licence.

The forms and documents to be attached to the request for certification of the minimum financial capacity are set forth in the Mining Regulations.

The Mining Registry processes the request for certification of minimum financial capacity and certifies the additional number of squares kilometres allowed for which the applicant has demonstrated his financial capacity, within a period not exceeding thirty days as of the date the request has been submitted.

Article 59 : Extension of the licence to other substances

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

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

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

Article 60 : Renunciation of the Exploration Licence

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

The declaration of partial or total renunciation addressed to the Minister indicates the coordinates of all or part of the renounced or retained Perimeter. It takes effect on the day the Minister makes acknowledgement of it, or in any case, three months as of the date the declaration is submitted.

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

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

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

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

Article 61 : Expiry of the Exploration Licence

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

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

When the Exploration Licence expires, the Mining Registry immediately notifies the holder of the expiry of his title, with a copy to the Geology Directorate.

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

Article 62 : Renewal of the Exploration Licence

The Exploration Licence is renewed if the holder has not breached his obligations to maintain the validity of the licence, as set forth in articles 196 to 199 and following of the present Code, and provided he submits an exploration work report for the prior term of validity of his title, and the results obtained.

The application for renewal of the Exploration Licence is addressed by the applicant to the Mining Registry at least three months before the date the licence expires, and must contain the following information :

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

The 'Exploration Certificate' held by the holder and the proof of payment of the filing costs must be attached to the application; failing that, it will not be accepted.

The Mining Registry decides on the admissibility of the application at the time of filing.

If the application is admitted, the Mining Registry commences the registrar's examination in accordance with the provisions of article 40 of the present Code.

When each renewal takes place, the holder of the Exploration Licence relinquishes automatically 50% of the Perimeter covered by his licence.

If the Minister does not reply to the renewal application which has been submitted in the appropriate manner within thirty days as of the date of filing, the renewal applied for is granted.

Without prejudice to the provisions of article 46 of the present Code, the Mining Registry proceeds to register the renewal within a period of five working days following the date when the renewal is assumed to have been granted.

Any refusal to renew an Exploration Licence must be explained and is subject to appeal as set forth in articles 317 to 320 of the present Code.

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

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

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

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

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

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

CHAPTER II : MINING EXPLOITATION

Article 64 : Scope of the Exploitation Licence

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

- a) Enter the exploitation Perimeter to conduct mining operations;
- b) Build the installations and infrastructures required for mining exploitation;

- c) Use the water and wood within the mining Perimeter for the requirements of the mining exploitation, complying with the requirements set forth in the EIS and the EMPP;
- d) use, transport and freely sell his products originating from within the exploitation Perimeter.
- e) proceed with concentration, metallurgical or technical treatment operations, as well as the transformation of the mineral substances extracted from the deposit within the exploitation Perimeter.
- f) Proceed to carry out works to extend the mine;

As long as a Perimeter is covered by an Exploitation Licence, no other application for a mining or quarry right for all or part of the same Perimeter can be processed.

However, an applicant to whom the holder of the Exploitation Licence has refused to provide his consent to open a quarry within the Perimeter may submit an application for Quarry Exploitation Licence over part of the Perimeter which is the subject of the Exploitation Licence but which is not used for the mining operations.

Failing that, the application is processed and is the subject of an administrative litigation process in which the holder and the applicant participate if the latter submits, together with his application, evidence that the holder has refused to give his consent in bad faith.

The Mining Regulations set forth the basic and substantive rules for this administrative litigation process.

Article 65 : Nature of the Exploitation Licence

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

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

Article 66 : Extent of the Exploitation Licence

The Exploitation Licence authorizes the extraction of the mineral substances for which it is specifically granted. These mineral substances are those which the holder has identified and for which he has demonstrated the existence of a deposit which can be economically exploited.

The Exploitation Licence may be extended to include associated substances, in accordance with the provisions of article 77 of the present Code.

Article 67 : Term of the Exploitation Licence

The term of the validity of the Exploitation Licence is thirty years, renewable several times for a duration of fifteen years.

Article 68 : Restrictions on/to the Exploitation Licence

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

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

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

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

The following documents should be attached to the application :

- a) A copy of the valid Exploration Certificate;
- b) The report on the outcome of exploration work with regard to the nature, the quality, the volume and the geographical situation of the mineral resources identified;
- c) The feasibility study for the exploitation of the deposit;
- d) The technical framework plan for the development, construction and exploitation work for the mine;
- e) The EIS and EMPP for the project;
- f) The report on the consultations with the authorities of the local administrative entities and with the representatives of the surrounding communities;
- g) The plan as to how the project will contribute to the development of the surrounding communities;
- h) The financing plan identifying the planned sources of financing;
- i) The proof of payment of the filing costs.

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

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

Article 71 : Conditions for granting the Exploitation Licence

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

- a) Demonstration of the existence of a deposit which can be economically exploited, by presenting a feasibility study, accompanied by a technical framework plan for the development, construction and exploitation work for the mine.
- b) Demonstration of the existence of the financial resources required for the carrying out of his project, according to a financing plan for the development, construction and exploitation work for the mine, as well as the rehabilitation plan for the site when the mine is closed. This plan specifies each type of financing, the sources of planned financing and justification of their possible availability;
- c) Obtain in advance the approval of the project's EIS and the EMMP.
- d) Transfer to the Government 5% of the shares in the registered capital of the company applying for the licence. These shares are free of all charges and cannot be diluted.

Article 72 : Granting of the Exploitation Licence

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

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

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

The Exploitation Licence can only be refused if :

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

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

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

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

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

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

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

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

Article 75 : Time limit for the environmental evaluation for the application for the Exploitation Licence

The environmental evaluation of the EIS and the EMPP relating to an application for an Exploitation Licence declared admissible is carried out within a period not exceeding a hundred and eighty working days, as of the

date the file containing the application is sent by the Mining Registry Directorate to the department responsible for the protection of the mining environment of the Ministry of Mines.

Article 76 : The Ministry's decision

If the registrar's opinion on an application for an Exploitation Licence is unfavourable, the Minister makes a decision to reject the application within a period of fifteen working days, as of the date the file containing the application is sent to him by the Mining Registry.

If the technical opinion on an application for an Exploitation Licence is unfavourable but the registrar's opinion is favourable, the Minister makes a preliminary and conditional decision to reject or approve it within a period of thirty working days, as of the date the file containing the application is sent to him by the Mining Registry.

If the registrar and technical opinions following the processing of the application for the Exploitation Licence are favourable but the environmental opinion has not been issued yet, the Minister makes a preliminary and conditional decision within a period of twenty working days, as of the date the file containing the application is sent to him by the Mining Registry and postpones his final decision to grant or refuse the Exploitation Licence until he has received the environmental opinion.

The Minister's preliminary and conditional decision has the effect of definitively ratifying the registrar and technical opinions. The final decision on the granting of the application is conditional on receipt of a favourable environmental opinion.

The Minister makes and sends his reasoned decision to grant or refuse the Exploitation Licence to the Mining Registry within a period of thirty working days, as of the date he receives the environmental opinion sent by the Mining Registry.

Article 77 : Extension to include other substances

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

The extension of the Exploitation Licence to include associated mineral substances is of right if the holder of the licence demonstrates that they are located together with the substances for which the licence has been granted, in such a state of association that it is necessary to extract them simultaneously.

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

However, if the holder of an Exploitation Licence wishes to extend it to include the non-associated substances, he must follow the procedure required for the granting of his valid Exploitation Licence. In this case, he updates and submits the documents approved during the processing of his initial application for the licence, including the operations planned for the extraction of the additional substances.

The extension of the Exploitation Licence to include the associated or non-associated mineral substances is granted by the Minister for a term not exceeding the unexpired period of the Exploitation Licence.

Article 78 : Expiry of the Exploitation Licence

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

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

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

Article 79 : Relinquishment of the Exploitation Licence

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

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

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

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

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

The total or partial relinquishment does not entitle to any right to reimbursement of the fees and the costs paid to the State for the granting or the maintenance of the licence. It does not relieve the holder from his responsibility relating to the protection of the environment and his obligations towards the local community.

Article 80 : Renewal of the Exploitation Licence

The Exploitation Licence is renewable for successive periods of fifteen years if the holder :

- a) Has not breached his obligations to maintain the validity of the licence provided for in article 196 to 199 of the present Code;
- b) Demonstrates the fact that the deposit is not exhausted by updating the feasibility study;
- c) Demonstrates the existence of the financial resources required to continue to carry out his project, according to the financing plan and exploitation work in the mine, as well as the rehabilitation plan for the site when the mine will be closed. This plan details each type of financing planned and reasons of its possible availability;
- d) Obtains the approval for the updating of the EIS and EMMP;
- e) Undertakes in good faith to actively carry on with his exploitation.

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

- a) The requirements in items (a), (b) and (c) of article 35 of the present Code;
- b) The identity of the affiliated companies;

c) The nature, number and surface area of the Perimeter held by the holder and his affiliated companies.

The title of the valid Exploitation Licence and the proof of payment of the filing costs must be attached to the application; failing that it will not be deemed admissible.

The Mining Registry decides on the admissibility of the application at the time when the file is submitted.

If the application is deemed admissible, the Mining Registry commences the registrar, technical and environmental evaluation, in accordance with the provisions of articles 39 to 42 of the present Code.

The study of the technical document provided by the mine operator is restricted to the verification of the update of the feasibility study and the undertaking which he signed in good faith.

The time period allowed for the environmental evaluation for the approval of the update of the EIS and EMMP of the holder cannot exceed ninety working days as of the date the file is sent by the Mining Registry to the department responsible for the protection of the mining environment of the Ministry of Mines.

After the evaluation, the Mining Registry sends the application file, together with the technical opinion of the Directorate of Mines, to the Minister within a maximum period of five working days, as of the time the environmental opinion is received.

If an application for renewal duly submitted within this period has not been refused and notified to the applicant within a period of thirty days as of the time the Minister receives the application file, the renewal is deemed to have been granted.

In regard to the registration of the right renewed, the second last paragraph of article 62 of the present Code shall apply.

The renewal of the Exploitation Licence cannot be refused for reasons other than those under article 73 of the present Code.

Any refusal to renew an Exploitation Licence must be reasoned and is subject to the right to appeal, in accordance with the provisions of articles 317 to 320 of the present Code.

Article 81 : Right to process or transform mineral substances

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

Article 82 : Processing or Transformation licence

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

Article 83 : Processing or Transformation plants

The installation and functioning of a plant for the processing or transformation of mineral substances are subject to the regulations with regard to the protection of the environment which are set forth in the present Code and by specific environmental legislation.

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

The holder of an Exploitation Licence has the right to transport, or to have transported by the transport company of his choice, the mining products which originate from his exploitation Perimeter.

He also has the right to store his mining products on closed sites for this purpose located in the vicinity of the places where they are loaded, provided he complies with the regulations on safety of the site and the control of industrial pollution.

Article 85 : Sale of mining products

Subject to the provisions of the following paragraph, the sale of mining products which originate from the exploitation Perimeters is free. The holder of an Exploitation Licence may sell his products to the customers of his choice at prices freely negotiated.

However, the Minister's authorization is required for exporting unprocessed ores for treatment outside the National Territory. This authorization will only be granted if the Holder who is applying for it demonstrates at the same time :

- a) The fact that it is impossible to treat the substances in the National Territory at a cost which is economically viable for the mining project;
- b) The advantages for the Democratic Republic of the Congo if the export authorization is granted.

CHAPTER III : EXPLOITATION OF TAILINGS

Article 86 : Access to exploitation of tailings

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

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

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

Article 87 : Exploitation Perimeters of tailings

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

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

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

Article 64 of the present Code governs the scope of the Licence for the Exploitation of Tailings.

However, the right granted to the holder of the Licence for the Exploitation of Tailings is restricted to the surface it covers and does not extend in depth.

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

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

This right is evidenced by a mining title called ÔCertificate of Exploitation of TailingsÓ.

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

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

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

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

Notwithstanding the provisions of the preceding article, the partial transferee who is an applicant for an Exploitation Licence must submit the instrument relating to the partial transfer to the Mining Registry for registration, to which his application for a Licence for the Exploitation of Tailings must be attached.

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

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

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

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

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

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

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

The application for renewal of a Licence for the Exploitation of Tailings is submitted, processed, granted or refused in accordance with the provisions of article 80 of the present Code.

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

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

CHAPTER V : SMALL-SCALE MINING EXPLOITATION

Without prejudice to the provisions of articles 23 to 25 and 27 of the present Code, any entity which intends to carry out small-scale mining must apply for and obtain a Small-scale Mine Exploitation Licence.

Article 98 : Small-scale mining deposits

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

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

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

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

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

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

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

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

The provisions of article 64 of the present Code govern the scope of the Small-Scale Mining Exploitation Licence.

The Small-Scale Mining Exploitation Licence entitles its holder the right to transform it into an Exploitation Licence if the technical conditions of exploitation justify/warrant it.

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

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

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

Article 101 : Term of validity of the Small-Scale Mining Exploitation Licence

The term of validity of the Small-Scale Mining Exploitation Licence is variable, but it may not exceed ten years, including renewals.

However, on the opinion of the Directorate of Mines, the Minister may extend the Small-Scale Mining Exploitation Licence, depending on the circumstances, and for the substances which exploitation exceeds ten years.

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

The Small-Scale Mining Exploitation Licence entitles its holder the right to mine the mineral substances for which it has been specially granted and for which the Holder has identified and demonstrated the existence of a deposit.

The Small-Scale Mining Exploitation Licence may be extended to associated or non-associated substances, in accordance with the conditions provided for in articles 69, 70, and 74 to 76 of the present Code.

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

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

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

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

In addition to the conditions listed above, any person of foreign nationality must set up a company pursuant to Congolese law in association with one or more persons of Congolese nationality whose participation in the capital of the company cannot be less than 25%.

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

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

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

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

Article 107 : Renewal of the Small-Scale Mining Exploitation Licence

The provisions of article 80 of the present Code apply to the preparation, submission and processing of the application, as well as the granting or the refusal to renew the Small-Scale Mining Exploitation Licence.

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

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

TITLE IV : ARTISANAL MINING

CHAPTER 1 : ARTISANAL MINING EXPLOITATION

Article 109 : Creation of an artisanal mining area

If the technical and economic factors which characterize certain deposits of gold, diamonds or any other mineral substance do not make it possible to ensure industrial or semi-industrial exploitation of same, but permits artisanal mining, such deposits are established, within the limits of a determined geographical area, as an artisanal mining area.

An artisanal mining area is created pursuant to an order issued by the Minister after he has received the opinion of the Directorate of Mines and of the Governor of the province concerned.

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

The creation of an artisanal mining area is notified to the Mining Registry which proceeds to insert it in the registry survey map. As long as an artisanal mining area exists, no mining title can be granted over the area, except for an exploration licence applied for by a group of artisanal miners who are working in the area.

However, the Geology Directorate may at any time proceed to prospecting and exploration work in the artisanal mining areas.

The Mining Regulations set forth the conditions for the exceptional granting of the Exploration Licence to the group of artisanal miners.

Article 110 : Closure of an artisanal mining area

If the factors which have justified the creation of an artisanal mining area have ceased to exist or if a new deposit which does not lend itself to artisanal mining has just been discovered, on the advice of the Geology Directorate, the Minister proceeds to close the artisanal mining area.

The Mining Registry is notified of the closure of an artisanal mining area and informs the Artisanal Miners who are obliged to free the artisanal mining area within sixty days as of the date the notification of the decision to close.

The group of artisanal miners working in the artisanal mining area concerned have a priority right to request a Licence for an industrial exploitation or small scale mining, in accordance with the provisions of the present Code.

This group has a period of thirty days as of the time of the notification regarding the closure is given by the Mining Registry, to advise if it intends to exercise its priority right , in accordance with the provisions of the present Code.

The Mining regulations set forth the conditions of access by the group of artisanal miners to industrial mining exploitation or a small-scale mining.

Article 111 : Authorization for artisanal mining

In the artisanal mining areas, only the holders of artisanal miners' cards which are valid for the area concerned are authorized to extract gold, diamonds or any other mineral substance which can be mined artisanally.

The artisanal miners' cards are issued by the Head of the provincial division of Mines in the area, to eligible persons who apply for them and undertake to comply with the regulations on protection of the environment, health and safety in the artisanal exploitation areas, in accordance with the terms and conditions set forth in the Mining Regulations, after having reviewed them.

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

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

If the artisanal miners' card is lost, destroyed or stolen, no duplicate will be issued. The holder is obliged to put a stop on it, however, the owner may apply for a new one.

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

Article 112 : Obligations of the holder of the artisanal miners' card

The holder of an artisanal miners' card must comply with the regulations regarding safety, health, use of water and the protection of the environment which apply to his mining activity, in accordance with the regulations in force. He must compensate the farmers for any damage caused by his activity.

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

Article 113 : Transformation of the products resulting from artisanal mining

The artisanal miners' card does not authorize its holder to transform the products resulting from artisanal mining.

However, the transformation of the products by the artisanal miner can only be done if there is a prior authorization granted by the Minister.

Article 114 : Withdrawal of the artisanal miners' card

The artisanal miners' card may be withdrawn by the Head of the Provincial Division Mines or by its local representative who has issued it, if the holder of the card does not remedy the breach of the obligations set forth in Article 112 of the present Code within a period of thirty days.

Failing that, the person from whom the card has been withdrawn is not eligible to obtain a new artisanal miners' card for three years, unless he completes a training course in appropriate techniques for artisanal mining, organized or authorized by the Mines Authority.

The withdrawal of the artisanal miners' card is subject to the right to appeal provided for in articles 315 and 316 of the present Code.

The Mining regulations set forth the conditions of organization of the training courses in artisanal mining techniques.

CHAPTER II : TRANSPORTATION AND SALE OF ARTISANAL MINING PRODUCTS

Article 115 : Transportation of artisanal mining products

Subject to the provisions of paragraph 2 below, within the entire National Territory, but outside the Perimeters which are the subject to exclusive mining titles, no person can keep or transport the products resulting from artisanal mining of mineral substances if he does not have an artisanal miner's card or a valid trader's card or if he is not an authorized buyer of an approved trading house.

However, the Mines Authority grants artists approved by the Ministry of Culture and the Arts special permission to keep or transport a limited quantity of these substances for the requirements of their occupation.

The conditions of acquisition and control of artisanal mining mineral substances sold to artists are set forth in the Mining Regulations.

Article 116 : Sale of products resulting from artisanal mining

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

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

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

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

Article 117 : Traders in artisanal mining products

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

The trader's cards are issued by the Governor of the Province to people who are of age and who are Congolese nationals who apply for them. In support of his application, the applicant for a trader's card must provide proof of his registration with the New Commercial Registry.

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

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

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

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

Article 118 : Obligations of holders of trader's cards

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

Article 119 : Withdrawal of the trader's card

The trader's card may be withdrawn by the Governor of the province who issued it, if the person who holds the card does not remedy the breach to comply with the obligations imposed on him and set forth in article 118 of the present Code, within a period of 30 days. Failing that, the person from whom the card has been withdrawn is not eligible to obtain a new trader's card for three years.

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

Article 120 : Authorized Trading Houses

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

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

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

A fixed fee, which amount is set by regulation, shall be paid upon granting the authorization and upon each renewal.

Article 121 : Number of Authorized Trading Houses

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

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

Article 122 : Purchasers from authorized trading houses

To become a purchaser of authorized trading houses, it is necessary :

- a) to be the bearer of a valid foreign work permit for the artisanal mining sector in the case of ex-patriates, or a valid work permit for nationals;
- b) to submit recent photographs of average format with the Directorate of Mines;
- c) to hold a permit to reside and travel within the mining zones, for expatriate purchasers;
- d) to comply with the regulations governing the activities of the trading houses.

The Mining Regulations set forth the conditions for the application, processing, granting or refusal of approval as purchaser, as well as the movement of foreign purchasers within the artisanal mining zones.

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

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

- a) proof of registration in the New Commercial Registry;
- b) notarized articles of incorporation, if it is a legal entity;
- c) excerpt from the police record of the first residence, no more than three months old, and the certificate of good conduct, good character, if it is an individual;
- d) National Identification number;
- e) proof that there is an open account in the name of the applicant with an authorized bank;
- f) letter of registration with the Central Bank of the Congo;

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

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

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

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

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

Article 125 : Authorization or refusal of authorization

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

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

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

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

Article 126 : Obligations of the authorized trading houses

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

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

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

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

The authorization as a trading house for the purchase and sale of artisanal mining mineral substances may be withdrawn by the Minister if the authorized trading house does not remedy the breach to comply with its obligations set forth in article 126 of the present Code within 30 days. Failing that, the trading house stripped of its rights is not eligible for authorization as a trading house for five years.

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

Article 128 : Exchange markets

No exchange market for the buying and selling of gold, diamonds and the other artisanal mining mineral substances can operate in the National Territory without the prior authorization from the Central Bank of the Congo.

Only the persons authorized as trading houses for gold, diamonds and other artisanal mining mineral substances are authorized to buy in the exchange markets.

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

TITLE V : QUARRY RIGHTS

CHAPTER ONE : GENERAL

Article 129 : Authorization for quarry operations

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

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

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

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

Article 130 : Scope of the quarry authorization

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

Article 131 : Change in classification of a mineral substance

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

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

Article 132 : Classification of quarries

Quarries are classified in four categories :

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

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

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

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

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

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

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

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

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

Article 135 : Exploration Licence and commercial exploitation of quarries

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

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

CHAPTER II : EXPLORATION OF QUARRY PRODUCTS

Article 136 : Scope of the Exploration Licence of Quarry Products

The scope of the Exploration Licence of quarry products is the same as that of the Exploration Licence set forth in article 50 of the present Code.

If a Perimeter is covered by an Exploration Licence of Quarry Products, no other application for authorization of quarries for the same Perimeter can be admitted, except for the application for Authorization for Quarry Exploitation applied for by the holder of said Exploration Authorization.

The Exploration Licence of Quarry Products entitles its holder the right to obtain an authorization for quarry exploitation for all or some of the mineral substances covered under the Exploration Licence within the area covered by the Exploration Licence, if he discovers a deposit thereof.

However, a mining title may be issued for a Perimeter covered under an Exploration Licence of Quarry Products.

If an Exploitation Licence is issued for the same area covered under an Exploration Licence of Quarry Products, the latter is cancelled without consultation.

Article 137 : Nature of the Exploration Licence of Quarry Products

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

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

Article 138 : Term of the Exploration Licence of Quarry Products

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

Article 139 : Restrictions

The surface area covered under an Exploration Licence of Quarry Products must not exceed a maximum of four square kilometres.

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

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

Article 140 : Application for an Exploration Licence of Quarry Products

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

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

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

Article 142 : Granting of the Exploration Licence of Quarry Products

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

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

Article 143 : Proof of minimum financial capacity

The minimum financial capacity required is equal to five times the total amount of the annual surface area fees per square payable for the term of validity of the Exploration Licence of Quarry Products applied for.

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

Article 144 : Expiry of the Exploration Licence of Quarry Products

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

The Minister determines the expiry of the title, prior opinion of the Geology Directorate. In this case, except if an Exploitation Licence is granted, the Perimeter covered by the Exploration Licence becomes free of any right as of the date the licence expires.

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

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

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

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

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

CHAPTER III : QUARRY EXPLOITATION

Article 146 : Scope of the Authorization for Permanent Quarry Exploitation

Except for the last three paragraphs, article 46 relating to the scope of the Exploitation Licence applies to the Authorization for Permanent Quarry Exploitation.

However, as long as a Perimeter is the subject of an Authorization for Permanent Quarry Exploitation, no other application for authorization of quarries or mining rights on the same area can be processed.

Article 147 : Scope of the Authorization for Temporary Quarry Exploitation

Without prejudice to the provisions of article 146 above, the Authorization for Temporary Quarry Exploitation sets forth the quantity of the substances to be extracted, the duties to be paid as well as the conditions for occupation of the sites necessary for sampling and related activities. It also sets forth the obligations of the beneficiary, in particular with regard to the environment and the rehabilitation of the site after the sampling has been carried out.

Any quantity exceeding the volume determined by the Exploitation Licence can be confiscated or may be subject to additional taxes.

As long as a Perimeter is covered by an Authorization for Temporary Quarry Exploitation, no other quarry authorization may be granted for the same Perimeter.

However, the holder may, before his authorization expires, apply for the transformation of the temporary authorization into a permanent authorization. To that end, he must follow the procedure concerning the granting of the Authorization for Permanent Quarry Exploitation.

Article 148 : Nature of the authorizations for exploitation

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

This right is evidenced by a quarry title called ÒCertificate of Permanent Quarry ExploitationÓ.

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

This right is evidenced by a quarry title, called ÒCertificate for Temporary Quarry Exploitation Ó.

Article 149 : Term of the Authorizations for Quarry Exploitation

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

However, its holder is entitled to apply for a new Authorization for Temporary Exploitation for the same Perimeter which would come into effect on expiry of the existing authorization. During the term of validity of its Authorization for Temporary Quarry Exploitation, only the holder thereof has the right to submit an application for a new Exploitation Licence on the same Perimeter.

The term of validity of the Authorization for Temporary Quarry Exploitation is one year and cannot be renewed.

Article 150 : Perimeters of the Quarry Exploitation

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

If the Perimeter has not been the subject of an Authorization for Quarry Exploration, it must comply with the provisions concerning the form provided for in article 28 of the present Code and must not exceed a maximum of four square kilometres.

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

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

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

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

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

Article 151 : Application for the Authorization for Quarry Exploitation

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

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

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

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

Article 153 : Competent authority

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

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

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

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

- a) The demonstration of the existence of a deposit by submitting a feasibility study, together with a technical plan for the development, construction and exploitation work of the quarry.
- b) Proof of the existence of the financial resources required for carrying out the project in accordance with the financing plan for the development, construction and exploitation work of the quarry, as well as the rehabilitation of the site upon closure. This plan specifies each type of financing, the planned sources of financing and proof of their potential availability ;
- c) Obtain the prior approval of the EIS and the EMMP of the project.
- d) Provide proof of the consent of the surface right holder, if the surface area which is the subject of the application is located within the Perimeter of his property;
- e) If the Perimeter applied for is located within the Perimeter of a valid exploitation mining right, provide proof of the consent of the holder of said right; or demonstrate that his consent was refused in bad faith.

Article 155 : Reasons for the refusal of the granting

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

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

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

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

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

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

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

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

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

Article 158 : The decision of the Competent Authority

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

If the technical opinion concerning an application for the Authorization for Permanent Quarry Exploitation is unfavourable, the competent authority renders its decision to reject or to grant a preliminary and conditional approval within a period of thirty working days as of the date the application file sent by the Mining Registry is received by the competent authority.

If the registrar and technical opinions following the processing of the application for an Exploitation Licence are favourable, but the environmental opinion has not yet been rendered, the competent authority renders its preliminary and conditional decision within a period of twenty working days as of the date the application file is

sent by the Mining Registry, and postpones its final decision to grant or to refuse the granting of the Authorization for Permanent Quarry Exploitation until it has received the environmental opinion.

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

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

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

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

- a) Demonstration of the existence of a deposit which can be economically exploited by submitting a technical plan for the exploitation work in the quarry and a MRP relating to it;
- b) if the quarry is located on a Perimeter which is covered by a land title held by a third party, submission of the written consent of the latter to the opening of the quarry;
- c) if the quarry is located on a Perimeter which is covered by an Exploitation Licence held by a third party, submission of the written consent of the latter to the opening of the quarry, or proof that the consent was refused in bad faith.

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

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

Article 161 : Time limit to render the decision

The competent authority renders and sends its decision to grant or its reasoned decision to refuse the granting of the Authorization for Temporary Quarry Exploitation to the Mining Registry within a period of forty-five days as of the date the application was submitted.

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

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

Article 162 : Extension to include other substances

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

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

Article 163 : Expiry of the Authorization for Permanent Quarry Exploitation

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

Article 164 : Renunciation of the Authorization for Permanent Quarry Exploitation

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

The letter of renunciation will indicate the co-ordinates of the part which is renounced and the part which is retained.

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

The renunciation will become effective three months after the date the letter of renunciation is received by the competent authority.

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

Article 165 : Renewal of the Authorization for Permanent Quarry Exploitation

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

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

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

The review of the technical document provided by the applicant will be restricted to the verification of the update of the initial feasibility study, and an undertaking made in good faith. The renewal of the Authorization for Permanent Quarry Exploitation can only be refused for the same reasons as for the granting of an Authorization for Permanent Quarry Exploitation. However, the holder must obtain the approval of an update of his EIS and his EMMP in order to continue his work beyond the term of the original licence.

The application for renewal must be submitted at the earliest twelve months, and at the latest, within six months before the date of expiry of the Authorization for Permanent Quarry Exploitation. The Mining Registry sends the application file, together with the technical opinion of the Mines Department, to the competent authority within a maximum period of sixty days.

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

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

Notwithstanding the fact that the Authorization for Temporary Quarry Exploitation is not renewable, its holder has the right to apply for a new authorization for temporary exploitation for the same Perimeter which would become effective upon expiry of the original authorization. During the term of validity of his Authorization for Temporary Quarry Exploitation, only the Holder has the right to submit a new application for a new Exploitation Licence over the same Perimeter.

CHAPTER IV: TRANSPORTATION, STORAGE AND SALE OF QUARRY PRODUCTS

Article 166 : Transportation and storage of quarry products

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

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

Article 167: Sale

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

TITLE VI: SECURITIES

CHAPTER I: MORTGAGES

Article 168: Assets which can be mortgaged

The following can be mortgaged pursuant to the present Code:

- a) Exploitation Licences, Exploitation Licences for Tailings, Small-scale Mining Exploitation Licences and Authorizations for Permanent Quarry Exploitation, in whole or in part; the movables by incorporation which are located within the mining exploitation Perimeter, in particular, factories, installations and machines built for the concentration, treatment and the transformation of the mineral substances contained in the deposits or in the artificial deposits;
- b) The fixtures used in mining exploitation;

Article 169: Procedure for the approval of the mortgage

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

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

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

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

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

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

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

The Minister renders and transmits his decision to approve or his reasoned decision to refuse, to the Mining Registry within a period of forty-five days from the date the application was submitted.

Without prejudice to the provisions of article 46, the Mining Registry proceeds to register the mortgage within the period of five days following the sending of the Minister's decision to grant approval.

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

Article 170: Reasons for the refusal to approve mortgages

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

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

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

Article 171: Registration and enforceability of the mortgage deeds

The mortgage is registered against the payment of a registration fee the amount of which is set forth in the Mining Regulations.

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

Article 172: Execution of mortgages

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

However, the mortgagee may, contrary to the provisions of article 261 of law number 73-021 of July 20 1973 on the general legal regime of assets, legal regime of land and real estate, and the legal regime of securities as modified and complemented to date, take the place of the defaulting debtor and in this capacity require the partial or total transfer of the mining or quarry right onto his own name, if he complies with the conditions of eligibility provided for in article 23 of the present Code.

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

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

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

Article 173: Mining registry examination in case of transfer

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

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

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

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

The validity of the new title corresponds to the unexpired period of the term of validity of the initial title.

After the expiry of the period of five days provided for in paragraph 3 of the present article, the mortgagee or the third party in his place may exercise the provisions of article 46 of the present Code.

The transfer of the mining or quarry rights onto the name of the mortgagee or the third party in his place is made within a period of one month as of the date the application was received.

Article 174: Legal consequences of the transfer

In case of execution of the mortgage and transfer of the mining or quarry right into his name, the mortgagee or the third party in his place, commits to assume all of the obligations arising from the initial title vis-a-vis the State and third parties.

Article 175: Legal Mortgages

The provisions of articles 253 to 255 of law number 73-021 of July 20, 1973 on the general legal regime of assets, legal regime of land and real estate, and the legal regime of securities as modified and complemented to date for the mortgages of the Treasury and the rescue company, may apply provided they are not contrary to the provisions set forth in this Code.

CHAPTER II: PLEDGE

Article 176: Pledges of marketable products

Marketable products originating from the deposits or artificial deposits may be pledged.

Pledges affecting marketable products are governed by the provisions of articles 322 to 336 of heading IV of law number 73-021 of July 20, 1973 on the general legal regime of assets, legal regime of land and real estate, and the legal regime of securities as modified and complemented to date.

TITLE VII: LEASES AND TRANSFERS

CHAPTER 1: LEASE

Article 177: Lease contracts

The lease consists of renting for a fixed or indeterminate period of time, without the right to sublet, of all or part of the rights relating to a mining right or a quarry authorization in return for a payment agreed to by the lessor and the lessee.

The mineral and/or quarry exploration rights cannot be leased.

In order to be valid, any lease contract must include an accelerated termination clause:

- a) In case the lessee fails to pay the taxes, duties and royalties owed to the State;
- b) In case of non-compliance with the laws and regulations which have financial or administrative consequences which are detrimental to the lessor.

In order to be valid, any lease contract must include clauses setting out the conditions for the maintenance and the reinvestment necessary for the appropriate exploration and development of the deposit.

Any lease contract must include the joint and several liability of the lessor and the lessee vis-à-vis the State. Notwithstanding any clause to the contrary, the lessee is liable for payment of the taxes and royalties due by virtue of a mining or quarry title. However, if the lessee defaults, the lessor is liable vis-à-vis the State, subject to his right of recourse against the defaulting lessee.

Article 178: Processing of the application for a lease

Subject to the provisions below, the Mining Registry carries out the mining registry examination in accordance with the provisions of article 40 of the present Code.

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

- a) To provisionally register the Licence subject to the lease on the mining registry survey map. This registration is valid for the entire duration of the examination;
- b) to display the outcome of the examination in the room specified in the Mining Regulations. A copy of the opinion is provided to the applicant;
- c) to reject the application, in case of an unfavourable opinion, and to notify the applicant of the decision to reject it.

In case of a favourable opinion, the Mining Registry proceeds to record the lease contract within a period of five days, in accordance with the provisions of article 171 of the present Code.

Upon expiry of this period, the lessee may take advantage of the provisions of article 46 of the present Code.

The term of validity of the lease contract corresponds to the term of validity of the lessor's unexpired title.

Article 179: Registration of the lease contract

Prior to the conclusion of the contract, the lessee must demonstrate that he is eligible for the mining right or for the quarry authorization relating to his contract.

In order to be able to enforce it against third parties, any lease contract must be registered in the registry book set up and kept for this purpose at the Mining Registry, in accordance with the procedure provided for in the Mining Regulations.

The registration of the lease contract is only subject to the assessment by the Mines Administration of the lessee's eligibility according to the procedure provided for in the Mining Regulations.

The lease contract is registered by the Mining Registry against payment of a registration fee the amount of which is specified in the Mining Regulations.

Article 180: Lessor's rights

Notwithstanding any clause to the contrary, the lessor may, either personally or through any duly authorized expert of his choice, exercise the right to monitor and inspect the lessee's work.

The Mining Directorate notifies the lessor of the observations which it addresses to the lessee and must bring to his attention its inspection reports.

Article 181: Lessee's exemption from liability

Without prejudice to the provisions of the last paragraph of article 177 of the present Code, the lessee is liable for civil and criminal matters vis-à-vis third parties.

However, the lessee may be relieved from any liability if he proves that:

- a) The damage was caused before the entering into of the lease contract;
- b) The damage occurred after the entering into of the lease contract, but before the effective occupation by him of the place of exploitation.
- c) The damage is caused by a fraudulent exploitation, carried out either by the lessor or a third party.

CHAPTER II: TRANSFERS

Section I: Conveyances

Article 182: Conveyance deeds

The mining rights and the Authorizations for Permanent Quarry Exploitation may be conveyed in whole or in part. This conveyance is final and irrevocable. In the absence of any provisions to the contrary, the substantive law on conveyance applies.

Any partial conveyance must comply with the provisions of articles 28 and 29 of the present Code.

In addition, any partial conveyance of mining exploitation rights or an Authorization for Permanent Quarry Exploitation only becomes effective as of the date a new mining or quarry exploitation right is granted.

The transferee must be a person who is eligible to apply and to hold the mining rights or the Authorizations for Permanent Quarry Exploitation.

The conveyance deed must include the undertaking by the transferee to assume all of the obligations of the holder vis-à-vis the State which arise from the mining right or the Authorization for Permanent Quarry Exploitation at issue.

Article 183: Processing of the application for conveyance

The processing of the application for conveyance is made in accordance with the provisions of articles 40 and 178 of the present Code.

Article 184: Registration and enforceability of the conveyance deed

In case of partial conveyance of the mining or quarry exploration right, the Mining Registry issues a new mining or quarry title.

In case of a partial conveyance of the exploitation right or the Authorization for Permanent Quarry Exploitation, the partial conveyance is registered upon granting of the new right.

In order to be enforced vis-à-vis third parties, the registration of the conveyance deed is made in accordance with the provisions of article 171 of the present Code.

Article 185: Transfer of the right

Subject to the provisions of article 40 and 178 of the present Code, the technical evaluation of an application file for the conveyance of mining rights or the Authorization for Permanent Quarry Exploitation in the name of the transferee is carried out within a period of twenty working days as of the date the application file is sent to the Mines Directorate by the Mining Registry.

The technical evaluation consists of:

- a) Verifying the transferee's financial capacity;
- b) Verifying that the obligations of the transferor have been assumed by the transferee;
- c) Failing that, determines that any change which the transferee proposes to make in the original documents on the basis of which the initial mining right or the Authorization for Permanent Quarry Exploitation was granted does not alter the technical conclusions of the project.

Any refusal to transfer the mining rights or the Authorization for Permanent Quarry Exploitation must contain the reasons therefor and it confers on the holder the right to recourse provided for by the provisions of articles 315 and 316 of the present Code.

The conveyance of the mining rights or the Authorization for Permanent Quarry Exploitation is registered in the appropriate registry book kept by the Mining Registry in accordance with article 172, immediately after the notification to the transferee and to the transferor of the decision to approve the transfer.

The conveyance may only concern the mining rights or Authorizations for Permanent Quarry Exploitation which are valid.

Article 186: Obligations of the transferor after transfer

Notwithstanding any clause to the contrary, the conveyance does not relieve the initial holder from his obligations vis-a-vis the State for the payment of the fees and charges in connection with his mining or quarry title during the period he was the holder, nor from his obligations regarding rehabilitation of the environment.

Section II: Transfer

Article 187: Transfer deeds

The mining rights and the Authorizations for Permanent Quarry Exploitation may be transferred in whole or in part pursuant to a contract of merger and by reason of death. In the absence of provisions to the contrary, the provisions of substantive law on transfers apply.

The person in whose favour the transfer is made must be eligible to hold mining or quarry rights.

Article 188: Partial transfer

The partial transfer of mining rights and Authorizations for Permanent Quarry Exploitation is made in compliance with the provisions of articles 28 and 29 of the present Code.

Article 189: Processing of the application for transfer

The processing of the application for transfer of the mining or quarry rights is made in accordance with the provisions of articles 40 and 178 of the present Code.

Article 190: Registration and enforceability of the transfer deeds

In order to be enforceable vis-à-vis third parties, the transfer deeds are registered in accordance with the provisions of articles 171 and 184 of the present Code.

Article 191: The act of conveyance by virtue of a contract of merger and for reason of death

The conditions and procedures for admissibility and processing of the acts of transfer pursuant to a contract of merger and for reason of death are those provided for in the deeds of conveyance of mining rights set out in the present Code.

Article 192: Obligations of the beneficiary of the conveyance

Notwithstanding any clause to the contrary, the person in whose favour the conveyance is made remains liable vis-à-vis the State and to third parties for all the obligations of the initial holder of the mining right or the Authorization for Permanent Quarry Exploitation.

Section III: Option contracts

Article 193: Option contract

The Exploration Licence may be the subject of an option contract. This contract is entered into freely between the parties and confers on the beneficiary the right to obtain a participation in the exercise of the mining exploitation right deriving from an Exploration Licence, or in the entire or partial transformation of same if he makes a certain investment and/or carries out work in connection with the mining activities relating to the Exploration Licence at issue.

Article 194: Registration of option contracts

The option contracts are registered in accordance with the provisions of article 171 of the present Code.

Article 195: Transfer of the rights

The provisions which apply to the transfer of mining rights also apply to the transfer of mining rights in case of an option

TITLE VIII: OBLIGATIONS OF THE HOLDERS OF MINING OR QUARRY RIGHTS

CHAPTER I: OBLIGATIONS RELATING TO THE VALIDITY OF THE MINING OR QUARRY RIGHTS

Article 196: Obligations to maintain the validity of the rights

In order to maintain the validity of his mining or quarry rights, the holder must:

- a) Commence the work within the time period specified in article 197 of this code;

b) Pay the surface area fees per quadrangle relating to his title, each year before the deadline specified in article 199 of this code.

If he fails to fulfil any of these obligations, the holder is deprived of his right pursuant to the procedure provided for in articles 286 to 291 of the present Code.

The holder's failure to comply with the obligations set forth in the following chapters is punishable by fines and/or possibly by an order to suspend the operations or, in case of breach of the law, by legal proceedings

Article 197: Obligation to commence the work

The holder of an Exploration Licence must commence the exploration within a period of six months as of the date the title evidencing his right is issued.

The holder of an Exploitation Licence must commence the development and construction work within a period of three years as of the date the title evidencing his right is issued.

The holder of a Small-scale Mining Exploitation Licence or an Exploitation Licence for Tailings must commence the development and construction work within a period of one year, as of the date the title evidencing his right is issued.

The holder of an Authorization for Permanent Quarry Exploitation must commence the work within a period of six months from the date the title evidencing his right is issued.

The Mining Regulations specify the conditions for the application of this provision.

Article 198: Obligation to pay the annual surface area fees per quadrangle

To cover the costs of the services and the management of the rights evidenced by the mining titles, annual surface area fees per quadrangle are charged for each mining or quarry title issued, to the benefit of the Mining Registry which pays a part thereof to the departments of the Ministry of Mines in charge of the administration of the present Code.

The holder of Exploration Licences, Exploitation Licences, Exploitation Licences for Tailings and Small-scale Mining Exploitation Licences, Exploration Licence of Quarry Products and the Authorization for Permanent Quarry Exploitation, pays for the surface area fees for the first year at the time when the mining or quarry title is issued.

The holder pays the annual surface area fees per quadrangle for each subsequent year before the end of the first quarter of the calendar year. However, the annual surface area fees are paid per quadrangle pro rata to the period of time since the issuing of the initial title, or to the last year of the term of validity of the title.

The annual surface area fees per quadrangle are paid at the counter of the Mining Registry which has issued the mining or quarry title. The latter provides the holder with a receipt upon payment of same.

The Mining Regulations determine the conditions for the collection of the annual surface area fees per quadrangle for each year.

Article 199: Calculation of the annual surface area fees per quadrangle

The amount of the annual surface area fees per quadrangle are specified in the Mining Regulations so as to be the approximate equivalent to the amount per hectare provided for in the paragraphs below.

The holder of an Exploration Licence pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 0.03 USD per hectare for the first two years of the first term of validity; the amount in Congolese Francs equivalent to 0.31 USD per hectare for the remaining years of the first term of validity; the amount in Congolese Francs equivalent to 0.51 USD per hectare for the second period of validity; and, the amount in Congolese Francs equivalent to 1.46 USD per hectare for the third period of validity of his title.

The holder of an Exploitation Licence pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 5.00 USD per hectare regardless of the term of validity of his title.

The holder of an Exploitation Licence for Tailings pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 8.00 USD per hectare, regardless of the term of validity of his title.

The holder of a Small-scale Mining Exploitation Licence pays annual surface area fees per quadrangle in the amount of Congolese Francs equivalent to 2.30 USD per hectare, regardless of the term of validity of his title.

The holder of an Exploration Licence of Quarry Products pays annual surface area fees per quadrangle in the amount in Congolese Francs equivalent to 0.005 USD per hectare, upon issuance of his title and upon renewal thereof, if applicable.

The holder of an Authorization for Permanent Quarry exploitation pays annual surface area fees per quadrangle in the amount in Congolese Francs equivalent to 2.00 USD per hectare, regardless of the term of validity of his title.

Article 200: Obligation to pay the annual surface area fees per quadrangle in the event of partial transformation of a mining right

In the event the holder requests a partial transformation of the Perimeter which is the subject of his Exploration Licence into a mining exploitation Perimeter, the quadrangles concerned follow, after the transformation, the system of rates applicable to the annual surface area fees per quadrangle payable for this licence.

Article 201: Payment of the annual surface area fees per quadrangle in case of a preliminary and conditional decision

In the event of a preliminary and conditional decision, as set forth in article 76 and 158 of the present Code, the holder of a mining or quarry exploration right pays the annual surface area fees per quadrangle relating to his exploration title.

However, in case of mining or quarry exploitation rights granted, he pays the annual surface area fees per quadrangle at the rate set for such right, compensating for the fees previously paid for the mining or quarry exploration title, to make up for the remaining amount owing, to cover the annual surface area fees arising from the issuing of the Exploitation title.

CHAPTER II: OBLIGATIONS RELATING TO THE ACTIVITIES RELATING TO MINING OR QUARRY TITLES

Section I: Protection of the environment

Article 202: During prospecting

Any person who carries out mineral prospecting or prospecting for quarry products must comply with the code of conduct for said activity set forth in the Mining Regulations.

Article 203: During exploration

Before commencing mineral exploration work or quarry products exploration work, the holder of an Exploration Licence or an Exploration Licence of Quarry Products must prepare and obtain approval of the MRP for the proposed activity.

The conditions of the MRP and its approval are determined by way of regulation.

The approval of the MRP is under the jurisdiction of the department responsible for the protection of the environment within the Ministry of Mines in collaboration with the Minister of the Environment.

Article 204: During Exploitation

Any applicant for an Exploitation Licence, an Exploitation Licence for Tailings, a Small-scale Mining Exploitation Licence, or an Authorization for Quarry Exploitation must submit an environmental impact study together with an environmental management plan for the project, and obtain the approval of his EIS and EMPP, as well as implement the EMPP.

The environmental impact study will include a description of the ecosystem before commencing mining operations, including the flora and fauna, soil and topography, air quality, underground and surface water. It specifies the aspects which may be affected qualitatively and quantitatively by the mining or quarry exploitation activity.

It will include as well, the measures planned for the protection of the environment, the elimination or the reduction of pollution, the rehabilitation of the sites, as well as the verification of the effectiveness of said measures.

The holder of mining or quarry rights must provide security in order to guarantee the compliance with the environmental obligations relating thereto during exploration and/or exploitation. In addition, the holder of a mining right is authorized to set up a provision for the site rehabilitation in accordance with the provisions of article 258 of this Code.

The conditions of application of this provision, including the financial guarantee, are specified in the Mining Regulations.

Section II: Protection of the Cultural Heritage

Article 205: Declaration of archaeological indications

The holder of a mining or quarry right must inform the local administrative authority and the authority in charge of Culture, Arts and Museums, of the discovery of archaeological indications if the exploration or exploitation works reveal the existence thereof.

Article 206: Discovery of elements of the national cultural heritage

The holder is prohibited from moving the objects which are contained in the updated national cultural heritage list, be they movables or other items. In this case, he must inform the local administrative authority and the authority in charge of Culture, Arts and Museums of this fact in writing, and without delay.

The Holder must remove, secure and keep these elements of national cultural heritage safe, as applicable, at the cost and on behalf the State if the local administrative authority and the authority in charge of Culture, Arts and Museums concerned do not remove them within a period of sixty days following notification of the discovery.

Section III: Safety and Health

Article 207: Special regulations

Mineral Exploitation is subject to the measures for safety, health and protection enacted by special regulations.

Article 208: Jurisdiction of the Mines Administration

The holders of the mining and or quarry rights must comply with the measures which are decreed by the Mines Administration with a view to preventing or removing the causes of the dangers which the work inflicts on the public safety and health, the preservation of the deposits, springs and public roads.

In the event of an emergency or refusal by those involved to comply with these measures, these will be taken and implemented by the administration without consultation at the expense of those involved.

In the event of imminent danger, the representatives of the Mines Administration empowered to do so will immediately take the measures required to remove the danger and may, if applicable and for this purpose, address all relevant requests to the local authorities and the miners.

The representatives of the Mines Administration, duly empowered, have the capacity of a Judicial Police Officer to investigate and ascertain any breach of the provisions of the present Code and its implementing measures.

Article 209: Notification of accidents in a mine or in a quarry

Any serious or fatal accident in a mine or in a quarry or in its related operations, must be immediately notified by the most rapid means of communication possible, to the Mines Directorate and the administrative and judicial authorities under whose jurisdiction the accident occurs.

Article 210: Publication of the safety instructions

Holders of mining or quarry exploitation rights must publish the safety instructions, taking into consideration the special conditions of his exploitation activities. These instructions are sent to the Mines Directorate and made known to its employees and the individuals who enter the mine site.

The Mining Regulations determine the conditions of publication of the safety instructions.

Article 211: Use of explosive substances

Holders of mining or quarry rights using explosive substances are subject to special regulations for these substances, which are appended to the Mining Regulations.

Section IV: Infrastructure

Article 212: Authorization for construction and the planning of infrastructure

Holders of mining rights or Authorizations for Permanent Quarry Exploitation must build and maintain all the infrastructures required for the activities relating to the titles or the environmental authorization relating thereto, in accordance with the provisions of the present chapter.

Any infrastructure to be built by the holder is subject to a plan submitted to the competent administrative authority for consent, and the prior consultation with the local authority which has territorial jurisdiction.

Article 213: Use of the infrastructure of the project

The roads built by the holder inside or outside the mining or quarry Perimeter may be used, provided it does not affect the exploitation and subject to the consent of the holder, by the neighbouring mining, industrial and commercial establishments, at their request, on the condition that fair compensation is determined by mutual agreement by the parties, including participation by those involved in the maintenance of said roads.

The roads built outside and inside the Perimeter may be opened to the public under the conditions provided for in the preceding paragraph, subject to fair compensation to be agreed upon between the holder and the community or the local cadastral entity whose inhabitants make use of said roads.

Article 214: The right of the State over the infrastructure

Except for a written and express agreement to the contrary between the holder and the State, all public utility infrastructure built by the holder of a mining or quarry right which remains in place upon expiry of the term of validity of his right, becomes part of the State's public domain.

Section V: Various obligations

Article 215: Relations with the local authorities

Before commencing his activities, the holder of a mining or quarry right has the obligation to appear before the local authorities in whose jurisdiction he will carry them out, and hand in, against the issuing of a receipt, a copy of his mining or quarry title.

Article 216: Registers and reports

Holders of mining or quarry titles must keep the registers, prepare and submit the reports of activities, in accordance with the Mining Regulations.

Article 217: Inspections

Holders of mining or quarry titles must submit to inspections carried out by the representatives responsible for inspecting mining or quarry operations.

In all cases, these inspections take place during office, workshop or site opening hours.

The Mining Regulations set forth the conditions to carry out said inspections.

Article 218: Opening and closing of an exploration or exploitation centre

Any opening or closing of an exploration centre or mineral exploitation or permanent quarry exploitation centre must be notified without delay to the Mines Administration, according to the modalities set forth in the Mining Regulations.

TITLE IX: TAX AND CUSTOMS LEGAL REGIME FOR THE MINES

CHAPTER I: GENERAL PROVISIONS

Article 219: Taxpayers affected

The Holder is subject to the tax and customs legal regime set forth under the present heading for all his mining activities carried out on the National Territory.

Without prejudice to the provisions of article 223 of the present Code, the tax and customs legal regime provided for under the present heading also applies to the affiliated companies and to the sub-contractors.

The activities of concentration, processing and/or transformation carried out by the holder of a mining right and/or its affiliated companies and sub-contractors are governed by the tax and customs legal regime provided for in the present Code.

However, the exploration activities for quarry products or the quarry exploitation are subject to the tax and customs legal regime under substantive law.

Article 220: Exhaustive tax and customs legal regime

Subject to the provisions of articles 221 and 222, the tax and customs regime which apply to mining activities on the National Territory is defined under heading IX of the present Code, to the exclusion of all other forms of taxation present and future.

Upon entry into force of the present Code, only the taxes, customs duties, charges, royalties and other fees due to the public Treasury mentioned hereafter are applicable to the holder, according to the conditions provided for under the present title:

- a) The taxes applicable to the holder are: The taxes on vehicles, taxes on the surface area of mining and hydrocarbon concessions, taxes on land, taxes on property, taxes on income, taxes on rental income, taxes on salaries, exceptional taxes on salaries of expatriates and taxes on the internal turnover;
- b) The fees charged by the Customs Administration applicable to the holder in the National Territory are: taxes upon entry, taxes on consumption and excise taxes.
- c) The holder is subject to the special tax on road traffic, surface area fees and mining royalties;
- d) Without prejudice to the provisions in article 234, paragraph 3, the holder, the affiliated companies and the sub-contractors are subject, when carrying out activities outside their mining projects, to the charges and compensatory duties which contribute to the costs of the functioning of the public administrations or the customized public services.

Contrary to article 221, the taxes related to articles 235 to 239, 244 to 246, items (a) and (b) not included, and 259 paragraph 4, apply and are deemed to apply to the holder at the rates and pursuant to the conditions of substantive law in force upon enactment of this Code.

Article 221: Modifications to the tax and customs regime

Subject to the provisions of article 222 below, the tax and customs regime specified in the present Code may only be modified in accordance with the provisions of article 276 of the present Code.

Article 222: More favourable tax and customs provisions

If substantive law legislation adopted or enacted in the National Territory after the date the present Code enters into force, provides for more favourable tax or customs provisions than

those contained in the present Code, these new provisions are immediately applicable, as of right, as of the date they enter into force.

Article 223: Benefit of the regime which is applicable to the holder of mining titles

Also benefiting from the entire tax and customs regime provided for by the present Code:

- a) The affiliated companies carrying out mining activities set forth in the present Code;
- b) The sub-contractors carrying out mining activities which are governed by the present Code, and which result exclusively from contracts entered into with the holder.

Article 224: Tax and customs procedure

Without prejudice to the provisions of the present Code, the tax and customs procedure applicable is that of the substantive law.

The procedure for collection and the practical terms of the distribution provided set forth in article 242 are determined by the Mining Regulations.

CHAPTER II: CUSTOMS REGIME

Section I: General

Article 225: List of assets benefiting from the preferential regime

Before commencing the work, the holder submits the list including the number and the value of the movable property, equipment, vehicles, mineral substances and other inputs which are governed by the preferential regime provided for in the present Code. Prior to that, the list must be approved by a joint Decree issued by the Ministries of Mines and Finance, within thirty working days following the date of receipt of the letter of application for approval by the Ministry of Mines and the copy by the Minister of Finance.

If upon expiry of this period, no reply is given, the list is deemed to have been approved, and the receipt of filing certifies this fact. In this case, the competent authorities must issue the Decree of approval, within seven days.

In case of refusal of approval of the list, the decision must be in writing and contain the reasons for refusal.

This list indicates the categories of equipment, non-obsolete goods and tools required respectively at the stage of exploration, construction and development, as well as at the stage of exploitation of the project which benefits from the advantages of the customs regime defined hereafter.

The supplies of consumer goods, reagents and maintenance products needed for everyday use, but not directly related to the mining activity, are excluded from said lists.

Imports by the holder or his sub-contractors of equipment, goods, tools and other goods which do not appear on the approved lists, are subject to the provisions of the substantive law.

The Mining Regulations determine the conditions of organization and operation of the Interministerial Commission called to assist the Ministers referred to in paragraph 1 above.

Article 226: Exporting samples

In the context of the project, the holder's exports of samples for industrial analysis and assaying is exempt from any customs duty or other taxes, regardless of their nature, when leaving the National Territory.

Notwithstanding the provisions of article 234 of the present Code, samples exported in violation of article 50 paragraph 3 of the present Code are subject to all taxes pursuant to substantive law.

Samples sold to third parties to the benefit of or by the holder, before or after analysis, are taxable at the rate set forth under substantive law.

Any export of samples which is of a commercial nature is also taxable. This is the case, in particular, for samples exported in exorbitant quantities in comparison with the reasonable requirements of an analysis.

Article 227: Imports of personal items belonging to expatriates

The personal items belonging to expatriate employees employed by the holder in connection with the Project, are exempt from import taxes and duties in accordance with customs legislation.

Article 228: Imported goods made available for consumption on the National Territory

The equipment, goods and the tools imported under the preferential customs regime may not be transferred on the National Territory without the authorization of the Customs Authority. Failure to comply with this provision exposes the holder to the penalties decreed by the customs regulations. If said equipment, goods and tools are made available for consumption, they shall be subject to the payment of charges and duties which remain due, at the rate in force on the date of transfer, calculated on the basis of the residual value brought up to date, based on the information on the initial import declaration.

Article 229: Consequences of halting the project on/before completion

In case the project is halted on/before completion, the materials, goods and tools which have benefited from the preferential customs regime must either be re-exported or be made available for consumption on the National Territory after complying with the customs regime by paying the charges and duties which remain due, calculated on the basis of the residual value brought up to date, based on the information on the initial import declaration.

The declaration indicating the halting of the work must be made immediately to the Customs and Mines Authorities.

Article 230: Transfer of goods, equipment and/or tools

In the event of a plurality of mining titles held by the holder and/or the exploitation company, the transfer of goods, equipment and/or tools from one project to another must be previously notified in writing to the customs administration.

In the event of a transfer of equipment used in connection with a given mining title, to a project relating to another mining title belonging to a different holder, this holder-transferee must benefit from a customs regime similar to the one from which the transferor benefited, and in order to bring this about, the latter must obtain prior written authorization from the Customs administration.

Article 231: Temporary import free of duty

The goods, tools and equipment introduced by the Holder in the National Territory and destined to be re-exported, are admitted temporarily free of customs duty with the authorization of the Customs Authority for a

period of six months. This term may be extended twice for the same period of time if, for reasons which are beyond the holder's control, it cannot be complied with.

Section II: Regimes applicable to the various phases of the project

Article 232: Import duties at preferential rates

Before the effective commencement of exploitation work at the mine, evidenced in accordance with the provisions of the present Code, all of the goods and products which are strictly for mining use and imported by the Holder, his affiliates and sub-contractors are subject to import duties at the rate of 2%, provided these goods appear on the list referred to in the first paragraph of article 225 of the present Code.

Upon the effective commencement of exploitation work, evidenced in accordance with the provisions of the present Code, all of the goods and products which are strictly for mining use and imported by the Holder, his affiliates and sub-contractors are subject to import duties at the rate of 5%, provided these goods appear on the list referred to in the first paragraph of article 225 of the present Code.

Fuel, lubricants, reagents and consumer goods destined for mining activities are subject to a single import duty of 3% throughout the duration of the project.

Article 233: Imports during the extension work

The holder of a mining title who makes an investment in order to extend, after the start of exploitation work at the mine, may benefit from the preferential customs regime provided for in the first paragraph of article 232 of the present Code for the equipment, tools and items to be imported for the extension work, provided he files an application with the Mining Registry and demonstrates that the work to be carried out is for the purpose of increasing the production capacity of the mine by at least 30%. The application should indicate the date on which the extension work will be completed.

After the application has been processed, in accordance with the provisions of articles 40 and 41 of the present Code, and without the file being sent to the Minister, the Mining Registry delivers an authorization of consent to the holder, who will be able to use before the customs authorities in order to benefit from the customs regime applicable during the period of construction and development. The list of imports relating to the extension work will be appended to the authorization.

The issuing of an authorization is only possible provided favourable registrar, technical and environmental opinions have been rendered. However, in case of refusal to issue the authorization, the holder reserves the right the recourse provided for by articles 315 and 316 of the present Code.

If the extension work is not completed in the manner or within the deadline indicated at the time of the application provided for in the first paragraph above, and/or if the production capacity does not actually increase by 30%, the holder is retroactively liable for the import duties on the imports made at the rate applicable during the Exploitation phase.

However, in the event of fraud in the declaration at the time of import in relation to the present provision, the holder is subject to the import duties and turnover tax on the imports at the rate specified under substantive law.

Article 234: Export duty

Without affecting the validity of the application of the provisions of article 226 paragraphs 2 to 4 of the present Code, the holder is completely exempted from all customs duties and other taxes, regardless of their nature, for his exports in relation to the mining project.

However, in addition to the imposition of taxes pursuant to the substantive law, fraudulent and irregular exports made by the holder are subject to fines and penalties provided for in customs legislation.

The royalties and fees paid as remuneration for services rendered in connection with the export of commercial products or goods for temporary export for improvement, may not exceed 1% of their value.

Article 235: Consumption and excise duties

The holder is liable for the consumption and excise duties in accordance with substantive law, except for mineral oils indicated in article 7 of Ordinance-Law no. 68/010 of January 6, 1968 and intended for and exclusively linked to mining activities.

CHAPTER III: FISCAL REGIME

Section I: Taxation

Article 236: Property tax

The holder is liable for property tax in accordance with the provisions of substantive law, only on the properties for which the tax on the surface area of mining and hydrocarbons concessions is not due.

Article 237: Tax on Vehicles

The holder is liable for taxes on vehicles in accordance with the provisions of substantive law. However, taxes on vehicles are not payable on vehicles used for transporting people or materials, vehicles used for handling or traction, which are used exclusively within the mining project compound.

Article 238: Tax on the surface area of the mining and hydrocarbons concessions

The holder of an Exploration Licence is liable for the tax on the surface area of the mining and hydrocarbons concessions at the rates in Congolese Francs equivalent to US\$0.02 per hectare for the first year, in Congolese Francs equivalent to US\$0.03 per hectare for the second year, in Congolese francs equivalent to US\$0.035 per hectare for the third year and in Congolese Francs equivalent to US\$0.04 per hectare for the subsequent years.

The holder of a mining exploitation right is liable for the tax on the surface area of the mining and hydrocarbons concessions at the rate in Congolese Francs equivalent to US\$0.04 per hectare for the first year, in Congolese Francs equivalent to US\$0.06 per hectare for the second year, in Congolese Francs equivalent to US\$0.07 per hectare for the third year and in Congolese Francs equivalent to US\$0.08 per hectare for the subsequent years.

Article 239: Special road tax

The holder is liable for the special road tax in accordance with the provisions of substantive law.

Section II: Mining Royalties

Article 240: Basis of the mining royalties

The holder of a mining exploitation title is subject to mining royalties which are calculated on the basis of the amount of sales minus the costs of transport, analysis concerning the quality control of the commercial product

for sale, insurance, and costs relating to the sale transaction. The selling price must be higher than or equal to the price which could be obtained for any sale of products to a non-affiliated entity.

The holder is liable for these royalties on all commercial products as of the effective date the exploitation commences.

The mining royalties are due upon sale of the product.

Article 241: Rate of mining royalties

The mining royalties are 0.5% for iron or ferrous metals, 2% for non-ferrous metals, 2.5% for precious metals, 4% for precious stones, 1% for industrial minerals, solid hydrocarbons and other substances not specifically mentioned, and 0% for standard construction materials.

Article 242: Distribution of the mining royalties

The mining royalties are paid by the holder of the mining exploitation title to the Public Treasury. The latter is in charge of distributing the receipts of the mining royalties as follows: 60% remain in the hands of the Central Government, 25% is paid into an account designated by the Provincial Administration where the project is located and 15% into an account designated by the Town or the administrative territory in the area where the exploitation activities take place.

The funds resulting from the distribution referred to in the previous paragraph of this article, in favour of the Decentralised Administrative Entities above, are allocated exclusively to the building of basic infrastructure in the interest of the community.

The Mining Regulations determine the conditions of the collection and distribution of the mining royalties in accordance with the distribution mentioned above, as well as the Entity in charge thereof.

Article 243: Tax credit

The holder benefits from a tax credit equal to a third of the mining royalties paid on products sold to a transformation entity located on the National Territory.

Section III: Income Tax

Article 244: Business tax on salaries

The holder is legally liable for the business tax on salaries payable by the employees at the rate set forth in the substantive law.

Article 245: Tax on rental income

The holder is liable for the tax on lease income in accordance with the provisions of substantive law.

Article 246: Tax on movables

The holder is liable for the tax on movables, in accordance with the provisions of substantive law, with the exception of the following income:

a) interest paid by the holder by virtue of loans contracted in foreign currency abroad which are exempted from the tax on movables.

If the holder is an individual, the benefit of the advantages granted under item (a) of the present article is only possible if it can be proved that the loans were exclusively assigned to the mining project.

The interest paid by the holder to the affiliates by virtue of loans contracted abroad are only exempted from the movable property tax if the interest rates and the other loan conditions are as favourable or better than the rates and the conditions which the holder of a mining title, as applicable, could obtain from money lenders who are not affiliates.

b) dividends and other distributions paid by the holder to his shareholders which are subject to movable property tax at the rate of 10%.

Article 247: Tax on profits

The holder is liable for the tax on profits at the rate of 30%.

Subject to the provisions on provisional instalments and contrary to Decree-law no. 058 of February 18, 1998 instituting the deduction of tax at source known as the Industrial and Commercial Profit, ICP in abbreviated form, the tax regime for the advance payment of the occupational tax on ICP, is not applicable to the holder of a mining title. Nonetheless, the latter has the obligation to collect the ICP at source.

Section IV: Determination of the taxable profit

Article 248: Taxable profit

The net profits from exploitation which are subject to occupational tax on profits are determined in accordance with accounting law and fiscal legislation in force, as well as the provisions of articles 249 to 258 of the present Code.

Contrary to Congolese legislation on accounting, the holder may keep his accounts in foreign currencies quoted by the Central Bank of Congo.

Article 249: Depreciation

The amount of the first year's depreciation is equal to 60% of the cost of the asset at issue.

Declining balance depreciation applies for each of the subsequent taxable years.

The following are excluded from the system of depreciation on declining balance:

- a) The depreciable items which normal duration of utilization is less than four years or higher than twenty years;
- b) Patents, trademarks, businesses, customers, the name and all other intangibles.

Subject to the provisions in the previous paragraphs of this article and article 250 of this Code, the provisions of substantive law as regards depreciation apply.

Article 250: Deferred depreciation

The depreciation made in loss periods is considered to be deferred. They may be accumulated and reported without any restriction in time over the subsequent tax years, to the amount of the taxable income.

Article 251: Tax loss carried forward

Losses in a tax year may, at the express request of the person who is liable for the payment of the tax and addressed to the tax administration, be deducted from the profits made during the subsequent tax years until the fifth year which follows the loss tax year, in accordance with the tax legislation.

The absence of a tax declaration or the late submission of a tax declaration for a given tax year precludes the possibility of the deduction of the loss being allowed during the year relating to said tax year.

Article 252: Research and development expenditures

The amount of the research and development expenditures incurred by the holder, other than those relating to the acquisition of fixed assets are converted to current value as of the day of the granting of the Exploitation Licence, and amortized by the mining company during the following two tax years at the rate of 50% per year.

The loss in a given tax year resulting from the provisions of the preceding paragraph is reported without limitation in terms of time, over the subsequent tax years.

Article 253: Capital gain and capital loss on mining title transfers

The holder includes the capital gain or the capital loss realized at the time a mining title is being transferred, to the basis for the calculation of the tax on profits.

The capital gain or the capital loss so realized is equal to the difference between the transfer price and the non-amortized amount of the research and development expenditures.

The transferee of a mining title amortizes the price of the acquisition of the mining title acquired as a staggered charge.

Article 254: Deduction of interest paid abroad

The interest paid by the holder to affiliates by virtue of external loans is only deductible from the taxable basis of the tax on profits if the interest rates and the other loan conditions are as favourable or better than the rates and the conditions which the holder can obtain from creditors who are not affiliates.

Article 255: Deduction of mining royalties

The mining royalties paid by the holder are deductible from the taxable basis of the tax on profits.

Article 256: Deductible expenses

Without affecting the application of the provisions of the present Code, the following are deemed expenses which can be deducted from taxable revenues:

- a) rent actually paid and rental charges relating to the buildings or parts of buildings used in carrying out the activities, and all general costs resulting, in particular, from their maintenance, lighting. However, the rental value of buildings or parts of buildings whose owner is the person liable for the tax is not considered as a rent or as a rental charge;
- b) The general expenses resulting from the maintenance of the equipment and the movables used for Exploitation;

- c) The wages, salaries, bonuses and allowances of the employees and the workers of the exploitation site, the advantages in kind if they have been added to the salaries. However, the remuneration of the members of the family of the miner, other than his spouse working with him, may only be deducted as long as it does not exceed a normal wage or salary which would be paid to a third party not related to the holder, and which has been as such, subjected to the tax;
- d) The interest on capital borrowed from third parties and destined for the exploitation, and all similar charges, interest or royalties relating to it;

The associates in the companies other than stock companies, are not considered as third parties.

Under no circumstances can the interest on mortgage debts relating to buildings which are rented out, in whole or in part, be considered as deductible expenses;

- e) The costs of transportation, insurance, brokerage, commissions. However, the expenses consisting of commissions, brokerage, commercial discounts or others, vacations, occasional or non-occasional fees, bonuses and other rewards of any kind, will not be allowed to be deducted unless warranted by the exact indication of the name and the address of the beneficiaries as well as the date of the payments of the amounts allocated to each of them. Similarly, as regards commissions and brokerage costs, the deduction will not be allowed unless compliance with taxes on turnover can be evidenced. In case of failure to provide an exact declaration of the aforesaid amounts and/or of their beneficiaries, or in case of failure to provide proof of payment of the turnover tax, said amounts shall be added to the profits of the entity who has paid them, without prejudice to the penalties provided for in case of fraud.
- f) The amount of the profit distributed among the personnel of the company;
- g) The wages allocated in stock companies to the members of the board of directors provided it is evidenced that they correspond to normal remuneration in relation to the nature of the real and permanent functions performed in the company on National Territory.
- h) The amortization of fixed assets used in the performance of services;
- i) The actual contribution being an exploitation charge settled within the period, to the extent it has not been determined automatically.

The amounts paid by the holder to an individual or a legal entity incorporated pursuant to foreign law with whom he is related, either by means of a direct participation in its capital, or through holdings held by one or more other companies of the same group, as payment for a service rendered, are not likely to be admitted as professional fees of the company unless on the triple condition that:

- a) The quality of the service rendered is clearly demonstrated;
- b) The service in question cannot be rendered on the National Territory;
- c) The amount of the remuneration corresponds to the actual value of the services rendered.

Article 257: Provision for restoration of the deposit

The holder is authorized to set aside, free of tax on profits, an amount for restoring the mineral deposit, up to a maximum equivalent to 5% of the taxable profits for the tax year during the course of which it is set aside.

This provision must be used before the expiry of a period of three years as of the end of the tax year during the course of which it is set aside, either in exploration activities on the National Territory, or in participations in the capital of companies which hold exclusively one or more exploration licences on the National Territory.

If the deposit is not used pursuant to the conditions set forth in the previous paragraph, the amount for restoring the mineral deposit is reintegrated into the taxable profits for the fourth tax year following the one during which it was set aside.

Article 258: Provision for site rehabilitation

The holder must make, free of tax on profits, a provision for rehabilitation of the site on which the mining activities take place.

The maximum amount to be allocated for this provision is equal to 0.5% of the turnover for the tax year during which it is made.

In case the holder is required to make a provision or to fulfil other financial obligations in compliance with the regulations on the protection of the environment, the amount of this second provision or of these financial obligations shall be deducted from the maximum authorized amount of the provision for the rehabilitation of the site.

This provision must be used within a period of ten years as of the end of the tax year during which it was made. The unused amount of the provision is reintegrated into the taxable profits for the eleventh tax year following the one during which said provision was made.

The unused amount of the provision at the end of the last tax year of the project is reintegrated into the taxable profits for said tax year.

Section V: Turnover Tax

Article 259: Domestic turnover tax

The holder is liable for domestic turnover tax on the sales made and the services rendered on the National Territory.

The sales of products to a transformation entity located in the National Territory are expressly exempted.

The other sales of products within the National Territory constitute the tax base for the calculation of the taxable amount and the applicable rate is 10 %.

The services rendered by the holder are taxable at the rate set forth under substantive law.

The holder pays the turnover tax at a preferential rate of 5 % if he benefits from the supply of services relating to his company's corporate purpose.

The acquisition by the holder of goods produced locally is taxable at the rate of 3% for the goods related to the mining activities.

Section VI: Exceptional Tax on the remuneration of expatriates

Article 260: Preferential regime

The holder is liable for the exceptional tax on expatriate's remuneration at the rate of 10%. It is set/determined in terms of the salaries generated by the work carried out or the position held in the Congo, and is deductible from the taxable base of the tax on profits.

CHAPTER IV: TAX AND CUSTOMS REGIME APPLICABLE TO ARTISANAL MINING AND TO SMALL-SCALE MINING EXPLOITATION

Article 261 : Artisanal mining

The tax and customs regime applicable to artisanal miners, traders and approved trading houses is governed by regulations in accordance with the provisions set forth in the Mining Regulations.

Article 262 : Small-scale mining exploitation

Small-scale mining exploitation is subject to the customs regime set forth in articles 225 to 235 of the present Code.

Without affecting the application of the provisions of substantive law, small-scale mining exploitation falls within an unique tax regime as regards the taxes for which the holder of the mining title is liable in connection with the mining activities.

The taxable rate for small-scale mining exploitation activities is fixed at 10 % of the turnover resulting from the sale price of the commercial products.

The payment of the flat rate provided for in the previous paragraph exempts the holder from the payment of the mining royalties, taxes on movables, taxes on profits, the exceptional tax on expatriates' remuneration and the domestic turnover tax.

The flat rate is due at the time of the sale.

The share of the mining royalties to be apportioned is determined in accordance with the provisions of articles 240 to 242 of the present Code.

The conditions for the collection of taxes provided for in the preceding paragraphs are specified in the Mining Regulations.

The small-scale miner may opt either to remain in the unique taxation regime, or to be governed by the provisions of chapters I and III of the present Title.

The option so taken is irrevocable.

TITLE X: FOREIGN EXCHANGE REGIME AND STATE GUARANTEES

CHAPTER I : FOREIGN EXCHANGE

Section I : Conversion of foreign currency into Congolese Francs

Article 263 : Freedom to convert at the market rate

The holder of the mining rights benefits from the freedom to convert capital contributions, the funds advanced by the shareholders, draw downs on loans and the receipts in foreign currency originating from the sale of the products, into Congolese Francs at the best rate of exchange offered by the authorized banks on the day of the exchange operation.

However, the holder of mining rights may resort, for the exchange of paper currency, to approved non-banking intermediaries other than financial services companies.

Section II: Transfer of funds abroad

Article 264 : Transfers of income, current transfers and transfers on account of movements of capital

Without affecting the validity of the provisions of the last three paragraphs of the present article, the holder of the mining rights is authorised to make in favour of non-residents, after paying for the taxes and charges owing, the transfers of revenue, the current transfers and the transfers on account of movement of capital mentioned below, which are directly related to the activities authorised by virtue of his mining right, as follows:

- a) The payment for goods and services from foreign suppliers if he has been unable to find the same goods and/or services in the same quantity, quality and for the same price, as well as under the same conditions of delivery in the Congolese market.
- b) The acquisition or the lease of imported equipment;
- c) The payment of commissions to third parties for services rendered abroad;
- d) The payment of fees to third parties domiciled abroad for services rendered;
- e) The payment of royalties relating to the rights granted to the holder by foreign third parties;
- f) The training overseas of Congolese employees and the social security charges of expatriate employees, in particular, bonuses, insurance for professionals, transportation and moving expenses;
- g) The amounts corresponding to the dividends duly and legally declared, destined to be distributed to shareholders or to the holder's associates who are non-residents;
- h) The amounts corresponding to the receipts from the sale of shares, and all amounts originating from the transfer or the liquidation of the company's assets, as well as any compensation for expropriation;
- i) The repayment of advances on associates or shareholders current accounts, on the condition that the ratio of the funds borrowed against the amount of own funds does not exceed 75:25.

In addition, the foreign personnel residing in the National Territory, employed by the holder of a mining title, are guaranteed the free conversion and free transfer of all or part of the amounts owed to them, provided that the interested parties have paid for their taxes and various charges in accordance with the legislation in force in the Democratic Republic of the Congo.

The transfer of the funds required for the transactions listed above must be made solely through an approved bank, provided an exchange document is signed.

Any other transfer abroad is subject to the provisions set forth under the exchange regulations in force.

Article 265 : Control of transfers in favour of affiliated companies

Notwithstanding the provisions of article 264, transfers in favour of the holder's affiliated companies as payment for the goods supplied or services rendered must be justified in relation to the ongoing market prices for similar goods or services.

The conditions of this justification are defined in the Mining regulations.

CHAPTER II : HANDLING OF RECEIPTS FROM EXPORT SALES

Article 266 : Export of mining products

The holder is authorized to freely export and sell his entire production in the international markets of his choice. The receipts in foreign currency relating thereto must be collected within thirty days following the date of departure of the exports from an African port, except for the sales by instalments.

The holder must sign an exchange document, in accordance with the exchange regulations in force, for all of his export operations.

Article 267 : Main Account and accounts for the servicing of foreign debt

Contrary to the provisions of articles 1 to 9 of the Ordinance-Law no 67/272 of June 23, 1967, relating to the regulatory powers of the Central Bank of the Congo with regard to exchange regulations and its implementing measures, the holder who exports the authorized mining products has the right and also the obligation to:

- a) Open an account in foreign currency called the "Main Account" at a foreign bank with an international reputation which will have business dealings with a correspondent bank for the handling of funds which he is authorized to hold outside the National Territory;
- b) Communicate to the Central Bank of the Congo, in great detail, all of the coordinates of the main account;
- c) Pay the export receipts which he is authorized to hold outside the National Territory, in accordance with the provisions of article 269 below, into his main foreign account before any redistribution;
- d) Pay for the servicing of his foreign debt, including principal, interest, commissions and penalties from the main account according to the loan agreements concluded with the foreign money-lenders;
- e) Notify the loan agreements concluded with the foreign creditors to the Mines Administration in order to confirm whether the loan agreements correspond to the financing plan of a duly authorized mining exploitation. In case of loan agreements between affiliated companies, the holder also confirms that the loan conditions are no less favourable to the holder than the market terms between non-affiliated parties. He notifies the Central Bank.

The holder is authorized to open accounts in foreign currency at foreign banks with an international reputation where he manages or appoints a person to manage the funds paid from his main account necessary for the servicing his foreign debt, as well as the legal, statutory and free provisions and reserves.

Article 268: Foreign currency accounts

A holder who exports mining products can open and maintain an account or group of accounts in foreign currencies with approved commercial banks having a registered office in the Democratic Republic of the Congo, to handle the receipts and expenses in foreign currency relating to the project he is exploiting in connection with his mining right. He is free to keep in foreign currency all the receipts from the export sale of products deriving from the project, without the obligation to convert them into national currency.

If he has opened several accounts, a holder of a mining right must indicate the account deemed to be the 'Main National account' which shall receive in the first place all amounts and receipts from exports.

Article 269: Repatriation of receipts from exports

The holder who exports commercial mining products:

- a) is authorized to keep and manage in his main account and accounts for the servicing of the foreign debt, the receipts from his export sales up to a limit of 60%. The terms and conditions for paying into the accounts for the servicing of the foreign debt, as well as the terms and conditions for paying for the servicing of the holder's foreign debt, are set out in the loan agreements entered into by the borrower with his foreign creditors;
- b) must repatriate into his main national account held in the Democratic Republic of the Congo, 40% of the receipts from exports within fifteen days of receipt of same in the Main Account as provided for in article 267 of this Code.

Article 270: Payment of exchange control duties

The holder must pay the Congo Central Bank exchange control duties of 2/1000 on the following transactions:

- a) any payment abroad made by the approved banks from the holder's accounts in banks in the Democratic Republic of the Congo, both for revenue and for expenses, with the exception of repatriations of receipts originating from the main account;
- b) any debit or credit transactions made from his main account, with the exception of transfers in favour of accounts for the servicing of the foreign debt; payments made from these accounts for the servicing of the foreign debt are also exempted from the exchange control duties.

The holder will instruct the banks involved to calculate this duty and to transfer the amount thereof to the account indicated by the Central Bank.

Article 271: Control of transactions in the main local account and main external account

The holder must submit a monthly report on the movements of funds paid into the main foreign currency account abroad, as well as the references relating to the export files regarding the receipts paid into said account. This report, together with a copy of the bank statement relating to said account is submitted to the Mines Directorate and to the Central Bank of Congo, in order to ascertain conformity with the provisions in the present chapter.

However, the Central Bank shall retain the right to dispatch its delegates to verify the regularity of the transactions recorded on the main account, with prior notice thereof in writing to the holder.

Article 272: More favourable exchange provisions and the exchange regime applicable to the holder of quarry rights

If legislation or regulation on exchange under substantive law, enacted or promulgated in the National Territory after the date of entry into force of this Code, contains provisions more favourable than those contained in this Code, these new provisions are immediately applicable, as of right, upon their entry into force.

A holder of quarry rights is subject to the provisions of substantive law with regard to all his exchange transactions.

CHAPTER III: GOVERNMENT GUARANTEES

Article 273: Freedoms Guaranteed

Subject to compliance with the mining laws and regulations of the Democratic Republic of the Congo, the State will guarantee the holders of mining and quarry rights:

- a) compliance with the law and agreements or conventions executed with partners;
- b) The right to freely dispose of their assets and to organise their businesses as they deem fit;
- c) The freedom to recruit, provided that priority shall be given to employing Congolese personnel with equal qualification in terms of education and experience, to carry out mining operations, and subject to the conditions of dismissal pursuant to the laws and regulations in force;
- d) Free access to raw materials within the limits of the mining or quarry rights;
- e) Free circulation within the National Territory for their personnel and their products provided that the laws concerning residence and circulation of foreigners are complied with.
- f) The freedom to import goods and services as well as the funds necessary for their activities, provided Congolese firms are being given priority for any contract relating to the mining project, under conditions which are equivalent in terms of quantity, quality, price and delivery and payment dates.
- g) The freedom to dispose of the products in the internal markets, to export and dispose of the products on the external market, provided the provisions of the present Code are complied with;
- h) Peaceful enjoyment of the Perimeters relating to their mining and/or quarry rights;
- i) to facilitate the obtaining of all the documents required for their foreign personnel to access the places of exploration or exploitation, without affecting the validity of the laws and regulations governing the policing of foreigners.

Article 274: Prohibition to repurchase foreign currency

The State and the Central Bank of Congo are forbidden to officially repurchase the foreign currency deposited in the currency accounts of residents and non-residents.

Article 275: Compensation for expropriation

The mine or quarry installations cannot be compulsorily expropriated by the State except in exceptional circumstances set by law, in exchange for fair compensation paid to the holder concerned at least six months prior to the compulsory execution of the decision to expropriate.

Within 48 hours following the date of notification of the decision to expropriate, the State will notify the affected holder of the proposed amount of compensation, and the precise or estimated date on which the actual expropriation will take place.

The expropriated holder must react within ten days from the date of receipt of the State proposal, unless he requests an additional extension.

In the case of acceptance, the compensation will be paid in accordance with the first paragraph of this article.

In case of any disagreement, the expropriated holder's reply must include the latter's proposal with regard to the actual level of compensation.

If the State rejects the expropriated holder's proposal, the latter may request that a ruling be made by the competent Court or by means of arbitration procedure set forth in Articles 315 to 320.

It is also possible to appeal through the courts or by arbitration if: there has not been any notification of the expropriation measure or the amount of the compensation, or in the event of late notification or, lastly, if the compensation for expropriation has not yet been paid and the execution of the decision to expropriate is nearing six months.

Article 276: Guarantee of stability

The State guarantees that the provisions of the present Code can only be modified if, and only if, this Code itself is the subject of a legislative amendment adopted by Parliament.

The rights attached to or deriving from an exploration licence or mining exploitation licence granted and valid on the date of the enactment of such a legislative modification, as well as the rights relating to or deriving from the exploitation licence subsequently granted by virtue of such an exploration licence, including among others, the tax, customs and exchange regimes set forth in this Code, remain acquired and inviolable for a ten-year period from the date of:

- a) the entry into force of the legislative modification for the valid exploitation licences existing as of that date;
- b) the granting of the exploitation licence subsequently granted by virtue of a valid exploration licence existing on the date of entry into force of the legislative modification.

TITLE XI: RELATIONS BETWEEN THE HOLDERS OF MINING RIGHTS AND/OR QUARRY RIGHTS THEMSELVES AND WITH THE OCCUPANTS OF THE LAND

CHAPTER I: RELATIONS BETWEEN THE HOLDERS

Article 277: Works between two adjacent mines

In cases where it is acknowledged to be necessary to carry out works of common interest for two neighbouring mines, the holders concerned cannot object to them. The parties concerned, heard by the Directorate of Mines, are each obliged to participate thereto prorata to their interest.

If the works at a mine cause damages to an adjacent mine, the party carrying out those works is liable for compensation.

If, on the contrary, these works bring about a reduction of the charges of a neighbouring mine, indemnification is necessary.

A protective wall of sufficient size between two adjacent mines may be requested by the Directorate of Mines, but the maintenance thereof may not give rise to compensation.

Article 278: Rights of way

The holder of an exploitation or small-scale mining exploitation permit has the right of way over the tailings exploitation Perimeter for the purpose of gaining access to his own exploitation Perimeter.

Provided that they do not contravene the provisions of the present Code, the provisions of Articles 170 to 179 of Law No. 73-020 of July 20, 1973 relating to the general regime for assets, land and real estate and the regime concerning securities, shall apply in case of mining rights of way.

The holder of a Tailings Exploitation Permit is entitled to compensation if the right of way over the Perimeter of the Holder of an Exploitation Permit or Small-scale Mining Exploitation Permit causes him grave damage which translates into an additional burden on his mining activity.

The Mining Regulations set the terms and conditions for the creation of rights of way referred to in the present Article.

CHAPTER II: HOLDERS' RELATIONS WITH THE OCCUPANTS OF THE LAND

Article 279: Restrictions on the occupation of the land

Except with the consent of the competent authorities, no person may occupy land:

- a) Reserved for cemeteries;
- b) Containing archaeological remains or a national monument;
- c) Situated on or less than ninety metres from a dam or a building belonging to the State;
- d) Close to National Defence installations;
- e) within an airport;
- f) Reserved for railway projects;
- g) Reserved for the planting of young trees or forest plantations;
- h) Situated less than ninety metres from the boundary of a village, a town, a municipality or a city;
- i) on a street, a road, a motorway;
- j) within a national park.

Unless there is consent from the owner or legal occupant, no person may occupy land situated less than:

- a) one hundred and eighty metres from occupied, unoccupied or temporarily unoccupied houses or buildings;
- b) forty five metres from land hoed and ploughed for farm cultivation;
- c) ninety metres from a farm breeding cattle, having a reservoir, a dam or a private water reserve.

The Governor of the Province, on the advice of the competent department of the Mines Authority may request the setting up of Perimeters of protection of any dimension within which exploration and exploitation of mineral substances may be subject to certain conditions or may be prohibited, without the holder of the mining or quarry title being able to claim any compensation whatsoever. Said Perimeters are for the protection of buildings and built-up areas, water sources, roads, civil engineering and public utilities works, as in all other cases where it would be necessary in the general public interest.

Compensation representing the total expenses relating to the works or structures demolished or abandoned is however owed by the public entity concerned in the event the holder has to demolish or abandon works or structures duly erected by or commenced by him with a view to exploiting those Perimeters, prior to the setting up of said Perimeters.

Article 280: Actual liability for the occupation of the land

The holder or lessee must compensate for the damages caused by the works he carries out in connection with his mining activities, even if they are authorized.

In case of transfer of a mine exploitation right or an Authorisation for Permanent Quarry Exploitation, liability for damages deriving from works prior to the transfer is joint and several for both the former and the new holder.

In case of transfer, the former holder must notify the new holder in writing. He also notifies him, in so far as he is aware of them, of the significant dangers or disadvantages resulting from exploitation. In the absence of this information, the beneficiary of the transfer has the option to request termination of the transfer or to have a portion of the price reimbursed to him. He may also request, at the expense of the former holder, elimination of the dangers or the removal of the disadvantages that may cause damage to third parties.

The holder may be required to provide a guarantee, to pay full compensation if these works are likely to cause a particular damage, and if it is suspected that his resources may not be sufficient to meet his potential liabilities.

The courts shall assess the need for this guarantee and shall determine the nature and amount thereof.

All damages caused to the assets of third parties shall be settled at their actual replacement value, plus 50%, unless the assets are returned to the condition they were in prior to the occurrence of said damage.

Article 281: Compensation for the occupants of the land

Any occupation of land depriving the rightful holders of enjoyment of the surface rights, any modification rendering the land unfit for cultivation, shall cause the holder or lessee of the mining and/or quarry rights, at the request of the rightful holders of the surface rights, and at their convenience, to pay fair compensation, corresponding either to the rent or the value of the land at the time of its occupation, plus fifty per cent.

Land, as referred to in the above paragraph, means the ground on which the individuals have always carried out or are effectively carrying out any activity.

Amicable settlement of the dispute may be made by any legitimate method other than resorting to the courts, especially by compromise, settlement, arbitration or before an Officer of the Judiciary Police or an Officer of the Public Ministry.

In the absence of an amicable settlement between the parties within three months from the date on which the dispute arises, the compensation shall be determined by the competent court pursuant to the rules on judicial organization and jurisdiction in force in the Democratic Republic of the Congo.

However, the usual occupant of the land may, in agreement with the holder, continue to exercise his right to cultivate the land provided that the work in the fields does not hinder the mining activities. The owner of the surface rights shall then no longer continue to construct buildings on it.

Lastly, the simply passing through the land does not entitle to any compensation if no damage results therefrom. The act of passing must take place with a view to best conserving the environment.

Article 282: Restricted access areas

At the request of the holder of an exploitation right or a permanent quarry exploitation authorization and after making the necessary investigation, the Minister may demarcate a zone around the holder's sites, as a restricted access area, in whole or in part, prohibiting any activities and/or the circulation of third parties.

Damages caused in that area by the mining or quarry exploitation works to third parties who might violate that prohibition, shall not entitle them to any compensation.

The Mining Regulations set forth the conditions to set up these areas, as well as the duration thereof.

Article 283: Authorized activities

Without prejudice to the State's ownership rights over its sub-soil, and subject to any rights of third parties over the surface concerned, the holder of an exploitation right or a permanent quarry exploitation permit has, in addition to the rights relating to his permit, with the authorisation of the Governor of the province concerned, and on the advice of the competent department of the Mines Authority:

- a) Within his surveyed Perimeter, the right:
 - to occupy the land necessary for his activities and associated industrial activities, including the construction of industrial plants, dwellings and others of a social nature;
 - to use the underground water, the water in non-navigable water courses, and water courses conducive, in particular in connection with a concession relating to a waterfall, to build a hydro-electric station intended to meet the power requirements of the mine;
 - to dig canals and channels;
 - to establish means of communication and transport of any type.
- b) Outside his demarcated Perimeter, the right to establish means of communication and transport of any type.

The rights of occupation set forth in the present article constitute legal encumbrances in the public interest. They cannot be infringed, directly or indirectly, by the granting of subsequent mining and/or quarry rights.

Article 284: Execution of public utility works or exploitation of quarries relating thereto

The authorisation to occupy the land does not preclude the carrying out of public utility works or the opening a temporary quarry to provide the materials necessary for such works. The holder or lessee is entitled to compensation for the damages suffered.

Article 285: Making use of mineral substances not specified in the mining titles

The holder of a mining right or quarry exploitation right is entitled to make use of, for the needs of his exploitation activities and associated industries, mineral substances other than those he is extracting, which the works necessarily involve the mining thereof. The occupant of the surface rights may request that he be permitted to make use of these substances, if they are not used by the mine operator, in return for fair compensation, if applicable, unless they derive from the processing of the mineral substances extracted.

TITLE XII: FAILURE TO COMPLY WITH ADMINISTRATIVE OBLIGATIONS AND PENALTIES

CHAPTER 1: FAILURE TO COMPLY WITH ADMINISTRATIVE OBLIGATIONS

Article 286: Non-payment of surface rights fees and failure to start work within the deadline set forth under the law

The following are considered breaches of administrative obligations: non-payment of the annual surface rights fees per quadrangle and failure to start the works within the deadline specified in Articles 196 to 199.

Article 287: Confirmation of non-payment of surface rights fees per quadrangle and processing of files

The Mining Registry confirms the cases of non-payment of surface rights fees per quadrangle at the end of the first quarter of each year. It notifies the holder concerned and displays in a room determined by the Mining Regulations, within fifteen working days following the end of the quarter, a list of those holders who have not paid the surface rights fees relating to their mining and/or quarry rights. This list will also be published in the press in the national capital and main city of each province concerned.

A holder whose name appears on the list may submit any document or grounds for his defence within forty five (45) days from the date on which the list is displayed, which is also specified in the published notice. Only proof of payment or cause of force majeure are recognised as grounds for defence.

The processing of the defence documents shall be carried out by the Mining Registrar within a maximum period of thirty days following the end of the period for defence. The Mining Registry shall notify the holders concerned of his opinion and send it to the Minister, together with the defence documents as well as a draft opinion for the forfeiture of rights, in accordance with the provisions of Articles 40 and 41 of the present Code.

Article 288: Confirmation of failure to start the works and the processing of the files

Failure to commence the works within the deadlines is confirmed by the Directorate of Mines which sends the report on its findings to the Mining Registrar in order for the party concerned to be notified within ten working days following the end of the period during which the works should have commenced.

Within a maximum period of one working day following receipt of the report, the Mining Registrar displays the findings from the Directorate of Mines in a room indicated by the Mining Regulations. A copy of this report is provided to the holder.

Each holder is responsible for obtaining the findings of the technical department concerning his project. A holder whose failure to commence works has been confirmed may present any document for his defence within forty-five days from the date on which the confirmation is displayed. Only proof for reasons of force majeure are recognised as valid. .

The Directorate of Mines processes the defence documents within a maximum period of thirty days as of the end of the period indicated in the previous paragraph, and it sends its technical opinion to the Mining Registrar who informs the holder concerned.

The Mining Registrar sends the technical opinion of the Directorate of Mines, together with the file relating thereto and the draft decision, to the Minister for his decision.

CHAPTER II: PENALTIES

Article 289: Causes of forfeiture and decision to deprive the holder of his rights.

Without prejudice to the provisions of Articles 299 to 311 of this Code, the breaches listed in article 286 constitute causes of forfeiture of a holder of an exploration licence, Exploitation Licence, Licence for Tailings Exploitation, Small-scale mining Exploitation Licence and Authorisation for Permanent Quarry Exploitation.

The Mining Registrar immediately notifies the holder of the decision to cancel the rights and then proceeds to display it in a room indicated by the Mining Regulations .

Notification of the decision to forfeit the rights entitles the holder to the recourse as set forth in Articles 317 to 320 of the present Code. The recourse must be exercised within thirty days following the display of the decision in the offices of the local branch of the Mining Registry.

In the absence of any recourse pursued within the deadline set above, the decision to forfeit the rights is registered in the appropriate registry book and published in the Official Gazette.

In the event of an appeal against a forfeiture decision, the mining or quarry right remains valid throughout the duration of the procedure. However, a notice is made of the decision and of the appeal procedure initiated in the registry book of granted licences and authorisations.

Article 290: Cancellation of the mining rights and/or Authorization for Permanent Quarry exploitation

The mining rights and the Authorization for Permanent Quarry Exploitation are cancelled by the Minister if the holder does not appeal against the forfeiture decision, the recourse is not pursued within the time limit, or if the appeal is rejected.

The decision to cancel takes place on the date on which the appeal is rejected or on the last day on which the appeal should have been made.

The decision to cancel is notified to the Mining Registrar which proceeds to register it in the registry book of cancelled titles.

The Perimeter relating to a cancelled mining or quarry right reverts to the public domain of the State.

Article 291: Prohibition

The holders of mining rights and Permanent Quarry Exploitation Authorisations whose rights are forfeited and whose titles are cancelled, can obtain new mining rights or Permanent Quarry Exploitation Authorisations only after a period of five years as of the date the cancellation was registered in the registry book held at the Mining Registry.

Furthermore, cancellation of the mining rights or the Authorization for Permanent Quarry Exploitation does not have the effect of relieving the Holder from his environmental and fiscal obligations.

Article 292: Suspension

Any serious offence defined in the Mining Regulations committed by the Holder is punishable by immediate suspension of works, decided by the Minister, with prior official notification.

The duration of the suspension is set by regulation depending on the extent of the gravity of the offence committed and of its impact on the environment, public health and safety. .

In order to rectify this serious offence, the Mines Authority may, on his own initiative or upon request from the local authorities concerned, impose on the holder the carrying out of those works which it deems necessary for

the protection of public health, the environment, workers or adjacent mines. If the holder fails to do so, the Mines Authority may have said work carried out by third parties at the holder's expense.

Article 293: Irregular keeping of documents

In the event of irregular keeping of the compulsory documents required pursuant to the provisions of the present Code as well as its implementing regulations, duly confirmed, the Mines Authority sends a written notice to the mine operator concerned, if the breach does not constitute an offence.

In the event of repeated breach, its activities may, after notice, be suspended by the Minister for a period of three months.

At the end of the suspension period, the Mines Authority proceeds with a verification. If the irregularity found has disappeared, then the suspension will be lifted. If not, the suspension is renewed for a period of 3 months.

If the notice has not yet resulted in a satisfactory response before the expiry of the second period of suspension, the holder shall be liable for a fine of an amount in Congolese Francs equivalent to US\$ 500 per day until the irregularity has disappeared, any day started deemed to be an entire day.

Article 294: Confiscation of the provision for rehabilitation of the site

If, on completion of the exploration and/or exploitation works, the holder of a mining or quarry right does not voluntarily execute the obligations agreed to in the EMPP or MRP, at the request of the Mines Authority and to its benefit, the competent court shall order the confiscation of the corresponding provision for rehabilitation set up by the holder.

If the value of the guarantee or provision thus confiscated is not sufficient to cover the costs necessary to return the site concerned to its original state, the Mines Authority may entrust execution of the pending work to a third party. The costs incurred for carrying out such additional works shall be borne by the defaulting mine operator.

At the request of the Mines Authority, the defaulting operator may be the subject of a ban on leaving the National Territory, ordered by the competent court, until completion of the works for rehabilitation of the site.

Article 295: Failure to provide reports

Failure by the holder of a mining or quarry title to provide the compulsory periodic reports within the statutory time limit, leads to a notification requesting the holder to do so within a maximum period of thirty days.

Upon expiry of this time limit, unless he is in a situation of force majeure, the defaulting holder is liable to a fine, the amount of which in Congolese Francs is equivalent to 1,000 USD per day for each day of delay starting on the last day of the regulatory time limit up until the submission of the reports, any day started deemed to be an entire day.

Article 296: Delay in paying the mining royalties

Delay in paying mining royalties, failure to pay them, as well as the payment of a reduced amount owing, constitute infractions sanctioned by this Code as follows:

- in the event of a delay in the payment of the royalty, the amount owing is increased by the amount of a penalty the rate of which is fixed at 7% per month of delay;
- in the event of a duly confirmed refusal to pay, the amount owing is multiplied by thirty;
- in the case of payment of a reduced amount owing, this amount is multiplied after adjustment by three to fifteen times.

In all cases, there is recourse to the seizure procedure in accordance with tax legislation currently in force.

Article 297: Force majeure

Any event which is unforeseeable, unavoidable, insurmountable and outside the control of the holder, preventing him, despite his best efforts, from executing his obligations in full or in part or causing a significant delay in the execution thereof, constitutes a case of force majeure. The following events are particularly considered as cases of force majeure: wildcat strike, riots, insurrection, civil unrest, social conflicts, government action without legal support, sabotage, natural catastrophe, fire, acts of war or circumstances attributable to war.

The event of force majeure may be allowed only for breaches of those obligations which could not have been executed on account of the occurrence of this event.

An act or an omission attributable to the holder does not constitute a case of force majeure.

The conditions for application of the present article are specified in the Mining Regulations.

Article 298: Time limit for notifying a case of force majeure

If the holder finds it impossible to fully or partially execute his obligations due to an event of force majeure, he shall notify the Mining Registry immediately, or no later than fifteen days from occurrence of the event, specifying the reasons constituting the force majeure, the commencement date of the non-performance, and the means proposed to remedy the case of force majeure.

As of the date of the occurrence of an event of force majeure, the execution of the obligations affected is suspended for the duration thereof and for an additional period sufficient to enable the holder to act with the due diligence required to revert back to the same position as before said event occurred. The duration of the event of force majeure is added to the time limit for execution of his obligations.

TITLE XIII: INFRACTIONS AND PENALTIES

Article 299: Illegal mining activities

Any person who engages, without permission, in mineral exploration or exploitation work in mines or quarries in violation of the provisions of the present Code, shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$10,000 and US\$250,000.

The mineral substances extracted illegally shall be seized and their confiscation ordered by a competent court in favour of the State or the holder of the mining or quarry exploitation right concerned.

Article 300: Theft or possession of stolen mineral substances

Any person who has stolen or has kept stolen mineral substances shall be punished, without prejudice to the special provisions regarding precious substances and the provisions of the Congolese Criminal Code, with a fine in the amount of Congolese Francs equivalent to between US\$5,000 to US\$20,000.

Article 301: Diversion of mineral substances

Any person who has diverted mineral substances shall be punished with five to ten years imprisonment and a fine in the amount in Congolese Francs equivalent to between US\$5,000 to US\$20,000.

Any person who has facilitated the diversion of mineral substances shall be punished with two to five years imprisonment and a fine in the amount in Congolese Francs equivalent to between US\$ 5,000 to US\$10,000.

Article 302: Illegal purchase and sale of mineral substances

Any person who has bought or sold mineral substances in breach of the legal and statutory provisions in force shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$10,000 and US\$30,000.

The mineral substances relating to said transactions shall be seized and their confiscation ordered by the competent court in favour of the State.

Article 303: The illegal keeping of mineral substances

Any person who has illegally held mineral substances shall be punished with a maximum sentence of two months' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$ 2,000 and US\$20,000, or one of these penalties only.

Article 304: Illegal transportation of mineral substances

Any person who, without authorisation, has transported or has organised the forwarding of mineral substances, shall be punished by two months' imprisonment and a fine of between US\$2,000 and US\$20,000, or one of these penalties only.

Article 305: Fraud

Any person fraudulently exporting or attempting to fraudulently export mineral substances in infringement of the customs regime and the excise duties provided for in this Code is subject to the penalties and fines provided for by the customs and excise legislation in this matter.

Article 306: Infringements of health and safety regulations

Any person who has infringed the provisions of the mining regulations concerning public health and safety shall be punished by a fine the amount of which in Congolese Francs is equivalent to between US\$ 5,000 to US\$10,000, or only one of these penalties.

Article 307 : Corruption of State civil servants

The persons who, being empowered to carry out mining operations to execute the provisions of this Code are found guilty of violations to the provisions of Articles 147 to 149 of the criminal code volume II, are subject to criminal sanctions as set forth in said provisions, as well as a fine in the amount of Congolese Francs equivalent to US\$1,000.

Article 308 : Destruction, degradation and damage

The following persons are punishable by five to six years' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$5,000 to US\$10,000, or only one of these penalties:

Any person who has fraudulently or maliciously:

- a) placed false information on a post or a survey marking;
- b) placed, removed or damaged a post or a survey marking;

- c) made a false declaration or used documents he knew to be false or wrong for the purpose of either obtaining or arranging to obtain a mining right or quarry permit, or to prevent others from obtaining or exploiting mining rights or quarry permits.

Article 309 : Offences or violence against agents of the Mines Authority

Any person who has committed an offence by means of an act, words, gestures or threats or attacks against an agent of the State who is exercising or on the occasion of exercising his duties, shall be punished by a maximum of six months' imprisonment or a fine the amount of which in Congolese Francs is equivalent to between US\$1,000 and US\$5,000 USD, or one of these penalties only, without prejudice to the other provisions set forth in substantive law.

Article 310: Hindering the activity of the Mines Authority

Any person who hinders the execution of works ordered or authorised by the Mining Department as set forth by the present Code and the Mining Regulations, shall be punishable with six months' imprisonment and a fine the amount of which in Congolese Francs is equivalent to between US\$ 2,000 to US\$10,000, or one of these penalties only.

Article 311: Contravening the decrees of the Minister and the decisions of the Governor of the Province

Any contravention of the provisions of Ministerial decrees and decrees of the Governor of the Province in connection with the artisanal or industrial mining sector relating to measures implementing the present Code, shall be punished by between seven days to one month imprisonment and a fine the amount of which in Congolese Francs does not exceed US\$5,000, or one of these penalties only.

TITLE XIV: APPEALS

CHAPTER 1: GENERAL PROVISIONS

Article 312: Recourse

The holder and the State are afforded the right to appeal through administrative, judicial and/or arbitration as set forth by the present Code.

CHAPTER II: ADMINISTRATIVE APPEALS

Article 313: Implementation of the rules of substantive law

Subject to the provisions of articles 46 and 315 of this Code, appeals made against administrative acts by the administrative authorities pursuant to or in breach of the provisions of the present Code or the provisions of the Mining Regulations are governed by the relevant provisions of substantive law, in particular, by the provisions of Articles 146 to 149 and 158 of Ordinance-Law No. 82-020 of March 31, 1982 relating to the code organising and setting the jurisdiction of the courts as modified and by Ordinance-Law No. 82-017 of March 31, 1982 relating to the procedure before the Supreme Court, as modified and supplemented up to this date.

Article 314: Shortening the time limits

Contrary to the provisions of Articles 79, 88 and 89 paragraph 1 of the aforementioned Law/Decree No. 82-017 of March 31, 1982, the prior claim of the claimant, actionable before the Administrative Section of the Supreme Court of Justice, must be lodged within thirty days following the date of publication or personal notification of the administrative act, to the authority who is able to revoke or modify said act. The petition for annulment (of

the act) must be lodged within twenty days from the date on which total or partial rejection of the claim has been notified.

The time limit for filing a reply and for filing the administrative documents is fifteen working days from the date of serving of the petition. The same time limit applies to the opinion of the Public Prosecutor. The extension of time limits imposed on parties for sending the petition and the reply may be decided by reasoned order of the Head of the Administration Office of the Supreme Court, and may not exceed twelve working days.

The shortening of the time limits set forth in the previous paragraph relate only to the refusal to grant mining and/or quarry rights as well as approval or execution of mortgages.

In any event, the sentence of the Supreme Court shall be rendered within thirty working days from the date on which the case is heard.

CHAPTER III: APPEALS VIA THE JUDICIAL SYSTEM

Article 315: Matters subject to court appeals

Without prejudice to the provisions of Article 46 of the present Code, the following are subject to court appeals, in particular:

- the withdrawal and the refusal to renew artisanal minerÕs and traderÕs cards;
- the refusal to transfer titles in cases of transfer or lease, by the person in charge at the Mining Registry or his local representative,
- overlaps between holders of mining rights,
- disputes between the holders or with the occupants of the land,
- confiscation of the guarantee or the provision for site rehabilitation in favour of the Mines Authority,
- disputes concerning compensation for expropriation,
- appeals against fines decided by the Mines Authority in case of irregular keeping of documents,
- the ban on leaving the National Territory,
- the imposition of a fine in case of failure to submit reports,
- the increase of penalties for late payment of the mining royalties and disputes due to cases of force majeure, as well as civil actions relating to the infringements provided for by this Code.

Article 316: Applicable rules

The courts in charge of deciding a dispute or an appeal against a judicial decision concerning the matters set forth in the previous article, shall apply the procedure pursuant to substantive law as set forth in the Congolese Code of Civil Procedure, the Criminal Procedure, the procedure before the Supreme Court of Justice, as well as all the general principles of law which apply to judicial matters.

CHAPTER IV: APPEAL VIA ARBITRATION

Article 317: Arbitration

Subject to the provisions relating to administrative and judicial appeals, and subject to the breaches, penalties and sanctions set forth by the present Code, disputes which might arise from the interpretation or application of the provisions of the present Code may be settled by arbitration as specified in Articles 318 to 320 of the present Code.

Article 318 : Domestic arbitration

Disputes arising from the interpretation or application of the provisions of the present Code shall be subject to arbitration according to the procedure set forth in the provisions of Articles 159 to 174 of the Congolese Code of Civil Procedure.

Article 319 : International arbitration

Notwithstanding the provisions of Article 318 of the present Code, disputes which might result from the interpretation or application of the provisions of the present Code may be settled, at the request of the party who proceeds first, by arbitration in accordance with the Convention on the Settlement of Disputes Relating to Investments between the State and Nationals of other States, provided that the holder is a *ÖNational* of another contracting state according to the terms of Article 25 of said convention.

Upon issuing a mining or quarry title, the holder gives his consent to such arbitration pursuant to said convention, and both on his own behalf and that of his affiliated companies. He also accepts that such affiliated company should be considered as a *ÖNational* of another contracting state.

Holders who are not Nationals of another contracting state may submit disputes resulting from the interpretation or application of the provisions of the present Code to any arbitration tribunal of their choice, but must notify the Government of the name, address and regulations of the arbitration tribunal on the date on which the mining title is issued at the Mining Registry.

Article 320 : Arbitration rules and decisions

In accordance with the previous article, arbitration shall take place in French at the place agreed to by the Government and the holder.

For arbitration purposes, the arbitration proceedings shall refer to the provisions of the present Code, the laws of the Democratic Republic of the Congo and to its own rules of procedure.

The decisions rendered by the arbitrator are enforceable and their enforcement may be requested before any competent court within the National Territory according to the procedure stipulated by the Congolese Code of Civil Procedure, or in the holder's country of origin.

In the event of application of the provisions of the previous paragraph, the Government waives its right of any immunity from jurisdiction or enforcement.

CHAPTER V: THE REPRESENTATION OF THE STATE AND THE SERVING OF NOTICE

Article 321 : The representation of the State

In all administrative, arbitration and judicial proceedings where the State is involved, the person in charge of the Mines Authority or his local agent shall represent it, either as a claimant or as a defendant, both within the country and abroad.

Article 322 : Serving of notice

Any appeal, judgment, order or other procedural instruments shall be served on the State at the Office of the Minister or at the Office of its local representative.

Any notice served at any other location in the National Territory or abroad is null and void.

TITLE XV: VARIOUS PROVISIONS

Article 323 : Consultation by the public of the registers and registry survey maps at the Mining Registry

The registers relating to mining and quarry rights, as well as the registry survey maps may be consulted by the public free of charge at the Mining Registry.

However, the collection of data is subject to payment of the charges set forth in the Mining Regulations.

Article 324 : Confidentiality

The technical, geological and mining information submitted by the holder are confidential for a maximum period of ten (10) years. After this period, they shall be available to the public.

However, this information may be used and published globally for documentary purposes before the expiry of this period, without disclosing personal information.

The information is no longer confidential upon expiry of the mine or quarry exploration title, if the holder renounces it, or if he has been deprived thereof.

Article 325 : Adjustment of amounts

The amounts expressed in foreign currency in the present law are expressed at the value of that currency on the date on which the present Code comes into force. These amounts are adjusted annually by decision of the person in charge at the Mining Registry, on advice of the Central Bank of Congo, in order to keep their value up to date.

Article 326 : Matters not regulated by the present Code

Associated matters not expressly stipulated, defined or regulated by the provisions of the present Code shall be governed by the Mining Regulations.

TITLE XVI: TRANSITORY PROVISIONS

CHAPTER I: MINING AND QUARRY RIGHTS IN FORCE

Article 327 : The list of mining and quarry titles held by the State

A list prepared and published by the Minister within forty-five days following enactment of the present Code, shall specify the mining and quarry titles held by the government entities which are subject to the new provisions of the present Code. These titles shall retain their term of validity until the original expiry date. Renewal thereof, if applicable, will take place pursuant to the provisions of the present Code.

CHAPTER II: PENDING APPLICATIONS RELATING TO MINING AND/OR QUARRY RIGHTS

Article 328 : Pending applications on the date on which the present Code is enacted.

Applicants who have applications for the granting of mining and/or quarry rights which are being processed on the date on which the present Code is enacted, must resubmit them pursuant to the provisions of the present Code within three months of the entry into force of the Mining Regulations. After this time limit, these applicants shall lose their right of priority.

Article 329 : Pending applications for renewal and transformation on the date on which the present Code is enacted.

Holders of mining and/or quarry rights who have pending applications for renewal or transformation on the date on which the present Code is enacted, must resubmit them pursuant to the provisions of the present Code within three months of the entry into force of the Mining Regulations. If they fail to resubmit them within that time limit, these applications shall be considered null and void without consultation.

Article 330 : Applications for renewal or transformation of mining and/or quarry rights which expire after the date on which the present Code is enacted.

Without prejudice to the provisions of the following paragraph, holders of mining or quarry titles who have applications for renewal or transformation on the date on which the present Code is enacted and whose mining rights expire after that date, shall benefit from an automatic extension of their mining or quarry rights until a decision is made by the competent authority.

These holders of mining or quarry rights have three (3) months following the date of entry into force of the Mining Regulations to bring their applications for renewal, transformation and transfer into conformity with the provisions of the new mining regulations. Failure to resubmit their applications within said time limit shall cause their rights to become invalid without consultation.

CHAPTER III: PARTNERSHIPS WITH THE STATE

Article 331 : Option to maintain partnerships entered into with the State

Any person of Congolese or foreign nationality who is a holder of a mining or quarry right who is in partnership with the State in the mining sector is entitled to opt, within three (3) months following enactment of the present Code, either to maintain or abandon that partnership. After that deadline, the partnership shall be deemed to have been maintained.

The declaration of renunciation of the partnership shall be made to the Minister.

The provisions of the present Article do not apply to joint ventures duly entered into by the State and private developers who form commercial companies pursuant to the corporate laws in force in the National Territory on the date on which the present Code is enacted.

Article 332 : Renewals of mining or quarry rights.

In application of the first paragraph of article 331 and without prejudice to the provisions of the previous paragraphs, Exploitation or Exploration Licences or Authorisations of holders whose projects or mining or quarry operations have been the subject of partnerships with the State and have expired on the date on which the present Code is enacted, or have not been renewed by reason of force majeure or by reason of an act attributable to the State, shall be renewed.

However, the holders of such licences are required to apply for renewal of their validity pursuant to the provisions of the present Code within three months following the entry into force of the Mining Regulations.

After the time limit indicated in the previous paragraph, these titles shall become null and void.

Article 333 : Issuing of new titles

In application of the first paragraph of article 331, persons of Congolese or foreign nationality who carry out exploitation activities on Perimeters which are not the subject of a mining right or mining title in the context of a partnership with the State, are required to cease all mining activities within thirty days following the enactment of the present Code. Upon expiry of this time limit, these activities will be considered illegal and shall be punished in accordance with article 299 of this Code.

However, they shall have right of priority in applying for mining rights regarding the Perimeters to which their mining rights relate, without prejudice to the mining or quarry rights held by third parties. The exercise of this right of priority is valid for a period of three (3) months from the date of entry into force of the Mining Regulations.

CHAPTER IV: IMPLEMENTATION OF THE NEW PROVISIONS

Article 334 : Mining Regulations

The conditions for application of the provisions of the present Code are specified in the Mining Regulations which shall be adopted by decree within a period of six (6) months following enactment of the present Code.

Article 335 : Suspension of admissibility of applications

In order for the new Mining Registry to be set up and to complete the review of existing titles, no application for a mining right or Authorization for a Permanent Quarry Exploitation shall be admitted as of the date of enactment of the present Code until it comes into force. Only applications for renunciation or transformation of existing titles shall be admissible. However, except for applications for authorizations for permanent quarry exploitation, applications to open quarries as well as those concerning permits for exploitation or commercialisation of mining products shall continue to be admissible and shall be dealt with pursuant to the provisions of Ordinance-Law no. 81-013 of April 2, 1981 concerning the general legislation for mines and hydrocarbons, until the present Code comes into force.

Article 336 : Validation of mining and quarry rights in force.

Subject to the provisions in the previous paragraph, mining and quarry rights issued pursuant to the previous legal provisions which are still valid, shall remain valid until their original expiry date.

In order to facilitate the setting up and the functioning of the Mining Registry specified in the present Code and the management of the mining and quarry rights, their holders must validate them in accordance with the procedure set forth in Article 337 hereunder.

Article 337 : Procedure for the validation of mining and quarry rights in force

Within forty five days following the enactment of the present Code, the Minister shall prepare and publish, by Decree, a complete list of the mining and quarry rights which are still valid, as well as those which have expired or have been cancelled since at least 1995. The list will be published in the Official Gazette, in the specialist journals, in the local dailies and be circulated on the Internet. It may be displayed in diplomatic and consular representation offices. It will contain, in particular, the identity of the holder, the number corresponding to the right, the term, province and district concerned, the geographical coordinates of the Perimeter, the date on which the right is issued and, if applicable, the date on which it expires.

Within ninety days following publication of the list in the Official Gazette:

- a) any person who claims to be the holder of a valid mining or quarry right who does not appear on the list is required to claim his right by providing proof of the validity and regularity thereof to the address shown on the list;

b) any holder of a mining or quarry right who appears on the list is required to confirm his intention to maintain his right and to bring forward any corrections to the information concerning him by submitting the corresponding proof or documentary evidence. The competent authority reserves itself the right to accept or deny any corrections if the proof is not sufficient.

After that time limit, the persons who have not taken action in accordance with the above provisions shall be deemed, without consultation, to have abandoned their right.

Upon expiry of the above time limit, the Minister shall publish the list of the confirmed rights in force, the list of the abandoned rights and the list of rights subject to claims or disputes. The latter shall be deferred to the commission of validation of mining and quarry rights. As long as the dispute is not resolved, the Perimeter at issue cannot be the subject of a new application for a mining or quarry right.

Article 338 : Commission for validation of mining and quarry rights

A Commission shall be created charged with validating the confirmed mining and quarry rights, examining and rendering a decision on the fate of the mining and quarry rights which are the subject of claims or disputes in accordance with paragraph 4 of Article 339. This commission shall also be charged with ruling on any dispute arising during the transition period of the entry into force of the present Code.

The Commission for the validation of mining and quarry rights shall consist of 15 members as follows:

- a) 2 for the Presidency of the Republic,
- b) 5 for the Ministry of Mines ,
- c) 1 for the Ministry for the Environment ,
- d) 2 for the Ministry of Justice,
- e) 1 for the Ministry of the Interior,
- f) 1 for the Ministry of Planning
- g) 3 independent persons.

The commission shall be assisted by national and international experts.

The members of the Commission shall be appointed by Decree of the Head of State on the advice of the Ministers to whom they are answerable, and on the advice of the Director of the Cabinet of the Head of State with regard to the representatives of the Presidency and the independent members.

The organisation and functioning of the commission and the status of its members shall be determined by decree of the President of the Republic.

Article 339 : Transformation of existing mining or quarry rights

The holders of mining or quarry rights validated in accordance with the provisions of Article 338 of the present Code must, within three (3) months following the entry into force of the Mining Regulations, transform their rights in accordance with the provisions of the present Code. The same applies to the holders of rights which are the subject of claims or disputes, within three months following the resolution of their cases.

Article 340 : Mining rights resulting from mining agreements

Without prejudice to the provisions of Article 336 above, the holders of mining rights deriving from mining agreements duly signed and approved pursuant to a Decree issued by the President of the Republic, in accordance with the provisions of Ordinance-Law no. 81-013 of April 2, 1981 concerning the general legislation for mines and hydrocarbons, and in force on the date on which the present Code is enacted, are governed by the terms of their respective agreements.

Their holders may, however, opt for the application of the provisions of this Code in their entirety in lieu of their agreements, within nine months of the entry into force of the present Code.

They must, in any case, within three months of the entry into force of the Mining Regulations, comply with the provisions of the present Code governing the form, direction and location of the mining Perimeters.

Article 341 : Approval of Agents for mines and quarries

Prior to the entry into force of the Mining Regulations, the Minister may, in exceptional cases, approve as agents for mines and quarries any person who can prove he has knowledge of the mining legislation and who has negotiated at least two mining agreements, or actively participated in the drafting of the present Code, notwithstanding the provisions set forth in said Regulation.

Article 342: Mining and Quarry rights affected by force majeure

Mining and/or quarry rights that are valid upon the entry into force of this Code, which exercise and enjoyment by their holders are prevented by an event of force majeure as defined in paragraph one of article 297 of this Code, remain valid for the duration of the event constituting force majeure.

The term of validity of each of these mining and quarry rights is automatically extended for a period equal to the length of time of all the events of force majeure that prevent the respective holder from enjoying the rights in question.

However, holders of mining and quarry rights the term of which is thus extended, must comply with the provisions of this Code within six months of the date of the disappearance or cessation of the event constituting force majeure.

TITLE XVII: REPEAL AND FINAL PROVISIONS

Article 343 : Repeal provisions

Upon enactment or entry into force of the present Code, as applicable, the following are repealed:

- a) Decree/Law No. 81-013 of April 2, 1981 relating to the general legislation on mines and hydrocarbons, as modified and supplemented up to that date, with the exception of the provisions applying to hydrocarbons, and except where they concern the mining agreements duly signed and approved upon promulgation of the present Code.
- b) Article 4 of Law No. 77-027 of November 17, 1977 relating to general measures for the reassignment of Zairian or radicalised assets concerning mines and quarries;
- c) Law No. 74-019 of September 15, 1974 relating to the creation of a mining squad;
- d) Decree-Law No. 72-005 of January 14, 1972 intended to reinforce the protection of certain substances against theft;
- e) Decree No. 84-082 of March 30, 1984 relating to the regulation of the activities of trading houses of precious minerals;
- f) Order No. 0012 of January 12, 1997 bringing in the new tariff of duties and taxes on imports relating to mines and quarries;

- g) Order No. 121 of September 11, 1998 relating to the creation of a public service of a social nature called the Department of Purchasing of Precious Mineral Substances (the OS.A.S.M.I.P.Ó and its implementing measures;
- h) Law no. 78-017 of July 11, 1978, regarding loans intended to finance mining activities of private companies within the framework of the enjoyment of their mining rights;
- i) all legal and statutory provisions contrary to the provisions of the present Code.

Article 344 : The entry into force of the present Mining Code

With the exception of Articles 229, 327 to 338 and 341 to 344 which come into force upon enactment of the present Code, the other provisions of the present law shall come into force within six months after its enactment.

Drafted in Lubumbashi, on July 11, 2002

Joseph Kabilà