

## **Comments on the October 2013 proposed amendments to DRC Code Minier**

Below are our comments on the further amendments as they relate to the following specific aspects of the DRC's Code Minier:

- Obligatory open and competitive tenders for allocation of mining rights
- Transparency on contracts, beneficial ownership, revenues and production volumes
- Prohibitions on the handling and trading of conflict minerals
- Adequate environmental and social standards

### **1. Obligatory open and competitive tenders for allocation of mining rights**

There is nothing new in the second lot of amendments that deals with this issue.

### **2. Transparency on contracts, beneficial ownership, revenues and production volumes**

There is nothing in the amendments that addresses the points we raised in our memo with respect to these issues.

There is a new definition of transparency included in Article 1 (54 bis - *a set of rules or mechanisms related to the obligations for statements/publication from both the State and mining industry of revenues and payments of any kind, including obligations relating to the acquisition and disposal of mineral rights*). But the term is used only in Article 7 ter (described in the paragraph below), and then in the new social responsibility provisions (Article 285 octies, described in the paragraph below).

Article 7 ter requires transparency with respect to the certification and traceability of minerals, which is positive for dealing with issues of conflict minerals. Article 285 octies then requires, to comply with this principle of transparency in Article 7 ter, that contributions to community development projects are managed by a multi-stakeholder entity including representatives of the rights holder, the surrounding communities and the local administration in the project area. Such a multi-stakeholder body is positive with respect to managing investments in local communities. There are, however, no other provisions dealing with transparency of these investments in community development projects.

### **3. Prohibitions on the handling and trading of conflict minerals**

There are no amendments made to specifically require due diligence on supply chains in the case of applications for or renewals of licenses. As mentioned above, the new Article 7 ter requires transparency with respect to certification and traceability of minerals. There are new definitions included of transparency (54 bis – described above) and traceability (53 bis – *a mechanism to be established in order to follow the steps in the value chain and financial flows, from extraction to export*). There are no further references to the concept of traceability in order to give effect to the concept embodied in the definition. This may be set out in regulations. If this is to be the case, it would be helpful to specifically refer in the Code to the regulations.

### **4. Adequate environmental and social standards**

There are substantial amendments dealing with environmental and social responsibilities.

#### Environmental responsibility

The additions relating to environmental issues are new Articles 285 bis, 285 ter, 285 quater et 285 quinquies. These deal with liabilities related to environmental and health issues, providing clearer responsibilities in case of damage or illness.

Article 285 bis puts the onus on the license holder to fix any damage to persons, property and the environment from the mining operations, even in the absence of any fault or negligence, unless the license holder can prove that the damage is unrelated to the mining activity. This is positive in that there is an automatic requirement to repair damage, and the government does not have to prove the reverse, i.e., that the mining activity caused the damage.

Articles 285 ter and quater make the company responsible for any direct or indirect contamination caused by the mining activities which cause environmental degradation or health issues.

#### Social responsibility

New Articles 285 sexies to 285 octies introduce some good social responsibility requirements, centered on requirements for investment in community development.

Importantly, the amendments introduce a requirement on companies to help finance community development projects in local communities affected by

mining projects. There is a loose description of the types of community development projects to be funded (“socioeconomic developpement”), they are to be determined on the basis of specifications (“cahier des charges”).

There is now a provision explaining the “cahier des charges”, but there is no clarity on who will define it and how it will be put in place. This should be specified. One important issue to be dealt with, either in the Code or in the cahier de charges is the definition of “local community” – how will it be determined? which communities will benefit from these projects?

Article 258 bis provides for a deductible contribution of 0.1% of turnover to community development projects. As described above, there is a requirement in Article 285 octies for a multi-stakeholder entity to manage these projects, which is good. However, it is important also to have detailed regulations governing the administration of the money. These should be referred to in the Code.

Ensuring that this local contribution benefits the local community is a difficult challenge that many countries struggle with from Peru to Kyrgyzstan. Hence the need to carefully draft the regulations implementing these provisions of the law.

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Jacky Mandelbaum, Senior Legal Researcher: Oil, gas and mining  
[jackymandelbaum@gmail.com](mailto:jackymandelbaum@gmail.com)

Perrine Toledano, Senior Economics Researcher: Oil, gas and mining  
[perrinetoledano@gmail.com](mailto:perrinetoledano@gmail.com)

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