# DEMOCRATIC REPUBLIC OF THE CONGO
# INVESTMENT CLIMATE STATEMENT
# 2015

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**Executive Summary**

The Democratic Republic of Congo (DRC) is located in central sub-Saharan Africa. Since 2001, the DRC has made progress to attract investment. The economy remains stable with average economic growth estimated at 7.5 percent over the past five years. The inflation rate remains low and the economic outlook for the medium term remains generally positive. The DRC rebounded remarkably well from the global financial crisis thanks to improved fiscal, monetary and exchange rate policies as well as the largest debt forgiveness in history. Tangible institutional, structural, and regulatory reforms are continuing to improve the business climate. The new government of national cohesion appointed in December 2014 has confirmed that improving the investment climate is a top priority.

Agriculture, basic infrastructure, transportation, telecommunication, agribusiness, energy, and construction are sectors the GDRC has targeted in order to build and diversify its economy. Economic diversification is the center of DRC's development strategy to pursue multipolar and inclusive growth and create sustainable jobs. DRC's economic rebound is largely driven by its extractive sectors -- mining and oil. Between 2010 and 2014, the average growth contribution of these sectors was estimated at 67.9 percent, versus a 17.6 percent average between 2006 and 2008. DRC's secondary sectors (housing, industry, and agribusiness) have also advanced with an average growth contribution of about 11.7 percent after 2009 against 2.6 percent between 2006 and 2008. Economic growth in the DRC is highly dependent on the mining sector, the country's traditional dominant revenue generator. The DRC holds an estimated USD 24 trillion worth of mineral reserves. Sales from the mining sector were over USD 8 billion in 2012, and significant room remains for growth in mining and related products and services despite a severe electricity shortage and limited transportation infrastructure. However, the ongoing instability and downturn of primary commodity prices on the international market make diversification urgent and crucial if the DRC’s economy is to thrive. Toward that end, the DRC has created Special Economic Zones (SEZs), including industrial agribusiness parks, and is looking to partner with American businesses.

As of September 2014, the DRC has implemented the code of Organization for the Harmonization of Business Laws in Africa (OHADA) to protect investors by modernizing the business code and settling disputes through supranational arbitration. The new American Chamber of Commerce has proven to be a good forum for developing relations between businesses and with the government. Businesses in the DRC face numerous challenges, including little functional infrastructure, endemic corruption at all levels of government, dysfunctional institutions, predatory tax agencies, limited access to financing, shortage of skilled labor, unenforceable contracts, high crime rates, an unpredictable security environment, and ongoing armed conflicts in the eastern part of the country. Economic governance, administration, and the judiciary system remain very weak.

DRC has one of the world’s lowest gross national incomes per capita, and the UN Human Development Index 2014 ranked the DRC in the second to last position and near the bottom on business climate, hunger, and many other indices. The poverty rate remains high at 63 percent in 2014 (although a significant improvement over 71 percent in 2013). The Embassy strongly urges all prospective investors to visit www.travel.state.gov to read the latest country-specific information and travel warnings before traveling to the DRC.

The U.S. Financial Reform Act (Dodd-Frank) requires companies whose products contain tin, tantalum, tungsten or gold to disclose to U.S. regulators whether they are sourcing these materials from the DRC or its neighbors. Companies must also document their due diligence to ensure their sourcing arrangements are not benefiting armed groups. The State Department and USAID have worked with the private sector, government, civil society, and international partners to develop pilot supply chains of artisanal-mined conflict-free minerals out of the eastern Congo. The Congolese Army's victory against rebel M23 combatants and the conclusion of a regional peace agreement in Addis Ababa have helped focus the GDRC on eliminating other armed groups and encouraging economic development and restoration of state authority in the eastern DRC, but security concerns remain a concern in many parts of the east.

## 1. Openness To, and Restrictions Upon, Foreign Investment

### Attitude toward Foreign Direct Investment

The government prioritizes attracting foreign investment; however efforts to improve economic governance and the business climate have not consistently reflected this prioritization. Congolese investment regulations prohibit foreign investors from engaging in small retail commerce and ban foreign majority-ownership of agricultural firms. Visas for foreign workers are limited to three months at a time. After the approval of a work permit, foreign workers may qualify for an establishment visa, which is more expensive but valid for up to a year. Expatriate salaries are also taxed at a higher rate than locals. Foreign investors, like local businesses, face frequent harassment, demands for bribes, and subjective, predatory interpretation of regulatory and taxation policies.

### Other Investment Policy Reviews

With the collaboration of the World Bank and European Union, in 2010 the government published a Diagnostic Study on Commerce Integration, which gives a global picture of doing commerce and trade in the DRC, identifying commercial hurdles and providing recommendations to address trade issues.

### Laws/Regulations of Foreign Direct Investment

Most foreign direct investments are governed by the 2002 Investment Code. The mining, hydrocarbons, finance, and other sectors are governed by sector-specific investment laws. Currently, there are important bills pending in Parliament which are expected to improve the investment environment, including one concerned with consumer protection, e-commerce, liberalization of prices and competition regulation, account auditing, agriculture regulation, trade courts, entrepreneurship, and free trade areas. Recently, some key deregulation laws have been promulgated, including liberalizing the electricity and insurance sectors. A hydrocarbons bill will soon be debated in the legislature. Accompanying measures to enforce these laws are crucial to making them effective. Despite investment success stories and the government's recognition of the private sector's importance to national development, project sustainability remains fragile based on past experience.

In 2002, the government created the National Agency for Investment Promotion (ANAPI) to overcome hurdles and facilitate investment. ANAPI's mandate is to simplify the investment process, make procedures more transparent, assist new foreign investors, and improve the image of the DRC as an investment destination. With support from international donors, the government is also working to implement a series of reforms aimed to improve the business climate. Specifically, in August 2009, the government launched the Steering Committee for the Improvement of Business and Investment Climate (CPCAI) under the Ministry of Plan. The committee's goal is to improve the GDRC's ranking on the World Bank's Doing Business report. CPCAI endeavors to reduce red tape, administrative delays, and the cost of establishing a business. It also expects to improve transparency of procedures and strengthen judicial security. CPCAI has already eliminated 46 taxes generating zero revenue among the 117 taxes previously applied in cross-border trade.

In April 2013, the DRC created a one-stop window bureau in Kinshasa to simplify business creation, cutting processing time from five months to three days; reducing the number of incorporation formalities and fees from USD 3,000 to USD 120. Though the one-stop window has sped-up business creation, businesses continue to complain of corruption and the need to visit multiple ministries. The DRC continues to make efforts to improve its investment framework, though challenges to doing business remain. The World Bank's 2015 Doing Business Report cited the DRC among the world's top ten improved countries.

Useful websites related to the different agencies in charge of investment promotion:

- One Stop Window for Company Creation
www.guichetunique.cd

- National Agency for Investment Promotion
www.anapi.og
www.investindrc.cd

- Organization for the Harmonization of Business Laws in Africa
www.ohada-rdc.cd

- Steering Committee for the Improvement of the Business and Investment Climate
www.cpcai.cd

**Industrial Promotion**

Though industrial promotion has long been purported to be part of a governmental strategy, excluding metallurgy, the industrial sector represents less than 5 percent of the economy. The GDRC has spent over USD 100 million to encourage engagement in the industrial sector, including development of the first agro-industrial park in Bukanga Lonzo.

The new Industry Minister has been proactive in promoting the sector. He organized the first national industrial development forum, Forum National de Développement de l'Industrie et du Redressement Productif in April 2015 to discuss creating a successful sector that will allow DRC to become an emerging economy by 2030.

**Limits on Foreign Control**

On aggregate, there are not specifically defined limits on foreign control for investment. However, some sectorial laws impose limits on a case-by-case basis. For example, the current agriculture law does not allow foreigners to be majority holders in agricultural businesses. This law is under review because it has stalled foreign investment in the agricultural sector.

**Privatization Program**

The Steering Committee for the Reform of Public Enterprises (COPIREP), funded by the World Bank but managed by the Portfolio Ministry, seeks foreign investors to enter into public-private partnerships (PPPs) with Congolese state-owned companies. However, restructuring the roughly 60 Congolese parastatals, none of which is profitable, has stalled. The parastatals not yet restructured include the national power utility (SNEL), port and river authority (SCTP), and rail company (SNCC). During 2015, SNEL signed a partnership contract with a Canadian power company to maintain and upgrade SNEL's facilities and improve power distribution. Also this year, the GDRC in collaboration with the private sector has financed about USD 45 million to rehabilitate an abandoned former presidential site and resume chicken and egg production for the Kinshasa market. The GDRC and a South African firm signed a USD 12 million PPP to set up a factory for fertilizer production in Boma, Bas-Congo.

The 2013 National Agricultural Investment Plan for 2013-2020 aims to decrease food insecurity and diversify food production for both local consumption and export at a cost of USD 5.73 billion. The GDRC continues to seek private partners to finance the plan's implementation. Traditional bilateral and multilateral partners continue to provide the government technical and financial support. The regionally ambitious USD 92 million World Bank-supported Central African Backbone (CAB) project to connect via fiber optics eleven countries in central Africa, including the DRC, will increase DRC and regional bandwidth and improve internet access. The DRC has also initiated a multimodal transportation project focusing on restoring rail, river, and road infrastructure across the country. The DRC seeks private sector partners for both of these projects.

**Screening of FDI**

Broadly, there are no formal limits or screening mechanisms imposed on foreign ownership of most businesses in the DRC. However, the processes of granting permits and licenses in the mining and telecommunication sectors often suffer from arbitrariness, lack of transparency, and corruption. Investment projects benefiting from Investment Code incentives must have an ANAPI assessment every six months.

All investors in the DRC face auditing by various government enforcement agencies seeking evidence of violations of tax laws or price controls. Foreigners and Congolese alike suffer the consequences of often dysfunctional judicial institutions. Inadequate physical infrastructure – including land, river, and air transport as well as energy and social services – presents a serious challenge and additional cost for nearly all commercial operators in the DRC. International donors and a 2009 multi-billion dollar Sino-Congolese agreement have begun to provide critically needed resources for infrastructure development, but significant constraints remain.

One trend of note in recent years is the propagation of vulture funds: legal actions against the GDRC for recuperation of decades-old unpaid DRC parastatal debt. These legal actions have sought to sequester and redirect profits of private multinational companies currently in partnership with indebted DRC parastatals (through joint venture projects, including mining joint ventures). The vulture fund legal actions add uncertainty to the investment climate, especially for private multinational companies engaging in joint ventures with DRC public enterprises.

**Competition Law**

As a member of OHADA, DRC's competition law is governed by the OHADA statute. Historically-granted monopolies still dominate some sectors.

**Investment Trends**

Energy, transportation, mining, oil and gas, telecommunications, agriculture and agribusiness, basic infrastructure such as bridges, roads, and buildings are sectors that offer opportunities to potential investors. DRC's macroeconomic stability indicators are positive: in 2014 the growth rate was estimated to top 8 percent and the inflation rate was estimated at 1.04 percent (against an average 7.1 percent for sub-Saharan Africa between 2002 and 2014.) The GDRC has announced an economic reconstruction program worth USD 11 billion for 2014-2016. This program prioritizes economic and social projects to reduce endemic poverty and is an extension of the DRC's Five Pillars, the 2008 national development plan which also includes foreign investment opportunities. DRC progress to improve its investment framework is notable, though investment challenges remain. The World Bank's 2015 Doing Business Report ranked the DRC among the world's top ten countries making reforms over the last year.

*Table 1*

| Measure | Year | Index or Rank | Website Address |
|---|---|---|---|
| **TI Corruption Perceptions index** | 2014 | 154 of 175 | transparency.org/cpi2014/results |
| **World Bank's Doing Business Report "Ease of Doing Business"** | 2015 | 184 of 189 | doingbusiness.org/rankings |
| **Global Innovation Index** | 2014 | NA | globalinnovationindex.org/content.aspx?page=data-analysis |
| **World Bank GNI per capita** | 2013 | USD 430 | data.worldbank.org/indicator/NY.GNP.PCAP.CD |

*Millennium Challenge Corporation Country Scorecard*

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) of USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

The DRC failed on all three hard hurdles: "Control of Corruption," "Democratic Rights," and "Pass Half Overall."

## 2. Conversion and Transfer Policies

### Foreign Exchange

As part of broad economic reforms starting in 2001, the DRC adopted a free-floating exchange rate policy and lifted various restrictions on business transactions, including in the mining sector. International transfers of funds take place freely when sent through local commercial banks. On average, bank declaration requirements and payments for international transfers take less than one week to complete.

The Congolese Central Bank (BCC) is responsible for regulating foreign exchange and trade. The only currency restriction imposed on travelers is a USD 10,000 limit on the amount an individual can carry when entering or leaving the DRC. The GDRC requires that the Central Bank license exporters and importers. The DRC informal foreign exchange market is large and unregulated and offers exchange rates similar to the official rate. In practice, the DRC economy remains highly dollarized. On September 25, 2014, the BCC enforced new foreign exchange regulations, which, inter alia, declared the Congolese franc (CDF) as the main currency in all exchange transactions within the DRC. Payment of fees related to education, medical care, water and electricity consumption, residential rents, and federal taxes must be made in CDF. However, with agreement of the parties involved and the appropriate monetary officials, exceptions may be applied.

All payments exceeding USD 10,000 cannot be carried out outside the banking system, unless there is no presence of banking entities. The largest – albeit rare – banknote in circulation is the 20,000 CDF note (approximately USD 22). Far more common are the 500 and 1000 CDF notes worth approximately USD 0.54 and 1.08, respectively. U.S. banknotes (post 2006) are readily accepted in virtually all major transactions. Banks provide accounts denominated in either currency. The GDRC has begun a process of de-dollarizing the economy by requiring that tax records be kept in CDF and tax payments from mining companies must be in CDF.

The CDF depreciated by 35 percent against the U.S. dollar between December 2008 and September 2009, but the GDRC has since maintained a stable exchange rate. Inflation in 2012 (2.70 percent), 2013 (1.07 percent), and 2014 (1.04 percent) remained under the BCC's target of 4 percent. Although GDRC fiscal policy may loosen in the run-up to elections in 2015 and 2016, it is expected to continue prioritizing a stable exchange and low inflation rates. As of December 2014, the exchange rate was 925 CDF per USD at the BCC, and 938 CDF per USD in the parallel market. International reserves have increased from USD 450 million to 1.65 billion between 2008 and 2014, corresponding, respectively, to 1.6 and 7.9 weeks of import cover.

The BCC is drafting a new strategic plan for 2014-2017, which will focus on four major axes: sustaining monetary stability, promoting financial system stability, developing the financial system, and financing the real economy.

*Remittance Policies*

The new exchange regulation increases the time to repatriate export and re-export incomes from 30 to 60 days. There is no legal restriction on converting or transferring funds related to investment. The BCC is the legal authority to control and provide legal framework on foreign exchange in the DRC. Foreign investors may remit through parallel markets when they are legally established and recognized by the BCC.

## 3. Expropriation and Compensation

The DRC's land law allows for expropriation of property by the government if it serves a public interest, such as the protection of community heritage, completing public works (e.g., infrastructure projects), and the presence of precious minerals. The illegitimate acquisition of property is also grounds for expropriation. In any case of expropriation, the GDRC is required to offer fair compensation; however, this legislative requirement is not always fully respected. Land associated with activities that have an impact on the environment, such as mining, energy, and forestry, is at greater risk of expropriation.

There have been no expropriation actions against U.S. citizens in the past year. Post is aware of a number of existing claims against the GDRC, some of which were taken to arbitration (see Dispute Settlement section below). Many arbitration judgments against the GDRC, however, have not been paid in a timely manner, if at all.

## 4. Dispute Settlement

### Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The DRC is a civil law country and the main provisions of its private law can be traced to the Napoleonic Civil Code. The Congolese legal system is primarily based on Belgian law. The general characteristics of the Congolese legal system are similar to those of the Belgian legal system because the DRC received its law from the Belgian colonialists. Customary or tribal law is another basis of the legal system of the DRC, where the majority of people live in rural areas. The various local customary laws regulate both personal status laws (like marriage and divorce laws) and property rights, especially the inheritance and land tenure systems in the various traditional communities of the country. The Congolese legal system is divided in three branches; public law, private law and economic law. Public law regulates legal relationships involving the state or state authority; private law regulates relationships between private persons; and economic law regulates interactions in such areas as labor, trade, mining and investment.

On paper, the DRC's official dispute policies are satisfactory and even attractive to business, but in recent years they have often been inoperative in practice, largely due to problems with the judicial system. Courts are marked by a high degree of corruption; public administration is not reliable, and both expatriates and nationals are subject to selective application of a complex legal code. Official channels often do not provide direct and transparent recourse in the event of property seizure, for which legal standing can rarely be determined. Seizures have been made via the police and/or military, often supported by questionable decisions from the courts. Foreign enterprises may have slightly better security of ownership due to the presence and intervention of their diplomatic missions. Many Congolese business contracts provide for external arbitration, but this is an expensive and time-consuming option with little value for resolving routine, day-to-day business problems.

In the case of investment disputes, the U.S.-DRC Bilateral Investment Treaty (BIT) provides for International Center for Settlement of Investment Disputes (ICSID) reconciliation or national or international arbitration. In the case of a dispute between a U.S. investor and the GDRC, the U.S. investor is subject to the Congolese civil code and legal system. If the parties cannot reach agreement, under the terms of the U.S.-DRC BIT, the dispute is taken to the ICSID or the Paris-based International Chamber of Commerce (ICC).

Since 2008, the DRC has established ten commercial courts placed in DRC's leading business cities, including Kinshasa, Lubumbashi, Matadi, Kisangani, and Mbuji-Mayi. These courts are led by professional judges specializing in commercial matters and exist in parallel with an otherwise inadequate judicial system. With European Union support, buildings are under construction and/or rehabilitation to establish additional commercial courts. Since September 2014, with the effective implementation of OHADA rules to ensure a secure commercial environment and to promote economic development and integration between members, the GDRC has agreed to adopt the OHADA commercial laws – including contract, company, and bankruptcy laws – and to submit interpretation of those laws to the final jurisdiction of the OHADA court in Abidjan. In practice, there is no effective legal deadline to render a judgement when a commercial matter is brought to the judicial system.

**Bankruptcy**

The OHADA law offers a juridical framework on bankruptcy, which the GDRC judiciary has agreed to enforce.

**Investment Disputes**

The DRC's current policies are satisfactory and even attractive to business, but in practice they seem to lack enforcement. Courts are marked by a high degree of corruption, public administration is not reliable, and both expatriates and nationals are subject to selective application of a complex legal code. Official channels often do not provide direct and transparent recourse in the event of property seizure, for which legal standing can rarely be determined. Seizures have been made via the police and/or military, often supported by questionable decisions from the courts. Foreign enterprises may have slightly better security of ownership due to the presence and intervention of their diplomatic missions. Many Congolese business contracts provide for external arbitration, but this is an expensive and time-consuming option with little value for resolving routine, day-to-day business problems.

A number of U.S. firms pursued claims against the GDRC for damages resulting from civil disturbances by military mutinies in 1991 and 1993. Two investors won settlements under the International Centre for the Settlement of Investment Disputes (ICSID convention).

**International Arbitration**

DRC is the 33rd African state to accede to the 1958 New York Convention. This accession is important to international investors seeking to develop activities in the DRC in a more secure environment, because as it facilitates the enforcement of international arbitral awards. The DRC has formulated a reservation in the statute of 26 June 2013, which limits the scope of the New York Convention. Disputes relating to immovable property situated within DRC or relating to rights in connection with that immovable property are not covered under the Convention. Mining rights are described as immovable property under Congolese law. Given that a large part of investing in DRC involves mining activities, this is important.

Another aspect to take into consideration is that Congolese rules of collection and enforcement will apply to enforcement under the Convention, those are detailed in the OHADA Uniform Act. Article 30 of the OHADA Uniform Act awards immunity of enforcement to all public entities including State-owned enterprises. This would mean that a foreign arbitral awards which falls under the scope of the Convention cannot be enforced in the DRC on any property belonging to state-owned entities, unless these is an expressed waiver of immunity.

*ICSID Convention and New York Convention*

The DRC is a member state to the International Centre for the Settlement of Investment Disputes (ICSID convention). DRC is currently in the process of ratifying their signature to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).

**Duration of Dispute Resolution**

There are maximum legal delays to render a dispute judgement, but generally they are not respected in practice. According to many DRC judges, duration varies depending on the nature of the case.

## 5. Performance Requirements and Investment Incentives

**WTO/TRIMS**

DRC is a World Trade Organization (WTO) member and as such does not maintain measures inconsistent with Trade Related Investment Measures (TRIM) requirements.

**Investment Incentives**

The DRC does not have any barriers specifically targeting or restricting U.S. trade or investment. There are, nevertheless, some challenges, including the multitude of taxes collected on imported goods by several government agencies and expensive, slow, and burdensome customs procedures. There has been some progress and improvements in the investment climate. For example, since October 2014, the DRC Customs Office has set up one stop windows to handle the myriad administrative processes involved with external trade. In essence, all administrative formalities related to import-export, including the collection of taxes and transshipment operations will now happen at a single point. Traders have already noted tangible progress, particularly in the hub cities of Kinshasa, Matadi, Kasumbalesa, Goma, and Beni. On the other hand, the GDRC has signaled its intention to impose local content/sourcing requirements on foreign investors, particularly in the mining sector. Also, although there are no specific performance requirements for foreign investors, they must nevertheless negotiate some investment conditions with ANAPI.

The DRC has decreased the procedures necessary during this negotiating period, which now takes approximately 30 days, and has created a number of incentives to attract foreign investment. Negotiated incentives can range from tax breaks to duty exemptions, and are dependent upon the location and type of enterprise, the number of jobs created, the extent of training and promotion of local staff, and the export-producing potential of the operation. Investors who wish to take advantage of customs and tax incentives of the 2002 Investment Code must apply to ANAPI, which will in turn submit the applications to the Ministry of Finance and Ministry of Plan for final approval. The Ministry of Labor controls expatriate residence and work permits. For U.S. companies, the BIT assures the right to hire staff of their choice to fill some management positions, but the companies agree to pay a special tax on expatriate salaries.

Performance requirements agreed upon with ANAPI typically include a timeframe for the investment, the use of OHADA accounting procedures and periodic authorized GDRC audits, the protection of the environment, periodic progress reports to ANAPI, and the maintenance of international and local norms for the provision of goods and services. The investor must also agree that all imported equipment and capital will remain in country for at least five years. Visa, residence, or work permit requirements are not discriminatory or excessively onerous, and are not designed to prevent or discourage foreigners from investing in the DRC, though corruption and bureaucracy can create delays in obtaining necessary permits. ANAPI and the Congolese Chamber of Commerce (FEC) play a vital role in addressing business issues in the DRC.

According to the terms of the Investment Code, the GDRC may require compliance with an investment agreement within 30 days of notification. Continued violations of an agreement may result in sanctions, including repayment of benefits received (such as tax exemptions) and eventual nullification of the agreement.

Foreign investors may bid on government contracts on the same terms as domestic investors. Foreign firms may even be favored in the bidding process because they can more easily access and present international insurance funding guarantees. There is no discrimination against U.S. or third country foreign firms in participating in government-sponsored or subsidized research and development programs, as participation is vetted on a national treatment basis. With the sponsorship and technical assistance of the World Bank, the Budget Ministry now has two agencies that work on tender issues, l'Autorité de Régulation des Marchés Publics (ARMP) and la Direction Générale de Contrôle des Marchés Publics (DGCMP).

Normally, however, public companies and/or parastatals do not participate in the bidding process, due to the financing guarantees required beforehand. In addition, contracts are often negotiated directly with the GDRC, not through an international tender process, thus reducing transparency. Parliament passed a new procurement law in April 2010 and the GDRC has adopted key implementing steps, institutions, and a manual of procedures to implement the new procurement law.

*Research and Development*

Not applicable/information not available.

**Performance Requirements**

The GDRC has signaled its intention to impose local content/sourcing requirements on foreign investors, particularly in the mining sector. The GDRC has proposed a bill on subcontracting, which, if passed by Parliament, will impose stipulations on foreign companies to use local subcontractors for subsidiary services.

**Data Storage**

The DRC does not have a specific legislation on data storage. However, it recognizes the need for appropriate regulation. As there is no obligatory legislation, in practice, few companies report on data storage.

## 6. Right to Private Ownership and Establishment

The DRC's Constitution (Chapter 2, Articles 34-40) protects private ownership without discrimination between foreign and domestic investors. The Constitution also protects investments against takeover, unless the investment conflicts with an overriding public interest, in which case there are legal provisions for equitable and appropriate compensation for the parties involved. As with many Congolese laws, these laws are not always fully respected.

Foreign investors can operate in the DRC primarily either through establishing a branch or local subsidiary. In accordance with the OHADA law, a DRC investor has four operating options as a commercial company. The business may be designated either a Société en Commodité Simple (SNC), a Société en Commandité Simple (SCS), Société à Responsabilité Limité (SARL), and a Société Anonyme (SA). The most common forms of establishment are the SARL and SA, which are both limited liability companies. SARL shares are not freely negotiable; in principle, SA shares are freely negotiable, unless there are particular arrangements otherwise already within the SA. Incorporation of an SA requires a minimum capital investment of USD 20,000. There is no minimum required investment for a SARL.

The GDRC has restricted some categories of small businesses to Congolese nationals. These restrictions include artisanal production, small retail commerce, small public transport firms, small restaurants, and hotels with fewer than ten beds. Despite GDRC restrictions, some foreign-owned small retailers, particularly Chinese-owned stores, have opened. Agricultural firms may not be majority foreign-owned.

## 7. Protection of Property Rights

### Real Property

Ownership interest in movable property (e.g. equipment, vehicles, etc.) is secured and registered through the Ministry of the Interior's Office of the Notary. Real estate property (e.g. buildings and land) is secured and registered at the Ministry of Land's Office of the Mortgage Registrar. Land registration can be particularly problematic as records are often incomplete and legal disputes over land deals are very common. During the 2015 state of the nation speech, the President recognized the need for new clarifying land legislation.

### Intellectual Property Rights

In principle, Intellectual Property Rights (IPR) are legally protected in the DRC, but enforcement of IPR regulations is virtually non-existent. The country is a signatory to a number of relevant agreements with international organizations such as the World Intellectual Property Organization (WIPO), and the Paris Convention for the Protection of Intellectual Properties, which protects trademarks and patents. The DRC is also a member of the Berne Convention that protects copyrights, artistic works and literary rights. The pertinent conventions provide maximum protection for 20 years for patents, and 20 years, renewable, for trademarks, starting from the date of registration. If it is not used within three years, a trademark can be cancelled. The DRC has not yet signed the WIPO Internet Treaties.

In July 2011, the Ministry of Culture and Art established the Société des Droits d'Auteur et des Droits Voisins (SOCODA) to address IPR issues faced by authors. The Ministry of Culture in collaboration with SOCODA has presented a law to the government that seeks to rectify the flaws of the existing 1986 IPR law. The law is pending Parliamentary approval.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

*Resources for Rights Holders*

Embassy POC:
Christina Day
DayC@state.gov or KinshasaEcon@state.gov

For a list of local lawyers, see:
http://photos.state.gov/libraries/congo/1120904/Pdf_files/ATTORNEY%20LIST%202015.pdf

## 8. Transparency of the Regulatory System

The DRC does not yet have a complete legal and regulatory framework for the orderly conduct of business and the protection of investments. The GDRC authority on business standards, the Congolese Office of Control (OCC), oversees foreign businesses engaged in DRC.

There are no formal or informal provisions by a public or private structure in a business-related environment which are used to impede foreign investment. Problems encountered within the GDRC tend largely to be administrative and/or bureaucratic in nature, as reforms and improved laws and regulations are often poorly or unevenly applied. Proposed laws and regulations are not often published in draft format for public discussion and comments. Discussion is typically limited to within the governmental entity that proposes the draft and at Parliament prior to the vote.

In 2008, the DRC became a candidate country for the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder effort to increase transparency in transactions between governments and companies in the extractive industries. DRC efforts achieved under EITI allowed it to be declared Pays Conforme since July 2, 2014. The DRC is therefore now counted among the 29 nations of the world that have achieved important progress in income transparency from mining and oil resources. To cope further with transparency issues and public administration red tape, the DRC created a public administration school in 2014 to train future public managers and modernize the DRC's public administration. 60 students were recruited through a competitive exam process.

## 9. Efficient Capital Markets and Portfolio Investment

The banking sector is expanding rapidly, but lack of financing in the banking sector remains a constraint on economic growth. Bank penetration is roughly 6 percent, having doubled since 2009, and placing DRC among the most under-banked nations in the world. Although the banking system is expanding, it remains limited in its ability to lend to any but to the largest and most profitable enterprises in the country. Foreign and domestic economic actors have equal access to DRC credit markets without discrimination. However, foreign investors are more likely to benefit from credit markets, as they are more likely able to provide valid guarantees and collateral.

Borrowing options for small and medium enterprises are limited, maturities for loans are usually limited to 3-6 months, and interest rates typically hover around 16-18 percent. The weakness of the legal system, the often cumbersome business climate and the difficulty of obtaining inter-bank financing discourage banks from providing long term loans. There are limited possibilities to finance major projects in CDF, including given banks' limited holdings in the national currency (on average roughly USD 12 million per bank), while foreign currency deposits account for 89 percent of bank holdings.

The DRC had approximately 3.1 million bank accounts in 2013, up from 1.6 million in 2012, most of which are dollar-denominated. Much of this increase resulted from GDRC public employee payments through bank transfers. Banks are increasingly offering savings accounts that pay approximately 3 percent interest, but few Congolese hold savings in banks. Most account holders withdraw their balance in full shortly after their salary is deposited.

Portfolio investment has not yet developed in the DRC. Cross-shareholding and stable shareholding arrangements are also not common. There are occasional complaints about unfair competition between investors in profitable sectors such as mining and telecommunications.

**Money and Banking System, Hostile Takeovers**

As of March 2014, there were 18 commercial banks and one development bank, SOFIDE (Société Financière de Developpement). All 18 banks are supported primarily with foreign capital. The DRC has approximately 150 microfinance institutions. Money transfer agencies are concentrated in the Kinshasa and Katanga Provinces, while credit cooperatives are concentrated in North and South Kivu and Kinshasa Provinces. The volume of deposits was USD 3.15 billion in March 2014, up from USD 2.34 billion in 2012. The overall balance sheet of the DRC banking system amounted to USD 4.43 billion in March 2014, up from USD 3.47 billion in 2012; lending volume reached USD 1.9 billion in March 2014, up from USD 1.4 billion in 2012. The banking system has not witnessed a hostile takeover.

## 10. Competition from State-Owned Enterprises

DRC state-owned enterprises (SOEs) are a large burden on the country's economic development. SOEs stifle competition and are unable to provide reliable electricity, transportation, and other important services over which they have monopolies. Most of the SOEs are overstaffed and laden with large debt, usually including salary arrears, and large unpaid debts to foreign creditors, other SOEs and the state. The GDRC, via the Steering Committee for the Reform of Public Enterprises (COPIREP), and with support from international donors, began to reform SOEs in 2010. Since then, however, little progress has been made, although those SOEs listed for transformation have been at least partly commercialized, though state ties reportedly remain. Many potential private companies hesitate to partner with SOEs because of the latter's large debt burden.

**OECD Guidelines on Corporate Governance of SOEs**

Not applicable/information not available.

**Sovereign Wealth Funds**

The DRC has no reported Sovereign Wealth Funds.

## 11. Corporate Social Responsibility

The GDRC requires companies in key sectors to provide significant Corporate Social Responsibility (CSR) to surrounding communities, including many services normally provided by government. Mining companies are frequently required to support and maintain infrastructure projects such as roads, schools, dams and hospitals. Companies involved in extractives industries are often required to establish a community development fund with projects selected by a committee of representatives from surrounding communities and indigenous groups. Tenke Fungurume (of American mining company Freeport McMoran), operating in Katanga, is an outstanding example of success on CSR in the DRC.

**OECD Guidelines for Multinational Enterprises**

Not applicable/information not available.

## 12. Political Violence

The Department of State's Security Environmental Threat List Report has designated the DRC as a high-threat post for political violence. The DRC has suffered bouts of civil unrest and conflict for many years. Large-scale military looting in 1991 and 1993, for example, resulted in significant loss of economic productive capacity and flight of foreign investors. In addition, widespread looting and destruction associated with wars in the DRC from 1996-1997 and from 1998-2003 further damaged the Congolese economy.

The country's first democratic elections in more than 40 years took place in 2006, under a new constitution that established national and provincial governments. National presidential and legislative elections took place on November 28, 2011. Incumbent President Kabila was declared the winner, although local and international observers reported widespread irregularities, logistical problems, and a lack of transparency. Local and national elections are scheduled for 2015 and 2016, respectively.

The United Nations has its largest peacekeeping operation in the world in the DRC. Known by its French acronym, MONUSCO, it has over 20,000 peacekeepers deployed throughout the country, with a majority of them in the east. The DRC military has conducted a series of operations against the Democratic Forces for the Liberation of Rwanda (FDLR), the Allied Democratic Forces (ADF), the Lord's Resistance Army (LRA) and other armed groups in eastern DRC in effort to restore state authority to the region. As a result of conflict and resulting humanitarian crises, there are approximately 2.7 million internally displaced persons in the DRC. In April 2012, a group known as M23 began an aggressive rebellion in North Kivu Province, at times occupying large parts of the Province, including the provincial capital of Goma for two weeks in November 2012. The Congolese army (FARDC), with the assistance of a new UN Intervention Brigade, defeated M23 in November 2013.

Political instability results in a highly unpredictable security situation in many parts of the country, including Kinshasa. On December 30, 2013, clashes occurred when armed supporters, who may have been inspired by a religious leader, attacked strategic government locations in Kinshasa, including the airport, as well as key locations in three other Congolese cities. Over 100 people were killed across the country when Congolese police and military units responded with live gunfire, effectively shutting down the capital until the situation stabilized. Clashes again erupted in January 2015 behind protests against the possibility of President Kabila staying past his Constitutionally-mandated two terms; in addition to more than 20 reported deaths, some foreign business, particularly Chinese, were looted.

The security situation in the DRC remains precarious and difficult to predict. Travel by Embassy personnel outside of Kinshasa must be reported to Embassy security staff. In addition to continuing instability in parts of eastern DRC, protests and demonstrations have caused social disruption in various parts of the country. Military and police personnel remain poorly trained and underpaid.

## 13. Corruption

U.S. and domestic businesses routinely cite corruption as a principal constraint to doing business in the DRC. In principle, there are laws that punish corruption, for both offering and accepting bribes. The GDRC has recently made some progress on corruption; however bribery is still routine in public and private business transactions, especially in the areas of government procurement, dispute settlement and taxation. The DRC was ranked 154 out of 177 nations on Transparency International's 2013 Corruption Perception Index.

The DRC is not a signatory to the UN Anti-Corruption Convention. However, the DRC did pass its own anti-corruption law in 2004. Additional legislation includes the 2004 Money Laundering Act, under which the DRC cooperates with African and European crime-fighting organizations. The DRC is not a signatory of the OECD Convention on Combating Bribery. In September 2007, the DRC ratified a protocol agreement with the Southern African Development Community (SADC) to fight corruption. The GDRC is also preparing to ratify the African Union Convention on the Prevention and Fighting of Corruption.

Corruption, including bribery, raises the costs and risks of doing business in DRC. According to a report published in 2012, corruption adds approximately 30-40 percent to the cost of transactions in DRC, compared approximately 10-30 percent in neighboring countries.

During 2015, the GDRC dismissed National Customs Authority (DGDA) chiefs in various levels at various customs and border Provinces for cases involving bribery, corruption and embezzlement. While the GDRC has vocalized determination to end corruption and sanction malfeasance, many high ranking officials and leadership of public companies have not changed their corrupt practices. Widespread impunity makes prosecution unlikely. In 2015, President Kabila nominated a Special Adviser in charge of good governance, corruption, and money laundering.

The U.S. government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their respective companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center Report A Trade Barrier website at http://tcc.export.gov/Report_a_Barrier/index.asp.

In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: http://www.justice.gov/criminal/fraud/fcpa/.

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

The DRC is a signatory of the UN Anticorruption Convention, but not of the OECD Convention on Combating Bribery. In September 2007, the DRC ratified the protocol agreement with SADC on Fighting Corruption. The GDRC is also preparing to ratify the African Union Convention on the Prevention and Fighting of Corruption. In 2015, the government drafted a bill on fighting corruption that is scheduled to be discussed in Parliament this year.

*Resources to Report Corruption*

The Agency in charge of fighting corruption in the DRC is:

The Technical Entity in charge of impunity, including corruption and bribery
Title: Coordinator
Nkulu Mbayo Marie-Claude
Tel: 00243815189341
nmbayo2002@yahoo.fr
Palais de Justice, Place de l'Indépendance
Kinshasa/Gombe, DRC

## 14. Bilateral Investment Agreements

The U.S. and DRC have a Bilateral Investment Treaty (BIT). It was signed in 1984 and entered into force in 1989. The treaty guarantees reciprocal rights and privileges to each country's investors. The BIT provides that should a claim arise under the treaty, it can be submitted to a dispute resolution mechanism through international arbitration.

Germany, France, Belgium, Italy, South Korea, and China (PRC) have signed bilateral investment agreements with the DRC. South Africa and Kenya are negotiating bilateral investment agreements with the DRC. Lebanon, Ivory Coast, and Burkina Faso have negotiated, but not yet signed, bilateral investment treaties with the DRC.

## Bilateral Taxation Treaties

There is no Bilateral Taxation Treaty between the U.S. and the DRC.

## 15. OPIC and Other Investment Insurance Programs

The U.S. Overseas Private Investment Corporation (OPIC), which provides political risk insurance and project financing to U.S. investors and non-governmental organizations, has granted political risk insurance for projects in the DRC in the past and is open to working on future projects in the DRC.

The DRC is a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which offers insurance on new foreign investments to protect against foreign exchange losses, expropriation, and civil unrest. The GDRC is negotiating resumption of the MIGA program to allow for investment insurance in other sectors of the economy. The DRC is also a member of the African Trade Insurance Agency, which provides political risk insurance.

**16. Labor**

The DRC's large urban population provides a ready pool of available labor, including a significant number of high school and university graduates, a few of whom have studied at American universities. Employers cannot, however, take diplomas at face value. Skilled labor is in short supply and must usually be trained by individual companies.

The GDRC sets regional minimum wages for all workers, including in private enterprise, with the highest pay scales applied in the cities of Kinshasa and Lubumbashi. Most foreign employers pay higher wages than the official minimum wage.

The DRC has ratified all the International Labor Organization (ILO) eight core conventions. However, there are significant gaps both in law and practice regarding compliance with these conventions. The law imposes restrictions on the principle of free and voluntary collective bargaining in the public sector. The law bans collective bargaining in certain sectors, including civil servants and public employees. The law does not provide adequate protection against anti-union discrimination. While the right to strike is recognized, there are law provisions undermining the right to strike. Prior to strike actions, unions must obtain prior permission and adhere to lengthy compulsory arbitration and appeal procedures.

Several laws continue to be in consistent with ILO Conventions on Forced Labor, No. 29 & 105. These include Act No. 76-11 of 21 May 1976 (concerning national development and its implementing order), and Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976 (on the performance of civic tasks in the context of the National Food Production Program), which aim to increase productivity in all sectors of national life, require all adult persons (who are not already considered to be making their contribution by reason of their employment ) to carry out agricultural and other development work, as decided by the Government; Legislative Ordinance No. 71/087 of 14 September 1971 on the minimum personal contribution, of which sections 18 to 21 provide for imprisonment involving compulsory labor, upon decision of the chief of the local community or the area commissioner, for tax evasion; Ordinance No. 15/APAJ of 20 January 1938 respecting the prison system in indigenous districts, which allows work to be exacted from persons in preventive detention.

The Penal Code does not establish appropriate criminal penalties to penalize the imposition of forced labor. In practice, forced labor persists and remains a serious concern. According to reliable reports in July 2014, men and children continue to be kidnapped by armed groups and forced to work in the mines. Additionally, as the measures to punish those responsible for these acts are neither effective nor adequate, offenders continue to commit these acts with impunity.

Although the National Committee to Combat the Worst Forms of Child Labor has drawn up a National Action Plan (NAP), with technical and financial support from ILO-IPEC, to eliminate the worst forms of child labor by 2020, the NAP has yet to be officially adopted. Approximately 17 percent of children in the DRC are engaged in child labor in agriculture and in the worst forms of child labor in the forced mining of gold, cassiterite (tin ore), coltan (tantalum ore), and wolframite (tungsten ore). Cassiterite, coltan, gold wolframite are included on the U.S. government's Executive Order 13126 List of Goods Produced by Forced and Indentured Child Labor. Additionally, copper diamonds, and heterogenite are included on the U.S. government's List of Goods Produced by Child Labor or Forced Labor.

The Code provides for tight control of labor practices and regulates recruitment, contracts, the employment of women and children, and general working conditions. Strict labor laws can make termination of employees difficult. The Code also provides for equal pay for equal work without regard to ethnicity, sex, or age. Parliament passed a new labor code in April 2014, which will enforce a six-day work week, allow married women to work without their husband’s approval, permit pregnant women to take leave without suspending their work contract, and ban discrimination on the basis of HIV status.

Generally, employers must cover medical and job-related accident expenses. Larger firms are required to have medical staff and facilities on site, with obligations increasing as the number of employees increases. Mandated medical benefits are a major cost for most firms. Employers must provide family allowances based on the number of children, paid public holidays and annual vacation based on length of service. Employers must also provide daily transportation for their workers or pay an allowance in areas served by public transportation. Outside the major cities, large companies often provide infrastructure, such as roads, schools and hospitals. The Ministry of Labor must grant permission for staff reductions. Generous severance packages are required by the labor code.

Every foreign employee must apply for a work permit from the National Committee of Employment of Foreigners within the Ministry of Labor.

## 17. Foreign Trade Zones/Free Ports/Trade Facilitation

The DRC does not have designated free trade areas or free port zones. The DRC is a member of SADC and the Common Market of Eastern and Southern Africa (COMESA), but has not yet joined either COMESA or SADC Free Trade Areas. In 2015, the GDRC confirmed its commitment to work to enter the tripartite COMESA-SADC-EAC (Eastern African Community) Free Trade Area by June 2015, and the African Free Trade by 2017.

**18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

*Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy*

| | Host Country Statistical source* | | USG or international statistical source | | USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other |
|---|---|---|---|---|---|
| **Economic Data** | **Year** | **Amount** | **Year** | **Amount** | |
| **Host Country Gross Domestic Product (GDP) ($B USD)** | 2013 | 19 | 2013 | 33 | www.worldbank.org/en/country |

| **Foreign Direct Investment** | **Host Country Statistical source*** | | **USG or international statistical source** | | **USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other** |
|---|---|---|---|---|---|
| **U.S. FDI in partner country ($M USD, stock positions)** | 2013 | NA | 2013 | 2,000 | BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm |
| **Host country's FDI in the United States ($M USD, stock positions)** | 2013 | NA | 2013 | NA | BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm |
| **Total inbound stock of FDI as % host GDP** | 2013 | NA | 2012 | 17% | 17% is an estimation based on an estimated USD 5.6 billion total FDI stock. |

Obtaining reliable statistical data on foreign direct investment (FDI) in the DRC remains a challenge. Most FDI data presented by authorized public institutions and agencies are estimates. There are currently two DRC sources of FDI information: the Central Bank (BCC) and the National Agency for Investment Promotion (ANAPI). BCC statistics are based on funds reported to the bank from actual investment projects underway, and are more accurate than those of ANAPI. These figures, however, may not capture all FDI flowing into the DRC.

*Table 3: Sources and Destination of FDI*

Although Post is unable to procure specific statistics, the United States is reportedly the largest direct investor in DRC, perhaps followed by China then South Africa and Belgium.

*Table 4: Sources of Portfolio Investment*

IMF Coordinated Portfolio Investment Survey data are not available for DRC.

**19. Contact for More Information**

Points of contact for inquiries from the public

John C Kelley
Economic Counselor
kelleyjc@state.gov
KinshasaEcon@state.gov

Christina Day
Economic and Commercial Attaché
DayC@state.gov
KinshasaEcon@state.gov

Mukoko wa Mukoko Kebana
Commercial Assistant
MukokoAK@state.gov

Econ Section's email address: KinshasaEcon@state.gov