
CHAMBERS GLOBAL PRACTICE GUIDES

Project Finance 2025

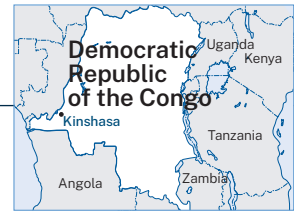
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D.R. of Congo: Law and Practice

Nicolas Dupont, Didier Bracke and Arnauld Nyamu
Janson



D. R. CONGO



Law and Practice

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Janson is a full-service law firm with approximately 100 lawyers advising clients on all aspects of business law. Janson has significant expertise across the African continent, with a focus on the DRC, where it assists investors in mining, energy and infrastructure projects. In addition to a dedicated team of lawyers based in Brussels, the DRC practice group includes lawyers based in Kinshasa and admitted to the DRC Bar. The firm's clients appreciate its responsiveness and its ability to uphold international standards with-

in the local environment. The team regularly advises foreign and local lenders on financing matters in the DRC, particularly project finance and trade finance transactions. Recent examples include assisting a global metals trader with pre-export financings of mining off-takes, including obtaining security over off-takers' valuable assets; and advising a Mauritius-based fund in relation to a USD20 million term loan facility extended to a DRC-based steel manufacturer.

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1. Project Finance Panorama

1.1 Sponsors and Lenders

The type of project sponsors varies depending on the nature of the project. In the Democratic Republic of Congo (DRC), project sponsors are most often mining companies, independent power producers (IPPs), agribusiness companies and infrastructure developers.

The typical project finance lenders include development finance institutions such as the International Finance Corporation (IFC), Eastern and Southern African Trade Development Bank, African Development Bank, Development Bank of Southern Africa, and African Export-Import Bank. Additionally, local commercial banks are becoming increasingly active in project financing due to their growing size, flexibility, and lower interest rates, often through bilateral and syndicated loans.

1.2 Public-Private Partnership Transactions

Public-private partnership (PPP) transactions are governed by DRC Act No 18/016 of 9 July 2018 on public-private partnerships and implementing Decree No 23/38 of 26 October 2023. According to the Act, PPPs encompass public service delegations (such as public concessions) and partnership contracts related to public infrastructure in the public domain.

The key features of the legislation provide for the following:

- public tenders are the default procedure, with direct agreement procedures (*procédures de gré à gré*) being the exception;
- a stabilisation commitment from the State in cases of changes to the legal or regulatory framework;
- subcontracting opportunities for Congolese-owned enterprises;
- a balancing subsidy from the State if products or services are sold at prices lower than those stipulated in the agreement;
- the right of the lender to intervene in the event of default by the private partner under the partnership agreement, upon request from the contracting authority;
- fair and equitable compensation in the event of expropriation for public use; and
- transfer of assets to the contracting authority upon termination of the partnership agreement.

1.3 Structuring the Deal

The key legal considerations in relation to a project finance deal include the following.

- *Public procurement* – ensuring the public procurement process has been properly completed in accordance with applicable laws.

- *Land titles* the project company(ies) must hold the appropriate rights and titles over the land on which the project is built.
- *Permitting* the project company(ies) must possess all necessary permits and licenses to operate the project, such as mining permits or power production licenses.
- *Project contracts* – detailed due diligence over project contracts such as power purchase agreements (PPAs), off-take agreements or concession arrangements and linked revenues.
- *Financing* having comprehensive and enforceable financing documents, with security interests properly vested over project assets.
- *Dispute resolution* – implementing contractual mechanisms to resolve disputes efficiently, such as international arbitration or other alternative dispute resolution methods.

1.4 Active Industries and Sectors

There are several sectors in which project financings are expected in the coming year in the DRC. These include the following.

- *Energy* only 22% of the Congolese population has access to electricity, despite the country's vast hydropower and solar energy potential.
- *Infrastructure* developing road and rail infrastructure is crucial for developing the Congolese economy and facilitating the export and import of goods, as well as internal exchanges. One major infrastructure project is the Lobito Corridor, a railway linking the port of Lobito in Angola to the mining regions of the DRC and Zambia in order to facilitate the export of mineral products.
- *Agriculture* the DRC has approximately 80 million hectares of arable land, offering the second-largest potential in the world after Brazil. However, only a small fraction – about 10% – of this land is currently cultivated, despite the country having a population of approximately 102 million that is also experiencing one of the highest growth rates in Africa.

2. Guarantees and Security

2.1 Assets Available as Collateral to Lenders Movable Assets

Pledges over movable assets are quite popular in project finance transactions. The following assets are usually pledged to the benefit of lenders:

- shares of the project company(ies);
- bank accounts of the project company(ies);
- project company(ies)' receivables; and
- equipment used in a project.

Pledges are documented in pledge agreements which are registered with the competent Trade and Movable Property Credit Register (*Registre du Commerce et du Crédit Mobilier*) for enforceability and ranking purposes.

Real Property

Mortgages are vested over real property and are registered with the local Registrar of Property Titles (*Conservateur des Titres Immobiliers*) for enforceability and ranking purposes.

Mining Assets

Exploitation mining titles may also be mortgaged to the benefit of a creditor, subject to the prior approval from the Minister of Mines. A mortgage over an exploitation mining title must be registered with the Mining Cadastre to be enforceable vis-à-vis third parties.

Security Agent

The 15 December 2010 OHADA Uniform Act on Security Interests introduces the concept of a security agent, being an entity constituting, registering, managing and realising securities or other guarantees for the performance of one or several obligation(s) in its own name and for the benefit of the creditors of the secured obligation(s) that have appointed it for that purpose. According to the Uniform Act, only foreign and local credit and financial institutions are eligible to act as security agent.

2.2 Charges or Interest Over All Present and Future Assets of a Company

The OHADA Uniform Act on Security Interests does not recognise the concept of a floating charge – a glob-

al security interest covering all or most of a debtor's assets. The Uniform Act is based on the Napoleonic legal system and the principle of specialisation. It provides for different types of security interests depending on the asset subject to security (bank account(s), equipment, receivable(s), shares, IP rights, etc).

2.3 Registering Collateral Security Interests Movable Assets

Costs related to the registration of a pledge with the Trade and Moveable Property Credit Register are estimated at around USD250.

Real Property

A mortgage over real property is subject to a registration fee due upon registration with the Registrar of Property Titles (*Conservateur des Titres Immobiliers*) equal to 1% of the secured amount. Ancillary costs ranging from USD300 to USD600 should also be considered.

Mining Assets

Registration of a mortgage over an exploitation mining title is subject to a registration fee calculated as follows:

- 0.5% on the secured amount between USD1 and USD100,000,000;
- 0.3% on the secured amount between USD100,000,001 and USD500,000,000;
- 0.2% on the secured amount between USD500,000,001 and USD1,000,000,000; and
- 0.1% on the secured amount exceeding USD1,000,000,000.

2.4 Granting a Valid Security Interest Movable Assets

The OHADA Uniform Act on Security Interests requires the pledge agreement in pledges over tangible movable assets to include the quantity, nature and type of pledged assets, on the understanding that the pledge may also extend to future assets of the same nature or type.

The rules concerning the description of the pledged assets vary depending on the type of movable assets, as follows.

- *Receivables and bank accounts* – references of the pledged receivables and bank accounts or, for future receivables and bank accounts, items allowing their identification.
- *Shares* – references of the company whose shares are pledged and the amount and number of shares.
- *IP rights* – information necessary to determine the pledged IP rights.
- *Business (fonds de commerce)* – a description of the business, its components and its address(es).

Real Property

For mortgages over immovable property, the mortgage deed must include sufficient details to identify the immovable property.

2.5 Restrictions on the Grant of Security or Guarantees

Certain limitations apply when a corporate entity wishes to issue a guarantee or grant security over its assets, as follows.

- The Articles of Association of the security or guarantee provider might include requirements for prior board or shareholder approval for granting the security interests and guarantees.
- To ensure alignment with the guarantor's corporate interest in relation to the grant of the guarantee, it is advisable to limit the guarantor's commitments to a certain proportion of its net assets.
- The guarantor or security provider's corporate purpose might not allow for the issuance of guarantees or the creation of security interests.

If a guarantee or security interest is provided by an individual, this person must have the legal capacity to commit themselves to binding legal acts. Minors and persons with legal incapacities lack such capacity and therefore cannot validly assume such commitments.

2.6 Absence of Other Liens Movable Assets

The pledges are registered with the Trade and Moveable Property Credit Register to be enforceable against third parties. Before creating a pledge, it is advisable to request an excerpt from the Trade and Moveable Property Credit Register outlining the assets of the relevant security provider being pledged, although

this cannot be considered to represent conclusive evidence.

Real Property

To register a mortgage against real property, the original copy of its registration certificate must be submitted to the Registrar of Property Titles with the mortgage transcribed on the reverse side of the registration certificate. As a consequence, the verification of the existence of any mortgage may be conducted by requesting the original copy of the registration certificate. Additional checks may be carried out at the level of the Registrar of Property Titles.

Mining Assets

For mortgages against mining titles, a verification of the existing mortgage(s) on a mining title may be carried out at the Mining Cadastre.

2.7 Releasing Forms of Security

The security provider and the beneficiary sign of a deed of release (*acte de mainlevée*). This is a written agreement confirming final settlement of the debt and the security interest's release. The deed of release is then submitted to the relevant registry which proceeds with the deregistration of the relevant security interest.

3. Enforcement

3.1 Enforcement of Collateral by Secured Lender

The enforcement of a security interest presumes a default under the secured debt.

Pledge Over Movable Assets

Several types of enforcement exists, as follows.

- Forced sale – after obtaining a writ of execution, having the pledged assets sold by court order to obtain payment of the sums due from the price obtained in preference to other creditors.
- Judicial assignment – after obtaining a writ of execution, obtaining permission from the competent court that the pledged assets can be assigned to the beneficiary in payment up to the amount of their claim, based on an estimate of market value or an expert valuation.

- Out-of-court assignment – if the pledged asset is a sum of money or an asset whose value is officially quoted, the parties may agree that the ownership of the pledged assets will be transferred to the pledgee upon the occurrence of an event of default. The same applies to other tangible movable assets when the debtor of the secured debt is a professional debtor.

Mortgage Over Immovable Real Property

If not enforced in accordance with the rules on attachment over real property, the mortgage is enforced through the transfer of ownership of the mortgaged assets to the mortgagee:

- the transfer of ownership of the mortgaged assets is preceded by a 30-day notice period notified in writing to the mortgagor; and
- upon the expiry of this period, to the extent that the secured debt is not entirely settled in the meantime, the mortgagee will be entitled to proceed to the transfer of ownership of the mortgaged assets to its name or to the name of an entity affiliated to the mortgagee without any deed of transfer being required, subject to an expert valuation. If the valuation calculated by the expert exceeds the amount of the debt due, the mortgagor will be entitled to a sum equal to the difference.

Mortgage Over Mining Title

A mortgage over a mining title may be enforced according to the common rules applicable to mortgage enforcement or through a total or partial transfer of the mining rights to the mortgagee, in accordance with the rules of the Mining Code.

3.2 Foreign Law

As a matter of principle, DRC law recognises a choice of law and a choice of jurisdiction between parties, provided that this choice of law and choice of jurisdiction do not conflict with public order (*ordre public*) in the DRC.

3.3 Judgments of Foreign Courts

Foreign Judgment

In the DRC, the decision of a foreign court will be declared enforceable, depending on the case, by the high courts, commercial courts and labour courts,

through exequatur proceedings and without the Congolese court ruling on the merits of the case, if it meets the following conditions:

- the decision does not contain anything that goes against Congolese public policy;
- it has become final and binding under the law of the country in which it was rendered;
- under the same law, the copy produced meets the conditions necessary for its authenticity;
- the rights of the defence have been respected; and
- the foreign court does not have jurisdiction solely on the basis of the nationality of the claimant.

To obtain exequatur for a foreign judgment, the procedure is as follows:

- a request for the exequatur of the foreign judgment is addressed to the president of the competent court (the high court, commercial court or labour court);
- the applicant for exequatur must provide the court with the following information:
- the original of the writ of service of the foreign judgment or any other document serving as a writ of service;
- a certified copy of the judgment; and
- a certificate from the clerk (of the foreign court) stating that there is no opposition or appeal against the judgment. the president of the court examines the application in light of the conditions set out above and rules on the matter; based on their examination, the president of the court may grant exequatur in whole or in part for one or more of the components of the foreign judgment.

Arbitral Award

An arbitral award shall be recognised and declared enforceable in the DRC through exequatur proceedings.

The exequatur proceedings are held before the high court, commercial court or labour courts, depending on the case. The applicant must produce:

- the duly authenticated original of the arbitral award or a certified copy thereof;

- the authenticated original of the agreement or arbitration clause duly signed by the parties;
- a certified translation of the award and the agreement if they are not written in French; and
- proof of payment of the procedural costs required by DRC law.

3.4 A Foreign Lender's Ability to Enforce

The enforcement of a mortgage over a mining title by a foreign lender is more complicated in a situation where the enforcement takes the form of a transfer of ownership to the benefit of a foreign lender. A foreign entity is not eligible to hold a mining exploitation permit. However, the DRC Mining Code provides for a period of six months if a mortgagee is declared ineligible for mining rights upon the enforcement of the mining mortgage to comply with the eligibility rules or to be replaced by another person eligible for the relevant mining rights.

4. Foreign Investment

4.1 Restrictions on Foreign Lenders Granting Loans

The granting of loans on a regular basis by foreign lenders in the DRC qualifies as banking operation that only DRC-incorporated credit institutions licensed with the Central Bank of Congo (*Banque Centrale du Congo*, or BCC) are authorised to carry out.

Based on the above, a foreign lender is only authorised to grant loans in the DRC on an occasional basis.

4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders

There is no restriction on the granting of security interest or guarantees to foreign lenders.

4.3 Foreign Investment Regime

The foreign investment regime refers to the regime for the promotion of investments applicable in the DRC.

Act No 004-2002 of 21 February 2002 on the Investment Code and implementing Decree No 12/046 of 1 November 2012 set out a general regime of incentives and preferential treatments available to certain types

of eligible investors, whether national or foreign, in the DRC.

The investor must file an application for approval with the National Agency for Investment Promotion (*Agence Nationale pour la Promotion des Investissements*, or ANAPI) to obtain these incentives and preferential treatments.

Incentives and preferential treatment advantages cover customs benefits as well as fiscal and parafiscal advantages. Customs benefits include (i) exemptions from import and export duties and taxes; and (ii) reimbursement of value added tax (VAT) paid on imports. Fiscal and parafiscal advantages include exemption from (i) property tax; (ii) proportional duty at the incorporation of the company or at the capital increase; (iii) professional income tax on revenues; and (iv) contribution on turnover for the purchase of national goods and services.

Incentives and preferential treatments are granted for a specific period. Their nature, duration, and the conditions for their application are specified in the approval decision.

4.4 Restrictions on Payments Abroad or Repatriation of Capital

Payments abroad are made freely, subject to foreign exchange regulations requiring residents (and, in the case of cash, borrowers based in the DRC) to obtain an RC (capital income or *revenus des capitaux*) licence from a commercial bank licensed by the BCC if the transaction value is greater than or equal to USD10,000 or its equivalent in other currencies.

Export revenues from mining companies are subject to specific rules governing their repatriation and use, as follows.

- All export revenues must be remitted to an offshore bank account opened by the mining company called the “main account” within 45 calendar days from the shipment of the mining products from DRC territory. Exceptions are possible if the sale agreement provides specific payment terms.
- Subsequently, 60% of the export revenues must be repatriated to an onshore bank account within

15 days as of the collection of the revenues on the main account. If the mining company fails to comply with this rule, it could be sentenced to the payment of a fine equal to 5% of the non-repatriated amount.

- The 60% to be repatriated to an onshore bank account are intended to cover domestic expenses to the benefit of DRC residents.
- Once the mining investment is fully amortised, 100% of the export revenues must be repatriated to an onshore bank account within 15 days as of the collection of the revenues on the main account.

4.5 Offshore Foreign Currency Accounts

A project company is authorised to maintain offshore foreign currency accounts.

5. Structuring and Documentation Considerations

5.1 Registering or Filing Financing of Project Agreements

Financing agreements are not subject to registration. However, in practice, at the stage of the registration of security interests, the Trade and Moveable Property Credit Register (*Registre du Commerce et du Crédit Mobilier*) may require the submission of the underlying financing agreement. Furthermore, as mentioned in 2.1 Assets Available as Collateral to Lenders, local registration formalities apply to the security documents.

5.2 Licence Requirements

Depending on the sector, the economic operator will need to obtain the appropriate licenses or authorisations.

- The exploration and exploitation of mining substances requires the appropriate mining permit(s). Whilst exploration permits may be held by a foreign entity, exploitation permits are only available to DRC-based entities.
- Furthermore, the exercise of activities in the energy sector, depending on the type of activities, requires operators to be authorised or licensed or to hold a concession. In any of these circumstances, the applicant must be incorporated in the DRC.

- Agriculture in the DRC is subject to the concession regime, which is not available to foreign entities.
- The telecommunications sector is also a regulated sector that requires any actor subject to the DRC Telecommunications Act to obtain the appropriate authorisations, which are reserved to DRC-incorporated entities.

5.3 Agent and Trust Concepts

Agent structures are recognised in DRC civil law, in accordance with the general rules on mandates laid down in the Decree of 30 July 1888 on Contracts and Contractual Obligations. The agent structure is also recognised in the field of security interests, through the concept of security agent, as addressed in **2.1 Assets Available as Collateral to Lenders**.

Trust structures are not recognised in DRC law.

5.4 Competing Security Interests

In the DRC, security interests typically gain priority through registration, which renders the security enforceable against third parties. The first security interest to be registered generally has priority over subsequent interests. The timing of registration (lodging) is therefore critical as it determines the ranking of the security interest.

Parties may agree in an intercreditor agreement (i) that a debt will be subordinated to other claims; and (ii) on the allocation of proceeds from the realisation of secured assets among the secured creditors regardless of their ranking. Such an arrangement, if the company is party to it, will bind the insolvency trustee, provided that it does not infringe public policy.

5.5 Local Law Requirements

See **5.2 Licence Requirements**, in which we describe the sector-specific regulations that require the operating company to be registered locally. Furthermore, DRC Act No 18/016 of 9 July 2018 on public-private partnerships requires any private partner under a PPP to be incorporated in the DRC.

The legal form used for a project company depends on certain criteria which include the need for a collegial management body. If a collegial management body is required, the project company takes the form

of a public limited company (*société anonyme*, or SA). Otherwise, project companies are often incorporated as simplified joint-stock companies (*sociétés par actions simplifiées*, or SAS) which are characterised by a high degree of flexibility and freedom when it comes to the definition of their statutory rules (with few mandatory provisions).

6. Bankruptcy and Insolvency

6.1 Company Reorganisation Procedures

The OHADA Uniform Act of 10 September 2015 on the organisation of collective proceedings for the settlement of liabilities provides for three procedures for reorganising companies in the DRC: i) conciliation (*conciliation*); ii) preventive settlement (*règlement préventif*); and iii) judicial settlement (*redressement judiciaire*).

Conciliation

Conciliation is a preventive, consensual, and confidential procedure available to a debtor experiencing proven or foreseeable difficulties without being in a situation of insolvency. It aims at preventing the debtor from becoming insolvent through an amicable settlement with its creditors. This restructuring is carried out through private negotiations and the conclusion of a conciliation agreement negotiated between the debtor and its creditors, or at least its main creditors, with the support of a neutral, impartial, and independent third party known as a conciliator.

The conciliation procedure is initiated at the request of the debtor or at the joint request of the debtor and one or more of its creditors. This request details the financial difficulties encountered by the debtor, and includes supporting documents (in particular financial statements). It presents solutions for dealing with these difficulties. Conciliation takes place over a period of three months, which may be extended by one month at the request of the conciliator or the debtor.

At the request of the applicant or a creditor, the signed agreement may be filed with a notary or homologated by the competent court or authority ruling in private. Homologation is automatic, and may only be refused if the agreement is contrary to public policy. The deci-

sion to homologate the agreement must remain confidential and not subject to appeal. It terminates the conciliation. In any event, the conciliation period may not exceed the three-month period indicated above.

Preventive Settlement

Preventive settlement is a preventive collective procedure available to a debtor who, without being in a situation of cessation of payments, faces serious financial or economic difficulties. The preventive settlement proceedings aim at preventing the situation of cessation of payment of the debtor and allowing the payment of its debts through the conclusion of a preventive composition agreement (*concordat préventif*) with its creditors

A preventive settlement may be opened at the debtor's request (or at the joint request of the debtor and one or more creditors) filed with the competent court, describing (i) the debtor's financial and economic difficulties; (ii) the prospects for recovery; and (iii) the means envisaged to discharge liabilities, and containing a draft composition agreement detailing the measures related to the continuity and financing of activities (eg, grace periods, write-offs, disposals) and employment prospects.

The opening of preventive settlement proceedings triggers the beginning of a standstill period of three months (which can be extended for an additional month under exceptional circumstances) with regard to the debts arising prior to the court decision.

The court has then 30 days to decide on the homologation of the composition agreement:

- either it approves and homologates the composition agreement, subject to (i) the absence of cessation of payment and (ii) the existence of maximum three years of terms of payment with creditors and maximum one year of terms of payment with regard to the salaries; or
- it initiates liquidation or judicial settlement proceedings in relation to the debtor if the debtor is in situation of cessation of payment; or
- it rejects the composition agreement if the court is of the opinion that the situation of the debtor falls outside any collective proceedings.

Judicial Settlement Proceedings

The judicial settlement proceedings are available to a debtor who is in a situation of cessation of payments, but where the situation is not irretrievably compromised. It aims at safeguarding the debtor and settling its liabilities by means of the conclusion of a judicial agreement (*concordat de redressement judiciaire*).

Judicial settlement proceedings are initiated at the request of the debtor within 30 days of the cessation of payments. The opening of judicial settlement proceedings can also be requested by a creditor, the competent court or the public ministry.

The competent court opens judicial settlement proceedings if (i) the debtor proposes a serious judicial agreement with the creditors outlining how it will settle its debts and continue operations; or (ii) a global sale is possible. The opening of judicial settlement proceedings suspends or prohibits all individual proceedings seeking to establish rights and claims, as well as all enforcement measures seeking to obtain payment, brought by creditors forming part of the estate against the debtor's movable and immovable property.

The competent court appoints an insolvency judge (*juge-commissaire*) and one or more trustees (*syndic(s)*) representing the creditors in the proceedings.

The creditors vote on the debtor's draft judicial agreement after taking note of the trustee's overview. The agreement must be accepted by a majority of creditors representing at least half of the total debt amount.

The competent court then homologates the agreement. If it includes a sale, the competent court will not homologate it unless (i) the price is sufficient to pay off creditors with special security interests, unless they waive this condition; and (ii) the price is payable in cash or, in the event that payment terms are granted to the purchaser, these do not exceed two years and are guaranteed jointly and severally by a bank.

6.2 Impact of Insolvency Process

The decision to commence insolvency proceedings (judicial settlement or liquidation proceedings) suspends or prohibits any legal action by all pre-existing creditors of the debtor that seeks to order the debtor

to pay a sum of money or to terminate a contract for non-payment of a sum of money.

The decision to commence proceedings also suspends or prohibits any (security) enforcement proceedings by these creditors, whether in respect of movable or immovable property. Furthermore, it suspends any action against natural persons who are jointly liable or who have provided personal security or who have assigned or transferred property as security, from the date of the judgment and during the implementation of the judicial agreement (in case of judicial settlement proceedings).

6.3 Priority of Creditors

The proceeds from the realisation of movable assets are distributed amongst the creditors of a company under liquidation in the following order.

- Creditors benefiting from the “fresh money” privilege.
- Creditors of legal costs incurred in realising the debtor’s assets and distributing the proceeds.
- Creditors of expenses incurred in preserving the debtor’s assets.
- Creditors of super-privileged salaries.
- Creditors holding a security interest, each according to the rank of their security.
- Creditors with a special lien, each on the movable property subject to the lien.
- Creditors of the estate (*créanciers de la masse*).
- Creditors with a general lien in accordance with the order established by the OHADA Uniform Act on Security Interests.
- Unsecured creditors (*créanciers chirographaires*) with an enforceable title.
- Unsecured creditors without an enforceable title.

The proceeds from the realisation of real property assets are distributed amongst the creditors of a company under liquidation in the following order.

- Creditors benefiting from the “fresh money” privilege.
- Creditors of legal costs incurred in realising the debtor’s assets and distributing the proceeds.
- Creditors of super-privileged salaries.

- Creditors holding a forced or conventional mortgage, according to the rank of registration on the registration certificate.
- Creditors of the estate.
- Creditors holding general privileges, each according to their ranking in the Trade and Moveable Property Credit Register (*Registre du Commerce et du Crédit Mobilier*).
- Unsecured creditors with an enforceable title.
- Unsecured creditors without an enforceable title.

6.4 Risk Areas for Lenders

The risks for lenders if the borrower, security provider, or guarantor becomes insolvent include the following.

- The commencement of insolvency proceedings against a borrower, a security provider or guarantor results in the suspension of individual actions, meaning that the lender immediately loses its right to enforcement.
- The opening of insolvency proceedings may also result in the non-recognition of certain acts performed during the so-called “suspicious period” (*période suspecte*). This suspicious period commences on the date of cessation of payments and ends on the date of the decision opening insolvency proceedings.
- The establishment of a judicial agreement may result in a forced reduction of the lender’s claim as well as a postponement of repayment deadlines.
- When establishing a judicial agreement, if the lender does not declare its claim, there is a risk of foreclosure in certain circumstances.

6.5 Entities Excluded From Bankruptcy Proceedings

In principle, insolvency proceedings apply to any natural person engaged in an independent professional, civil, commercial, craft, or agricultural activity. They also apply to any legal entity governed by private law, as well as any legal entity governed by public law that operates under the form of a legal entity governed by private law.

However, credit institutions are subject to a special bankruptcy procedure governed by DRC Act No 22-069 of 27 December 2022 on the activity and supervision of credit institutions.

7. Insurance

7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

DRC law requires that these insurance policies be fully subscribed in the DRC with insurance companies licensed by the Insurance Regulatory and Supervisory Authority (*Autorité de Régulation et de Contrôle des Assurances*, or ARCA).

If insurance companies licensed by ARCA are unable to cover all risks to project assets, they are authorised to obtain reinsurance abroad, subject to certain restrictions.

- The Insurance Code provides that, when an insurer licensed in the DRC wishes to reinsure more than 75% of the risk abroad, that insurer must first obtain authorisation from the Minister of Finance.
- The process for obtaining authorisation from the Minister of Finance for reinsurance abroad above the 75% cap is not explicitly set out in the Insurance Code or its implementing texts. In practice, this process is carried out as follows.
- *Submission of the authorisation application to the Ministry of Finance* – upon submission, the Ministry of Finance issues an acknowledgment of receipt for the application. This step takes one business day.
- *Submission of the application with acknowledgment of receipt to ARCA* – upon submission, ARCA will also issue an acknowledgment of receipt of the application. This step takes one business day.
- *Examination of the authorisation application by ARCA* – following this examination, ARCA issues its opinion and forwards it to the Minister of Finance for a decision. In practice, this examination takes between two and five working days.
- *Authorisation from the Minister of Finance* – once ARCA's favourable opinion is received, the Minister of Finance grants authorisation for reinsurance above the 75% cap. In practice, the time taken by the Minister to grant authorisation may range from six to ten business days.

7.2 Foreign Creditors

Insurance policies covering project assets are payable to foreign creditors under loss payee arrangements.

8. Tax

8.1 Withholding Tax

Insurance policies covering project assets are payable to foreign creditors under loss payee arrangements.

8.2 Other Taxes, Duties, Charges

We are not aware of other taxes, duties, charges or tax considerations relevant to lenders making loans to entities incorporated in your jurisdiction.

8.3 Limits to the Amount of Interest Charged

We are not aware of usury laws or other rules limiting the amount of interest that can be charged.

9. Applicable Law

9.1 Project Agreements

DRC law usually governs project agreements such as joint venture agreements, power purchase agreements, and offtake agreements. DRC law must compulsorily govern certain contracts, such as security agreements.

9.2 Financing Agreements

Financing agreements are subject to English law most of the time due to its predictability and stability. This is especially the case when financing is extended by foreign lenders.

9.3 Domestic Laws

The following matters are governed by domestic law:

- security interests;
- companies' structures, management and governance;
- insolvency matters; and
- public procurement.

DRC sector-specific regulation (including mining, energy, agriculture and telecommunications) must also be taken into account.

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