DRC
PATHY LIONGO & ASSOCIATES

FIRM INFORMATION

Website address : **www.plaafricalaw.com**
Languages spoken : **French and English**
Telephone : (+ 243) 81 423 3125, Mobile: (+ 27) 713 613 484
Address : Mr. Pathy Liongo / Ms. Deborah Mpombolo/ Mr. Willy Bashiya
Contact : info@plaafricalaw.com/lpathy@plaafricalaw.com/
Email dmpombolo@plafricalaw.com/willybashiya@plaafricalaw.com

DRC I PATHY LIONGO & ASSOCIATES

1. SOURCES AND OVERVIEW

1.1 Main substantive ESG-related laws in the Democratic Republic of Congo ("DRC")

The DRC has not yet introduced any specific legislation relating to ESG criteria. Nevertheless, certain legal provisions relating to specific sectors incorporate ESG principles, notably in the fields of mining, hydrocarbons, the environment, agriculture, labour and energy in particular -

1.1.1 Law n°007/2002 of July 11, 2002 on the Mining Code, as amended and supplemented by Law n°18/001 of March 09, 2018;

1.1.2 Law n°11/009 of July 09, 2011 on the fundamental principles of environmental protection, as amended and supplemented by ordinance-law n°23/007 of March 03, 2023;

1.1.3 Law n°14/003 of February 11, 2014 on nature conservation;

1.1.4 Law n°14/011 of June 17, 2014 on the electricity sector;

1.1.5 Law n°15/2002 of October 16, 2002 on the Labor Code, as amended and supplemented by law n°16 of July 15, 2016 ("Labor Code");

1.1.6 Law n° 11/022 of December 24, 2011 on fundamental principles relating to agriculture;

1.1.7 Law n°15/012 of August 1, 2015 on the general regime for hydrocarbons;

1.1.8 Law n°22/068 of December 27, 2022 on anti-money laundering and combating the financing of terrorism and the proliferation of weapons of mass destruction;

1.1.9 Decree n°09/28 of 16/07/09 on the creation, organisation and operation of the National Committee of the Extractive Industries Management Transparency Initiative in the Democratic Republic of Congo, i.e., "CN-ITIE/RDC"; and

1.1.10 Law n°15/026 of December 31, 2015 on water.

1.2 ESG disclosure requirements in the DRC

1.2.1 ESG disclosure obligations are not yet formally covered by uniform regulations such as those proposed by the Global Reporting Initiative ("**GRI**"), the Sustainability Accounting Standards Board ("**SASB**"), the Task Force on Climate-related Financial Disclosures ("**TCFD**") or the International Integrated Reporting Council.

1.2.2 However, some specific legislations in the industry, energy and agricultural sectors impose similar requirements, such as -

1.2.2.1 compliance with environmental standards -

1.2.2.1.1 mandatory environmental impact assessments for all industrial projects;

1.2.2.1.2 periodic environmental audits organised for mining companies, classified installations and all other projects subject to environmental and social impact assessment;

1.2.2.1.3 environmental management plans for industrial companies;

1.2.2.1.4 the imposition of strict pollution prevention standards for companies operating in the hydrocarbons sector;

1.2.2.1.5 the obligation to integrate sustainable practices into the energy sector;

1.2.2.1.6 compliance with environmental standards; and

1.2.2.1.7 the obligation to restore hydrocarbon and mining sites.

1.2.2.2 compliance with social standards -

1.2.2.2.1 protection of workers' rights (health, safety, remuneration, freedom of association), as required by the Labor Code;

1.2.2.2.2 prohibition of forced labour and child labour;

1.2.2.2.3 the obligation to make social investments in local communities, in the mining sector and elsewhere.

1.2.2.3 compliance with Governance standards -

1.2.2.3.1 transparency in financial transactions and identification of beneficial owners by financial institutions and other entities subject to the provisions of the Anti-Money Laundering and Combating the Financing of Terrorism Act (identification of the client, determination of the source, economic purpose and ultimate beneficiary of the transaction);

1.2.2.3.2 in the financial sector;

1.2.2.4 transparency in the extractive industries through the Extractive Industries Transparency Initiative ("**EITI**"); and

1.2.2.5 publication of contracts, payments made to the State by extractive industries and revenues collected by specialised state services.

1.2.3 Although ESG disclosure obligations are not yet formally laid down in uniform regulations, as is the case internationally, international ESG standards are nevertheless influencing Congolese companies. Examples include -

1.2.3.1 exporters of minerals from the DRC to the European Union are obliged to comply with the European Conflict Minerals Regulation, requiring due diligence on the supply chain;

1.2.3.2 companies financed by international donors, such as the World Bank and International Finance Corporation ("**IFC**") are often required to comply with the IFC Performance Standards (similar to the Task Force on Climate-Related Financial Disclosures ("**TFCD**") and Global Reporting Initiative ("GRI"); and

1.2.3.3 multinationals operating in the DRC frequently use GRI standards or TCFD in their global reports, covering also their local subsidiaries.

1.3 Compulsory versus discretionary ESG-related disclosures in the DRC, and the frequency of such disclosures

1.3.1 ESG disclosures are mandatory for specific sectors and types of business, particularly those with an environmental or social impact, but are optional for other sectors.

1.3.2 The sectors in which ESG disclosures are mandatory include -

1.3.2.1 companies or projects that fall within the scope of "classified installations" or are subject to environmental and social impact assessments ("**ESIA**"): an ESIA is mandatory before the commencement of any project (e.g. mining, hydrocarbons, energy, large-scale agriculture);

1.3.2.2 mining companies are required to disclose their social development plans and contributions to community development funds (which amounts to approximately 0.3% of annual sales);

1.3.2.3 the obligation for mining companies to submit reports to the Ministry of Mines and local communities (these reports are generally submitted annually);

1.3.2.4 reports issued each year by labour inspectors (on child labour, safety at work, the guaranteed minimum wage); and

1.3.2.5 disclosure of payments made to the government and other governance-related information (ownership structures, licenses, etc.) of extractive companies, in accordance with EITI rules.

1.4 If the answer to 1.4 is that ESG disclosures are discretionary, are compulsory ESG disclosure being considered by the regulators in your jurisdiction and is it envisaged that such disclosures will, at some stage, become compulsory?

We are not in a position to comment on the government's future intention to impose ESG standards on all sectors covering its territory.

1.5 Significant private sector initiatives relating to ESG-related laws and/ or disclosures in the DRC

1.5.1 There are significant private sector initiatives in relation to ESG requirements in the DRC, among which the mining, energy and banking sectors stand out.

1.5.2 We can list a few examples -

1.5.2.1 a mineral traceability system, known as the iTSCi programme, has been set up to combat the financing of conflicts;

1.5.2.2 the development of solar micro-power stations to contribute to the energy transition, by the company Nuru SARL, in the east of the country; and

1.5.2.3 the contribution of one of the DRC's leading banks (i.e., RAWBANK) to green investment, access to drinking water, carbon emission reduction, gender equality and many other ESG-related initiatives.

2. PRINCIPAL SOURCES OF ESG PRESSURE

2.1 Investor and Asset/ Investment Manager Perspectives on ESG Compliance and Influence Strategies

2.1.1 From a general point of view, investors in the DRC increasingly recognise the importance of ESG criteria, although their application is still a challenge due to the absence of a defined legal framework.

2.1.2 On the other hand, international investors (such as the World Bank, IFC, Asian Development Bank, etc.) or those operating via European or American markets, are very much favourable to the integration of ESG criteria into their investments in the DRC, to the point of refusing to invest in a mining project, for example, if human rights are violated and environmental standards are not respected.

2.1.3 The companies in which they invest are therefore required to respect ESG criteria in order to benefit from their support.

2.2 Stakeholder Influence on ESG Compliance

2.2.1 International lenders such as the World Bank, Agence Française de Développement (i.e., AFD), the African Development Bank (i.e., AfDB) and the European Union impose strict ESG compliance rules for project financing in the DRC. These conditions include requirements in terms of governance, respect for human rights and environmental protection.

2.2.2 In 2024, for example, lenders refrained from financing projects in the DRC due to concerns about governance and transparency, particularly with regard to public institutions perceived as corrupt.

2.3 Principal regulators of ESG compliance in the DRC and their focus areas

There is no ESG regulatory authority in the DRC.

2.4 Liability and Penalties for ESG Non-Compliance: Piercing the Corporate Veil

2.4.1 Penalties for non-compliance with ESG criteria are mainly governed by laws specific to the mining, environment and oil and gas sectors.

2.4.2 Some of these penalties include -

2.4.2.1 suspension of mining or hydrocarbon activities: In the event of non-compliance with environmental obligations, the holder of a mining or hydrocarbon right may be subject to suspension of activities for a specified period, which may extend to permanent suspension;

2.4.2.2 violations of occupational health and safety rules are punishable by up to one year's imprisonment and fines;

2.4.2.3 fines are provided for non-compliance with the requirement for an environmental impact study for organisations to which this obligation applies;

2.4.2.4 the penalty of penal servitude is applied in cases of pollution of the air, continental waters or maritime areas, or degradation of coastal ecosystems; and

2.4.2.5 acts of corruption or fraud in the mining sector are severely punished, with prison sentences and fines.

2.4.3 In principle, stakeholders, employees, funders or investors cannot be held directly responsible for the failure of companies with which they are associated to comply with ESG standards, except in cases of complicity, gross negligence or direct involvement in such violations.

2.5 Material ESG Enforcement Actions in the DRC

A number of measures have been taken to strengthen ESG compliance, particularly in the industrial sector, such as -

2.5.1 the introduction of social and environmental obligations;

2.5.2 environmental and social management obligations for mining companies;

2.5.3 mandatory environmental and social impact assessments;

2.5.4 the integration of Corporate Social Responsibility ("**CSR**");

2.5.5 the introduction of effective customer identification; and

2.5.6 the introduction of the RES-ESG Commitment Trophy in 2024.

2.6 ESG Litigation Risks and Emerging Legal Exposure

The DRC has seen a number of disputes linked to non-compliance with ESG rules, especially in the mining sector. Here is an overview of the main types of disputes -

2.6.1 non-compliance with social and environmental obligations - several mining companies have been accused of violating the social obligations of their employees, local communities and the environment.

2.6.2 lack of transparency in ESG reporting - a study conducted by Doing Good in Africa revealed that only 10% of Congolese companies publish their CSR reports, thus facilitating greenhushing.

2.6.3 violation of the rules of governance and transparency - in March 2024, Congo's Subcontracting Regulatory Authority suspended nine subcontracting companies belonging to the Eurasian Resources Group (i.e., ERG) for violating subcontracting regulations on governance and transparency.

2.7 Key ESG Compliance Concerns in the DRC

Proponents of ESG compliance in the DRC express several major concerns such as -

2.7.1 governance failure;

2.7.2 transparency;

2.7.3 natural resource management;

2.7.4 inclusive energy transition; and

2.7.5 human rights violations.

2.8 Shareholder Activism Triggered by ESG Non-Compliance

While the activism of shareholders is still emerging, civil society and local communities are increasingly getting involved. At COP 28, the DRC's environmental civil society called for substantial investment in the fight against climate change. In addition, in 2024, the anti corruption coalition "Le Congo n'est pas à vendre" (Congo is not for sale) and its activists fought against the misappropriation of mining royalties in Lubumbashi.

3. ENVIRONMENTAL METRICS AND GOALS

3.1 Carbon Footprint Disclosure Requirements: Scope 1, 2 and 3 Emissions

Currently, organisations are not required to calculate and disclose information related to their footprint; those that do so do so on a voluntary basis.

3.2 Emissions Reduction Targets and Enforcement in the DRC

3.2.1 The DRC, through the Ministry of the Environment and Sustainable Development, has committed to reducing its greenhouse gas (i.e., GHG) emissions by 21% over the period 2021-2030, as part of its Nationally Determined Contribution (i.e., NDC), in line with the Paris Agreement.

3.2.2 This objective mainly concerns three gases: carbon dioxide, methane and nitrous oxide, in sectors such as energy, agriculture, forestry, waste and other land uses, at an estimated overall cost of 48.68 billion US dollars.

3.2.3 Although its commitment is voluntary and the Paris Agreement does not provide for sanctions in the event of non-compliance, the DRC is nonetheless required to report on its progress at the risk of losing credibility internationally, a situation that would not only affect its relations with financial partners, but also compromise access to certain climate financing mechanisms.

3.3 Sector-Based Environmental Disclosure Requirements

3.3.1 In order to preserve biodiversity as well as the quality of air, water and other environmental components, the Congolese government has introduced a series of strict measures requiring organisations operating in the country to measure, monitor and, in some cases, disclose their water consumption, waste production and environmental impact, in accordance with current legislation. However, the application of these obligations varies according to the sector of activity, the size of the company and the level of environmental risk associated with its operations.

3.3.2 Mining and oil and gas companies, for example, are subject to stricter requirements in terms of environmental management and social responsibility. In particular, they must -

3.3.2.1 carry out an ESIA prior to any activity;

3.3.2.2 draw up specifications;

3.3.2.3 implement an environmental management plan;

3.3.2.4 restore sites after operation;

3.3.2.5 pay guarantee sums for environmental damage into an environmental guarantee fund;

3.3.2.6 comply with the principles of transparency and environmental monitoring;

3.3.2.7 submit to water abstraction and use authorisation;

3.3.2.8 treat and manage wastewater (set up wastewater treatment plants);

3.3.2.9 protect environmentally sensitive areas; and

3.3.2.10 comply with the polluter-pays principle.

3.3.3 While other sectors must also comply with environmental standards, their application may be less rigorous.

3.3.4 In addition, the law n°15/026 of 31 December 2015 on water requires sustainable management of water resources, with obligations to monitor consumption and treat wastewater. It establishes specific obligations for businesses and other major users, including their continuous monitoring of water consumption, to avoid wastage and ensure rational use; and the proper treatment of wastewater before any discharge into the natural environment, in accordance with environmental standards.

3.4 Statutory Obligations for Renewable Energy and Efficiency Reporting

At present, there are no legal obligations in this respect. We are not in a position to say with certainty that there may be an obligation to measure, monitor and disclose the use of renewable energies in the near future.

3.5 Biodiversity Disclosure Obligations in Operations and Supply Chains

3.5.1 With a view to ensuring the conservation of ecosystems and natural habitats, the protection of wildlife species and sustainable development in protected areas, Law no. 14/003 of 11 February 2014 on nature conservation requires organisations to measure, monitor and in some cases disclose the impacts of their operations and supply chains on biodiversity.

3.5.2 Indeed, these measures are mainly focused on projects with a direct impact on biodiversity, such as natural resource development or exploitation projects. Companies operating in sectors with less direct impact are not necessarily subject to these requirements.

3.5.3 The requirements applicable to companies are to -

3.5.3.1 carry out an Environmental Impact Study, including an analysis of the impact on biodiversity;

3.5.3.2 respect protected areas and endangered species;

3.5.3.3 draw up an environmental management plan defining mitigation, monitoring and compensation measures; and

3.5.3.4 publish environmental (and biodiversity) data as part of CSR.

4. CLIMATE RISK ASSESSMENT

4.1 What physical climate risks have been identified in your jurisdiction?

The DRC is facing major climate risks that threaten its ecosystem, population and economy. Here is a detailed analysis of the specific risks identified -

4.1.1 Accelerated degradation of tropical forests

4.1.1.1 Risk: Loss of 1.2 million hectares/ year (Global Forest Watch), reducing CO_2 absorption capacity.

4.1.1.2 Causes include -

4.1.1.2.1 slash-and-burn agriculture (75% of cases);

4.1.1.2.2 illegal mining and logging; and

4.1.1.2.3 urban expansion (e.g. Kinshasa).

4.1.1.3 Impacts include -

4.1.1.3.1 disruption of rainfall patterns in Central Africa; and

4.1.1.3.2 loss of biodiversity (habitat of endemic species such as the Bonobo).

4.1.2 Catastrophic floods

4.1.2.1 Risk: Recurrent floods in the Congo basin and its tributaries.

4.1.2.2 Recent examples include -

4.1.2.2.1 2023: Floods in Kalehe (South Kivu) - 400 dead; and

4.1.2.2.2 2022: Kinshasa submerged - 120 dead, 300,000 affected.

4.1.2.3 Causes include -

4.1.2.3.1 heavy rains + deforestation (increased runoff); and

4.1.2.3.2 urban sprawl (insufficient drainage).

4.1.3 Prolonged drought

4.1.3.1 Risk: Reduced rainfall in the south of the DRC (Katanga, Kasaï).

4.1.3.2 Impacts include -

4.1.3.2.1 falling agricultural yields (-30% for maize in 2022, according to the Food and Agriculture Organisation);

4.1.3.2.2 food insecurity (27 million people in crisis, according to the World Food Programme 2024); and

4.1.3.2.3 conflicts over water between herders and farmers.

4.1.4 Agricultural imbalances

4.1.4.1 Risk: Disruption of crop cycles.

4.1.4.2 Examples include -

4.1.4.2.1 delayed rains, which results in the postponement of sowing leading to local shortages; and

4.1.4.2.2 proliferation of parasites (e.g. armyworms).

4.1.5 Coastal erosion (Central Kongo)

4.1.5.1 Risk: Rising sea levels + increased waves.

4.1.5.2 Impacts include -

4.1.5.2.1 receding coastline at Moanda (-5 m/year at certain points); and

4.1.5.2.2 threat to port infrastructures (Matadi).

4.1.6 Rising temperatures

4.1.6.1 Risk: +1.5°C since 1960 (World Bank).

4.1.6.2 Consequences include -

4.1.6.2.1 heat waves resulting in water stress; and

4.1.6.2.2 spread of diseases (malaria, cholera) in newly exposed areas.

4.1.7 Instability of waterways

4.1.7.1 Risk: Reduced flow in the Congo River during the dry season.

4.1.7.2 Impacts include -

4.1.7.2.1 disruption of navigation and river transport; and

4.1.7.2.2 reduced hydroelectric production (Inga dam).

4.1.8 Indirect risks

4.1.8.1 Land conflicts: Increased pressure on arable land.

4.1.8.2 Forced displacements: +2 million internally displaced people (of which 30% linked to climatic disasters).

4.1.8.3 Economic crises: fall in rural incomes (75% of the population depends on agriculture).

4.2 Challenges of Transitioning to a Low-Carbon Economy

We are not in a position to confirm the existence or identify such risks.

4.3 Statutory Integration of Climate Risks into Enterprise Governance

No

4.4 Insurance Coverage for Climate Hazards and Anticipated Exclusions

We are not aware of any such practice by insurers, and cannot assess whether it might occur in the near future.

4.5 Climate Adaptation Strategies by State, Business and Civil Society

4.5.1 The following strategies have been implemented to combat climate change from the State's point of view -

4.5.1.1 a balanced transition plan - Vocational reconversion for charcoal workers; and

4.5.1.2 a National Climate Change Adaptation Plan.

4.5.2 We are not in a position to determine which strategies have been implemented by business or charitable organisations.

5. INTEGRATION OF ESG INTO STRATEGY, BUSINESS OPERATIONS AND PLANNING

5.1 ESG Oversight: Board and Management Responsibilities

ESG compliance responsibilities are not defined in the DRC.

5.2 Statutory Governance Mechanisms for ESG Oversight

See previous answer.

5.3 ESG-Linked Remuneration and Incentive Structures

We are not aware that such approaches exist in the DRC.

5.4 Operational Integration of ESG Compliance Across Sectors

The integration of ESG compliance is not yet common in the DRC.

5.5 Determining ESG Materiality for Disclosure and Reporting

There is no formal legal framework imposing the application of a mandatory ESG materiality test in the DRC. Companies are free to determine the importance of ESG issues according to their own risk analysis, the expectations of their stakeholders, or the international standards to which they voluntarily choose to adhere (GRI, SASB, etc.).

5.6 Board and Management Adaptation to ESG Oversight Requirements

ESG compliance is not yet a common practice in the DRC. We have not yet observed any adaptation policies on the part of boards of directors and management.

5.7 Data Security and Privacy Requirements for Organisations in the DRC

5.7.1 Yes, organisations in the DRC are required to set up systems to guarantee data security and customer privacy. This obligation is governed by a number of national laws and regulations.

5.7.2 The Digital Code, for example, requires digital service providers to ensure compliance with the rules governing the protection of personal data. It stipulates that, except in the case of judicial requisitions, digital service providers are required to maintain the confidentiality of the data they process.

5.7.3 Furthermore, the processing of personal data is only lawful if the data subject has consented to the processing of his or her personal data, or if the processing is necessary for the performance of a legal obligation to which the data controller is subject.

5.8 Cybersecurity Risk Management Requirements for Organisations

5.8.1 Organisations in the DRC are required to manage and monitor cybersecurity risks within their organization, in accordance with the provisions of the Digital Code.

5.8.2 Here are some of the measures implemented -

5.8.2.1 rust service providers are required to take the necessary technical and organisational measures to prevent and manage the security risks associated with the trust services they provide. In view of technological developments, these measures ensure that the level of security is proportionate to the degree of risk;

5.8.2.2 when the breach of security or loss of integrity in question is likely to cause harm to a user of the trusted service, the trusted service provider also notifies him of the breach of security or loss of integrity within twenty-four (24) hours;

5.8.2.3 the data controller or its representative must provide the person whose data is being processed with certain information, at the latest at the time of collection and irrespective of the means and media used, such as (the identity and contact details of the data controller or data protection officer and, where applicable, of the data controller's representative; The specified purposes of the processing for which the data is intended, when the processing is based on legitimate interests pursued by the data controller or by a third party; The categories of data concerned; The recipients to whom the data may be communicated; etc.);

5.8.2.4 the data controller implements the necessary means to guarantee the security of personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, backup and restoration. He/she is also civilly liable for any employees handling such data; and

5.8.2.5 it also implements all appropriate means to ensure that, by default, only the personal data necessary for each specific purpose of processing is processed.

5.9 Compliance with Global Data Protection Standards (e.g. GDPR)

No

6. FINANCE

6.1 How Financiers Apply ESG Ratings in the DRC

ESG ratings are not used in the DRC.

6.2 Top ESG Rating Agencies in the DRC

None

6.3 Ensuring Consistency in ESG and Financial Reporting in the DRC

ESG reports are not common in the DRC.

6.4 Role of Green and Social Bonds in the DRC

Green and social bonds do not yet play a significant role in the DRC market.

6.5 Role and Outlook of Sustainability-Linked Bonds in the DRC

6.5.1 Sustainable development obligations, in particular green, social and sustainable obligations, are still underdeveloped in the DRC.

6.5.2 Given the considerable financing needs facing the DRC, the integration of sustainable development bonds in the near future becomes not only relevant, but inevitable; because by joining the global dynamic of sustainable finance, the DRC could mobilise new capital while contributing to sustainable development goals.

6.6 Key Barriers to Sustainable Bond Adoption in the DRC

See our answer to paragraph 6.4

6.7 Assurance and Regulation of Green Bond Verification in the DRC

There is currently no verification mechanism for green bonds in the DRC.

7. TRENDS

Material trends related to ESG Compliance and disclosure in the DRC

None identified