

COUNTRIES ON THE MOVE

Democratic Republic of the Congo

19 July 2018

ADVOCACY. INSIGHTS. CONNECTIONS.

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WELCOME AND OVERVIEW

Topics to be covered today

Political background and current state of play

- Short history
- Province of Katanga divided

History of Katanga copper mining

- Long history
- Domination by Société Générale Belgique

Overview of new legislation

- Developed framework / Easing of challenging laws
- Investment Promotion Centre

Challenges and Remedies

- Reserve bank approvals / capital repatriation
- Stability of legislation

Evolution of relationship with Government

- Government, community and the social licence
- Always communicate, especially when you don't need something

Project impact of legislative changes

- Risk, uncertainty and opportunity
- Funding is now harder, but not impossible

INTRODUCTION

Today's presenters



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OVERVIEW

Recent to current history

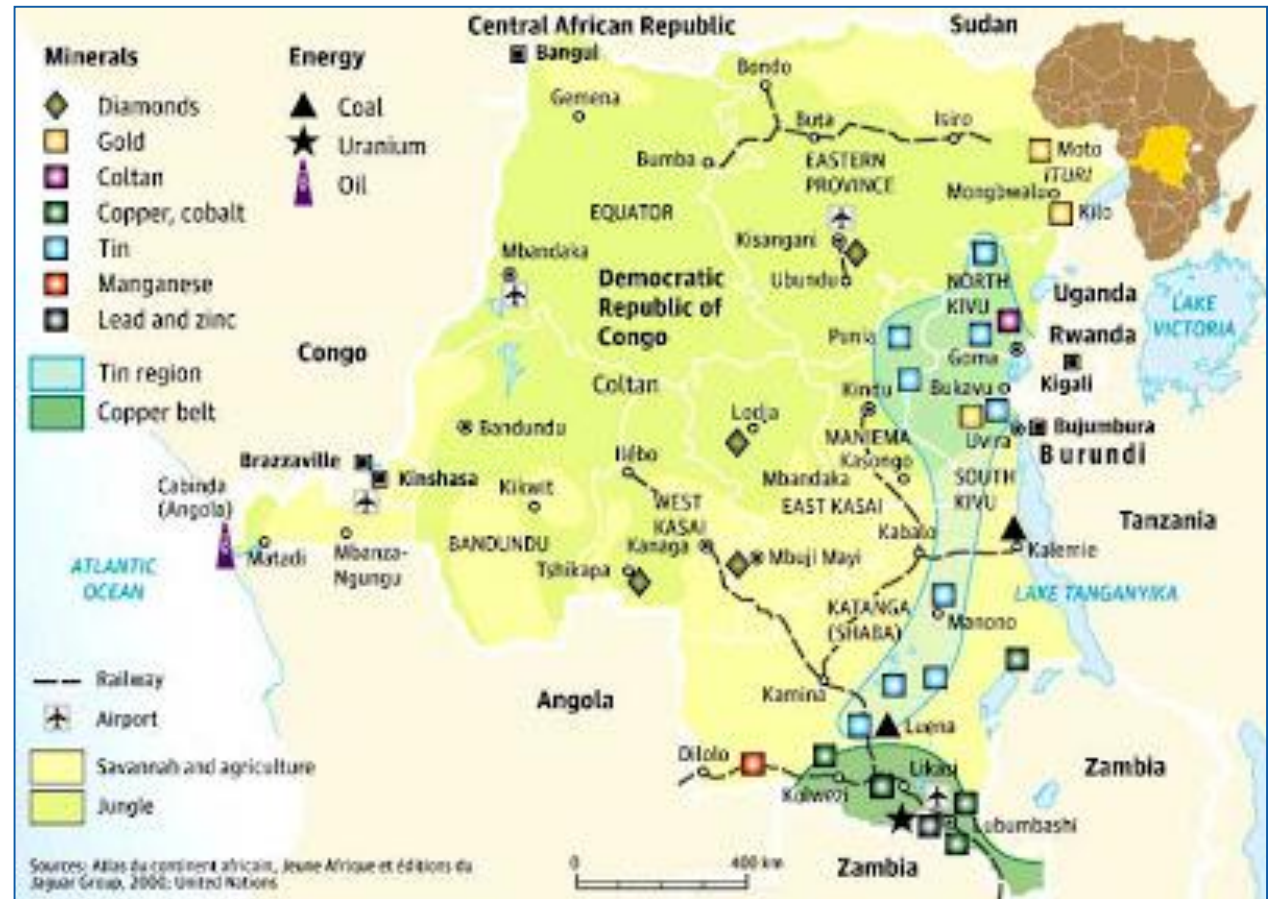
Pre – 1876	• Early history
1876 – 1885	• Colonisation
1885 – 1908	• Congo Free State
1908 – 1960	• Belgian Congo
1960 – 1965	• Congo crisis
1965 – 1996	• Zaire
1996 – 1997	• First Congo war
1998 – 2003	• Second Congo war
2003 – 2006	• Transitional Government
2006 – present	• Relative stability



GEOLOGY OF DRC

Copper Mining

Katanga copper mining dates back over 1,000 years

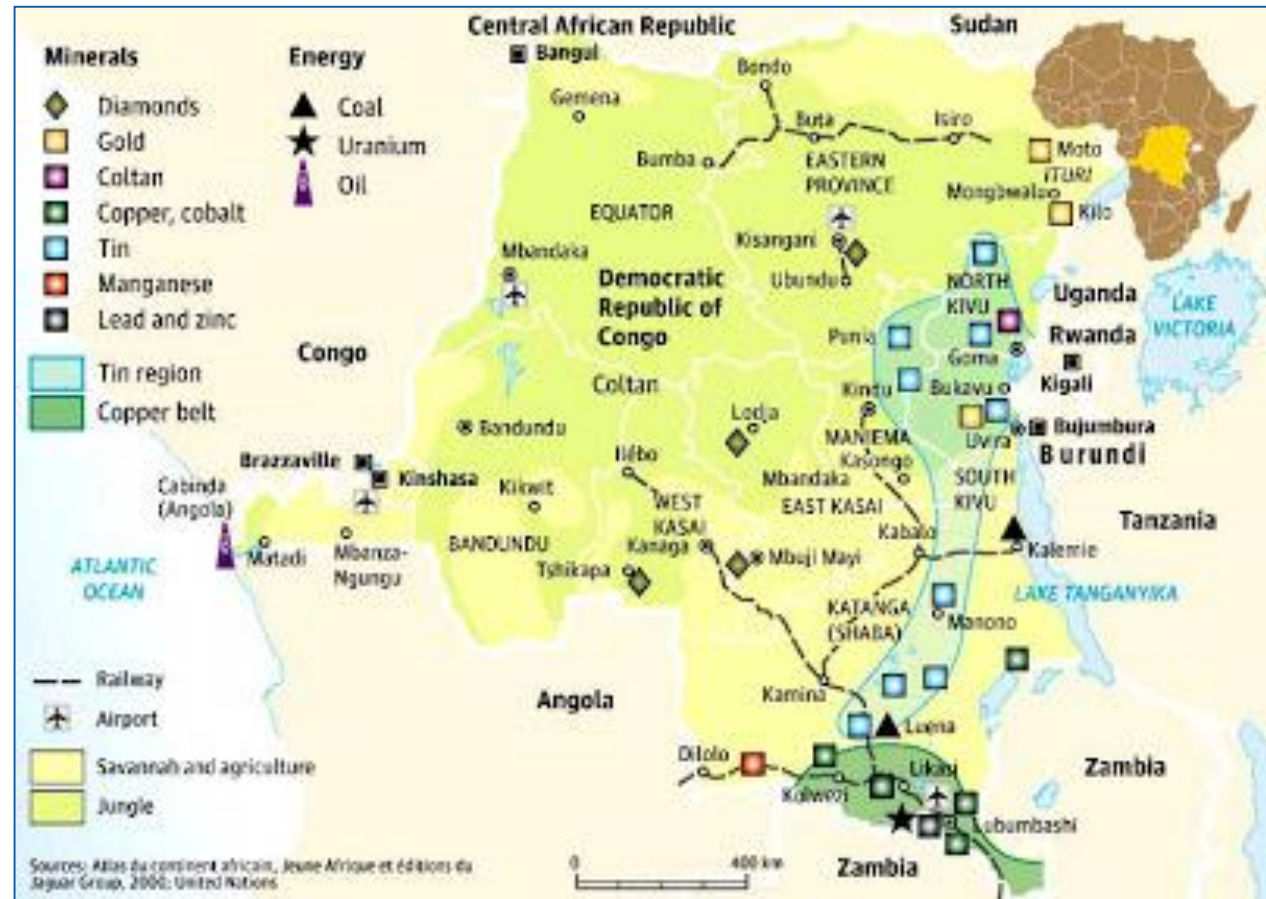


DOMINATION OF DRC MINING SECTOR

Société Générale de Belgique

From 1900 on, Société Générale de Belgique practically controlled mining in province through Union Minière

Minerals included: uranium, radium, copper, cobalt, zinc, cadmium, germanium, manganese, silver, gold and tin

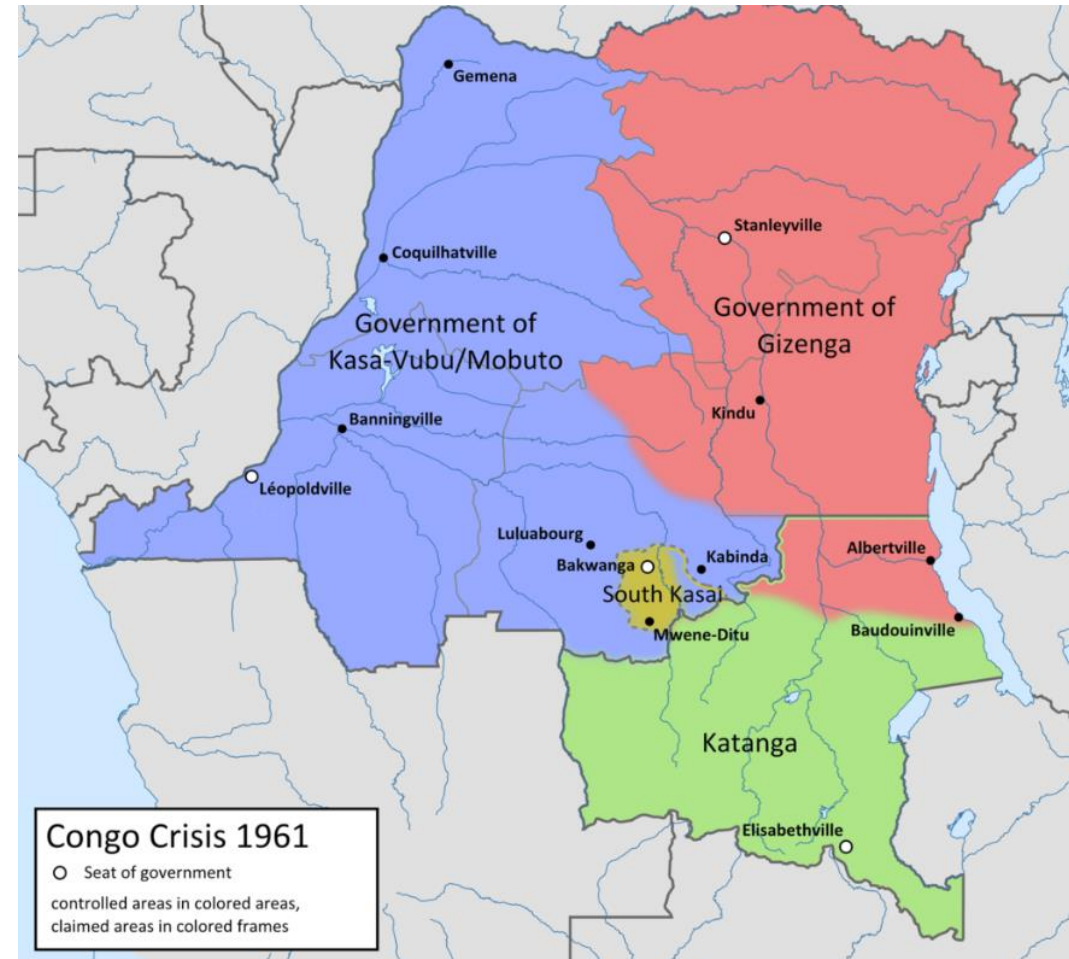


RESOURCE RICH KATANGA

Secession Attempt

In 1960, after Congo gained independence from Belgium, Katanga attempted to secede

Led to Katanga Crisis (Congo Crisis) which lasted from 1960 to 1965



POLITICS

Province division

Katanga was one of 11 provinces between 1966 and 2015, split into:

- Tanganyika
- Haut-Lomami (Kamina)
- Lualaba (Kolwezi)
- Haut-Katanga (Lumumbashi)



- | | |
|------------------------|---------------------------|
| 1. Kinshasa | 14. Ituri Province |
| 2. Kongo Central | 15. Haut-Uele |
| 3. Kwango | 16. Tshopo |
| 4. Kwilu Province | 17. Bas-Uele |
| 5. Mai-Ndombe Province | 18. Nord-Ubangi |
| 6. Kasai Province | 19. Mongala |
| 7. Kasai-Central | 20. Sud-Ubangi |
| 8. Kasai-Oriental | 21. Équateur |
| 9. Lomami Province | 22. Tshuapa |
| 10. Sankuru | 23. Tanganyika Province |
| 11. Maniema | 24. Haut-Lomami |
| 12. South Kivu | 25. Lualaba Province |
| 13. North Kivu | 26. Haut-Katanga Province |

POLITICIANS

Effect on current landscape



Étienne
Tshisekedi
Died 2017



Joseph Kabila
Current President



Moïse Katumbi
Candidate



Vital Kamerhe
UNC



Samy
Badibanga
Ex Prime Minister



Felix
Tshisekedi
Candidate



Martin Fayulu
ECiDé



Jean-Pierre
Bemba
MLC Candidate

ELECTIONS

Current key layers



Election

- Joseph Kabila elected in 2006 - DRC's 1st democratic election since independence

2nd Term

- Kabila secured 2nd term in 2011 – currently, a DRC president can only serve two consecutive five-year terms

Ineligible

- Kabila in power for 17 years, second term officially ended in 2016 - constitutionally ineligible for Dec poll

Next election

- According to DRC's Independent National Electoral Commission, elections will take place on 23 Dec 2018

Chapwe

- Exiled opposition leader – Moïse Katumbi Chapwe (Governor of Katanga Province, 2007 – 2015)

Sole Candidate

- On 25 May 2018, Moïse Katumbi discussed with Félix Tshisekedi, a single opposition candidate

RECENT TRENDS

(2002 to 2017)

Confidence

Confidence in DRC growing among international organisations such as World Bank and international private-sector companies

Mining Code

Introduction of new World Bank sponsored Mining Code in 2002 was important in attracting foreign investment

Sentiments

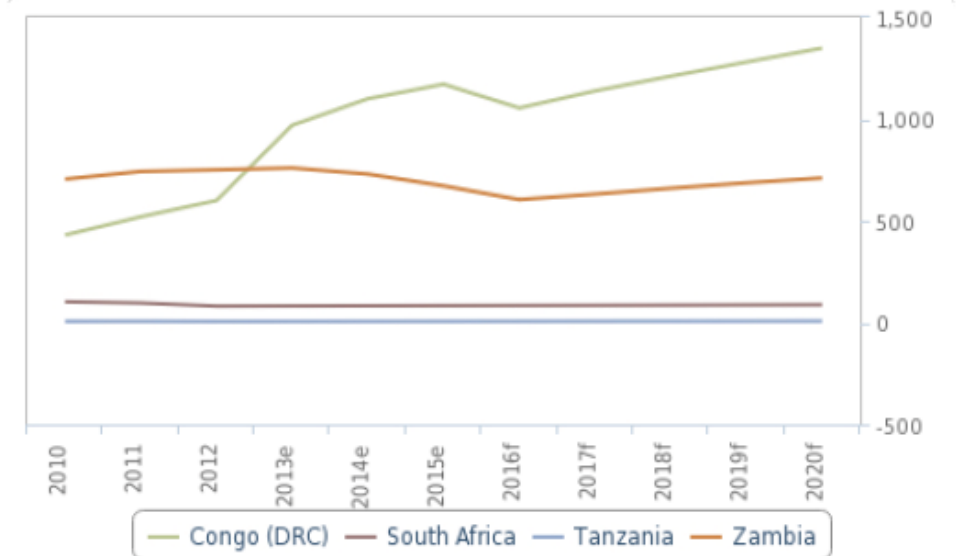
Positive sentiment outweighed negative sentiment, with companies out of Perth and Toronto investing

Decentralisation

Decentralization in southern DRC concentrated power in smaller places (Kolwezi), now possible to reach agreements outside of Kinshasa

DRC To Remain Largest Copper Producer In Africa

Selected Countries - Copper Ore Production ('000 tonnes)



e/f= BMI estimate/forecast. Source: BMI Calculation/USGS

RECENT STRONG MINING INDUSTRY

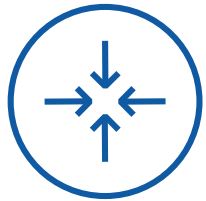
Examples of a few notable companies

DRC	Gecamines (State owned mining company)
CHN	MMG, Sicominer, China Molybdenum, Citic Metal Co, Zijin Mining Group Co, CMNC, Zhejiang Huayou Cobalt Co
TSX	Ivanhoe Mines
LSE	Rangold Resources
NYSE	Freeport-McMoRan, Banro
ASX	AVZ Minerals, EMR, Force, Nzuri Copper, Prospect Resources, Sundance Resources, Tiger Resources, Vector

CONTINENTAL TRENDS

Divergent thinking (e.g. DRC, Ghana and Tanzania)

Changing attitudes to mining in certain countries have resulted in new legislation and guidelines for foreign companies, some examples include:



New legislation effects

- State owned free carried interest
- Compulsory local ownership requirements
- Local content laws stricter
- Fines and penalties harsher
- International arbitration restricted
- Stabilisation provisions removed or narrowed



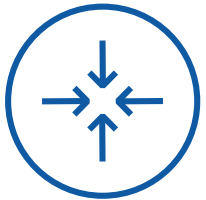
Project value consequences

- Increased royalties
- Tightened controls on exports
- Expanded controls on foreign currency movement
- Accumulation of VAT
- Liens over deposits
- Tax incentives reduced

CONTINENTAL TRENDS

Divergent thinking (e.g. Zimbabwe, Namibia and Burkina Faso)

Others have introduced changes to their regulatory framework, with a view to increasing direct foreign investment in mining, some examples include:



New legislation effects

- Relaxing local ownership requirements
- Local content laws rewarded rather than punitive in nature
- Confirming international arbitration available
- Stabilisation agreements upheld
- Allowing Financiers to take liens over mineral deposits
- No requirement to list locally

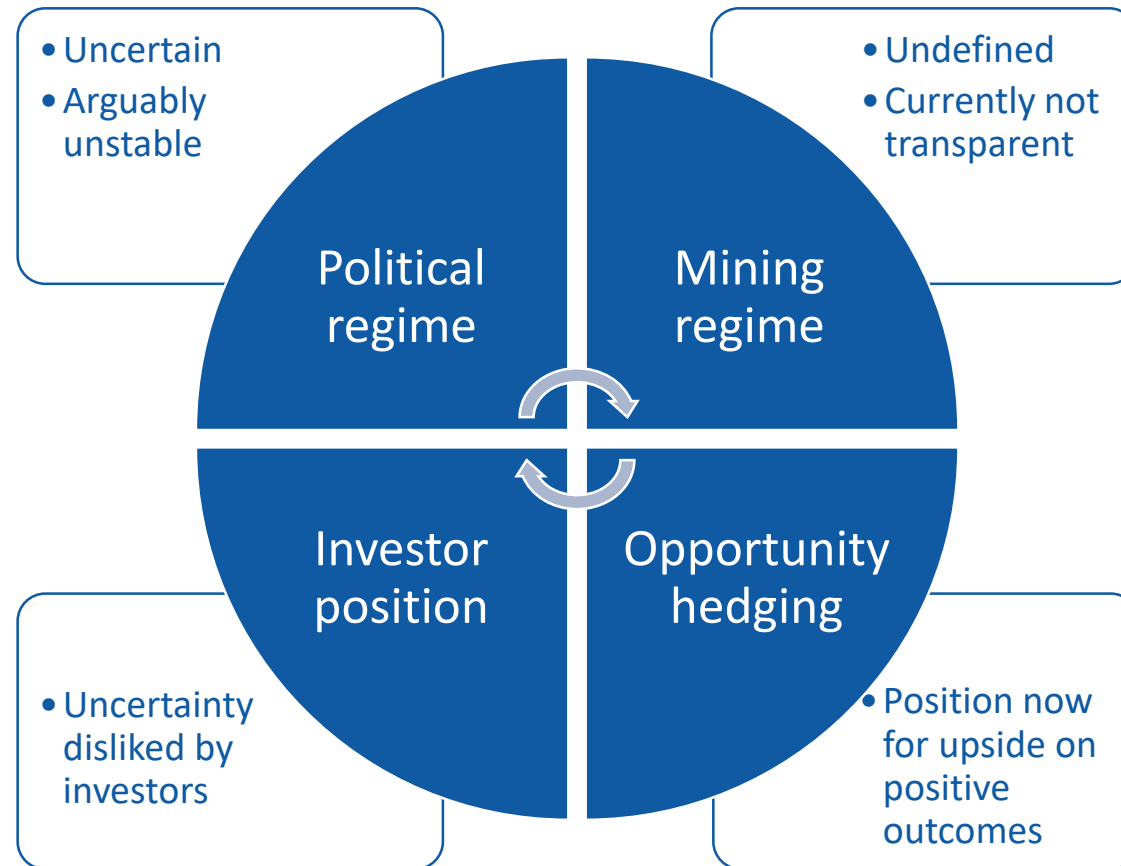


Project value consequences

- Reducing royalties
- Reducing controls on foreign currency movement
- Changes to beneficiation requirements and rewarding in country value add
- Refunding VAT
- Special economic zones
- Creating tax incentives regimes

UPCOMING ELECTIONS

Impacting project financing and opportunities



DRC MINING CODE 2018

Overview

Enacted 9 Mar 2018, published in DRC Official Gazette on 28 March 2018, applies to all mining contracts in force at time of enactment

(Loi n°18/001 du 9 mars 2018 modifiant et complétant la Loi n°007/2002 du 11 juillet 2002 portant Code minier)

Three key objectives



Align convention-based regime with legal regime (derived from applicable mining code)



Dismantling of tax/customs stabilisation regime over 10 year period (previous legislation)

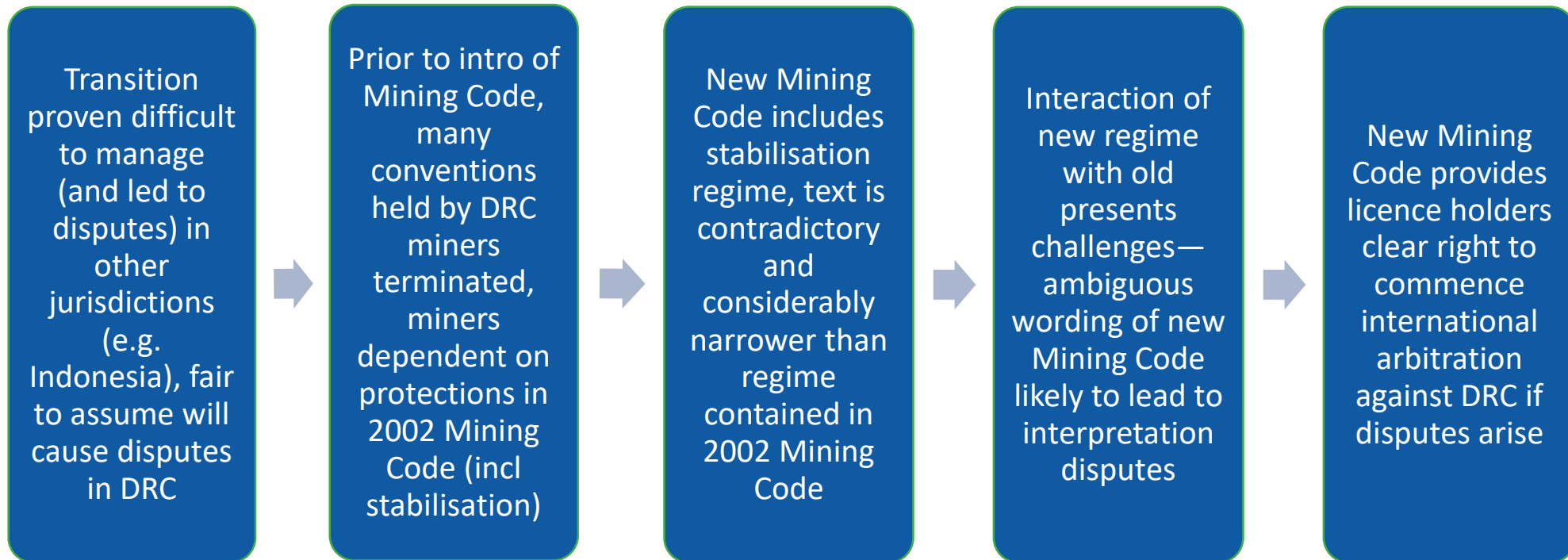


creation of specific tax regime for "*exceptional profits*" resulting from high mineral prices

NEW LEGISLATION

Key changes

The new Mining Code is intended to complete the transition from a convention-based system to a licence-based system of mining tenements



DRC MINING REGULATIONS

Anticipated regulations

Not yet in force – advance draft in circulation

Focus on implementing new law, rules for Gov depts

Increase in detail around licensing process – all stages

More rigour around EIA, community rights, sustainable development, rehabilitation (certification)

EITI transparency regime (“conflict minerals”)

NEW MINING LAW

New legislation



Mining licences and in-country value add

- Requirement to use tendering procedures for granting of mining rights broadened to any known deposit
- Duration of exploration permit limited to five years, renewable once for five years
- Duration of exploitation permits reduced from 30 to 25 years, renewable for 15 years
- Obligation to build head office of mining company in principal town of exploitation site
- Holder of exploitation permit required to perform treatment and transformation of mineral substances on the Congolese territory
- Companies engaging in transformation of mineral products that are not holders of operating licences must be at least 50% owned by nationals of DRC

NEW MINING LAW

New legislation



Capital requirements and financial limitations

- Amount of share capital of applicant for exploration permit must correspond to at least 40% of financial resources required to protect against thin capitalization
- Minimum financial capability to obtain exploration permit cannot be less than 50 times total amount of annual surface fees payable for last year of first period of validity of the exploration permit
- Removal of accelerated depreciation provisions
- Stronger limits on deductions on interest payments to affiliated parties
- Deduction of interest paid abroad on external loans subject to (i) use of loan for implementation of mining project and (ii) rate of interest may not exceed annual average of effective rates applied by credit institution of country where borrower established
- Obligation to repatriate funds increased from 40% to 60% during 'investment return phase' and to 100% thereafter, no possibility of using funds repatriated to pay external debt
- New Mining Code's fiscal terms apply immediately to existing permit holders

NEW MINING LAW

New legislation



Free carry, royalties and taxes

- Congolese individuals must hold at least a 10% equity interest in mining companies
- State's free carry interest in capital of companies holding exploitation permit increased from 5% to 10%
- Companies must transfer to State at each renewal an additional 5% of capital in company in addition to initial 10%
- If profits significantly greater than expected, additional profit tax of 50% on windfall
- Royalties significantly increased from 2% to 3.5% (on copper), up to 10% for designated "strategic substances" (e.g. cobalt, coltan)
- Exchange monitoring royalty of 2% of any export transaction, levied on the repatriated amount and paid by mining rights holder to Central Bank of Congo

NEW MINING LAW

New legislation



Security and transfer of shares

- Registration fees of mortgages over exploitation permits increased from a modest flat fee to percentage of the secured amount
- Registration fee of 1% of transfer price payable on transfer of mining titles
- Transfer of shares in a company holding an exploitation permit (leading to a change of control of the company by beneficiary of transfer) is subject to State prior approval

NEW MINING LAW

New legislation



Social/environmental impacts, local content requirements

- Covenant to comply with social responsibility undertakings given to local communities
- Holder of mining rights deemed liable (without any need to demonstrate fault) for damage caused to persons, assets and to environment as a result of its mining activities (i.e. strict liability)
- No statute of limitation for claims for harm to people and environment arising from mining
- Compliance with social obligations now a condition for maintaining validity of mining licences
- Minimum contribution 0.3% of turnover allocated to community development projects, managed by legal entity comprised of representatives of mining title holder and affected community
- Subcontracting reserved to businesses “promoted” by Congolese nationals (i.e. majority owned by nationals of DRC)
- Subcontractor must have local social security and provide evidence of its tax compliance
- Subcontractors allowed to subcontract activities subject to complying with provisions of law

NEW MINING LAW

New legislation



Stabilisation and international arbitration

Stabilisation regime of 2018 Mining Code is ambiguous but effect of new law seems to be to limit stabilisation:

- While stabilisation provisions were applicable to all types of legal or contractual rights under 2002 Mining Code, 2018 Mining Code limits application only to matters concerning taxation, customs duties and currency convertibility
- Legal (statutory) stabilisation reduced from 10 years from date of change of applicable legal regime to five years from date of entry into force of the 2018 Mining Code
- 2018 Mining Code gives mining title holders right to initiate international arbitration proceedings against State for disputes concerning interpretation or application of the 2018 Mining Code
- The arbitration takes place under auspices of International Centre for Settlement of Investment Disputes (**ICSID**), a World Bank-affiliated body headquartered in Washington DC
- ICSID awards enforceable in over 160 countries

PROTECTING YOUR ASSET

Pre-dispute

Nationality Planning

Structure new investments such that investor has corporate nationality of country benefitting from bilateral investment treaty (**BIT**) with DRC — at present France-DRC, DRC-Germany, Switzerland-DRC and US-DRC BITs

US-DRC BIT contains arguably strongest protections, but contains certain provisions that make it harder to rely upon if you do not have an active US business (“denial of benefits” clause)

Existing investments can be restructured to achieve these benefits provided investor is not already in dispute, or reasonably anticipates a dispute, with DRC Government

PROTECTING YOUR ASSET

Pre-dispute



PRI

- Investors may consider taking out political risk insurance (**PRI**) to provide cover for unlawful expropriations of assets and other adverse State actions
- In a country such as DRC, PRI cover may be costly (high sovereign risk = high premiums)
- PRI may also be sought through Multilateral Investment Guarantee Agency (**MIGA**), part of the World Bank Group
- MIGA has insured projects in DRC in past



Paper trail

- Key part of investment protection is ensuring you have evidence if you need to bring a claim
- Ensure Government commitments/ expectations regarding investments are properly documented in correspondence with Government during transition to new regime
- If uncertain seek specific assurances in writing from Government, if no answer, follow-up
- Take minutes of every Government meeting and send to the officials for their approval and signature
- Undertake continuing analysis of economic/operational impact of new laws (acts as evidence to bring a claim under stabilisation provisions)

DRC AS AN INVESTMENT DESTINATION

Why invest in the DRC?

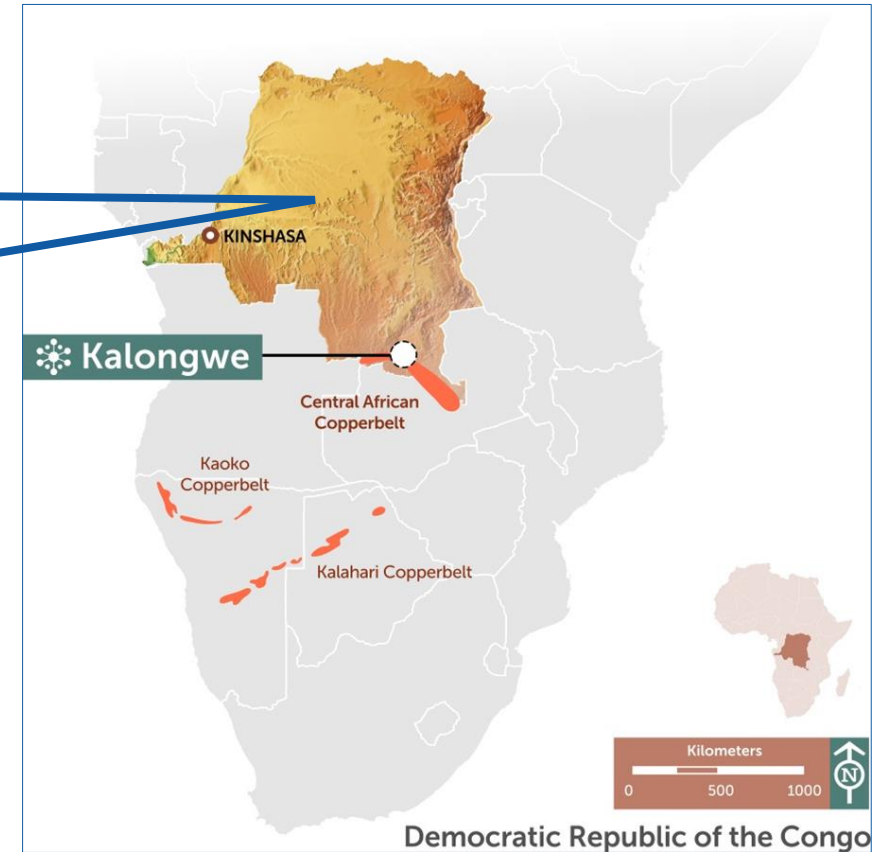
- Relatively good road network
- Long history of mining and skills sets available
- Going through large period of stability
- Desire for ethical sourcing
- Strategic investment

DRC RESOURCES

Copper and other leading resources in country

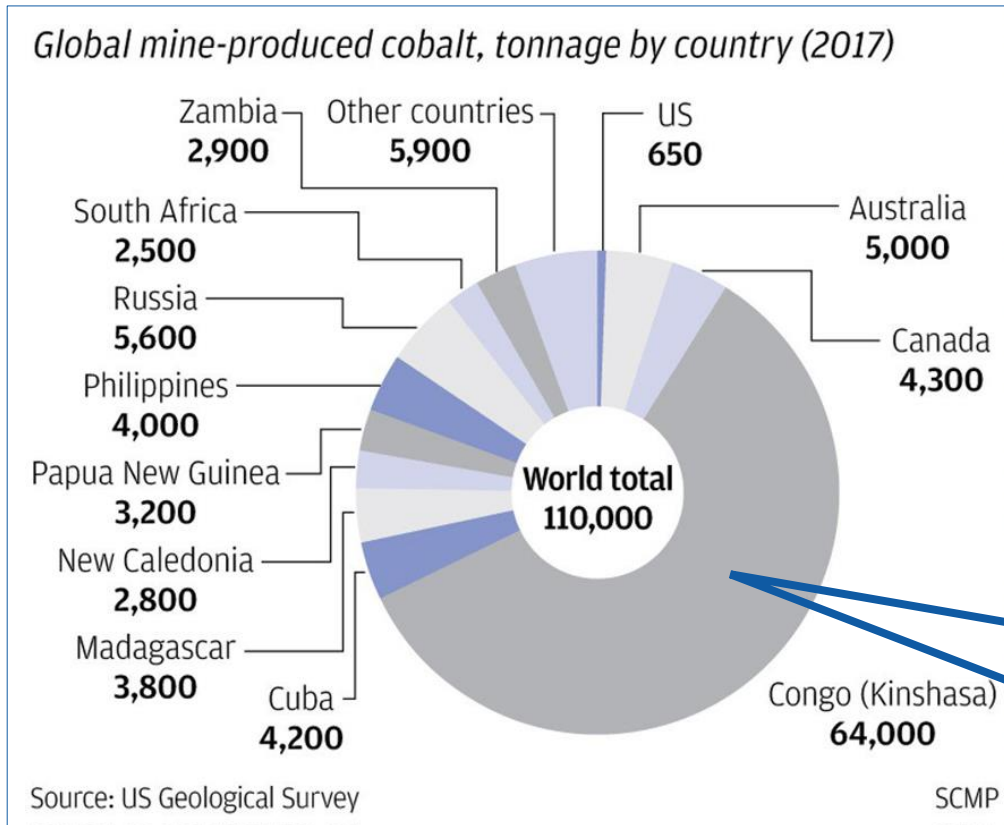
DRC
10-12% of
world copper
production in
2017

Strong near surface
resources of tin, copper,
gold and lithium



DRC RESOURCES

Copper, yes...but cobalt definitely



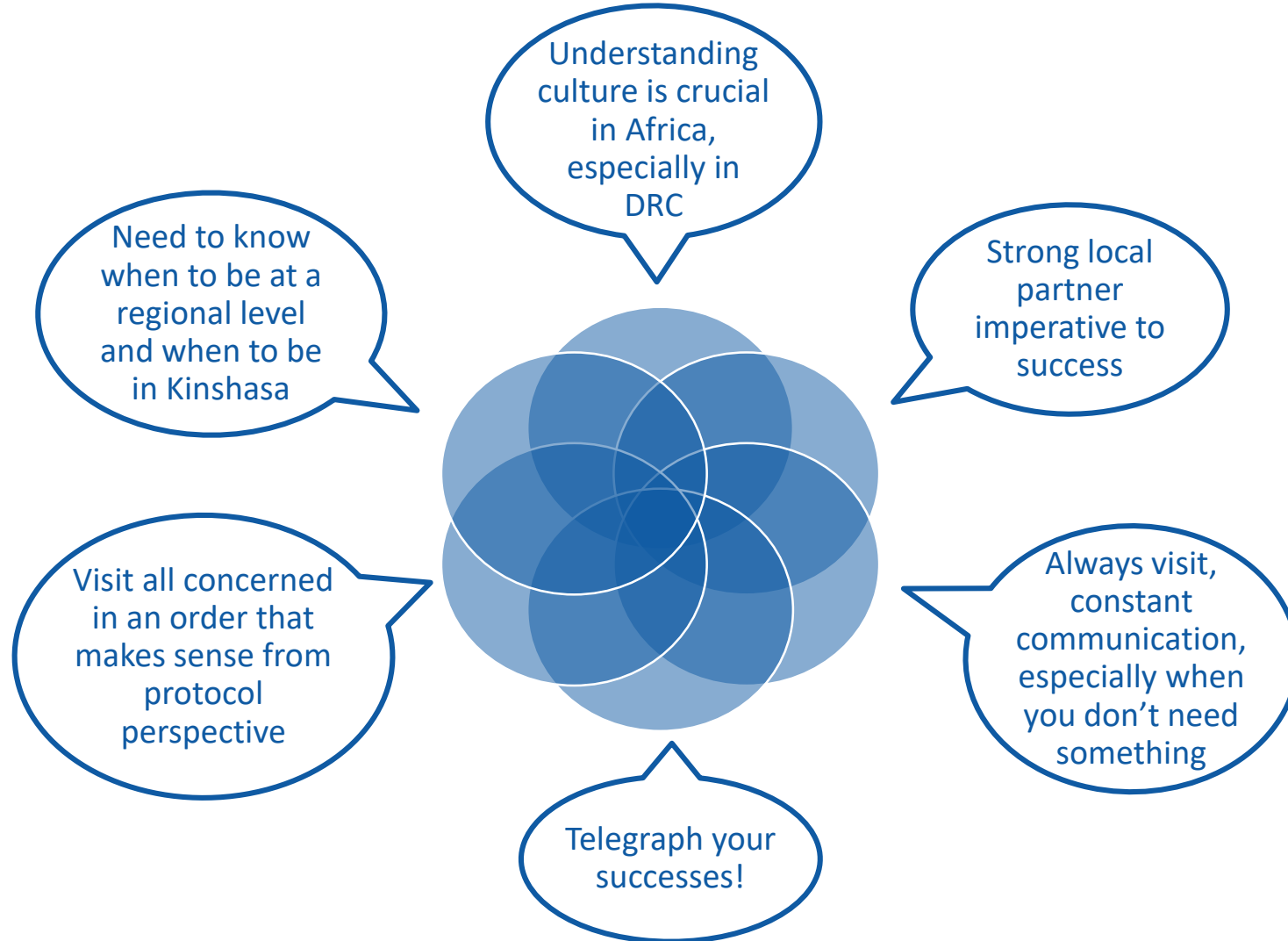
High grade cobalt resources available

99% a by-product and perhaps one of most crucial ingredients in current EV battery boom

DRC
60-70% of
world cobalt
production

RELATIONSHIP BUILDING IN THE DRC

Government, community and your social licence



**“It’s a matter of culture!”
- Adam Smits**

INVESTING IN THE DRC

Challenges & Opportunities



Challenges

- Small contractor community
- A “today” mentality
- Time has not a great deal of meaning
- Regulations/permits difficult to understand in terms of how they fit together
- Laws, codes and provinces cross over irregularly
- Multiple levels of regulation

Build a bridge,
get over it



Opportunities

- Broken promises
- Abundance of high grade resources
- Reticence by many western companies to enter
- Strong community support of mining

PROJECT IMPACT

Risks, uncertainty & opportunity

Risks and Uncertainty

- It's in Africa ...and a part not many people have visited
- DRC is a big big country
- Uncertainty around Dec 2018 presidential election
- Ebola
- New mining code took time to be promulgated and regulations are still to be issued. Tanzania precedent?

All of the above makes funding project harder, but not impossible

- People want stability
- People want exposure to ethically mined concentrate
- Compelling economics
- Funding via more creative routes – offtake/ lease arrangements/ debt funded EPC agreements





INVESTING IN DRC UNDER NEW MINING LEGISLATION

Risks, uncertainty and opportunities



C L I F F O R D
C H A N C E

Panel and floor discussion

