

MINING LEGISLATION IN THE DRC

Mining legislation in the DRC is based on

- The 2018 mining code <http://thaurfin.com/codeminier-2018.pdf>
- The 2018 mining regulations <http://thaurfin.com/REGLEMENT-MINIER-2018.pdf>
Which superseded the previous legislation on which the granting of Thaurfin Ltd 3PRs is based
- The 2002 mining code http://thaurfin.com/codeminier_2002.pdf
- The 2003 mining regulations <http://thaurfin.com/REGLEMENT-MINIER-2003.pdf>

The terminology ,

- The "**mining right**" is issued by the Minister of Mines by ministerial decree, according to art 10 of the mining code, also called "**mining permit**", there are 2 classes
 - The prospecting permit (PR)
 - The exploitation permit (PE)
- The mining permit gives the right to a "**prospection certificate**" issued by the mining cadastre also called "**mining title**", under art 109 of the mining regulations.

MINING LAW prevails over MINING TITLE

Mining rights (prospection permit or PR) are issued by Ministerial Order following an administrative procedure and a cadastral investigation.

Minier Mining titles (or prospection certificate) are issued by the mining cadastre as soon as the superficial taxes are paid under Art 109 of the mining regulation

Nemo auditur propriam turpitudinem allegans.

Latin expression meaning «no one can claim his own turpitude», More simply, it means that one cannot use in his favor a fault that one has committed.

As soon as the mining right is issued, the absence of delivery of the mining title by the mining cadastre cannot affect the validity of the mining right.

According to the mining code, transfers between holders concern the MINING RIGHT

According to Article 185 of the 2002 Mining Code on the transfer of the mining right,

- Subject to the provisions of Articles 40 and 178 of this Code, the technical examination of the file of the request for transfer of the mining right or the Permanent Quarry Exploitation Authorization on behalf of the transferee is carried out within twenty working days from the date of transmission of the file of the request to the Direction of Mines by the Cadastre Minier.
- The mining cadastre must verify the financial capacity of the transferee, the assumption of the obligations of the transferor by the transferee (...). Any refusal to transfer the right to mine or to authorize the exploitation of permanent quarries must be reasoned and gives right to the remedies provided for in articles 315 and 316

Any transfer not refused is accepted

The mining code of 2018 added Article 182 bis ,

.... b. in the case of a transfer of a research permit, justify the financial capacity provided for in Articles 56 and 58 of this Code;

FACTS ABOUT THAURFIN LTD PR1323, PR1324 & PR1325

THAURFIN LTD has the permits granted by Ministerial Decrees

The 3 Ministerial Orders 1323, 1324 & 1325 were issued in full compliance with the 2002 Mining Code and the 2003 Mining Regulation. The superficial taxes having been paid,

- <http://www.thaurfin.com/Doc-1323.pdf>
- <http://www.thaurfin.com/Doc-1324.pdf>
- <http://www.thaurfin.com/Doc-1325.pdf>

These 3PR have never ceased to be valid for never being fallen.

According to Art 10 of the Mining Code, only the Minister of Mines is competent to issue and revoke mining permits by Ministerial Order. The forgeries represented by the unfavourable cadastral opinions consider that permits never existed. These forgeries have been published in the annexes to the CAMI conclusions, so they are irrefutable. Permits considered never to have existed cannot be legally revoked.

3PR are in force majeure by default of issuing prospecting certificates

The Mining Cadastre violated Art 109 of the Mining Regulation by failing to issue prospecting certificates. In the absence of these certificates, the 3PR remained in case of force majeure until today.

The permits granted to Dan Gertler never existed

for two reasons (in french <http://www.thaurfin.com/INEXISTENCE.pdf>) ; the impossible existence of two different permits on a mining square is sufficient, if one exists (those of Thaurfin) the others do not exist (those of Dan Gertler)

Any court decision that has considered the existence of Dan Gertler's permits is terminated by virtue of the maxim "the accessory follows the main", (PS)

Transfers between holders concern MINING LAW

- From Jeka srl to Rubi River by assignment contract <http://thaurfin.com/irrefutable/AN16.pdf> of November 3, 2003, (it is about mining rights since the prospecting permits (PR) had not been granted, they were by Ministerial Order of February 17, 2006)
- From Rubi River to Jeka sarl by judgment RCE 9842 of the Court of First Instance of Kisangani of 5 May 2011 (cf <http://thaurfin.com/irrefutable/AN58.pdf>) : «says for right that the **mining rights** constitute henceforth the exclusive property of JEKA srl»
- From Jeka sarl to Ir Pol HUART by judgment RCE 1260 of the Commercial Court of Kisangani of 13 November 2017 (cf <http://thaurfin.com/irrefutable/AN82.pdf>) “condemns JEKA sarl to transfer to Pol HUART the 3 **research permits**”
- From Ir Pol HUART to Thaurfin ltd by deed of sale dated 15 February 2018 entitled “deed of sale **of mining rights**”.... “I, the undersigned Pol Huart, assign my **mining rights**...” (cf <http://thaurfin.com/irrefutable/AN91.pdf>)

All these transfers were carried out according to the mining code of 2002

According to art 185 of this mining code, since these transfers were not refused within 20 working days, they were accepted.

The 3PRs were given by JEKA sarl by court order to Ir Pol HUART who transferred them to the company Thaurfin ltd just before the promulgation of the mining code of 2018 no longer allowing foreign natural persons to hold mining permits

PS This maxim is based on a primary logic considered universally which is nevertheless confirmed by renowned lawyers (see appendix).

This non-existence was known before filing a third-party motion opposing an unfair judgment obtained by Dan Gertler but it was based on documents from the Rubi River file. These same documents became irrefutable once they were transmitted by mining cadastre in the annexes to its conclusions. In addition, unknown documents appeared: the forgeries that constitute adverse cadastral advices and the file was consolidated by other new information.

TO CONCLUDE

Research certificates are not required to secure mining rights 1323, 1324 and 1325 to investors, cf in French <http://thaurfin.com/Droits-miniers-suffisants.pdf>

Nemo auditur propriam turpitudinem allegans, the mining cadastre cannot claim its own turpitude and its own crimes.

Ir Pol HUART

Directeur de Thaurfin Ltd

Ingénieur Civil des Mines AIMs76 MINES-ParisTech84

ANNEX

The accessory follows the principal confirmed by (in French)

Me Paulin BOMBESHAY



De : paulin bombeshay <pbombeshay2011@gmail.com>

Envoyé : jeudi 23 mars 2023 18:10

À : Thaurfin <p.huart@thaurfin.com>

Objet : Re: [EXT] Dossier Thaurfin Ltd

Bsr, Pol,

Ainsi que vous le savez, si nous avons une décision judiciaire qui constate qu'au moment d'attribution de droit minier a D.G, ces titres étaient inexistantes, celle-ci anéantira de plein droit l'obtention par DG des décisions par lui obtenues en vertu de la maxime juridique, l'accessoire suit le sort du principal.

Il est tout à fait logique d'obtenir pareille décision.

Bien à vous et à vous lire

Paulin Bombeshay

Avocat

Me Pépé ABAYA KOY

De : Pépé Abaya <abayakoy@gmail.com>

Envoyé : lundi 15 mai 2023 13:15

À : p.huart@thaurfin.com

Objet : Re: suite de notre conversation WhatsApp

Bonjour Monsieur Pol.

Je confirme l'application du principe l'accessoire suit le principal, en ceci que s'il y a des décisions judiciaires qui se sont fondées sur des titres inexistantes pour reconnaître des droits à une partie, il suit que celles-ci sont annulables dès lors qu'on arrive à démontrer que les titres sont inexistantes.

Merci.

Me Cédric FISCHER

De : Cedric Fischer <cfischer@ftmsavocats.com>

Envoyé : lundi 27 mars 2023 08:34

À : 'Huart Pol' <p.huart@thaurfin.com>

Objet : Dossier 1801373 - THAURFIN / IRON MOUNTAIN

Cher Monsieur,

Si, avec un effet rétroactif, les permis de Dan Gertler sont annulés, il me semble que tous les actes subséquents devraient l'être.

Si des décisions sont passées en force de chose jugée, il doit pouvoir y avoir une possibilité de faire un recours en révision contre ces décisions.

Je n'ai pas fait de recherches dans le code de procédure civile congolais mais j'imagine qu'il y a une disposition en ce sens.

Bien à vous.

Cédric Fischer
Avocat au barreau de Paris

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