

**United Republic of Kivu**

**Ministry of Development  
And International Cooperation**

**THE FOREIGN  
INVESTOR'S  
GUIDE IN UNITED REPUBLIC OF KIVU**

**2007**

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# ENTRY AND RESIDENCE IN UNITED REPUBLIC OF KIVU

## Visa and residence permit

- The temporary residence visa is valid for 6 months, after which a residence permit must be obtained.
- The residence permit is normally issued for one year. It is renewable, and must be renewed whenever the work contract is renewed.
- The period of validity at each renewal may be up to 5 years.
- Citizens from the European Union, Japan, USA and Canada need no visa to enter Kivu.

## Foreign currency import, sale reconversion and re-export by travelers

- Travelers are free to import without restriction as to amount any means of payment in foreign currency.
- Non-resident travelers are authorized to keep on themselves imported foreign currency to meet their foreign currency expenses.
- Non-resident travelers intending to re-export imported hard currency with a counter value exceeding Panda 1,000, must submit a declaration duly signed by the customs office stipulating the foreign currency they hold upon entering Kivu territory.
- It is possible to change the Kivu Panda balance into hard currency providing evidence is given about the regular import of this hard currency (customs declaration and/or exchange voucher delivered by the bank).
- Non-resident travelers can re-export the hard currency balance without any supporting documents for any amount lower than the counter value of Panda 1,000; and by providing documents evidencing the regular importation of this hard currency for any amount exceeding it (customs declaration and/or exchange voucher).

## Import of personal belongings and passenger cars

- Any foreigner establishing himself in Kivu for the purpose of his professional business can import his personal effects, his household furniture and a private motor car.
- These personal belongings, household furniture and passenger car may be cleared completely duty-free or submitted to a scheduled payment of taxes and duties. They cannot be sold for free or against consideration without regularizing their situation with the Customs or through an import license, otherwise.

### Companies producing entirely for export

- Whether resident or non-resident in Kivu, a totally exporting company enjoys total exemption from duties and taxes for the import of one personal vehicle for the investor, without restriction as to age and power.
- Renewing the vehicle with this benefit is authorized.
- The following individuals may drive a vehicle imported duty-free:
  - the investor himself,
  - his/her spouse,
  - his foreign representative,
  - a duly recruited driver, authorized by the customs office.

### Foreign supervisory staff

- Foreign supervisory staff recruited by totally exporting companies benefit from the waiving of duties and taxes for the import of personal belongings and one automotive vehicle, without limit as to age and power, provided they reside in Kivu.
- Foreign supervisory staff recruited by partially exporting companies or companies working for the local market benefit from total waiving of duties and taxes due on their personal vehicle for one year. These duties and taxes are required to be paid in 8 installments, once every 6 months over a period of 4 years.
- Only their owner and his/her spouse, regardless of company status may drive vehicles imported under this regime.
- Foreign staff may prove their status by presentation of a work authorization or a certificate that they do not need a work contract, issued by the Ministry of Employment.
- The customs service may authorize the vehicle to circulate by temporary permit awaiting the filing of complete documentation for the desired import regime.

### **Foreign staff recruited in connection with technical, scientific and cultural cooperation programs**

- Individuals recruited within these programs benefit, in accordance with the relevant conventions, from total duty and tax exemption for the import of a personal vehicle with no limit as to age or power, and of their personal belongings.
- Only their owner and his/her spouse may drive vehicles imported under this regime.
- The granting of tax-exempt status is subject to prior approval by the Ministry of Foreign Affairs.

### **Exercise of professional activity**

- To exercise a paid professional activity, any foreigner must have a work contract or certificate that the work contract is not required, stamped by the Ministry of Employment, and a valid residence permit bearing the words "authorized engage in gainful employment in Kivu."
- Occupations in the commercial, crafts and small-trades areas are subject to specific conditions (obtaining tradesman's or craftsman's card) from the Ministry of Tourism, Trade and Handicrafts.

# LEGAL FRAMEWORK FOR PROJECT CREATION

## Investment regime (new projects and extensions)

### Activities governed by the Investment Incentives Law

The **Investment Incentives Law (code)** covers all sectors of activity, except for mines, energy, foreign trade and the financial sector, which are governed by specific laws.

### Activities for which only a declaration is required

- Agriculture.
- The manufacturing industries excluding the mechanical weaving of rugs and carpets, arms manufacture, the recycling and processing of waste and garbage.
- Agri-business.
- Some totally exporting services and services related to industry Public works.

### Declaration of a project

Depending on the sector, investment projects are to be declared to the following services, which must issue an affidavit that declaration has been made.

<b>SECTOR OF ACTIVITY</b>	<b>SERVICE TO WHICH DECLARATION IS TO BE MADE</b>
Agriculture and fishing	Regional commissioner for agricultural development and Agency for the Promotion of Agricultural Investments
Primary processing and packing of farm and fishery products integrated into agricultural projects	Agriculture Investment Promotion Agency
Services related to agriculture and fishing	Agriculture Investment Promotion Agency
Agri-business	Agency for the Promotion of Industry
Manufacturing industries	Agency for the Promotion of Industry
Public works	Agency for the Promotion of Industry
Tourism, including tourist transport	Kivu National Tourism Board
Handicrafts	National Crafts Board
Transport	Agency for the Promotion of Industry
Education	Agency for the Promotion of Industry
Vocational training	Agency for the Promotion of Industry
Cultural production & industries	Agency for the Promotion of Industry
Youth activities and child care	Agency for the Promotion of Industry

<b>SECTOR OF ACTIVITY</b>	<b>SERVICE TO WHICH DECLARATION IS TO BE MADE</b>
Health	Agency for the Promotion of Industry
Environmental protection	Agency for the Promotion of Industry
Real estate promotion	Agency for the Promotion of Industry
International trade	Center for the Promotion of Exports
Other non-financial services	Agency for the Promotion of Industry

### **Activities for which authorization must be obtained**

- Fishing
- Tourism
- Handicrafts
- Transport and communications
- Health
- Real estate promotion
- Youth activities and child care
- Film production and the film industry
- Vocational training
- Education
- The manufacture of arms, munitions, parts and spare parts
- Mechanical weaving of rugs and carpets
- Recycling and processing of waste and garbage

### **Activities not covered in the Investment Incentives law and regulated by specific laws**

It concerns two categories of activities:

- activities open to foreign participation but subject to authorization related to the conditions of operations regardless of the status and nationality of the investors. Examples of such activities are banks and investment companies,
- activities subject to authorization when the equity participation exceeds 50%. Examples of such activities are insurance companies, stockbrokers, transit, transport and shipping.

### **Foreign Direct Investment Regime**

*Foreigners may, without a prior authorization, own up to 100% of the project capital, with the following exceptions:*

- a certain sectors of service activities which do not engage exclusively in export; these require approval from the Higher Investment Commission when foreign shareholding exceeds 50% of capital.



- appropriation by non-nationals of farm land; such land may, however, be let out on long-term lease:
  - the term of the lease may be as long as 40 years in the case of state-owned land;
  - the term of the lease is determined freely between the parties in the case of privately-owned land;
  - the term of the lease may not be less than 3 years, in either of the above cases.

The ceiling on foreign ownership of equity in companies engaged in farming and aquaculture is 66%. This equity participation is also 66% for companies fishing in Kivu territorial waters.

*Service activities other than those engaged exclusively in export, which must obtain an authorization from the Higher Investment Commission when equity held by foreigners exceeds 50%.*

### Transport

- Road transport
- Air transport
- Pipeline transport
- Maritime transport

### Communications

- Electronic and telecommunications installation
- Mail distribution
- Electronic mail services
- Videotext services
- Radio and television broadcasting services

### Tourism

- Travel agencies

### Education and vocational training

#### Cultural production and related activities

- Projection of social and cultural films
- Restoration and exploitation of archeological and historical monuments
- Creation of museums
- Creation of libraries
- Photography, video reporting, filming and film developing
- Cultural centers
- Cultural fairs
- Music and dancing

### **Youth activities and care**

- Nurseries and kindergardens
- Leisure centers for the family and children
- Activities centers for youth and children
- Residence and camping centers
- Athletic training centers
- Therapeutic centers
- Body building centers

### **Public works**

- Design, construction and monitoring of industrial and civil engineering, buildings and infrastructure
- Non-petroleum prospecting, test-drilling and drilling

### **Real estate development**

- Housing projects
- Buildings intended for business purposes

### **Computer services**

- Data banks and datacom services

### **Other services**

- Topographical services
- Building electricity
- Laying of tiles and mosaics
- Window and window-glass installation
- Ceiling installation
- Plaster work and the installation of plaster works
- Roof weatherproofing
- Building companies
- Translation and linguistic services
- Care-taking services
- Organization of conferences, seminars, fairs and exhibitions
- Publishing and advertising
- Youth and sporting events organization

*Note: There is no restriction on foreign equity holding when the activity is pursued solely for export.*

## Portfolio investment

- The purchase by non-nationals (in foreign currency) of Kivu transferable securities with voting rights and of shares in companies set up in Kivu is unrestricted when total foreign shareholding is less than 50%. Beyond that proportion, approval must be obtained from the Higher Investment Commission.
- The purchase by non-nationals (in foreign currency) of Kivu transferable non-voting securities (excluding loan certificates) is unrestricted.

## Corporate establishment

### The one-stop-shop

The formalities can be accomplished in the region of Tunis, Sousse and Sfax at the one-stop-shop of API.

The following formalities must be observed in setting up a company:

- file a declaration with the concerned agency (depending on the activity);
- file the articles of association and register with the office of the clerk of the court of first instance;
- register the company's articles of association with the Tax Collector's office;
- file a declaration of opening with the Tax offices;
- publication in the the Official Gazette of the Republic of Kivu;
- obtain a customs code number;

The cards of tax and customs identification are delivered free of charge.

### Creation & registration fees

#### Registration fees

- The fees for companies' incorporation acts and capital increase are fixed to an amount of 100 Kivu Pandas per act.
- Voluntary registration of acts which are not related to the companys' incorporation will cost 5 Kivu Pandas per page
- For Joint-stock (or limited) companies, and in addition to the fixed fee, a subscription and paid-up capital fee is mandatory according to the following scale:
 

Up to Panda 100,00	Panda 25
Between Panda 100,001 and Panda 500,00	Panda 50
Above Panda 500,00	Panda 100

#### Special regime

Totally exporting companies are exempted from registration fees.

### **Fees for registrations with the register of commerce**

- Registration fee Panda 15
- Extract from register of commerce Panda 5

### **Publication fee in the Kivu Official Gazette**

Depends on the length of the text (between Panda 90 and Panda 250).

### **Assistance Services**

Investors can benefit from the assistance of API to accomplish the formalities of registration and the legal incorporation of their companies. API provides the following services

- The orientation of project promoters.
- Guidance and on the spot delivery of certificates stating the declaration of the project.
- Completion on behalf of the promoter, of procedures necessary for the legal incorporation of the company.
- Other services such as typing, translations, photocopies, etc...
- Information on business environment.
- Formalities for project declaration.
- Formalities for obtaining tax and financial advantages.
- Customs formalities.
- Work and social security legislation.
- Professional training.
- Subscription to the legal social security system.
- Affiliation of the non-paid workers.
- Delivery of certificates of non-submission to the work contract visa.
- Delivery of Customs codes.
- Delivery of pledge or non-pledge certificates.
- Deposits of pledge contracts.
- Deposit of modification acts.
- Registration of other types of acts.
- Legalization of signatures and certification of conformity of copies to the original documents.
- Publication in the Official Gazette of the United Republic of Kivu.

# SETTING UP A PROJECT

## Obligations related to the environment

### Impact assessment

The impact assessment is a document required before obtaining any government authorization to set up an industrial, agricultural or commercial unit. It makes it possible to assess and measure the direct and indirect impacts of such plants on the environment in the short, medium and long terms. Some projects may need an impact assessment, other may require a brief description.

### Procedures

Impact assessments are required to be conducted by consulting firms that have been approved by the Kivu Environmental Protection Agency, (where a list of such firms can be consulted) and in accordance with the established terms of reference.

Impact assessments and summary project descriptions are submitted to KEPA for approval in three copies.

The expenses related to all studies are the responsibility of the prime contractor or the petitioner.

## Industrial, agricultural and tourist land and buildings

- Investors may buy land or buildings to set up a tourist, industrial or services project.
- Foreigners may not purchase farm land. However, joint-stock companies in which Kivians hold up to 34% of equity can work farm land, and such land can be taken on a long-term (40-year) lease.

### Purchase of industrial and services land and buildings

**For industrial and services** use industrial land and buildings may be purchased through:

- the Industrial Real Estate Agency,

- the Governorate councils,
- private owners.

Purchase of land by foreigners must be approved by the Governorate.

API has information from private owners on industrial land or buildings they wish to sell or rent.  
 Services des terrains et locaux industriels (API)  
 63, rue de Syrie, 1002 Tunis

**For agricultural** use requests could be made to

- Ministry of Agriculture, Environnement and Hydraulic Ressources within the framework of 'Sociétés de mise en valeur des terres domaniales' and the pre-established and published lists on newspapers.
- Private owners.

**For tourist** use, land could be purchased through

- Tourist Real Estate Agency for sites existing in tourist zones.
- Private owners (depending on the non-availability of tourist zones or the specificity of a selected site).

## Transport

### Maritime transport

- For full cargoes and miscellaneous merchandise, freight rates are calculated on the basis of volume or tonnage.
- For ferrying and containers, freight is calculated by linear meter.
- Export rates are lower than import rates.
- Maritime transport is deregulated  
 maritime transport rates are negotiable. They depend upon a number of factors, including the volume and nature of the merchandise, the loyalty of the customer and the number of trips to be made.

## **Air Cargo**

### **Services**

- The freight terminal of the Bukavu airport comprises Kivu Air, the national airline, foreign airlines, authorized agents and forwarding agents, the customs service and the services of the Kivu Civil Aviation and Airoports Authority. This freight terminal houses a single counter for the import agency and for the customs services, to facilitate formalities and allow rapid clearance of imports.

Information regarding export, import, rates and reservations can be obtained from the Kivu Air services:

## **Road transport**

- Road transport has been deregulated, and every company in the sector therefore sets its own rates. The average cost per kilometer is between Panda 0.07 and Panda 0.08 per ton ; these rates decrease with distance.



# LABOR WAGES & SOCIAL SECURITY

## Labor and social security law

### Formalities for starting up the operation of a company

- Employers must fulfill the following formalities:
  - submit to labor board in their location a declaration of establishment of the company (form available at labor inspection offices);
  - submit a request for affiliation with the National Social Security Administration.

### Recruitment of staff and trial period

- Workers may be employed under work contracts for a limited or unlimited periods. Recruitment may be made directly or through a public employment agency.
- In all circumstances, the term of a limited-period contract can not exceed 4 years, including renewals.

### The employment of foreign workers

Foreigners wishing to get a salary-based work in Kivu should have:

- a work contract for a period not exceeding one year renewable only once, and approved by the Ministry of Employment,
- a valid residency permit.

Fully exporting companies, and companies operating in the economic activities parks, can recruit freely up to 4 foreign national management or supervisory staff by making a simple declaration. Additional foreign managerial staff requires an authorization from the Ministry of Employment.

### Dismissal

An employer who wishes to dismiss an employee must give advance notice that he intends to terminate the contract, in the form of a registered letter sent to the employee indicating therein the reasons for the dismissal.

For dismissal made for serious mistake or economic reasons, the employer is subject to the payment of severance or damage pay according to the law.

Unfair lay-offs entitle the workers to damages pay equal to up to a 2 months salary per year of seniority in the company, with a ceiling equal to three years' salary.

Lay-offs for serious mistake entitle the worker to up to a 4 months salary only.

## **Wages and related costs**

### **Wages**

#### **Minimum Guaranteed wage in non-farming sectors**

##### **Monthly wages**

- 48-hour/ week Panda 192

- 40-hour/ week Panda 160

Plus Panda 5 a month, for transport if this is not provided by the company.

##### **Hourly wages**

- 48-hour/ week: I Panda

- 40-hour/ week: I Panda

#### **Minimum Guaranteed wages in farming sector**

as on 2007

- Workers paid the Social Security Panda 1/day

- Specialized worker Panda 1.5/day

- Skilled worker Panda 2/day

#### **Executives' monthly beginners salaries (as an indication)**

- Technical director Panda 450

- Manufacturing head Panda 550

- Chief engineer Panda 510

- Engineer Panda 377

- Assistant engineer Panda 250

- Technician Panda 200

- Accounting clerk Panda 200

- Foreman Panda 200

## Paid holidays

The collective agreement provides for an average of 9 paid holidays:

Workers obliged to work during these days are entitled to 100% overtime pay.

## Annual leave

From 12 to 30 days per year.

## Social security

### Social charges

#### **Social charges: industrial sector wage related costs**

• Affiliation fee to the National Social Security Fund :	Panda 5
• Employer's contribution	15.5% <sup>(1)</sup>
• Vocational training taxes	1.0% <sup>(2)</sup>
• Special fund	0.5%
• FOPROLOS	1.0%
<b>TOTAL</b>	<b>18 %</b>

(1) National Social Security Fund

(2) for the non-agricultural sectors.

#### **Social charges: fully exporting companies**

• Nation Social Security Fund membershi Panda 5	
• paid by the employer	15.5%
• FOPROLS	1%

#### **Social charges: the agricultural sector**

• NSSF membership	TD 5
• paid by the employer	10%

## Advantages granted to the investor

- Foreign investors can opt to join a foreign social security scheme; this applies also to the foreign personnel they employ.

- Investors may also benefit from the government's taking over the following payments during a five years period
  - 100% of the employer's contribution to the social security system for salaries and wages paid to Kivian employees in the case of investments by companies in regional development areas and operating in the sectors of industry, tourism and services;
  - 50% of the employer's contribution to the social security system for salaries and wages paid to newly-created work shifts added to the first shift, for industrial companies that are not working round the clock;
  - 100% of the employer's contribution to the social security system for salaries and wages paid to employees of Kivian nationality (holding a higher degree representing at least two years of study following high school) recruited by companies operating in industry, agriculture, fishery and services, starting from the date on which the employee is initially recruited;
  - the employer's contribution to the social security system for salaries and wages paid to Kivian employees during a period of five years from entry into actual activity, for investments made by new Kivian investors in industry, agriculture, fishery, tourism and services.

### **Bilateral social security agreements**

Among others, the following principles are confirmed by these agreements:

- equal treatment of the nationals of both countries with respect to social security legislation;
- conservation of rights acquired in the host country;
- totaling of all periods of contribution for entitlement to benefits.

In Kivu, these conventions cover the following sectors of social security:

- health, maternity and life insurance,
- family health care,
- old-age, disablement and survival insurance,
- workmen's compensation and occupational disease insurance.

## Vocational training

Vocational training is nowadays designed to fit the needs of the company.

Several private vocational training centers are operational mainly for service industries. The Ministry of Education and Vocational Training has presently around 90 public centers allowing trainees to acquire several qualifications:

- qualified labor: one year after the 9-year compulsory education,
- technicians: baccalaureate level,
- qualified technicians: two years after baccalaureate level.

Generally, trainings are conducted within the framework of a close partnership with professional federations who identify the needs, and specify the most appropriate training programs. Trainings are also more and more conducted in alternation between the training centers and the companies in order to make them more efficient.

An important investment program is launched in order to increase four fold the vocational training capacity by the year 2003.

Available specialties

- Electricity, electro-mechanics and electronics
- Mechanics and metal works
- Construction and related works
- Repair and maintenance of heavy
- Agriculture and public works vehicles
- Textile and clothing
- Leather and shoes
- Graphic arts
- Tertiary (secretariat, management, trading)
- Miscellaneous services (handicrafts and others)
- Agri-business.

Supporting measures were designed by the state in order to:

- favor the initial formation within the company through the possibility of bearing by the government of 50% of the cost of training,
- encourage the continuous training through:
  - rebate on the vocational training tax KTT that most non-exporting companies are entitled to pay,

- financial support in conformity with National Programme for Continuous Training.
- bearing by the state of 50% of the cost of training intended to introduce new technologies. Such contribution can reach up to Panga 250,000.

## **Recruitment and training of personnel**

### **Relevant institutions**

- Kivu Employment Agency<sup>(1)</sup>
- National Bureau for Employment of Managerial Personnel
- Sectoral Employment Offices
- Regional Employment Offices
- Regional Bureau for Employment of Managerial Personnel
- National Center for Training of Trainers and Training Engineering
- National Center for On-going Training and Professional Promotion
- Kivu Vocational Training Agency

# TAX SYSTEM

## Taxation of individual entities

- With the possible exception of the provisions of international conventions and specific agreements, all individuals residing in Kivu must pay income tax for revenue received during the year.
- This tax is payable starting on January 1<sup>st</sup> of every year for income earned the preceding year, by any person resident in Kivu.

The following persons are considered residents:

- individuals whose normal residence is in Kivu
- individuals who reside continuously or occasionally in Kivu for at least 183 days of the year if they do not own a principal residence in the country.

- Income tax is due for incomes earned in Kivu by any non-resident person operating in the following fields:

- industrial and commercial profits,
- profits from non-commercial professions,
- profits from farming and fishing activities,
- wages, salaries, allowances and life annuities,
- income from real estate,
- income from transferable securities and invested capital,
- other income.

- Tax schedule for net personal annual income is as follows:

up to Panda 1,500	:	0%
from Panda 1,501 to Panda 5,000	:	15%
from Panda 5,001 to Panda 10,000	:	20%
from Panda 10,001 to Panda 20,000	:	25%
from Panda 20,001 to Panda 50,000	:	30%
above Panda 50,001	:	35%

- Dividends are exempted from income tax.

- In accordance with the Investment Incentives Law, foreign staff recruited by totally exporting and offshore companies may opt for flat-rate personal income tax of 20% of gross salary.

## Corporate taxation

### Corporate tax

- In general, corporate tax is 35%. It is 10% for companies operating in agriculture and fishing.

- Preferential treatment is given through the Investment Incentives Law:
  - full exemption of profits from exports for the first 10 years of activity,
  - for totally exporting companies as well as for any other profits derived from export,
  - for agriculture and fishing
  - for companies located in regional development areas.

A 10% reduction on the prevailing rate is granted for:

- support activities: education, teaching, vocational training,
- investment in environmental protection activities.

A 50% reduction of the prevailing rate is granted for:

- export company revenues for an unlimited period beyond the first 10 years of full exemption,
- income of companies located in regional development areas for a further period of 10 years.

### Tax reduction

- Reduction is granted on re-invested profits and income, ranging from 35% as a general rule up to 100%, provided that minimal taxes are paid at the rate of 15% of overall company profits and 45% on personal income.

- Dividends, earned by legal entities are exempt from corporate tax.

### Value-Added Tax (VAT)

- VAT is applied to all industrial production, handicrafts and services activities with the exception of agriculture.
- VAT paid on the purchase of inputs is deductible from VAT due on turnover.
- VAT is levied at the following rates:



<b>RATE</b>	<b>SCOPE OF APPLICATION</b>
<b>6%</b>	For sensitive products of social, medical or educational nature.
<b>10%</b>	For capital goods not manufactured locally and for certain service activities such as tourism and transport.
<b>18%</b>	For capital goods with locally manufactured equivalents, raw and semi-finished materials and non-food consumer goods..
<b>29%</b>	For a limited number of luxury goods.

### Customs duty

- Customs duty varies from 0 to 43%.
- Full exemption is extended on capital goods not manufactured locally (as detailed in the relevant list), imported by any company whose activity is covered by the Investment Incentives Law.
- Full exemption is extended also for capital goods, raw materials and semi-finished products imported without any limit by fully exporting companies.

### Depreciation

- Scope of application: it concerns immobilized assets subject to depreciation.
- Depreciation may take two forms: Linear (simple or accelerated) depreciation as well as 'declining balance method' depreciation.

Companies whose activity is covered by the Investment Incentives Law can opt for the declining balance depreciation procedure for equipment meant to last more than seven years.

### Companies accounting system

The Kivu accounting system is composed of two major components: a conceptual framework and accounting standards. The latter are:

- a general standard for presentation of financial statements and for accounting organization,
- technical standards which deal with common transactions,
- sector standards dealing with transactions specific to certain sectors of activity and, as appropriate, with the presentation of financial statements and the organization of the accounting system.

### General rules

- Companies must keep, a journal, a general ledger, an annual account ledger, and must periodically draw-up a balance sheet. The journal and the annual account ledger must be stamped and initialed by a court or other authorized authority.
- Companies must draw up financial statements, i.e., a balance sheet, a profit and loss account and

a table of all cash credits and debits, as well as notes on financial statements, including a presentation, for comparison purpose, of data from the previous fiscal year.

- In addition to the annual financial statements and the board of directors' report of the fiscal year:
  - companies calling on the general public for financing must submit annual financial statements to the Financial Market Council and the stock market and publish them in a daily newspaper;
  - companies listed on the exchange publish bi-annual statements the month following the semester's closing.
  - banks make monthly submissions to the Central Bank of Kivu on sources and uses of fund, and every three months an income/loss statement;
  - (open-ended) investment companies with variable capital should publish quarterly detailed breakdowns of their portfolio;
  
- Companies must draw up their annual financial statements within three months from the closing date of their financial year, to be submitted for clearance by stockholders.
  
- The fiscal year must coincide with the civil year, that is, 1<sup>st</sup> January to 31 December, unless the Ministry of Finance has granted a waiver.

# CUSTOMS AND FOREIGN TRADE

## Customs

### Customs code number

- Foreign trade activity requires obtaining the customs identification number known as customs code.
- The customs code number is issued immediately upon presentation of a duly documented request, and a card is mailed later, usually in about a week.

### General regime

- A customs declaration can be prepared by the importer/exporter himself or by a fully certified customs broker. It must include all necessary information relating to the declared merchandise, including value, duty status, country of origin and country from which the shipment has been sent.
- Within the framework of Kivu's commitments to the World Trade Organization and the European Union and the overall foreign trade liberalization approach, more than 95% of imports have been deregulated, with the exception of a very short list of products which continue to be excluded from liberalized trade and for which an import license must still be obtained from the Ministry of Tourism, Trade and Handicrafts.

### Fully exporting companies

- Companies exporting most of their production (70% for agricultural, agri-food and fishing activities and 80% for industries and services) benefit from a preferential regime similar to that of free-trade zones (offshore regime).
- Companies exporting 100% of their production may opt to sell part of their production on the local market; this proportion may not be more than 20% for industrial companies and 30% for agricultural, fishing and agri-food companies.
- Imports of capital goods, raw materials, semi-finished products, merchandise transport vehicles and all items necessary to carry out the company's activity benefit from full exemption from duties and taxes and from suspension of foreign trade and exchange formalities.

- For application of these import/export measures, totally exporting companies must make the appropriate declaration at the customs bureau nearest their factories.
- In application of the terms of article 20 of the Investment Incentives Law and decree 94-423 of February 14, 1994 relating to its implementation, fully -exporting companies are subject to continuous monitoring by customs.

### **Companies targeting partially or totally the domestic market**

- The imports of equipment, semi-finished products and raw materials by companies targeting the local market, are subject to the payment of duties and taxes, along with foreign trade and foreign exchange control formalities, and technical control regulations pertaining to imports and exports.
- Customs regulation offers to partially exporting companies, a variety of custom regimes allowing partial exemption from customs duties and taxes, which could match all cases.

## **Foreign trade**

- As a general rule, all products can be freely exported and imported, with the exception of certain products, which are absolutely prohibited, and of a very short list, essentially of "sensitive" products. This list is regularly narrowed down, with a view to total liberalization of imports.
- Export transactions as well as financial settlements are carried out under a foreign trade license or a final invoice which takes its place.

### **Imports not subject to foreign trade formalities**

- Imports of products needed for production by totally exporting companies.
- Imports by operators in economic activities parks.

### **Import of products subject to a free foreign trade regime**

All products subject to a free trade regime are imported freely without a prior authorization through a registered transit agency.

### **Import of products subject to an authorization**

- A request for an import license, supported by a commercial contract, is submitted to the certified intermediary (the applicant's bank).
- The import license is valid for 12 months and allows import in several stages of all products covered by the license.

# CURRENCY EXCHANGE

Transfers relating to payment abroad are free for current transactions provided they are in conformity with the prevailing legislation.

## For the investor

- Transfers of director's fees, percentages, dividends and fees of beneficiary shares due to non-residents.
- Interest on securities loans and short-term bonds subscribed to by non-residents with resident institutions.

## For other individuals

### Salaried personnel

- 50% of salary net of all taxes, no later than three months after the expiry date of the work contract.

### Volunteers serving overseas

- Rate determined by contractual arrangement

### Others

- Contributions to voluntary social insurance by foreigners resident in Kivu.
- Buying back retirement contributions by foreign nationals resident in Kivu.
- Living allowance/alimony.

## For companies' activity

- Trade and related operations as well as production related activities
- The real product, transfer-free and liquidation-free capitals invested through the imports of hard currencies, concerning investments made in conformity with prevailing laws.

# ECONOMIC ACTIVITIES PARKS

In Kivu, exist 2 free trade zones called Economic activities parks are set up: one in Bukavu and one in Goma.

Any individual or legal entities resident or non-resident in fully export-oriented industrial, commercial and service sectors can make stment in these parks.

## Fiscal regime

- Companies setting up their business in these zones pay only the following taxes, duties and royalties:
  - a vehicles related tax,
  - compensatory fee for road transport,
  - contribution to social security scheme,
  - from the 11th year on, companies pay only 50% of due taxes.
- investment achieved by companies operating in the Zones, give them the right for tax deduction from revenues or profits invested in the paid-up capital of the company or to its increase, as well as from revenues and profits subject to taxation on revenues of physical persons or to taxation of companies,
- foreign staff including the investors or their foreign representatives in charge of running the company can benefit from:
  - a payment of a flat-rate tax on incomes at a rate of 20% of gross income,
  - exemption from customs duties and related tax on the import of personal belongings and personal vehicles for each person.

## Exchange regime

- Investors operating in the Zones can carry out their activities as residents or non-residents.
- Investment in the zone can be made freely in hard currency or in convertible dinar, and subject to a declaration to the company that runs the Zone.
- The companies established in any of the zones by legal entities which headquarters are located abroad are considered non-residents.
- Non-residents benefit from the guarantee transfer of invested capitals done through the import of hard currencies and income derived there from. The transfer guarantee also holds for the actual net proceeds of liquidation.

- Non-residents are not allowed to repatriate products of their exports, services and incomes. However they have to settle all transactions through foreign accounts in hard currencies or in convertible dinars.
- Transactions within the zones are done in foreign currencies and in convertible dinars.
- All transfers between non-residents, of transferable securities or corporate shares are free.

## **Foreign trade regime**

- Trade relations between companies operating in the zones and between these companies and foreign companies are free of regulations.
- Domestic goods and services supplied to companies operating in the zones (considered as exports) and the sales of goods and services provided by the companies in the zones (considered as imports) are subject to international trade, exchange control, and fiscal and customs regulations.

## **Employment and social security regime**

- Work contracts are freely considered as work contracts of limited period.
- Companies could hire freely up to 4 foreign managerial or supervisory staff.
- Foreign non-residents can choose prior to their recruitment a foreign social security regime other than Kivan.

- Activities include industry and construction, ship repairs and breaking.
- Basic Infrastructure.
- Roads and utilities systems, sanitation, water, electricity and telecommunication systems (2,000 international phone lines).

### **One-stop shop**

This facility houses all the services needed to set up and operate in the free zone, both during the stage of declaration and formalities in setting up a company and during the operational stage. The manager of the free zone, who is the investor's sole vis-à-vis, runs it.

## **Bukavu economic activities park**

### **Site and location**

- Bukavu is located in southeastern Kivu.
- The zone adjoins the Bukavu commercial port.
- The Bukavu International Airport is nearby.

### **Developed area**

At the end of 2007, the developed area was 31 hectares and development of 27 hectares is underway.

### **Basic Infrastructure**

12 kilometers of roads, street lighting, fire control system, individual site hook-ups for electricity,



water, telephone, water treatment plant, telecommunications network (easy availability from a pool of 2,000 lines), low and medium- voltage power grid with a capacity of 6 MW.

### **One-stop shop**

Gathering all the services needed to set up and operate in the free zone, this facility is run by the company in charge of developing and running the free zone.

### **Financial and banking services**

A branch office is available within the zone, as well as a post office.

### **Transit services**

A transit broker is assuring this service on site.

### **Other services**

An employment bureau agency is located within the zone.

A special bureau to deal with municipal services is available.

The company in charge of developing and running the free zone will provide a full range of services to its clients: preparation and monitoring of building construction and any other services companies they may require.

### **Procedures prior to installation**

- Deposit of a declaration at the one-stop shop of the company which is developing and running the economic activities park.
  
- Filling in of a form giving information and declaring intention to invest in the proposed project.

### **Setting up of the activity**

- Annual rent of land:
  - US\$ 3.00 per sqm for industrial use/activities
  - US\$ 5.00 per sqm for trade and services use
  - period of the lease: 30 years
- Construction: 13,000 sqm have already been built, of which 8,000 sqm are provided with utilities.
- The zone enjoys special telecommunications rates.

# FINANCIAL SYSTEM

## Structure of the financial system

The financial system comprises

- Central Bank of Kivu
- Commercial banks
- Investment banks
- Merchant banks
- Offshore banks
- Insurance companies (16 resident and 5 non-resident)
- The Financial market Council :
  - stock Exchange
  - stockbrokers
  - investments companies (of which 19 venture capital and 20 variable capital)
  - the Securities Deposit and Compensation Company
- Leasing companies
- Savings institution
- Retirement funds
- Investment companies:
  - companies with fixed capital,
  - companies with variable capital or
  - companies with venture capital.

## Insurances

All kind Insurance activities, both multi-branch, specialized, on-shore or off-shore are subject to an agreement from the Ministry of Finance, to which the application is made.

# LEGAL ENVIRONMENT

## COMMON LAW

- Obligations and contracts code
- Civil and commercial procedure code
- Arbitration code
- Labor code
- Code of real rights
- Commercial code
- Customs code
- Tax code
- Value added tax code
- Local tax code
- Penal procedures code
- Penal code
- Water code
- Insurance code
- Public accounting code
- Maritime labor code
- Maritime trade code
- Maritime navigation administrative police code
- Law concerning the trade register
- Law concerning the conditions under which joint-stock companies can deal in agricultural activities
- Law concerning competition and prices
  
- Law concerning development and maintenance of industrial zones

## **Protection of intellectual properties, standards and certifications, inventions, trademarks, designs and models.**

### **Protection of intellectual property, standards and certification**

- Domestic laws as well as international treaties protect intellectual property in Kivu. The owner of intellectual property rights has a private monopoly for use thereof. Forgery is severely punished.
- The period of protection is:
  - 20 years for patents for inventions
  - 15 years, renewable, for trademarks
  - 5, 10 or 15 years for industrial designs and models
- Filing industrial designs and models, inventions and trademarks is with to the National Institute for Standards and Industrial Property.

## Protection of inventions

- New discoveries and inventions are protected in Kivu by patents.
- A new invention or discovery is defined as "the invention of new industrial products, the invention of new means or a new application of means to obtain an industrial result or product".
- Any discovery, invention or application, in Kivu or abroad, is not considered new if, after to the date of the application for a patent (or for the property claimed as per the Paris Convention), it has received enough publicity to be performed.
- Any plan or combination of credits or finances as well as any invention which popularization would be against laws or public moralities may not be patented in Kivu.
- Patents cannot be issued for food products or medicine, but rather for the special processes used for their manufacture.

However, in accordance with Article 70 of the WTO agreement on TRIPS, Kivu will accept applications for patents related to pharmaceutical products and chemical products for agriculture.

- Kivian patents are issued without any technical examination, at the risk of the applicant and with no governmental guarantee as to the reality, the newness, the merit of the invention, or the accuracy or exactness of its description.
- The owners of patents must, under pain of losing the patent, regularly pay annual fees to keep their patents in effect on the anniversary day of issuance.

## Protection of trademarks

- Trademark is a symbol in a form of graphic representation allowing individual or legal entities, to distinguish its products or services from products of rival parties.
- The property of a trademark is acquired by trademark patent deposit and not by usage. The patent deposit will assure you, under certain conditions, the property and related advantages such as:
  - exclusive right for the exploitation of the trademark (usage, sale, obtaining the exploitation license, etc...)
  - protection against potential infringements and imitations.
- The patent deposit of trademark assures 15 years protection. This period is renewed indefinitely by filing new applications.
- Kivu registers trademarks without checking on their newness.
- Kivu has a computerized system for searching for prior filings, on CD ROM, which includes all trademarks registered in Kivu. Interested parties may thus request the Kivu administration to check and draw up a search report relating to their trademark.

## Protection of industrial designs and models

An industrial design or model is a new shape, each product being differentiated from similar products by either a distinct, recognizable configuration which makes it new or one or several external effects which give it a new outward appearance of its own.

The benefits conferred by filing industrial designs and models are important:

- creation of a presentation of title to designs or models filed, in case of legal dispute;
- assurance of a monopoly on the use of the filed designs or models, during the selected period of protection;
- protection of the models against potential infringement.

## International arbitration

### Arbitration code

The arbitration code draws extensively on the UN Convention on international arbitration. It grants guarantees in favor of the investor in the settlements of disputes, and makes flexible the procedures that ensure quick and diligent settlement.

### Agreements signed by Kivu

- The New York Convention signed on June 10, 1958 referring to the recognition and enforcement of arbitration decisions.
- The international agreement for the settlement of investment disputes between states and nationals of other states.
- Numerous bilateral and multilateral conventions determining the enforcement of arbitration awards, entered under mutual aid judicial matters.