# 2. Regulatory Framework

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# 2 Regulatory Framework

## 2.1 Introduction

This chapter provides an overview of the regulatory framework (relevant policies, directives and guidelines) applicable to the KMT Project. The ESIA and public consultation process to date have been undertaken within the context of the following legal requirements or guiding principles:

- the laws and regulations of the host country, Democratic Republic of Congo (DRC);
- the policies, guidelines and procedures of international lenders/ financial institutions (World Bank Group including the International Finance Corporation and the Industrial Development Corporation of South Africa, additional banks who are signatories to the Equator Principles and the African Development Bank); and
- The company policies and codes of practice of First Quantum Minerals.

These are each described in further detail in this chapter. The engineering design teams have been informed of these legal requirements in order that they are incorporated into the design of all proposed project infrastructure; KMT will ensure that construction and operation takes place in accordance with these requirements throughout the life of the operation.

The scope of the ESIA process has been developed in accordance with the requirements of the current IFC Performance Standards. These standards are widely regarded as the environmental and social benchmark for private sector investments in developing countries, and are a central regulatory reference for this ESIA. FQM has committed to meeting these standards.

## 2.2 DRC Regulatory Requirements

A synopsis of DRC legislation relevant to the Kolwezi ESIA is provided in Table 2.1. Only key legislation is discussed in greater detail hereafter.

**Table 2.1: Key DRC Environmental Legislation Relevant to the KMT Project**

| Legislation | Summary | Relevance to the KMT Project | Comment |
|---|---|---|---|
| Mining Code (Law No 007/2002 of July 11, 2002) and<br>Mining Regulations (Decree No 038/2003 of March 2003) | Sets out in detail the way in which mining projects of any type may be undertaken in the DRC. The Mining Code is supported by the Mining Regulations, which implement the provisions of the Code. | The Directorate for the Protection of the Mining Environment (DPEM), within the Ministry of Mines, is responsible for all aspects relating to the protection of the environment. This Directorate ensures the implementation and compliance with the relevant regulations contained within the Mining Code and the Mining Regulations by all mining developments in the DRC.<br>In order for KMT to be able to commence with the tailings retreatment process the company holds a Tailings Exploitation Licence. KMT was also required to submit an Environmental Adjustment Plan (EAP) (including an environmental impact study, environmental management plan, report on stakeholder consultations and a community development plan) after obtaining the title.<br>The EAP was submitted to the DPEM on the 27th May 2005 and has been approved.<br>The requirements for compensation are included in the Mining Code. | Principal statute applicable to Project |
| Forest Code (Law 011 2002 of 29 August 2002) | Sets out the law applicable to the conservation, exploitation, and development of forestry resources in DRC<br>Stipulates the rules applicable to sylviculture, to the research, transformation, and trade of forestry products, promotes biodiversity, and protection of natural habitats along with fauna and tourism. | No forestry resources will be developed or impacted by the project. Only a small section of intact forest remains on the KMT Permit Area along the Muninga stream, the project does not plan to impact on this natural habitat. | Still in force |
| Decree of 6 May 1952 on water | Establishes the provincial water commission, which monitors the use of water infrastructure, and will report and make the necessary recommendations to avoid water misuse. | Applies to all water management, use and discharge relating to the KMT Project subject to the provisions of the Mining Code and Regulations.<br>KMT is not subject to water permits imposed by the Decree as, being the holder of a tailings exploitation permit, it is allowed pursuant to the Mining Code (articles 64[c] and 88) to use the water resources within its perimeter (in accordance with the provisions of its environmental plan). | Still in force |
| Regulation on lake and watercourse contamination and pollution of 1st July 1914 | Grants local authorities the power to determine the protection areas for stream, lakes, and other water sources which may constitute a | Applies to all water management, use and discharge relating to the KMT Project. | Still in force |

| Legislation | Summary | Relevance to the KMT Project | Comment |
|---|---|---|---|
| | soure of drinkable water. | | |
| Regulation no 69-041 of 22 August 1969 | Nature Conservation. | Only small tracts of natural habitat remain within the Permit Area and these are not expected to be impacted by the project. | In force |
| Regulation 79-244 of 16 October 1997 (Amended 1995 and 1996) | Rates and rules of “settlement” and recovery of taxes by the Department of Environment, Nature Conservation and Tourism.<br>Aims to raise taxes from exploitation of forest products, hunting and fishing licences, operating permits for dangerous unhealthy, or nuisance establishments, hotels, restaurants and travel agencies. | Only small tracts of natural habitat remain within the Permit Area and these are not expected to be impacted by the project. | Still in force |
| Regulation 252 of 22 September 1976 (Amended 1980) | Reorganises parts of the Department of the Environment, Nature Conservation and Tourism. | | Still in force, but project is overseen by DPEM |
| Decree No 002 of 18 March 1997 | Creation, organisation and operation of Reseau National Pour L’Information Environmentale (RNIE)<br>(National Network for Environmental Information). | Promotes the production, development, exchange and sale of information relating to the environment, natural resources and biodiversity.<br>Proposes regulatory and legislative means of accomplishing the above.<br>Proposes co-operation with similar organisations at national, regional and international levels. | Currently in operation despite the fact that there is no evidence of it having been gazetted nationally. |
| Memorandum of Understanding between the States of the sub-region of the Congo Basin (Cameroon, CAR, DRC, Congo, Gabon, Equatorial Guinea) July 1997 | Co-operation in the area of Environmental Information. | Establish Reseaux Nationaaux de L’Information Environmentale (RNIE)<br>Principles:<br>Rational use of natural resources in sustainable development;<br>Co-operation in protecting natural and built environments, especially forests, fauna, water and floral groups in frontier areas;<br>Giving effect to international conventions especially Biodiversity and Climate Change;<br>The Brazzaville Declaration of 30 May 1996 regarding forest ecosystems;<br>Development of institutions with responsibility for environmental information. | Still in force |

### 2.2.1 Mining Code and Mining Regulations

The key DRC legislation pertaining to the KMT Project is the Mining Code (Law No 007/2002 of July 11, 2002). This Code sets out in detail the way in which mining projects of any type may be undertaken. The Mining Code is supported by the Mining Regulations (Decree No 038/2003 of March 2003), which implement the provisions of the Code.

The Directorate for the Protection of the Mining Environment (DPEM), within the Ministry of Mines, is responsible for all aspects relating to the protection of the environment. This Directorate ensures the implementation of and compliance with the relevant regulations contained within the Mining Code and the Mining Regulations by all new mining developments in the DRC (Article 15, Mining Code 2002):

- In order for KMT to be able to commence the tailings retreatment process the company holds a Tailings Exploitation Licence, which was transferred to KMT from Gecamines in May 2004. KMT was also required to submit an Environmental Adjustment Plan (EAP) after obtaining the title according to the Mining Regulations (Articles 466 to 469) (*the EAP was submitted to the DPEM on 27th May 2005 and has been approved. A copy of the approval letter from DPEM can be found in Appendix 2.3*).

**Article 466: Obligation of Environmental Compliance**

Upon conversion, in accordance with the provisions of article 339 of the Mining Code, of their validated mineral or quarry rights, the Titleholders undertake to prepare, submit for approval in accordance with the provisions of this chapter and implement an Environmental Adjustment Plan.

Within twelve months following the coming into effect of this Decree, any Titleholder of an existing converted mining or quarrying right the remaining validity of which being in excess of five years shall be required to submit an Environmental Adjustment Plan to the provincial Mines Cadastre of the area where his operations are located.

Within six months following the coming into effect of this Decree, any Titleholder of an existing converted mining or quarrying right the remaining validity of which being in excess of two years shall be required to submit an Environmental Adjustment Plan to the provincial Mines Cadastre of the area where his operations are located.

**Article 467: Environmental Adjustment Plan**

The Environmental Adjustment Plan shall describe the state of the site of the mining or quarrying operations and of the surroundings at the date of the coming into effect of the Mining Code as well as of the measures already taken, or in progress, or envisaged in order to protect the environment, in accordance with the environmental directives and standards suitable for each type of mining or quarry operations provided for in the Annexes to this Decree.

The Environmental Adjustment Plan provides for the gradual implementation of environmental protection measures over a period of:

a) 2 years for exploration operations;

b) 5 years for mining operations without a concentration or treatment / processing plant using chemicals;

c) 10 years for mining operations with a concentration or treatment / processing plant using chemicals.

**Article 468: Submission of the Environmental Adjustment Plan**

The Environmental Adjustment Plan shall be submitted in threefold to the central or provincial Mines Cadastre which will deliver to the Titleholder a receipt against payment of a submission fee and forward such Plan to the Directorate responsible for the Protection of the Mining Environment for investigation in accordance with the provisions of this Decree governing the investigation of the Environmental Plan in respect of the type of operation in question.

The submission fee in respect of the environmental investigation shall be collected in accordance with the provisions of this Decree governing the investigation of the Environmental Plan in respect of the type of operation in question, subject to a *prorata temporis* reduction in respect of the lapsed period of total validity period of the mineral or quarry right.

**Article 469: Investigation of the Environmental Adjustment Plan**

The Environmental Adjustment Plan shall be investigated / examined pursuant to the provisions of this Decree governing the investigation / examination of the Environmental Plan for the type of operations in question, within a period of ninety days as of the date of its submission.

In accordance with the Mining Code (2002)and the Mining Regulations, the following documentation was required as part of the EAP:

- an Environmental Impact Study (EIS) and,
- an Environmental Management Plan of the Project (EMPP).

  As the Tailings Exploitation Licence had already been granted to Gecamines and was transferred to KMT, the EIS and EMPP took the form of an EAP. An EAP is normally required by existing operations in order to bring such operations into compliance with the Mining Regulations and Mining Code, but as no mining activity is taking place on the Kolwezi concession, the information required was best presented as an EIS.

- A report on the consultations with the authorities and the local administrative entities and with the representatives of the surrounding communities (*Public Scoping Report submitted in January 2005 and approved by DPEM, a summary of this report was included in the EAP*) and is included in the PCDP, Annex F to the ESMP; and
- A plan as to how the project will contribute to the development of the surrounding communities (*this is included as the Community Development Plan, attached as Annex D*). The CDP was also part of the EAP submission but has been updated in line with the revised project description, more work on land acquisition and the requirements of other lenders and potential lenders.

While the majority of the ESIA format is drawn from the requirements of Annex IX of the Mining Regulations, other Annexures contained in the Mining Regulations are also referred to in this report.

The Mining Code and Mining Regulations can be found at www.miningcongo.cd in French or from the FQM office in English, on request.

### 2.2.2 Liabilities associated with the concession

In November 2002, SRK undertook a site visit which focussed on the condition of the site, by means of an audit. As described in Chapter 5, section 5.2, the site is severely degraded as a result of past mining activities.

In accordance with the provisions of the Contract of Association entered into by KMT, Gécamines and the Congolese State on 23 March 2004, Gécamines obtained a certificate of release from its environmental obligations for the Permit Area before the transfer of the Tailings Exploitation Licence to KMT. Therefore, pursuant to the Mining Code, KMT should not be responsible to the State for environmental damage caused by Gécamines prior to the transfer.

In addition, Gécamines and the State have made a number of representations and warranties under the Contract of Association in relation to the legal and environmental conditions of the Tailings Exploitation Licence, the Permit Area and the tailings (articles 9.2, 9.3 and 22 of the Contract of

Association). Gécamines and the State have undertaken to indemnify KMT, its affiliated companies and its shareholders for any breach of these representations and warranties.

KMT is also covered by undertakings from Gécamines in respect of damage caused by Gécamines operations on or around the Permit Area after the date of transfer (articles 9.2(g) and 10.1(d)): Gécamines and the State shall indemnify KMT for damage caused to KMT by Gécamines operations on or around the Permit Area.

Pursuant to articles 22.2 to 22.4, KMT shall be indemnified for any liability or damage incurred by KMT (or its affiliated companies and its shareholders) towards the State, Gécamines or third parties resulting from acts of the State or Gécamines, or in relation to acts by third parties on the Permit Area or in relation to it. In such a case, Gécamines and the State shall jointly and severally indemnify KMT, its affiliated companies and its shareholders.

An Environmental Audit and Scoping Report was prepared and submitted to DPEM and a certificate of release from liabilities identified in the report was obtained from the Ministry of Mines in May 2004. A copy of the Certificate is included in Appendix 2.1. This certificate removes any responsibility arising from pollution or degradation of the site in accordance with Article 405 of the Mining Regulations, although in practice, anything which affects the safe operation of the KMT project will probably be dealt with by KMT. This includes, for example, the possible construction of a bund around the tailings at the Zinc plant (UZK) to prevent further material being eroded into the Musonoi tailings.

**Article 405: Environmental Responsibility / Liability of the Titleholder**

The Titleholder shall only be liable for damage to the environment caused by his activities insofar that he has not observed the terms of his Environmental Plan subject to prior approval, including the changes in the course of the project, or violated one of the environmental obligations provided for under this Title.

In the event of a transfer (assignment, cession), the transferee and the transferor of a mineral right shall have carried out, in accordance with the provisions of article 186 of the Mining Code, an environmental audit of the mining site being the subject of the transfer (cession, assignment). Such audit shall identify the environmental liabilities and obligations of the transferor in respect of the period when he was the Titleholder of the mineral right in question. The costs and charges related (to the title during that period) shall be for the account of the transferor.

Without prejudice to the provisions of the preceding paragraph and pursuant to article 182 of the Mining Code, the Titleholder acquiring his mineral or quarry right through a cession (assignment, transfer) shall take over, on behalf and at the expense of the tranferor, the environmental obligations vis-à-vis the State, unless the transferor has obtained the attestation releasing him from his environmental obligations as described in Chapter VII of this Title.

The Titleholder acquiring his mineral or quarry right through a grant shall not be liable for damage and harm/prejudice cause by the person who occupied or who worked his permit area before him. However, he shall be obliged to take into consideration such damage and harm/prejudice in his Environmental Plan and demonstrate that the (environmental risk) mitigation and rehabilitation measures which he plans to implement are in conformity with the provisions of this title and efficient so as to avoid that his own operations have the effect of making the existing damage and harm/prejudice worse hereby affecting the health and safety of the workers or of the communities or even of sensitive environments.

### 2.2.3 DRC Resettlement Requirements

The requirements for compensation are included in Title XI, Chapter II, Article 281 of the Mining Code which is reproduced below.

**Article 281: Compensation for the occupants of the land**

Any occupation of land depriving the rightful holders of enjoyment of the surface rights, any modification rendering the land unfit for cultivation, shall cause the holder or lessee of the mining and/or quarry rights, at the request of the rightful owners of surface rights, and at their convenience, to pay fair compensation, corresponding either to the rent or the value of the land at the time of its occupation, **plus 50%.**

Land, as referred to in the above paragraph, means the ground on which the individuals have always carried out or are effectively carrying out any activity.

Amicable settlement of the dispute may be made by any legitimate method other than resorting to the courts, especially by compromise, settlement, arbitration or before an Officer of the Judiciary Police or an Officer of the public prosecutor's office.

In the absence of an amicable settlement between the parties within 3 months from the date on which the dispute arises, the compensation shall be determined by the competent court pursuant to the rules on judicial organisation and jurisdiction in force in the DRC.

However, the usual occupant of the land may, in agreement with the holder, continue to exercise his right to cultivate the land provided the agricultural works do not hinder the mining activities. The owner of the surface rights shall then no longer continue to construct buildings on it.

Lastly, simply passing through the land does not entitle to pay compensation if no damage results therefrom. The act of passing must take place with a view to best conserving the environment.

The legislation does not require the project proponent to find the farmers additional land. Land in the DRC belongs to the state, it is not owned by individuals. However, areas of rural land are allocated to traditional chiefs who distribute it for use among their villages. The chiefs are responsible for allocating land to people who ask for it, and receive a tithe of the crops in return.

In the absence of detailed environmental and social requirements in the DRC legislation, the KMT policy is to adopt and implement those of the IFC. Land Acquisition and Involuntary Resettlement have been separately documented in Annex B. An Interim Resettlement Action Plan was developed to organise compensation for the loss of land and crops due to the creation of drilling access roads, and this methodology and approach have informed all further land take and associated compensation. The resettlement of Samukonga village will be undertaken in accordance with the requirements of PS 5: Performance Standard: Land Acquisition and Involuntary Resettlement.

As compensation procedures are not addressed in detail under the Mining Code, Regulations or Annexes thereto, KMT has established a method for delivering compensation. This involves collaboration with local government departments and traditional structures to implement the compensation process.

### 2.2.4 Public involvement requirements

Article 451 of the Mining Regulations lays down the purpose of and guidelines for conducting a Public Consultation Program during an Environmental and Social Impact Assessment. Public consultation and disclosure is also covered by the Equator Principles and the IFC's Performance Standards. Public consultation and stakeholder engagement are addressed in detail in several recently published guidelines. The most comprehensive of these is the IFC's *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (International Finance Corporation, 2007).

According to these standards and guidelines, public consultation during the Environmental and Social Impact Assessment (ESIA) of a project should allow active participation of affected populations in discussions during the ESIA/EAP, elaborating the DRC regulations.

Disclosure of relevant project information prior to project development is required, and should include details of the impact assessment and relevant action plans. Ongoing disclosure over the life of the project is also required. This is discussed in more detail in Annex F, the Stakeholder Engagement Plan. KMT had previously prepared a Public Consultation and Disclosure Plan (PCDP) which allowed for the disclosure of the EAP. The contents of this current document (Executive Summary, key impacts and mitigation measures and the Environmental and Social Management Plan) will be disclosed locally to stakeholders in Kolwezi and Lubumbashi at the end of March 2008. Feedback obtained will be incorporated into the ESIA which will then be released through IFC's Infoshop for international disclosure. The Stakeholder Engagement Plan reflects this programme.

The public consultation process during an ESIA should provide a platform where the local population will be provided with information concerning project activities, the positive and negative impacts of the project, and mitigation and rehabilitation measures. During the public consultation process, local communities should be given an opportunity to ask questions and to express concerns.

KMT will submit, to the Mayor of Kolwezi, other governmental and institutional stakeholders and community representatives, an executive summary of the ESIA/ESMP or a non-technical summary of the ESIA/ESMP translated into French (previous translation of technical documents in Swahili proved less popular). This summary will include a description of project activities and program, the negative and positive impacts of the project and proposed rehabilitation measures.

KMT has established good relations with each community which is directly affected by the project, and has done the following, in accordance with DRC legal requirements:

- Developed an understanding of the affected communities; knows their activities, and their social and cultural values.

- Informed the local populations of the proposed project activities, and their positive and negative impacts.

- Consulted with the affected population during the designing of mitigation and rehabilitation plans.

- Compensated parties affected by project activities during the scoping study and in early construction.

Measures aiming to establish good relations between the mining company and affected populations have been put in place at an early stage and are ongoing via the Kolwezi based Community Liaison Officer (CLO).

In addition to the DRC's mining and environmental legislation, FQM's policies commit KMT to adherence to and the implementation of international financial institutions' principles and policies, notably the Equator Principles and World Bank Group (WBG)'s environmental and social safeguard policies applicable to the KMT Project (including the IFC Performance Standards).

A summary of the public consultation process for the study is provided in Table 2.2.

**Table 2.2 : Summary of Public Consultation Process**

| Study Stage | Public Consultation Stage | Objectives | Activities | Records | Date |
|---|---|---|---|---|---|
| Screening | Public Consultation Scoping | Meet local authorities, police, military commanders<br>Initiate socio-economic study | Meetings with key stakeholders in Kolwezi | Minutes | February 2000 |
| Phase 1: Environmental Audit and Scoping | Social Scan | Identify key stakeholders<br>Introduce the study team | Meetings with key stakeholders in Kolwezi | Minutes | November 2002 |
| | | | Meetings with key stakeholders in Kolwezi not met previously such as artisanal miners | Minutes | March 2004 |
| | | Planning and preparation for the scoping meetings | Meetings with key representatives of different sectors of the community in Kolwezi | Minutes | May 2004 |
| Phase 2: ESIA | Scoping | Inform all stakeholders about the Project<br>Gather stakeholders' concerns about the project | Meeting with all stakeholders in Kinshasa, Lubumbashi, Kolwezi, including the Concession area<br>Open day<br>Radio announcements | Minutes | July 2004 |
| Phase 2: ESIA | Scoping Feedback | Document the scoping process and enable comment thereon | Public Scoping Report | Public Scoping Report | September 2004 |
| | Social Impact Assessment | Gather baseline information through participative research | Stakeholder interviews, focus group discussions and household surveys | Records<br><br>Social Impact Assessment Report | 2004 - 2005 |

| Study Stage | Public Consultation Stage | Objectives | Activities | Records | Date |
|---|---|---|---|---|---|
| | Interim Feedback | Inform the stakeholders of progress of the project and study | Meetings with key stakeholders in Lubumbashi and Kolwezi<br><br>Radio announcements | Minutes | July 2005 |
| | Feedback | Inform the in-country stakeholders of the results of the ESIA and ESMP | Meeting with all stakeholders in Lubumbashi and Kolwezi, including the Concession area<br><br>Open day<br><br>Radio announcements | Minutes | March 2006 |
| | | Inform all stakeholders | Availability of the Environmental and Social Report on the World Bank InfoShop for 60 days for stakeholder review and comment | Draft Environmental and Social Report: ESIA and ESMP | April to June 2006 |
| | Capacity Building | Increase the knowledge and skills of stakeholders in issues such as the environmental assessment process, the Project and community development | Workshops in Lubumbashi and Kolwezi | Proceedings | April 2006 |
| ESIA Revision | Feedback and Disclosure of Project Changes | Inform stakeholders of project developments following the FQM acquisition of Adastra, describe proposed changes and possible impacts, and outline management measures | Stakeholder meetings in Lubumbashi and Kolwezi, incorporating government and regulatory authorities, civil society, and affected communities | Proceedings | April 2008 |

## 2.3 IFC's Performance Standards

On 30th April, 2006, the IFC Performance Standards (PS) on Social and Environmental Sustainability were adopted. The PS are applied by the IFC to manage social and environmental risks and impacts, and to enhance and promote development opportunities through selective private sector funding. Other financial institutions may also choose to apply the Performance Standards to their own projects in emerging markets, as is the case among banks that have subscribed to the Equator Principles. The goal of the eight PS is to establish guidelines and standards that the client is to meet throughout the life of an investment by IFC.

In addition to meeting the requirements of the Performance Standards, a client must also comply with applicable national host country laws. The full documentation of the Performance Standards is available at http://www.ifc.org/policyreview. The eight Performance Standards are:

- PS1 Social & Environmental Assessment And Management System
- PS2 Labor & Working Conditions
- PS3 Pollution Prevention and Abatement
- PS4 Community Health and Safety
- PS5 Land Acquisition & Involuntary Resettlement
- PS6 Conservation of Biodiversity and Sustainable Natural Resource Management
- PS7 Indigenous Peoples
- PS8 Cultural Heritage

The first six Performance Standards and the African Development Bank (AfDB) guidelines from the CDP are particularly applicable to the Kolwezi project. These are elaborated in Appendices 2.4 and 2.8

### 2.3.1 IFC Environmental, Health and Safety Guidelines for Mining

The Environmental, Health, and Safety (EHS) Guidelines are technical reference documents incorporating general and industry specific examples of international good practice. The EHS Guidelines are applied when a member of the World Bank Group is involved in a project. The IFC is a shareholder in the KMT project. Therefore these Guidelines will be applied in conjunction with other IFC policies and standards. Performance levels and measures considered to be achievable in new facilities by existing technology at reasonable costs form the bulk of the EHS Guidelines (see Appendix 2.8 for a fuller description of the EHS Guidelines).

The IFC intends applicability of the EHS Guidelines to be tailored to the hazards and risks established for each project, and to be based on the findings and results of environmental assessment. Key elements of the assessment that should inform the use of the EHS guidelines are site specific variables such as host country context, assimilative capacity of the environment, and other project factors. Relevant technical recommendations relating to EHS should be based on the professional opinion of qualified and experienced persons. When host country regulations differ from the measures and levels presented in the EHS Guidelines, the IFC recommends that projects are seek to achieve whichever is more stringent.

### 2.3.2 IFC's Disclosure Policy

The IFC has revised its Policy on Disclosure of Information. The policy addresses the IFC's commitments and responsibility to disclosure of information about itself as an institution. Public disclosure requirements for IFC clients are integrated in the PS.

### 2.3.3 Other Guidelines and Reference Materials

In addition to the above, other documents applicable to this project have been consulted and where appropriate provided to KMT. Important reference materials are the following:

- IFC's *Stakeholder Engagement: a Good Practice Handbook for Companies Doing Business in Emerging Markets* (International Finance Corporation, 2007).
- Doing Better Business through Effective Public Consultation and Disclosure: A Good Practice Manual, International Finance Corporation, 1998.
- Investing in People: Sustaining Communities through Improved Business Practice. A Community Development Resource Guide for Companies, International Finance Corporation, 2000.
- Paths out of Poverty: The Role of Private Enterprise in Developing Countries, International Finance Corporation, 2000.
- Core Labour Conventions, International Labour Organisation.

Emission and effluent limits applicable to air, noise and water for the KMT Project are outlined in Appendix 2.2 to this chapter.

### 2.3.4 Pollution Prevention and Abatement Handbook

The World Bank Group's Pollution Prevention and Abatement Handbook (PPAH) applies to all projects directly financed by IFC. This handbook includes more than 40 guidelines for various types of industrial and other projects. The PPAH describes pollution prevention and abatement measures and emission levels that are normally acceptable to IFC. However, taking into account country legislation and local conditions, the EA may recommend alternative emission levels and approaches to pollution prevention and abatement for the project. Key guidelines are listed below:

- General Environmental Health and Safety Guidelines (30 April 2007) (see 2.3.5).
- Environment Health and Safety Guidelines for Mining (10 December 2007).
- Environment Health and Safety Guidelines for Base Metal Smelting and Refining (30 April 2007).
- Hazardous Materials Management Guidelines (Dec 2001).
- Life and Fire Safety Guidelines (Dec 2002).

Appendix 2.2 of this chapter contains a summary of the limits applicable to the KMT Project based on the IFC/PPAH guidelines and the DRC Mining Code.

## 2.4 Equator Principles

The Equator Principles (www.equator-principles.com) provide a framework for financial institutions seeking to manage environmental and social risks, and to promote best practice in this context. The Principles were recently revised. The signatories are predominantly private banks which provide project financing in developing countries. The signatories require borrowers to demonstrate that they have substantially met these principles or will do so in the development and management process. These undertakings are aligned with WBG policies, safeguards, performance standards and guidelines (especially the IFC's PS), and include (for certain categories of projects)[1]:

- Categorisation of the project based on environmental and social screening criteria of the IFC.

  **Category A:** Projects with potential significant adverse social or environmental impacts that are diverse, irreversible, or unprecedented;

  **Category B:** Projects with potential limited adverse social or environmental impacts that are few in number, generally site specific, largely reversible and readily addressed through mitigation measures, and;

  **Category C:** Projects with minimal or no social or environmental impacts.

The KMT Project is categorised as a Category A project, therefore the following broad requirements must be met:

- Completion of an Environmental Assessment (EA) to WBG standards and demonstrating compliance with applicable host country laws, regulations and permits required by the project; World Bank and IFC Pollution, Prevention and Abatement Guidelines and IFC Safeguard Policies.
- Completion of an Environmental and Social Management Plan (ESMP) to WBG standards;
- Consultation, in a structured and culturally appropriate way with project affected groups including local NGOs (there are no indigenous peoples in the KMT Project area). The EA, or a summary thereof, made available to the public for a reasonable minimum period in local language and in a culturally appropriate manner.
- As necessary, lenders will appoint an independent environmental expert to provide additional monitoring and reporting services.
- Agreement to comply with the ESMP and report thereon.

[1] Projects with a capital cost of US$ 10 million or more, and which have significant adverse impacts.

## 2.5 Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights and fundamental freedoms. KMT is committed to the Principles in its security policy and approach, and the Principles are applied more widely where appropriate.

The following are the six Voluntary Principles:

- **Acknowledging** that security is a fundamental need, shared by individuals, communities, businesses, and governments alike, and acknowledging the difficult security issues faced by Companies operating globally, we recognize that security and respect for human rights can and should be consistent;

- **Understanding** that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law;

- **Emphasizing** the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g., the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

- **Taking note** of the effect that Companies' activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

- **Understanding** that useful, credible information is a vital component of security and human rights, we recognize the importance of sharing and understanding our respective experiences regarding, inter alia, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

- **Acknowledging** that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

## 2.6 International Council on Mining and Minerals

In May 2003, the International Council on Mining and Minerals (ICMM) released a set of principles urging members to implement and measure their performance against this benchmark. The ten Principles are:

- Implement and maintain ethical business practices and sound systems of corporate governance;
- Integrate sustainable development considerations within the corporate decision-making process;
- Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities;
- Implement risk management strategies based on valid data and sound science;
- Seek continual improvement of health and safety performance;
- Seek continual improvement of environmental performance;
- Contribute to conservation of biodiversity and integrated approaches to land use planning;
- Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products;
- Contribute to the social, economic and institutional development of the communities in which we operate;
- Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.

## 2.7 Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) is a coalition of governments, companies, civil society groups, investors and international organizations. The aim of this initiative is to strengthen governance by improving transparency and accountability in the extractives sector. The EITI supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenue. In July 2005, the Board of KMT unanimously passed a resolution to adhere to EITI and in November 2005 the DRC government voted to join EITI.

## 2.8 African Development Bank Group

The African Development Bank Group (www.afdb.org) is a regional multilateral development finance institution engaged in mobilising resources towards economic and social progress of its

Regional Member Countries (RMCs). It is headquartered in Abidjan (Côte d'Ivoire). The bank's mission is to promote economic and social development through loans, equity, investments and technical assistance. AfDB has recently signed a grant agreement with the DRC which will help reduce internal and external isolation of the DRC by re-establishing access to the major urban centres, densely populated areas, major economic activity centres and countries of the sub-region specifically for the financing of the Nsele-Lufimi and Kwango-Kemge Roads Rehabilitation Project. AFDB could be a possible lender for the KMT Project. The ESIA has taken cognisance of the applicable AfDB policies which are outlined below.

### 2.8.1 Policy on Poverty

The goal of the Bank's poverty policy is to ensure that poverty in Africa is reduced. This involves development of strategies that facilitate national ownership, participation and an orientation towards improvements in the welfare of the poor, especially in the achievement of Millennium Development Goals (MDG). Five priority development areas have been selected namely: agriculture and rural development including rural infrastructure, human resources development, HIV/Aids, private sector development, good governance and two cross-cutting issues, i.e., gender and the environment.

### 2.8.2 Policy on the Environment

The specific objectives of the Policy on the Environment emphasise enhancement of the carrying capacity of Regional Member Countries (RMCs), improving the access of the poor to environmental resources, helping RMCs to bring about institutional changes to achieve sustainable development, and strengthening partnership with international agencies and networking with international, regional, and sub-regional organizations.

Relevant environmental sustainability considerations include the following:

- Reversing Land Degradation and Desertification
- Improving Public Health
- Promoting Sustainable Industry, Mining and Energy Resources
- Institution and Capacity Building
- Increasing Awareness

### 2.8.3 Policy for Involuntary Resettlement

This policy has been developed to address involuntary physical displacement and/or loss of other economic assets of people caused by Bank-financed projects and programs. The policy applies to all of the Banks' funded operations, in public and private sector, whether Bank financing is directly channelled as investment loans or is administered by a financial intermediary.

The overall goal of the Bank's policy on Involuntary Resettlement is to ensure that when people must be displaced they are treated equitably, and that they share in the benefits of the project that involves their resettlement. The policy seeks to avoid involuntary resettlement where feasible, or to minimize resettlement impacts where population displacement is unavoidable, exploring all viable project designs. It promotes resettlement assistance, preferably under the project, so that standards of living, income earning capacity, and production levels are improved;

The policy framework provides explicit guidance to Bank staff and to the borrowers on the conditions that need to be met regarding involuntary resettlement issues in Bank operations in order to mitigate the negative impacts of displacement and resettlement and establish sustainable economy and society.

### 2.8.4 The Gender policy

The main thrust of the policy is to promote gender mainstreaming in Bank funded programmes and projects as well as all policy documents. The Bank recognises that inequitable gender relations cannot be addressed by focusing on women in isolation. The major objectives of the Bank's gender policy are two-fold: to promote gender mainstreaming in Bank operations and to support RMCs' efforts to attain gender equality.

### 2.8.5 The Population Policy

The key objectives of this policy are to:

- Support programs and direct interventions aimed at reducing fertility, which in turn is seen as a major constraint on poverty and sustainable development.
- Ensure the quality and enhancement of human resources through implementation of appropriate education and health programs.
- Assist African countries achieve a balance between population growth and economic growth, by making available to RMCs relevant information on the population and development interrelationship through training and awareness creation.

## 2.9 Industrial Development Corporation of South Africa (IDC)

As shareholders of KMT, IDC have had an active role in the progress of environmental and social studies at Kolwezi. IDC has a short environmental policy which is included as Appendix 2.4.

In addition to the policies, guidelines and procedures outlined in the Appendix, SRK follows the principles of good international practice along the lines of those proposed by the International Association of Impact Assessment (IAIA) and the International Association for Public Participation (IAP2). These are outlined in Appendix 2.5 to this chapter.

## 2.10 Management of Environmental and Social Issues at FQM

In recognition of the imperatives discussed above and to execute its commitment to international norms, FQM has a corporate Environmental Manager (based in Ndola, Zambia) and a full-time KMT Community Liaison Officer, based in Kolwezi. These officers are responsible for the management of environmental and social issues at the KMT Project.

FQM has developed several policies relevant to development in its sphere of influence. These policies apply to KMT and its operations, and include the following:

- Environmental policy,
- Social Policy;
- Occupational Health and Safety Policy; and
- Human Rights Policy

KMT has adopted the following policies to supplement those of FQM:

- KMT Community Development Policy; and
- KMT Employment Policy.

**First Quantum Minerals Environmental policy**

First Quantum Minerals Limited (the “Company”) is a growing copper mining and exploration company producing LME grade "A" copper cathode, copper in concentrate, gold and sulphuric acid. Our mining operations take place in Africa with the Kansanshi and Bwana Mkubwa operations in Zambia; the Frontier, Lonshi and Kolwezi projects in the Democratic Republic of Congo; and Mauritania Copper Mines in Mauritania.

The Company’s overall environmental objectives include: a commitment of management to pollution prevention; compliance with all applicable environmental laws and continual improvement to protect the environment.

In particular, we shall:

• Recognize environmental management as a corporate priority and establish policies, programs and practices to continually improve our environmental performance in line with ISO 14001 standards and the Equator Principles.

• Assess, design, construct, operate and close facilities in compliance with Company policies and all applicable laws providing for the protection of the environment, our employees and the public.

• In countries where legislation does not meet our standards or is inadequate, the Company will apply management practices under the Equator Principles and IFC standards to advance environmental protection and manage risks and impacts.

- Develop, design and operate facilities in an environmentally sound manner, taking into consideration the efficient use of energy and other resource materials.
- Re-use, recycle and dispose of wastes and by-products in a safe and responsible manner.
- Provide adequate resources, personnel and requisite training so that all employees and contractors are aware of and are able to fulfil their environmental responsibilities.
- Develop, implement and continually update our Environmental Management System to manage, reduce and where possible prevent environmental pollution relating to our activities, products and services.
- Consider and communicate with stakeholders on new and current projects as well as our Environmental Policy.
- Conduct audits of our environmental and social systems to ensure continual improvement and report on environmental performance.

### 2.10.1 FQMs Social Policy

First Quantum Minerals Limited (the "Company") is a growing copper mining and exploration company producing LME grade "A" copper cathode, copper in concentrate, gold and sulphuric acid. Our mining operations take place in Africa with the Kansanshi and Bwana Mkubwa operations in Zambia; the Frontier, Lonshi and Kolwezi projects in the Democratic Republic of Congo; and Mauritania Copper Mines in Mauritania.

Our objective is to maximise socio-economic opportunities and benefits for the communities in which we operate while minimising potential negative social impacts. In order to achieve these objectives, we engage in a range of sustainable development and community relations activities.

In particular, the Company shall:

- Operate in an ethical manner in all spheres of our products, activities, and services.
- Assess the socio-economic impacts of our activities and operations, both beneficial and negative.
- Support local communities and continually seek to contribute to sustainable community development.
- Develop, design and operate facilities with the objective of improving the socio-economic situation of the communities in which we operate while seeking to minimize any potential negative impacts.
- Recognise and respect local culture, heritage and traditional rights and support the identification, recording, management and protection of Indigenous cultural heritage.
- Employ workers, contract services and purchase, hire or lease equipment and materials with the objective of improving and enhancing socio-economic development opportunities.
- Build social and human capital through community development, including supporting local health programs, and in particular malaria and HIV/AIDS prevention and treatment.

The Company subscribes to the:

  - United Nations' *Universal Declaration of Human Rights;*
  - *Voluntary Principles on Security and Human Rights;*

- United Nations' *Code of Conduct for Law Enforcement Officials;*
- the *Equator Principles;* and
- World Bank's *Operational Directive on Involuntary Resettlement*.

## FQMs CORPORATE OCCUPATIONAL HEALTH AND SAFETY POLICY

The Company is committed to safe and healthy working conditions and practices in all aspects of its business. It shall comply with all occupational health and safety laws and regulations. It considers the safety and health of its employees to be of utmost importance in the efficient conduct of its business and believes that management and each and every employee have a shared responsibility to apply this policy.

In particular, the Company shall;

(a) Include safety and health considerations as an integral part of its exploration, design, planning, purchase, construction, production and maintenance activities.

(b) Require that safe work practices and procedures be established for each activity where potential risks occur.

(c) Provide each employee with appropriate information, training and protective equipment so that people can work safely and productively.

(d) Require that each employee follow established work practices and procedures, comply with all government laws and regulations and not expose themselves, other employees or the assets of the Company to undue risk.

(e) Take all reasonable and practicable measures to ensure that potentially hazardous agents and conditions in the work place are identified and managed safely.

(f) Establish procedures to investigate all serious accidents and near miss incidents, and to take corrective action.

(g) Where necessary, conduct audits, inspections and other activities with the objective of ensuring this policy is followed.

(h) Require contractors to comply with the relevant aspects of this policy and with all relevant laws and regulations.

**KMT**
**Community Development Policy**

KMT recognises that it has responsibilities towards the local communities in which its projects are based. The Company is committed to the integration of community consultation, liaison and development at all levels of project development and operation, and seeks the best possible participatory relationships with all parties.

The implementation of the Community Development Policy will be a key requirement at all phases of project development. KMT will also seek to require its consultants, contractors, suppliers and subsidiaries to adopt the principles of this Community Development Policy as a minimum standard.

The Company is committed to facilitating sustainable contributions to the physical and economic development of communities close to its project sites and ultimately to limit the dependence of these communities on mining projects.

KMT is cognisant of the principles of sustainable development, which is taken to mean “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

KMT will assist in the improvement of conditions and infrastructure in communities close to its project sites, while recognising that it cannot undertake major infrastructure development projects. The Company will, in due course, seek to provide a specific amount of financial support to a KMT Not-For-Profit Foundation, depending on the financial success of the operations. The Not-For-Profit Foundation will be established and managed with the purpose of financing sustainable community development initiatives, within carefully prescribed guidelines.

**Policy Implementation**
Technically sound and economically feasible approaches to community development will be adopted throughout the exploration, development and operational phases of its projects, as well as on closure.

*Specific Goals*

The Company is committed to the following:

- The Company will adhere to all health and community laws, regulations and guidelines that are applicable to its project sites. Where no such national framework exists, the Company will seek to apply the World Bank Group policies, guidelines and procedures as at 28th April 2004;

- The Company will respect diversity and cultural differences;

- The Company will work with government, stakeholders and local communities at its project sites to maintain open and constructive communication and to address priorities and concerns, where possible through Partnership agreements;

- The Company intends to undertake a series of projects to benefit the local community, to be identified, evaluated and approved, based on local needs identified in consultation with communities, their representatives and leaders, government and NGOs as appropriate. Such programmes must be shown to be efficient, equitable and transparent, and may include such projects as teacher training, equipment for schools, sports equipment and community transport schemes;

- Where appropriate, NGO partners may be invited to assist in implementing aspects of the Community Development Policy and Community Development Plan at each project site, which will be a product of the Environmental and Social Assessment process.

- KMT will undertake to provide a scholarship scheme for local students, beginning with the year in which production commences at each of its project sites;

- The Company will undertake to employ skilled Community Nursing personnel at its project sites to provide a Health Advisory Programme that will include inter alia infant vaccinations and education programmes on basic hygiene, nutrition, family planning, malaria and HIV/AIDS;

- The Company will seek to establish and provide initial seed capital to a Not-For-Profit foundation to enable financing of Sustainable community development issues in the communities living inside and adjacent to the KMT Concession.;

- The Company will manage the Not-For-Profit foundation established by it only until such time as the relevant stakeholder group can manage it effectively themselves;

- The Company will seek to engage in open dialogue with stakeholder groups and communities at each project site to assist in defining, prioritising, implementing and maintaining community development projects, which may include advice and support for small businesses, and social and legal advice surgeries;

- The Company will seek to ensure that community development is managed by appropriately qualified local staff who are aware of local issues;

- The Company intends that the results of the community development initiatives will be monitored by a Public Liaison Committee made up of individuals and representatives of the local population, KMT and NGO representatives and appropriate local Government officials in terms of success, sustainability and compliance with this Community Development Policy;

- The Company will work with employees, regulatory agencies and the local communities to promote awareness of and ensure preparedness for possible emergencies related to each of the Company's project sites;

- KMT will work effectively with stakeholders such as employees, government, and local communities to maintain open and constructive communication at each of its project sites;

- The issue of artisanal miners within KMT Concession will be addressed as appropriate and possible measures may include the implementation of community programs, SME development and job opportunities, following consultation with the affected parties;
- This Policy will be reviewed on a periodic basis and updated as necessary.

**KMT Employment Policy**

KMT and its controlled affiliates (the "Company") recognise their responsibilities as regards workforce employment. The Company is committed to equitable and transparent recruitment and personnel management at all levels of project development and operation. This policy also links with the Company's Health & Safety Policy, Community Development Policy and Environmental Policy.

The Company will develop an Employment Programme (including management procedures for its operations), in accordance with local legislation and internationally recognised industry best practice. KMT will implement training and development programmes as part of its objective of aiming continually to improve performance in the workplace and community.

The implementation of the Employment Programme will be a key requirement at all phases of project development. The Company will also give preference to consultants, contractors, suppliers and subsidiaries who uphold the principles of this Employment Policy.

The Company is committed to securing sustainable benefits for local communities through the use of local goods, services and labour, where equal quality, standards and competitive terms can be demonstrated.

The Company recognises the presence of HIV/AIDS in local populations and is committed to developing an HIV/AIDS policy, and where appropriate a programme of information, including training on universal precautions, for the workforce.

**Policy Implementation**

The Company is committed to protecting the health, wellbeing and safety of its employees and to adopting employment practices that are fair, non-discriminatory and transparent.

Thorough employment and personnel management procedures will be developed and put in place at the earliest stages of project development.

**Specific goals**

To implement this, the Company is committed to the following:

- The Company will adhere to all employment laws, regulations and guidelines that are applicable to its projects. Where no such national framework exists, the World Bank Group policies, guidelines and procedures and especially the Performance Standards of the IFC will be applied;
- The Company will respect diversity and cultural differences;
- The Company will work with employees, government, stakeholders and local communities to maintain open and constructive communication and to address priorities and concerns;
- Clear procedures will be put in place for the recruitment of unskilled and skilled temporary and contract positions. These procedures will be widely publicised;
- The Company will give preference in recruiting new skilled staff at its project sites to former employees of mining companies operating locally and residents of the region in which the project is located, over expatriates or nationals from other regions, where permitted by applicable laws. Such recruitment will be conditional upon equivalent qualifications and experience being established;
- At project sites where there may be no suitably qualified staff living locally, recruitment will be carefully managed, in a manner appropriate to the area, to obviate the need for inward migration as far as possible;
- A programme will be put in place at each project site to train employees to carry out their tasks effectively and safely. Safety procedures and protocols for employee activities will be developed and detailed training given, covering methods of working, use of Personal Protective Equipment (PPE), first aid and action in emergencies;
- The Company will provide a health screening programme as appropriate for employees and a Medical Centre to deal with general health and to treat minor emergencies at each of its project sites;
- Training programmes will be implemented at project sites to enable employees to improve their skills in inter alia literacy, numeracy, foreign languages and technical subjects relevant to the project;
- The results of the employment initiatives will be monitored in terms of both success and compliance with the Employment Policy.
- This Policy will be reviewed on a periodic basis and updated as necessary.

# FQM Human Rights Policy

First Quantum Minerals Ltd. (the "Company") supports universal human rights and, in conducting our operations, we make every effort to uphold and respect human rights principles, consistent with the role of business.

We are committed to working with governments, our business partners, non-governmental organizations and the communities affected by our operations to more fully understand human rights issues, how they apply to our company and what we can do to make a contribution consistent with our appropriate role.

As a company, we will respect the law, and as a responsible member of the community we will apply the following Principles with integrity:-

- Express our support for universal human rights and, in particular, those of our employees, the communities in which we operate and parties with whom we do business;

- Promotes equal opportunity for our employees at all levels of the Company with respect to color, race, gender, age, ethnicity or religious beliefs and operate without unacceptable worker treatment;

- Respect our employees' voluntary freedom of association;

- Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities;

- Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development;

- Promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes;

- Work with government and communities affected by our operations to improve the quality of life in those communities i.e. educational, cultural , economic and social well being;

- When engaging private security forces or in engaging with governmental or other forces, ensure that human rights principles are upheld through addressing contractual requirements, establishing guidelines on the use of force, and promoting the protection of human rights.

- When engaging suppliers and business partners, avoid being complicit in or encouraging any activities that may result in human rights abuses.

- While respecting the national sovereignty of host governments, promote human rights by contributing to public debate, supporting international agreements and commitments, and identifying opportunities to constructively engage government on human rights issues relevant to the counties in which we operate.

- Promote the application of these Principles by those with whom we do business.

We will develop and implement Company policies, procedures, training and internal reporting structures to ensure commitment to these Principles throughout our Company. We believe that application of these Principles will achieve greater tolerance and better understanding amongst peoples and advance the culture of peace.

We will be transparent in its implementation of these Principles and provide information which demonstrates publicly our commitment to them.

**DATED: October 29 2007**

In addition to these policies, FQM has policies relating to corrupt practices and Ethics and Conflict of Interest which those involved in the project must sign and adhere to. These policies are included as Appendices 2.6 and 2.7. Transparency and good governance are fundamental to the way in which FQM and its subsidiaries conduct their business.

KMT is a member of a new group of mining companies active in the Katanga province of the DRC (the Katanga Mining Association). This group seeks to operate in a transparent manner and in accordance with international norms. Other companies involved in the group include Katanga Mining, Tenke Fungurume Mining and Anvil Mining. The IFC has also facilitated the establishment of an Artisanal and Small Scale Mining project, under the umbrella of the Oil, Gas and Mining Sustainable Community Development Fund (CommDev). The programme is coordinated by PACT, an international NGO. KMT is not presently a participant in the programme, but would be willing to cooperate with it if the need arises.

A number of documents have been developed for use either at corporate level or on the project including:

- The **Stakeholder Engagement Plan (SEP).** This is based on the earlier **Public Consultation and Disclosure Plan (PCDP).** A first draft of the PCDP was produced in 2004 and this was revised following the first set of public meetings. The SEP sets out the plan for managing the consultation process and for keeping people informed.

- A **Register of Meetings** has also been set up and is maintained at site.

- The **Interim Resettlement Action Plan** has also been developed, approved and implemented. The IRAP was developed to deal with the loss of mainly small areas of fields lost during drilling, when tracks were widened to provide access to drilling locations. The IRAP described the process of identifying the fields and the owners, valuing the assets and making payments. The IRAP has also guided land acquisition and compensation during the clearing of sites for the plant and accommodation. Further details can be found in Annex B the Framework Resettlement Action Plan (FRAP).

- Briefing documents for a number of purposes have been developed including one for use by contractors and visitors to site, (**Background Information Document for Visitors**) which includes details of the project and a reporting requirement in the event of an incident or issue involving members of the local community.

- An **Expectation Management Procedure** for use during the early stages of the ESIA and Feasibility Study. It was found that expectations for jobs and change in Kolwezi would be considerable and would need to be managed, particularly when numerous people were visiting site carrying out technical investigations. The Background Information Document for Visitors (above) is also designed to fulfil this role. Expectation Management is now covered by the SEP and the Community Development Plan.

To execute the environmental and social studies, FQM undertook a rigorous selection process to identify international consultants best qualified to assist them. As a result of this, SRK Consulting was appointed to carry out Phase 1, which consisted of the site Audit and Scoping Report referred to earlier. SRK became registered as Approved Consultants in the DRC on 16 April 2004 and undertook Phase 2 of the environmental and social studies. The current update of the KMT ESIA is also being undertaken by SRK.

# Appendix 2.1: Certificate of release from environmental liabilities

REPUBLIQUE DEMOCRATIQUE DU CONGO
Ministère des Mines
SECRETARIAT GENERAL

DIRECTION DE PROTECTION
DE L'ENVIRONNEMENT MINIER

**ATTESTATION N°02./DPEM/04 PORTANT LIBERATION DES OBLIGATIONS ENVIRONNEMENTALES POUR LE PERIMETRE 652 DE LA GENERALE DES CARRIERES ET DES MINES (GECAMINES) EN CESSION A LA SOCIETE KINGAMYAMBO MUSONOI TAILINGS (KMT) SARL**

Le Directeur-Chef de Service de Protection de l'Environnement Minier,

Vu la loi n° 007/2002 du 11 juillet 2002 portant Code Minier ;

Vu le décret n° 038/2003 du 26 mars 2003 portant Règlement Minier en ses articles 472, 476, 405 et en particulier le chapitre VII du Titre XVIII :

Vu la demande n°0668/ADG/2003 du 24/11/2003 de la Direction Générale de la Générale des Carrières de Mines (Gécamines) déposée à la Direction de Protection de l'Environnement Minier pour octroi de l'attestation de libération des obligations environnementales pour le périmètre 652 ;

Considérant le rapport d'audit environnemental et l'Etude portant sur les rejets du Projet KMT à Kolwezi en République Démocratique du Congo, réalisés du 31 octobre au 5 novembre 2002 par le Bureau d'Etudes Environnemental SRK agréé par l'arrêté ministériel n° 334/CAB.MIN/MINES/01/2004 du 16 avril 2004 portant agrément d'un Bureau d'Etudes Environnemental ;

Considérant le constat effectué in situ, conformément à l'article 475 portant demande d'attestation de libération de l'obligation environnementale du Décret n° 038/2003 du 26 mars 2003 portant Règlement Minier, par les experts de la Direction de Protection de l'Environnement Minier du 30 novembre au 12/12/2003 ;

Considérant que la cession par la Gécamines à la Société Kingamyambo Musonoi Tailings des rejets de Kingamyambo et de la vallée de Musonoi pour leur retraitement en vue d'en extraire le cuivre et le cobalt avec un grand impact positif sur l'économie nationale et en particulier sur la ville de Kolwezi tant du point de vue socio-économique qu'environnemental en débarrassant la rivière Musonoi des rejets qui la polluent en même temps en réhabilitant l'environnement ;

Considérant que le partenariat entre la Gécamines et à la Société Kingamyambo Musonoi Tailings pourra permettre de résoudre les problèmes environnementaux causés par la Gécamines sur le périmètre concerné par la cession et de relancer les activités minières de la GCM- Groupe Ouest ainsi que toutes les autres activités économiques de la ville de Kolwezi à la suite de l'implantation de l'usine de traitement des rejets dans cette zone ;

Considérant l'impérieuse nécessité de préserver l'environnement et de le réhabiliter pendant le retraitement des rejets de Kingamyambo et l'engagement de la Société KMT de se conformer à la réglementation environnementale de la République Démocratique du Congo ,

Considérant la décision du Gouvernement de transition en sa réunion du 12 mars portant adoption du projet de traitement des rejets de Kolwezi par KMT ;

Considérant le Décret n° 04/020 du 15 mars 2004 portant autorisation de fondation de la Société par Actions a responsabilité limitée dénommée : Kingamyambo Musonoi Tailings, en sigle KMT ;

Considérant le recours n° PRES/CA/051/TK/LK/2004 du 13 mai 2004 portant modification de l'article 1er de l'attestation de libération des obligations environnementales n° 01/DPEM/04 du 28 avril 2004 ;

Vu l'importance ,

Décide :

Art. 1er : Il est délivré à la Générale des Carrières et des Mines (Gécamines) l'Attestation de libération des obligations environnementales pour les rejets de Kingamyambo et de la vallée de Musonoi dans le périmètre 652.

Art. 2 : Toute disposition antérieure et contraire à celle-ci est réputée nulle et de nul effet.

Art. 3 : La présente attestation donne droit à la Générale des Carrières et des Mines (Gécamines) de faire valoir ce que de droit.

Fait à Kinshasa, le 14 mai 2004

**Le Directeur Chef de Service**

**Pascal MUHINDO SONGE LUYEYE**

# Appendix 2.2: Emission and effluent limits to be applied to KMT Project

## *1 Air Quality*

### IFC Requirements

The IFC recommends ambient air quality thresholds. The thresholds are presented in Table 1.

**Table 1: Air Quality Management - IFC Ambient Air Quality Thresholds**

| Pollutant | Threshold value ($\mu g/m^3$)* | Comment |
|---|---|---|
| [2] $PM_{10}$ – Annual average | 50 | Arithmetic average |
| $PM_{10}$ – 24-hour average | 70 | Maximum average |
| $NO_x$ – Annual average | ns | |
| $NO_x$ –24-Hour average | 150 | Maximum average |
| $SO_2$ – Annual Average | 50 | Arithmetic average |
| $SO_2$ – 24-hour average | 125 | Maximum average |

The IFC does not specify emission levels for copper production by solvent abstraction. However they do specify a maximum limit 1000mg/$Nm^3$ for $SO_x$ from copper smelting operations.

### DRC Requirements (Mining Code)

DRC legislation specifies threshold limits for ambient air quality around mining operations. These values are tabulated in the following sections.

### Article 50: Tolerated Air Pollution Thresholds

Air pollution thresholds inside and outside the area are divided up according to the type of contaminants described in the tables hereunder:

The pollution thresholds for the relevant contaminants for this project are tabulated in Table 2.

**Table 2: Air Pollution Thresholds within the boundaries of the mining area**

| TYPE OF CONTAMINANT | POLLUTION THRESHOLDS |
|---|---|
| Arsenic | 0.5 $mg/m^3$ |
| Carbon Monoxide | 29 $mg/m^3$ |
| Copper | 1$mg/m^3$ |
| Free Silicon Dioxide | 5.0 $mg/m^3$ |
| Hydrocyanic Acid | 11$mg/m^3$ |
| Hydrogen Sulphide | 14 $mg/m^3$ |
| Lead: emissions and fumes | 0.15 $mg/m^3$ |
| Nitrogen peroxide | 6 $mg/m^3$ |
| Solid Particles | 10 $mg/m^3$ |
| Sulfur Dioxide | 5$mg/m^3$ |

[2] The World Bank/IFC guideline does not specify a particle size other than referring to dust as particulate matter. A comparison of the guidelines values with other international guideline values suggests that this guideline is similar to guidelines for PM10 which will be assumed to be the case for this study.

**Table 3: Air Pollution Thresholds beyond (outside) the boundaries of the mining area**

| TYPES OF CONTAMINANTS | POLLUTION THRESHOLDS[5] |
|---|---|
| Matter Particles (< 10 µm):<br>Annual Arithmetic Average<br>Maximum Average over 24 hours | 100 µg/$m^3$<br>500 µg/$m^3$ |
| Nitrogen Dioxide such as $NO_2$:<br>Annual Arithmetic Average<br>Maximum Average over 24 hours | 100 µg/$m^3$<br>200 µg/$m^3$ |
| Sulfur Dioxide:<br>Annual Arithmetic Average<br>Maximum Average over 24 hours | 100 µg/$m^3$<br>500 µg/$m^3$ |

***2 Noise***

**DRC Requirements (Mining Code)**

**Article 46: Continuous Noise**

The maximum sound level of mining or quarry activities must be less than, at all times and for any noise evaluation point depending whether it is a residential dwelling, a hospital or a school, a land where a permanent agricultural, industrial or hunting or fishing activity is taking place, a recreation area, the highest of the following sound levels:

(a) maximum sound levels allowed as per land category indicated in the table below;

(b) sound level equal to the environmental level measured at the noise evaluation point when the mining activities of the project are fully stopped.

**Article 47: The categories of land**

Land is distinguished into the following three categories as outlined below.

**Table 4: Continuous Noise Limits, DRC**

| Land category | Description | Noise level, Le dBA | |
|---|---|---|---|
| | | Night (19h00 to 07h00) | Day (07h00 to 19h00) |
| a | Land on which there are numerous residential dwellings constituting a community or a village, a school or a hospital or similar health institution. | 40 | 45 |
| b | Land on which there are permanent commercial, hunting, fishing or recreational activities. However, the noise level prescribed for the night only applies on the border with residential properties. Everywhere else the day and night thresholds are the same. | 50 | 55 |
| c | Land on which there are predominantly industrial or agricultural activities. However, at the location of an existing residential dwelling on this terrain the thresholds are 50 dBA during the night and 55 dBA during the day. | 70 | 70 |

**Article 48: Vibrations and noises during a blasting**

Mining or quarry operations must not create vibrations the speed of which, evaluated in the ground of any residential dwelling, school or hospital or any artesian well, is higher than 1.25 cm/s and air pressures superior to 120 linear decibels. This is only applicable to blasting at the quarry sites.

## 3 LIQUID EFFLUENT

Table 5 below sets out a summary of the quality limits set for effluent streams that discharge to watercourses

**Table 5: Discharge Water Quality limits set by DRC and IFC**

| Constituent | DRC Mining Regulations | IFC/World Bank |
|---|---|---|
| | | |
| pH | 6 - 9 | 6 – 9 |
| COD | NS | 150 mg/l |
| BOD5 | 50 mg/l | 50 mg/l |
| Oil and Grease | 20 mg/l | 10 mg/l |
| Total Suspended Solids | 100 mg/l | 50 mg/l |
| Total dissolved salts | NS | NS |
| Temperature at the edge of designated mixing zone | *Max 5$^o$C above ambient T$^o$C of receiving waters, max 3$^o$C if receiving waters >28$^o$C* | *Max 5$^o$C above ambient T$^o$C of receiving waters, max 3$^o$C if receiving waters >28$^o$C* |

**Residual heavy metals:** Where natural backgrounds exceed these levels, the discharge may contain concentrations up to natural background levels, or up to 110% if no significant adverse impact can be identified. (IFC/World Bank)

| Constituent | DRC Mining Regulations | IFC/World Bank |
|---|---|---|
| | | |
| Arsenic | 0.4 mg/l | 0.1 mg/l |
| Cadmium | NS | 0.1 mg/l |
| Chromium, hexavalent | NS | 0.1 mg/l |
| Chromium total | NS | 1.0 mg/l |
| Copper | 1.5 mg/l | 0.3 mg/l |
| Iron, total | 6 mg/l | 2 mg/l |
| Lead | 0.5 mg/l | 0.2 mg/l |
| Mercury | 0.002 mg/l | 0.002 mg/l |
| Nickel | 1.0 mg/l | 0.5 mg/l |
| Zinc | 10 mg/l | 1.0 mg/l |
| Total metals | NS | 10 mg/l |
| Total cyanide | 2 mg/l | |
| Hydrocarbons | 10 mg/l | NS |

# Appendix 2.3: Copy of the EAP approval letter from DPEM

**REPUBLIQUE DEMOCRATIQUE DU CONGO**
*MINISTERE DES MINES*
Secrétariat Général des Mines

**DIRECTION DE PROTECTION**
**DE L'ENVIRONNEMENT MINIER**

**Décision n° 79 / DPEM du 06/07/2005 portant approbation du P.A.E. de la Société KINGAMYAMBO MUSONOI TAILINGS SARL**

Le Directeur-Chef de Service de Protection de l'Environnement Minier du Ministère des Mines ;

Vu la loi n°007/2002 du 11juillet 2002 portant Code Minier en son article 154 ;
Vu le décret n°038/2003 du 26 Mars 2003 portant Règlement Minier en ses article 454 et 455 ;
Vu la lettre n° Réf./CAMI/DG/21851/2005 du 27 juin 2005 par laquelle le Cadastre Minier transmet à la DPEM le PAE de la société KMT pour instruction environnementale,
Considérant l'Avis Environnemental favorable du 05 juillet 2005 en faveur de la Société susmentionnée et émis après instruction et examen du dossier par les services spécialisés de la DPEM conformément aux articles 64, 70 et 75 du Code Minier, aux articles 153, 407 et 450 du Règlement Minier et à son annexe IX ;

Vu l'importance et la nécessité ;

**DECIDE** :

Article 1er : Est approuvé Le Plan d'Ajustement Environnemental de la société KINGAMYAMBO MUSONOI TAILINGS SARL (KMT).

Article 2ème : Est recommandé à la Société KINGAMYAMBO MUSONOI TAILINGS SARL (KMT) de communiquer à la DPEM dans les 30 jours à compter de la date de l'approbation du P.A.E les preuves du versement de la sûreté financière de réhabilitation de l'environnement conformément aux dispositions des articles 7 et 8 de l'Annexe II du Règlement Minier ;

Article 3ème :La présente décision entre en vigueur à la date de sa signature.

Fait à Kinshasa, le 06 juillet 2[illegible]

**Pascal MUHINDO S[illegible]GE L[illegible]**

Directeur-Chef de [illegible]

REPUBLIQUE DEMOCRATIQUE DU CONGO
*MINISTERE DES MINES*
Secrétariat Général des Mines

DIRECTION DE PROTECTION
DE L'ENVIRONNEMENT MINIER

N° 78 /DPEM/2005

# AVIS ENVIRONNEMENTAL

**Concerne : Plan d'Ajustement Environnemental pour le projet de traitement des Rejets de Kolwezi « Permis d'exploitation des rejets n° 652 » de la Société KINGAMYAMBO MUSONOI TAILINGS SARL (KMT)**

La Direction de Protection de l'Environnement Minier du Ministère des Mines a reçu, en dates du 30 mai 2005 et du 27 juin 2005 respectivement de la Société KINGAMYAMBO MUSONOI TAILINGS S.A.R.L. (K.M.T.) par sa lettre n° Réf. : 71/KMT/FC et du Cadastre Minier par sa lettre N° Réf./CAMI/DG/1851/2005, le Plan d'Ajustement Environnemental (PAE) relatif au Permis d'exploitation des rejets n° 652 pour instruction environnementale.

L'examen du dossier par le Comité Permanent d'Evaluation "C.P.E." fait état des observations suivantes :

**a. De forme :**

- Que la Société K.M.T. avec son permis d'exploitation projette d'entreprendre les travaux d'implantation d'une usine de retraitement des rejets miniers déposés sur le remblai des rejets miniers de Kingamyambo et dans la Rivière MUSONOI ;
- Que ces rejets recèlent du Cuivre et du Cobalt ;
- Que les méthodes d'exploitation et de traitement sont clairement décrites de la page 22 à 41 du présent PAE ;
- Que les impacts environnementaux potentiels ont été relevés à tous les niveaux (sols, qualité de l'air, gestion des eaux de surface et eaux souterraines, bruit, flore et faune, socio-économiques etc....) ;

d'une gare d'escale.

- Le modèle mathématique utilisé par KMT pour classifier les impacts selon qu'ils sont fort, moyen et faible en ce qui Concerne les indices importantes pour l'évaluation des impacts n'est pas décrit ;
- Il y a Contradiction sur le schémas opérationnel de projet : comment la production de l'acide sulfurique peut-elle faire intervenir l'ajout de l'acide sulfurique ? ;
- Les mesures prises par KMT en ce qui concerne la pollution de l'air par l'acide sulfurique produit ne sont pas clairement décrites (article 52, Annexe Ix du Règlement Minier) ;
- Etant donné que les rejets ne sont pas constitués uniquement du cuivre et du cobalt, la composition et les propriétés chimiques de chaque métal présent dans le rejet devaient être signalées, car, certains (l'uranium notamment) ont des propriétés radioactives ;
- KMT devrait déterminer comment il compte gérer les déchets considérés comme dangereux et ~~ce,~~ conformément à la loi en vigueur ;
- En ce qui concerne l'agriculture et l'élevage, il y a manque des statistiques de bêtes se trouvant aux alentours du périmètre.

-3-

En dehors des observations de forme et de fond ci-haut relevées, la Direction de Protection de l'Environnement Minier tient à prévenir la Société K.M.T. de quelques enjeux, notamment :

1. **Les enjeux liés aux ressources naturelles**

a. **Qualité de l'eau**

Sans méconnaître l'engagement formulé dans votre PAE sur la gestion des eaux, la Direction de Protection de l'Environnement Minier rappelle toutefois que les eaux produites et déversées sans avoir été convenablement neutralisées ou traitées peuvent contenir de forte teneur en acide et aussi, les nitrates, les métaux lourds ou les carburants émis par les équipements peuvent contaminer les eaux de surface locales ainsi que les nappes peu profondes. Il en est de même que le rejet des eaux de production polluées peuvent aussi détériorer les eaux de surface locales. Sans oublier que les déversements ou la mauvaise gestion d'évacuation des solvants, des lubrifiants et des substances chimiques servant au procédé de traitement peuvent également être à l'origine de la dégradation des eaux.

b. **Qualité de l'air**

Quant à la gestion des risques liés à la qualité de l'air, la Direction de Protection de l'Environnement Minier rappelle que la Société K.M.T. ne doit pas perdre de vue pendant toute la durée de construction de l'usine que les travaux aux explosifs, les activités de transport et transbordement des matériaux peuvent donner naissance à des particules en suspensions qui peuvent, se dégager durant les opérations de traitement. Des nitrates provenant des travaux aux explosifs ainsi que des produits de combustion émis par les moteurs au diesel seront présents.

c. **Utilisation des terres**

De même, il est certain que les travaux de construction de l'usine pourront être à l'origine de pertes ou de modification des sols, de la végétation, des habitats de la faune et de la flore, des biens Culturels et historiques, de la disparition des repères et des particularités topographiques etc....

2. **Les enjeux socioculturels**

Tout en reconnaissant que les enjeux socioculturels ont été pris en compte dans le PAE, il n'est pas sans intérêt de rappeler que la perturbation du sol causée par les travaux de construction risquent d'endommager voir détruire les biens culturels, les Sites historiques ou les lieux de Culte des populations indigènes.

En outre, il faut aussi veiller aux Sites non protégés par des actes de vandalisme à la suite d'un accroissement accru des populations et des travailleurs dans le Site minier en exploitation.

- 4 -

Enfin, la Direction de Protection de l'Environnement Minier encourage la Société K.M.T. de maintenir, pendant toute la durée d'exploitation, cette volonté réelle de protéger les écosystèmes de l'environnement concerné dans et autour du périmètre d'exploitation. Car, un comportement de laxisme en matière d'écologie pour les industries étrangères peut devenir dangereux au cas où elles sont génératrices d'une pollution excessive qui peut provoquer dans la population locale un vif sentiment d'animosité vis-à-vis des pouvoirs publics et des multinationales. Cette réaction de la population peut dégénérer allant jusqu'à susciter un ressentiment auprès des citoyens devant ce qui constitue à leurs yeux une collusion entre gouvernement et sociétés étrangères pour les activités qui dégradent l'environnement ou menacent la santé publique.

En considération de l'engagement ferme de la Société KMT de respecter les contraintes environnementales édictées dans les Code et Règlement Miniers de la République Démocratique du Congo, la Direction de Protection de l'Environnement Minier donne Son **AVIS FAVORABLE** pour permettre au titulaire de commencer les activités d'exploitation de traitement des rejets miniers de Kingamyambo et de la rivière Musonoi qui apparaît à nos yeux comme une solution aux problèmes environnementaux énormes qui se posent dans cette zone minière.

Fait à Kinshasa, le 05 juillet 2005

**Pascal MUHINDO SONGE LUTEYE**

Directeur-Chef de service

RÉPUBLIQUE DÉMOCRATIQUE DU CONGO
DIRECTION DE PROTECTION DE L'ENVIRONNEMENT MINIER
DPEM
MINES ET HYDROCARBURES

**REPUBLIQUE DEMOCRATIQUE DU CONGO**
*MINISTERE DES MINES*
Secrétariat Général des Mines

**DIRECTION DE PROTECTION**
**DE L'ENVIRONNEMENT MINIER**

N° 141 /DPEM/2005

Transmis copie pour information à :

- Son Excellence Monsieur le Ministre des Mines ;
- Son Excellence Monsieur le Vice-Ministre des Mines ;
- Monsieur le Secrétaire Général des Mines
- Monsieur le Directeur Général de la Société KINGAMYAMBO MUSONOI TAILINGS SARL (KMT)

(Tous) à Kinshasa/Gombe

Concerne: Transmission
Avis Environnemental
et Décision d'approbation
du PAE KMT

A Monsieur le Directeur Général
du Cadastre Minier
à Kinshasa/Gombe

Monsieur le Directeur Général,

J'ai l'honneur de vous transmettre en annexe de la présente, conformément à l'article 441 du Règlement Minier, l'Avis environnemental favorable pour la société "KINGAMYAMBO MUSONOI TAILINGS SARL"

Tout en vous souhaitant une bonne réception, Je vous prie d'agréer, Monsieur le Directeur Général, l'expression de mes sentiments distingués.

Fait à Kinshasa, le 06 juillet 2005

Pascal MUHINDO SONGE LUYINDE

Directeur-Chef de Service

**REPUBLIQUE DEMOCRATIQUE DU CONGO**
*MINISTERE DES MINES*
Secrétariat Général des Mines

**DIRECTION DE PROTECTION**
**<u>DE L'ENVIRONNEMENT MINIER</u>**

N° 144/bis/DPEM/2005

<u>Transmis copie pour information</u> à :
- Son Excellence Monsieur le Ministre des Mines ;
- Son Excellence Monsieur le Vice-Ministre des Mines ;
- Monsieur le Secrétaire Général des Mines ;
- Monsieur le Directeur Général du Cadastre Minier.

(Tous) à <u>Kinshasa/Gombe</u>

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**Objet : Félicitation**

**A Monsieur François Collette**
**Administrateur Fondé de pouvoirs**
**à K.M.T. S.A.R.L.**
**à <u>Lubumbashi/Katanga</u>**

Monsieur l'Administrateur,

Dans le cadre du projet de traitement des rejets miniers de Kolwezi, la Direction chargée de Protection de l'Environnement Minier (DPEM) a reçu le 30 mai 2005 le Plan d'Ajustement Environnemental (PAE) de la Société K.M.T. élaboré par le Bureau d'Etudes Environnementales S.R.K. conformément à la loi n° 007/2002 du 11 juillet 2002 portant Code Minier et au Décret n° 038/2003 du 26 mars 2003 portant Règlement Minier.

Après examen et analyse de la forme et du fond relatives au PAE présenté, mes services (D.P.E.M. – C.P.E.) et moi-même, avons été satisfaits de la qualité du travail réalisé, conformément aux dispositions légales prévues dans la loi minière en vigueur en République Démocratique du Congo.

Le souci qui vous anime de pouvoir vous conformer à la réglementation de la République Démocratique du Congo me fait un agréable devoir de vous présenter mes sincères félicitations pour ce travail titanesque et particulièrement soigné qui constitue un document de base par lequel je souhaiterai voir la Société K.M.T. mettre en application toutes les mesures et considérations environnementales y consignées pour la survie des écosystèmes et l'amélioration des conditions de vie des travailleurs dans ce cadre idéal pour un développement durable et intégré.

Encore une fois, Monsieur l'Administrateur, la Direction de Protection de l'Environnement Minier du Ministère des Mines vous demande de transmettre ces félicitation au Bureau d'Etudes Environnementales "S.R.K" dont le siège social se trouve en Afrique du Sud.

Je vous prie d'agréer, Monsieur l'Administrateur, l'expression de mes sentiments distingués.

Fait à Kinshasa, le 05 juillet 2006

République Démocratique du Congo
Direction de Protection de l'Environnement Minier
DPEM

**Pascal MUHINDO SONGE LUTEYE**

Directeur-Chef de service

# Appendix 2.4: IDC Environmental Policy

## INDUSTRIAL DEVELOPMENT CORPORATION
## OF SOUTH AFRICA LIMITED

### ENVIRONMENTAL, HEALTH AND SAFETY POLICY

**Corporate Mission**

The Industrial Development Corporation of South Africa Limited is a self-financing national development institution whose primary objectives are to contribute to the generation of balanced, sustainable economic growth in Africa and the economic empowerment of the South African population. The IDC pursues these objectives by financing competitive enterprises based on sound business principles.

IDC's core business is to foster sustainable economic development that will improve the quality of life of all residents of South Africa and the Southern African Development Community by providing equity and loan financing for new and existing business enterprises showing economic and social merit. It does so in full support of Government's economic and social development policies.

**EHS Policy**

IDC considers corporate responsibility as a fundamental value and conducts all its activities in a manner designed to protect the environment, as well as the health and safety of employees, contractors and the public by integrating best practice EHS considerations into its projects from planning stage through to decommissioning, closure and aftercare.

In that spirit the IDC views responsible environmental. Health and safety management as an obligation to future generations and works actively with its employees, business partners. The authority and the public to ensure a sustainable safe and healthy environment by:

- Promoting a healthy and safe work environment for its employees, contractors and the public;
- Providing its employees with the necessary training and resources to play an active role in ensuring superior environmental, health and safety performance by IDC and its business partners;
- Identifying and assessing environmental, health and safety risks associated with the activities of IDC and its business partners prior to the provision of financing and regularly thereafter during IDC's involvement.
- Insisting on full compliance with all relevant environmental, health and safety regulations as a condition precedent to providing financing to its business partners;

- Encouraging its business partners to exceed legislative compliance by the application of internationally recognized environmental, health and safety Standards and best business practices;
- Educating, training and motivating employees about responsible environmental, health and safety management;
- Promoting open communication on environmental, health and safety issues amongst employees and stakeholders:
- Communicating to employees this policy and their accountabilities. and providing them with necessary resources to achieve company objectives:
- Continually assessing environmental. health and safety performance selling targets, embracing best practices and reporting enterprise-wide results: and
- Periodically reviewing and updating enterprise-wise objectives and targets in line with its commitment lo sustainable development, continuous environmental performance improvement and the prevention of pollution. Health and safety risks.

IDC believes that no operational condition or urgency of service can ever justify endangering the environment or the health and safety of anyone.

M G QHENA
CHIEF EXECUTIVE OFFICER

# Appendix 2.5: Principles of Good International Practice

The World Bank Group policies, standards, procedures and guidelines for Environmental Assessment set the benchmark for international best practice and no other single body of information exists to guide such activities on an international level. The International Association of Impact Assessment (IAIA) is an active association of organisations and individuals around the world, who are practicing or researching impact assessment, but their publications are extremely limited and brief and several are concerned with issues such as Strategic Environmental Assessment (SEA). Available publications can be viewed at www.iaia.org. However, as regards social assessment and public consultation, a number of bodies and institutions have played a key role in defining best practice principles.

**Social and Public Consultation**

International best practice in social and public consultation may be defined by reference to the core values and principles developed by the International Association for Public Participation (IAP2). IAP2 was established in 1990 as a non-profit organization to advance the practice of public participation. The core values and principles have been derived from the membership of IAP2, which consists of more than one thousand members operating in some 22 countries around the world. KMT is cognisant of these principles, which are reflected in the way in which public participation is carried out in the KMT Project. The core values and principles are presented below:

**Core Values**

- The public should have a say in decisions about actions that affect their lives.
- Public participation includes the promise that the public's contribution will influence the decision.
- The public participation process communicates the interests and meets the process needs of participants.
- The public participation process seeks out and facilitates the involvement of those potentially affected.
- The public participation process involves participants in defining how they participate.
- The public participation process provides participants with the information they need to participate in a meaningful way.
- The public participation process communicates to participants how their input affected the decision.

**Principles**

Following from the Core Values, the best practice principles apply to public participation, as well as to conflict and dispute resolution processes. These principles ensure that the views of all participants are fairly heard and considered, that the process needs of participants are met and that the process is defensible.

- Consultation is inclusive (consultation takes place with all sectors of society, and affords a broad range of stakeholders the opportunity to become involved, bearing in mind that it is not practically possible to personally consult with every individual in the project area).
- The opportunity to comment is announced in various ways over a period of time (for example, by way of letters addressed to stakeholders personally, advertisements, documents left in public places, radio announcements, personal visits to previously disadvantaged communities).
- Information is sufficient to allow meaningful contributions, and is accessible (in a language that stakeholders can understand and written in a non-technical way).
- Participation according to ability and interest level (highly technical documents are presented to technically minded people; such documents are simplified for lay people).
- Information is presented in various ways (for example, by way of discussion documents, presentations at meetings and workshops, visual displays, print and broadcast media).
- Special efforts for previously disadvantaged communities and vulnerable groups.
- Enough time is allowed for comment, but time is not wasted on options that are no longer viable.
- There are various opportunities for comment, at various stages in the process.
- There are various ways for stakeholders to comment (written submissions, comment sheets, e-mail, faxing, briefing meetings, workshops, public meetings, personal contact with members of the EA team).
- Stakeholders have ample opportunity to exchange information and viewpoints (for example, at workshops and public meetings).
- Stakeholders receive ongoing feedback and acknowledgement, and the opportunity to verify that their issues have been considered, and if not receive an explanation for this.
- Transparency, honesty and integrity on the part of all involved in the process.
- Stakeholders are supplied at an early stage with information that assists them to understand their roles, rights and responsibilities in the process.

# Appendix 2.6:Corrupt Practices Agreement (FQM)

1.1 The Consultant understands and acknowledges that in relation to the any proposed implementation phase for the Project it is illegal to offer, give, pay, promise to give or authorise the offering, giving, payment or promising to give of, anything of value to any officer or employee of the government of the Democratic Republic of Congo (hereinafter referred to as the "DRC"), any person, acting in an official capacity for or on behalf of such officer or employee of the government of the DRC, any official of a political party in the DRC or any candidate for political office in the DRC (hereinafter referred to as a "Foreign Official") in an effort to win or retain business or secure any improper advantage (hereinafter referred to as a "Corrupt Practice").

1.2 An offer, gift, payment, promise (or the authorization thereof) shall not be considered a Corrupt Practice if, in the Client's reasonable opinion, it is lawful under applicable law or if it is made for the purpose of expediting or securing the performance of a routine government action which the party initiating the offer, gift, payment, promise (or authorisation thereof) could legitimately request or expect in the ordinary course of the business of the Foreign Official.

2 The Consultant warrants that in relation to any proposed implementation phase for the Project it has not taken or refrained from any action which is or could be reasonably construed as a Corrupt Practice, and that it has not, and to its knowledge, after due enquiry given the circumstances, none of its affiliates nor any of its managers, officers, directors, employees, shareholders, members of authorised agents (including the managers, officers, directors, employees, or authorized agents of its affiliates) has offered, given, paid, promised directly or indirectly to give or pay, or authorise the offer, giving, payment or promising to give or pay, any money, gift or other thing of value to any Foreign Official (or to any other person while knowing it will be offered, given, paid or promised to a Foreign Official) for the purpose of influencing any act or decision of such person acting in their official capacity, inducing such person to do or permit any action in violation of their lawful duty, or inducing such person to use their influence with the government of the DRC in order to assist such party to obtain or retain business for or with, or in directing business to, any person.

3 From and after the date of execution of this Agreement and in relation to any proposed implementation phase for the Project), the Consultant undertakes that it shall not, (and shall cause its respective affiliates and all of its own and their respective officers, managers, directors, employees, shareholders, members, agents and representatives not to) take or refrain from any action which is or could be deemed to be a Corrupt Practice as contemplated above; or offer, give, pay, promise directly or indirectly to give or pay or authorise the offer, giving, payment or promise to give or payment of any money, gift or other thing of value to any Foreign Official (or to any other person while knowing it will be offered, given or promised to a Foreign Official) for the purpose of influencing any act or

decision of such Foreign Official acting in their official capacity, inducing such Foreign Official to do or omit to do any action in violation of their lawful duties, or inducting such Foreign Official to use their influence with the government of the DRC to affect or influence any act or decision of such government, in order to assist any party to obtain or retain business for or with, or in directing business to, any person.

4 The Consultant undertakes to notify and discuss with the Client any concerns or difficulties in interpretation or application of the above requirements, that may arise or otherwise come to its attention.

5 The Consultant will forthwith after signature of the Agreement and on consultation with the Client develop its Project procedures so as to evolve a code of practice (the “Code”) which will inform and educate all employees, agents and sub-contractors of the Consultant engaged in the Project about corrupt practices and measured which should be taken to avoid them, including (without limitation) a requirement that all meetings with sub-consultants shall not take place in the absence of a representative of the Client (unless this requirement is waived by the Client in writing).

6 A breach of the above undertakings by the Consultant or its affiliates (and any of its own and their respective officers, managers, directors, employees, shareholders, members, agents and representatives) shall constitute a breach of the Agreement entitling the Client to claim damages for the damage and loss it has suffered as a consequence of such breach.

**Acknowledgement**

We acknowledge, understand and accept the above provisions.

_______ ____

For and on behalf of: For and on behalf of:

Duly authorized duly authorised

# *Conflict of Interest and Gifts Disclosure*

The following is an extract from the FQM Board of Directors Manual "Employee Code of Conduct Policy" and it has a section devoted to conflicts of interest and ethical behaviour and receiving gifts or benefits:

***Conflicts of Interest***

*Employees must avoid all situations in which their personal interests conflict or might appear to conflict with their duties to FQM.*

*While FQM recognizes and respects an employee's right to take part in financial, business and other activities outside their jobs, these activities must be free of conflict with their responsibilities as FQM employees. Employees must avoid acquiring any interests or participating in any activities that would tend:*

***(a)*** *to create an obligation or distraction which would affect their judgment or ability to act solely in the Company's best interests; or*
***(b)*** *To deprive FQM of the time or attention required to perform their duties properly.*

*Ownership or an ownership interest in a competing or complementary business might create, or appear to create, a conflict. Employees must disclose to their Manager, in writing, all business, commercial or financial interests or activities where their activities might reasonably be regarded as creating an actual or potential conflict with their duties of employment.*

*Every employee of the Company who has executive or managerial responsibility is required to see that actions taken and decisions made within his or her jurisdiction are free from the influence of any interests that might reasonably be regarded as conflicting with those of FQM. Employees must do more than merely act within the law. They must act in such a manner that their conduct will bear the closest scrutiny should circumstances demand that it be examined. Not only actual conflicts of interest, but the very appearance of conflict, must be avoided.*

*If a "**conflict of interest**" exists, and there is no failure of good faith on the part of the employee, it will be FQM's policy to allow a reasonable amount of time for the employee to correct the situation in order to* *prevent undue hardship or loss. Decisions in this regard shall, however, be within the discretion of FQM management, and whose first concern must be the interests of FQM.*

*Conflicts of interest relating to entities supplying, purchasing from or competing with the Company include:*

***(a)*** *the holding, directly or by a member of the employee's immediate family (e.g., spouse, children, parents, brothers, sisters), of "a substantial financial interest" in any business entity that does or seeks to do business with, or is in competition with, FQM. "A substantial financial interest" will be presumed where ownership is in excess of 1% in a company traded on a stock exchange and the investment constitutes more than 5% of the employee's total assets, or where an ownership interest in any other business contributes more than 10% of the annual income of the employee and his or her immediate family;*

***(b)*** *A partnership, profit-sharing arrangement, creditor/debtor relationship with such an entity;*

***(c)*** *an employee or member of the employee's immediate family serving as an agent, representative, director, officer or employee of, or consultant to, such an entity; and*

***(d)*** *The acceptance of any loan, service or other benefit from any such entity (other than borrowing on commercial terms from entities who are in the business of lending).*

***Receiving Gifts or Benefits***

*Employees must not use their position to obtain personal gain or benefit from those doing or seeking to do business with FQM.*

*Employees are required to select and deal with suppliers, customers and others doing or seeking to do business with FQM in a completely impartial manner and be perceived by others to be acting in an impartial manner, without favour or preference based upon any considerations other than the best interests of FQM.*

*Modest gifts and reasonable entertainment may be received from business associates of FQM. No gift, favour or entertainment shall be of such a nature as might affect, or reasonably be perceived to affect, an employee's judgement or conduct in matters involving FQM. Cash or cash value vouchers are not to be accepted.*

*Gifts or benefits of a more substantial nature from customers or suppliers are not encouraged. However, occasionally there are special circumstances that may apply (e.g., developing a business relationship) and, in such cases, permission must be obtained from your Manager.*

*Employees must not use their position to obtain personal gain or benefit from companies or others doing or seeking to do business with FQM. Employees must not seek any gifts, payments, services, loans, or other benefits.*

Under the Multilateral Instrument 52 – 109 “Certification of Disclosure in Issuers Annual and Interim Filings” and subsequent regulations promulgated by Canadian Securities Administrators, the CEOs and CFOs of public companies are required to sign (as part of a comprehensive certification process) statements inter alia relating to disclosure controls and procedures.

It is required that the CEO and CFO certify that they have disclosed to FQM’s audit committee and the independent auditors all significant deficiencies in the design or operation of FQM’s internal controls and any fraud, whether or not material, involving management or other employees who have a significant role in FQM’s internal controls.

The purpose of this disclosure is to formalize and document the process:

- to provide the employee with a vehicle to immediately disclose a conflict of interest when it transpires or when a gift or similar action presents itself; and
- to support the certifications that FQM is legally obligated to provide and to define the responsibility for the process.

It is also expected that this process will lead to an overall improvement in FQM’s disclosure as well as internal control environment due to the renewed focus this will give managers on the controls within their divisions and their responsibilities in connection therewith.

In order to accurately and fully complete the disclosure by certification, you are required to consider the following issues and to certify the statements in **Annexure A** regarding these issues.

**Annexure A**

FIRST QUANTUM MINERALS LTD.

## *Conflict of Interest and gifts Certification*

| | |
|---|---|
| **To:** | Reporting Manager Operations/Reporting Manager Discipline |
| **From:** | [Insert certifying officer's name] |
| | **[Insert certifying officer's position]** |
| **Subject:** | **Conflict of Interest and Receiving of gifts and benefits Certification** |
| | [the Period ended [Month, 200_] [for the Fiscal Year ended December 31, 200_. |

**I confirm, to the best of my knowledge, the following representations for the period ended [insert period]:**

**1.** I have not been in and avoided all situations in which my personal interests could have conflicted or might appear to be in conflict with my duties to FQM.

**2.** The business activities and/or any other activities, if any, that I am currently taking part in, outside my responsibility towards FQM, are free of conflict with my responsibilities as a FQM employee.

**3.** I am not currently involved or plan to acquire any interests or participating in any activities that would tend:
- to create an obligation or distraction which would affect my judgment or ability to act solely in the Company's best interests; or
- to deprive FQM of the time or attention required to perform my duties properly.

**4.** I have disclosed an ownership or an ownership interest in a competing or complementary business that might create, or appear to create, a conflict.

**5.** I have disclosed to my reporting manager within my Division as well as my reporting manager within my discipline, in writing, all business, commercial, family and romantic relationships or financial interests or activities where my activities might reasonably be regarded as creating an actual or potential conflict with my duties of employment or my position in the company.

**6.** I have ensured that as an employee of the Company who has executive, managerial or operational responsibility that actions taken and decisions made within my jurisdiction are free from the influence of any interests that might reasonably be regarded as conflicting with those of FQM.

**7.** I will immediately disclose, when presented with, any gifts, donations, hand-outs or any similar action from vendors, suppliers or customers to management of FQM by submitting an email to the company's gift register at gifts@fqml.com with the particulars. In addition to that, I have disclosed any gifts, donations, hand-outs or any similar action previously received from vendors, suppliers or customers to management of FQM by submitting an email to the company's gift register at gifts@fqml.com with the particulars.

In accordance with the declaration, I have the following to declare to comply with the FQM ***Conflict of Interest*** and ***Receiving Gifts or Benefits*** requirements:

**[Signature]**

**[Printed Name]**

**[Title]**

**[Date]**

# Appendix 2.8: IFC Performance Standards and Environmental, Health and Safety Guidelines for Mining

## IFC Performance Standards

The International Finance Corporation (IFC) applies the Performance Standards to manage social and environmental risks and impacts and to enhance development opportunities in its private sector financing in member countries eligible for financing. The Performance Standards may also be applied by other financial institutions electing to apply them to projects in emerging markets. Together, the eight Performance Standards establish standards that the client is to meet throughout the life of an investment by IFC or another relevant financial institution:

- Performance Standard 1: Social and Environmental Assessment and Management System
- Performance Standard 2: Labor and Working Conditions
- Performance Standard 3: Pollution Prevention and Abatement
- Performance Standard 4: Community Health, Safety and Security
- Performance Standard 5: Land Acquisition and Involuntary Resettlement
- Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management
- Performance Standard 7: Indigenous Peoples
- Performance Standard 8: Cultural Heritage

Performance Standard 1 establishes the importance of:

- integrated assessment to identify the social and environmental impacts, risks, and opportunities of projects;
- effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them ; and
- the client’s management of social and environmental performance throughout the life of the project.

Performance Standards 2 through 8 establish requirements to avoid, reduce, mitigate or compensate for impacts on people and the environment, and to improve conditions where appropriate. While all relevant social and environmental risks and potential impacts should be considered as part of the assessment, Performance Standards 2 through 8 describe potential social and environmental impacts that require particular attention in emerging markets. Where social or environmental impacts are anticipated, the client is required to manage them through its Social and Environmental Management System consistent with Performance Standard 1.

In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national laws, including those laws implementing host country obligations under international law.

A set of Guidance Notes, corresponding to the Performance Standards, offers helpful guidance on the requirements contained in the Performance Standards, including reference materials, and on good sustainability practices to help clients improve project performance. The complete Guidance notes can be found at www.ifc.org.

## Environmental, Health and Safety Guidelines for Mining

The EHS Guidelines are technical reference documents that address IFC's expectations regarding the industrial pollution management performance of its projects. They are designed to assist managers and decision makers with relevant industry background and technical information. This information supports actions aimed at avoiding, minimizing, and controlling environmental, health, and safety (EHS) impacts during the construction, operation, and decommissioning phase of a project or facility.

The EHS Guidelines have become globally applied references for private sector development with their use extending well beyond World Bank Group operations to a diverse external community, such as other international financial institutions, regulators, industry, academics, and commercial banks, including the international banks that have adopted the Equator Principles.

The updated EHS Guidelines will serve as a technical reference source to support the implementation of the IFC Performance Standards, particularly in those aspects related to Performance Standard 3: Pollution Prevention & Abatement, as well as certain aspects of occupational and community health and safety.

This project will predominantly apply and refer to the Mining EHS Guidelines due to the nature and scope of the project, “the EHS Guidelines for Mining are applicable to underground and open-pit mining, alluvial mining, solution mining, and marine dredging.”

There are numerous EHS issues associated with mining activities which may occur during the exploration, development and construction, operation, closure and decommissioning, and post-closure phases, along with recommendations for their management. The issues associated with this project addressed by the EHS guidelines are:

**Water use and quality**

Management of water use and quality, in and around mine sites, can be significant regarding issues such as contamination and availability. Mining activities should therefore include adequate monitoring and management of water use.

**Wastes**

Mines generate large volumes of waste. Structures such as waste dumps, tailing impoundments/dams, and containment facilities should be planned, designed and operated such that geotechnical risks and environmental impacts are appropriately assessed and managed throughout the entire mine cycle.

**Land Use and Biodiversity**

Habitat alteration is one of the most significant potential threats to biodiversity associated with mining. The protection and conservation of biodiversity is fundamental to sustainable development.

**Air Quality**

Management of ambient air quality at mine sites is important at all stages of the mine cycle. Airborne emissions may occur during each stage of the mine cycle, although in particular during exploration, development, construction, and operational activities.

**Occupational Health and Safety**

Mine activities should seek to provide an operation where people are able to work without being injured and where the health of the workforce is promoted.

As a general approach, health and safety management planning should include the adoption of a systematic and structured approach for prevention and control of physical, chemical, biological, and radiological health and safety hazards.

**Community Health and Safety**

Concerns specific to mining activities, with community health and safety implications are important to address and monitor.

**Mine Closure and Post-Closure**

Mine closure and post-closure activities should be considered as early in the planning and design stages as possible. Mine sponsors should prepare a Mine Reclamation and Closure Plan (MRCP) in draft form prior to the start of production, clearly identifying allocated and sustainable funding sources to implement the plan.