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Subject:	Congo-Brazzaville: 2011 Investment Climate Statement

REPUBLIC OF THE CONGO
INVESTMENT CLIMATE STATEMENT – 2011

OVERVIEW:

Located in Central Africa and straddling the equator, the Republic of the Congo (ROC) covers an area of 142,000 square miles, slightly larger than the state of New Mexico. Its population is estimated at 3.7 million inhabitants, with a population density of 5.2 people per square mile. The country is bordered by Cameroon and the Central African Republic to the north, Angola (the Cabinda enclave) to the south, the Democratic Republic of the Congo and the Congo River to the east, and the Republic of Gabon and Atlantic Ocean to the west. The Republic of the Congo has three climatic zones: equatorial in the north, sub-equatorial in the center and humid tropical in the south.

After almost three decades of a centrally planned economy, the Congo entered a period of broad liberalization at the end of the 1980s. With assistance from the IMF and the World Bank, the Congo implemented various structural adjustment programs to create a private sector based market economy. Following the Civil War from 1997-2002, the Congo spent significant resources rebuilding the capital city Brazzaville, which was heavily damaged during the fighting. The Congo held peaceful presidential elections in July 2009, which gave incumbent President Denis Sassou N'Guesso with a seven-year term. Sassou N'Guesso has been President 25 out of the last 32 years; however the current constitutional term limits do not allow him to run for reelection in 2016.

Although the informal sector is an important component of the Congolese economy, it does not generate revenues for the Congolese treasury. The Congolese government relies heavily on the oil industry, which generates roughly 80 percent of its fiscal revenue, and represents 70 percent of the Congo's gross domestic product (GDP).

The agriculture and fishing sectors account for a mere five percent of the Congolese GDP. However, the ROC government aims to revive these important sectors over the coming decade.

The Republic of the Congo reached the “completion point” in the Heavily Indebted Poor Countries (HIPC) initiative on January 28, 2010, which initially generated $1.9 billion in debt service savings. The HIPC agreement could eventually lead to $6.4 billion in overall debt relief for the ROC.

China continues to loan money to the ROC government for the construction of large scale infrastructure projects that are universally awarded to Chinese contractors. Current infrastructure projects underway by Chinese firms include: roads and highways, airports, apartment buildings, ministries, and a hydroelectric dam.

The Congo imports approximately $200 million in food products each year, which represents at least 65 percent of Congolese food consumption. According to the government, only two percent of Congolese available farm land is currently used for agriculture.

The economic indicators for the upcoming year remain positive with a GDP growth rate estimated to reach nine percent in 2011, down from 12 percent in 2010. The ROC government has an opportunity to take advantage of its strong economic position by investing in sectors that will strengthen the country’s investment climate, such as: education, health, electricity, roads, railroads, and telecommunications.

The Congo’s investment climate is constrained by corruption. Tender offers are irregularly publicized. Government spending is not backed by substantiated figures and audits. Contract terms are not available to the public.

A.1 Openness to Foreign Investment

In order to create a business in the Republic of the Congo, investors must provide to the “Centre de Formalites des Entreprises”(CFE) two copies of the company by-laws, two copies of capitalization documents (e.g. a bank letter or an affidavit), a copy of the company’s investment strategy, the company-approved financial statements (if available), and ownership documents or lease agreements for the company’s office in the ROC.

The CFE is designed to provide all services under one roof in order to facilitate the opening and closing of businesses. CFE has offices in Brazzaville, Pointe-Noire, N’kayi, Ouesso and Dolisie.

The Investment Charter, established by Law 6–2003 on January 18, 2003, offers a range of guarantees to foreign investors including no discrimination or disqualification on all types of investment and equal justice under Congolese law.

The cost of registering a business depends on the type of company one is trying to register. Registration fees range from $244 for a small company with a capitalization below $2,000, to $4,500 for a large company with a capitalization that exceeds $200,000.

A local partner is not required to start up a business in the Congo. The entire business registration process should take an average of three weeks, according to the CFE’s Secretary General. There might be additional government licensing and permit requirements, depending on the nature of the business.

The Congo’s investment code, adopted in 1994, provides a framework to protect investments and investors. In addition, the Congo is party to OHADA (Organization for the Harmonization of Business Law in Africa), a type of commercial code, adopted by 16 African countries, that governs investments and business practices. Members include all countries that are members of ECOWAS and CEMAC as well as Mauritius and Madagascar. OHADA registration applies to all countries in the zone.

There are no known pending lawsuits in regard to the investment code in Congolese commercial courts. However, lawsuits have been filed at OHADA’s tribunal in Abidjan, Cote D’Ivoire relating to investors doing business in the Republic of the Congo. In principle, the judicial system upholds the sanctity of contracts; parties also may appeal to foreign or international justice courts for any necessary relief.

Investors report that the commercial environment in the Congo has improved and they feel that they have good working relations with government officials. However, corruption is still a fact of life that continues to present challenges to investors. The 2011 national budget includes an unprecedented $1.6 billion for investment in the Republic of the Congo. Various development partners, including international financial institutions, have warned the government about the structural inadequacy of the Congolese economy to absorb such a big amount of investment in just one year.

Despite the existence of the CFE, decision making with respect to foreign direct investment (FDI) is delayed due to ineffective centralized decision making. Some U.S. companies have experienced lengthy delays in their pursuit to invest in the Congo due to overlapping authority within the country's decision making apparatus.

Measure	Year	Index/Ranking
*TI Corruption Index	2010	154 out of 178
Heritage Economic Freedom	2010	169 out of 179
World Bank Doing Business	2010	177 out of 183
**MCC Government Effectiveness	2011	24%
MCC Rule of Law	2011	32%
MCC Control of Corruption	2011	19%
MCC Fiscal Policy	2011	12.6%
MCC Trade Policy	2011	19%
MCC Regulatory Quality	2011	15%

* Transparency International
** Millennium Challenge Corporation

A.2 Conversion and Transfer Policies

The Republic of the Congo is a member of the CFA Franc Monetary Zone (Communauté Financière Africaine - CFA), a member of the Central African Economic and Monetary Community (CEMAC) and a member of the Bank of the Central African States (Banque des Etats de l'Afrique Centrale – BEAC). BEAC serves as the Central Bank for Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea and Gabon.

The common currency used in the Republic of the Congo and other CEMAC members is the CFA Franc (F CFA). The CFA is linked to the Euro and is treated as an intervention monetary unit at a fixed exchange rate of 0.001524 Euro/CFA Franc. This agreement guarantees the availability of foreign exchange and the unlimited convertibility of the CFA Franc. It also provides considerable monetary stability to the Republic of the Congo and other countries of the CEMAC. The exchange rate between the CFA Franc and the U.S. dollar fluctuates according to the rate between the euro and the U.S. dollar.

A.3 Expropriation and Compensation

During the 1970s and 1980s, the political landscape of the Republic of the Congo was marred by turbulent interventionist policies and Marxist-Leninist doctrine that led to the nationalization of private companies and the departure of many foreign investors. However, the Republic of the Congo completed a transition to multi-party democracy in 1992, and the country's former economic and political practices became more moderate following the collapse of the Soviet Union.

There is no evidence that foreign investors who have returned to the country are discriminated against in any fashion or have been subjected to expropriation of assets. Foreign and national firms established in Republic of the Congo operate on an equal legal basis.

Several companies have been privatized, including the national flour company (currently MINOCO) and the banking companies UCB and CAIC. The U.S. firm Seaboard successfully privatized MINOCO in 2000.

During the 1970s and 1980s, the Congolese economy was dominated by state-owned companies. However, the promulgation of Law 24/94 on August 10, 1994, which introduced a framework for privatization, and its addendum, Law 10/95 introduced on April 17, 1995, which identified specific sectors to be privatized, ushered in a new economic era that is receptive to national, private and foreign investments.

The laws define the privatization process as follows:

- A transfer of property from the government to the private sector;
- A call for private sector capital or expertise managed through concessions or contract to conduct a public sector activity.

The transfer may be implemented as follows:

- Total or partial cession, subject to payment for shares representing the direct or indirect majority shareholding of the government;
- Total or partial cession, subject to payment for elements owned by public companies.

Public companies have been divided into two categories of privatization: (a) the first consists of six major public companies supporting the oil, transport, telecommunication, water and electricity sectors; and, (b) the second includes all other agricultural and industrial companies in the farming, forestry, hotel, banking, transport and transit sectors. The General Office of Privatization within the Ministry of Industrial Development and the Promotion of the Private sector is responsible for monitoring privatization.

A.4 Dispute Settlement

The majority of foreign private companies based in the Republic of the Congo are invested in the oil and timber sectors. Relations between the government and the oil companies are regulated on the basis of Production Sharing Agreements (PSAs). Although there have been some reports of constraints on recovering value added tax (VAT) reimbursements or customs fees under those agreements, very few private investment disputes involving foreign businesses have been lodged in recent years.

The Republic of the Congo is a member of the World Trade Organization (WTO) and is a party to other international treaties governing trade and commerce. Binding international arbitration of investment disputes is accepted.

Public Law 6-2003, which established the country’s Investment Charter, states that investment disputes will be subject to settlement under Congolese law. However, independent settlement or conciliation procedures can be enacted by either party. These procedures are governed by:

- The convention regulating the Community Justice Court;
- The treaty of October 17, 1993, implementing the African Business right Harmonization Organization OHADA);
- The International Center for the Settlement of Investment Disputes (ICSID).

A.5 Performance Requirements and Incentives

Presidential decree No: 2004-30 of February 18, 2004, defines the requirements for foreign and national companies to benefit from incentives offered by the Congolese Investment Charter. Four types of incentives are considered:

(a) Incentives to export.

(b) Incentives to reinvest the company's profit in the Congo.

(c) Incentives for businesses in remote areas or areas which are difficult to access.

(d) Incentives for social and cultural investment.

In the oil and forestry sectors, companies are required to respect the environment, particularly regarding water pollution safeguards and forest regeneration. All forestry companies, both foreign and locally owned, are required to process 85 percent of their timber in the country and to sell it abroad as furniture or otherwise transformed wood. According to the law, companies are allowed to export up to 15 percent of their wood product as natural timber.

There are no known performance enforcement procedures for foreign companies. There are no known restrictions on U.S. or other foreign firms from participating in Congolese government financed or subsidized research and development programs.

A.6 Right to Private Ownership and Establishment

The law stipulates that each individual, without distinction of nationality, residing in the territory of the Republic of the Congo, has the right to establish a business in agriculture, mining, industry, forestry, handicrafts, commerce or services in accordance with existing policies. Local and foreign investors have the right to own and establish lawful business enterprises and all forms of remunerative activity.

The Republic of the Congo guarantees the legal right and freedom of private business to:

- Import or export raw materials or products, equipment and materials necessary for economic activity;
- Define their own production, commercial and hiring policies; and,
- Select suppliers and customers and set prices.

At present, the oil, timber and commerce sectors are led predominantly by foreign investors.

A.7 Protection of Property Rights

As a member of the Central African Economic and Monetary Community (CEMAC), the Congo is automatically a member of the African Intellectual Property Organization (AIPO). AIPO is charged with issuing a single copyright system that is enforceable in all member states. As a member of the World Trade Organization (WTO), the Congo must ensure that its legislation conforms to trade-related aspects governing intellectual property.

The Ministry of Commerce and other interested ministries work together to address issues related to counterfeit products and other items entering the country illegally. Containers of contraband items, such as medical supplies and food products, have been seized and destroyed by local authorities.

A.8 Transparency of the Regulatory System

Transparency in the government's economic management system is an ongoing concern. The Public Finance

Law of 2000 governs transparency and public management.

From 2006-2009, the Republic of the Congo, working with the International Monetary Fund and the World Bank, designed and began implementation of significant changes in the area of public finance and management of Congo's natural resources. A forestry code was adopted, a government procurement system was designed and implemented, major changes were made in the management of revenue from oil production, a national anti-corruption commission was established, new debt management procedures were adopted, and a system for monitoring public spending was developed. These reforms, if fully implemented, will vastly increase the transparency and efficiency of government economic management.

A.9 Efficient Capital Markets and Portfolio Investment

The Republic of the Congo does not have a stock exchange. Monetary and credit policies are set up by the BEAC within the CEMAC framework. The main objective is to ensure the stability of the common regional currency.

The privatization of the Congo's main commercial banks has been completed. However, the commercial banks provide credit and services primarily to large clients involved in the sectors of: oil, forestry, telecommunications, import-export, and services. The Congo's informal economy is predominantly cash-based and commercial banks service only a small segment of the market.

Banks do not yet provide adequate credit to small businesses, which appears to be a constraint on the country's economic growth and development.

A.10 Competition from State-Owned Enterprises

Following the liberalization of the Congolese economy in the 1990s, several state-owned enterprises were privatized. Some state-owned enterprises still exist, notably in the transportation, oil, energy, and water sectors. These sectors are deemed strategic by the Congolese government. The national oil company SNPC participates in all oil projects in the Republic of the Congo (usually at a 15 percent stake).

A.11 Corporate Social Responsibility (CSR)

The large oil companies engage in CSR practices such as funding local community development projects. This is viewed favorably by these communities. At the national level, there is little awareness of accepted CSR principles.

A.12 Political Violence

Multi-party democracy, established during the National Conference in 1991, experienced severe trials in the early 1990s and eventually led to the civil war that severely damaged Brazzaville and other Congolese cities from 1997-1999. Peace accords were signed in 2003 and stability has returned.

President Sassou N'Guesso offered a general amnesty to his former principal adversaries including former President Lissouba and the late Bernard Kolelas. The President continues to focus his nation's attention on peace and reconciliation, political unity, and economic and social development. Peaceful presidential elections were held in 2009. Legislative elections will be held in 2012.

A.13 Corruption

The Republic of the Congo has signed and ratified the UN anticorruption convention. Nonetheless, corruption is almost invariably linked to doing business in the country. Tender offers are irregularly publicized. There is an absence of substantiated figures on government spending. Contract terms are not transparent, and bribes are regularly solicited. Recourse to corruption in the judicial system might be limited as court cases are subject to political influence. Despite the pervasiveness of corruption in the Congolese investment climate, the country is making progress in putting in place mechanisms to address the challenges.

The national Anti-Corruption Commission was created in September 2009 by the Anti-Corruption Law. The commission's main function is to manage and track the implementation of anti-corruption and governance enhancement measures adopted by the government.

The Congo's success at reaching the completion point in the Heavily Indebted Poor Countries debt relief program in January 2010 was the result of the government's implementation of processes to ensure tighter budget controls. The Congo also committed itself to bringing the internal controls and accounting system of the state-owned oil company SNPC up to internationally recognized standards, preventing conflicts of interests in the marketing of oil, requiring officials of SNPC to publicly declare and divest any interests in companies having a business relationship with SNPC, and implementing an anti-corruption action plan with international support and monitoring by the IMF.

The HIPC agreement brought about $1.9 billion in debt relief in 2010, equivalent to a 32.4 percent reduction in Congo's sovereign debt. The debt relief is intended to increase the resources available to the Congolese government to finance poverty reduction programs, fight corruption, and support on-going financial and structural reforms.

A.14 Bilateral Investment Agreements

On February 12, 1990, the Republic of the Congo signed a Bilateral Investment Treaty with the United States. The treaty entered into force on August 13, 1994. Bilateral investment agreements with France and China have been in place for many years, as well as fiscal agreements with other CEMAC countries.

Commercial and bilateral agreements to safeguard investments have been signed with several African nations, including South Africa in 2005 and Namibia in 2007.

A.15 OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) is active in the Republic of the Congo with a political risk insurance program covering MINOCO (Minoterie du Congo SA), a flour mill company owned and operated by the Seaboard Corporation. The Republic of the Congo is also a member of the Multilateral Investment Guarantee Agency (MIGA).

A.16 Labor

The state civil service bureaucracy is the country's largest employer, with an estimated 80,000 employees. The World Bank and other international lending institutions have pressed for reform in public sector hiring practices. Unemployment among Congo's youth is approximately 40 percent, as young workers seeking to leave the rural agricultural economy find limited opportunities in urban centers, with state-owned enterprises, or in public service.

Except for members of the police, gendarmerie and armed forces, the Congolese Constitution provides workers with the right to form unions and to strike, subject to conditions established by law. The Labor Code allows for collective bargaining; however, collective bargaining is not widespread due to the social and economic disruption and extreme hardship that occurred during much of the 1990s. Several labor unions threatened to strike in 2009, but negotiations with the Congolese government led to the labor unions deciding to forego their threat.

The Labor Code establishes a standard work period of seven hours per day and 35 hours per week.

A.17 Foreign Trade Zones/Free Trade Zones

As a member of the Central African Customs Union (CEMAC), the Republic of the Congo belongs to a free trade zone which includes Cameroon, Central African Republic, Chad, Equatorial Guinea and Gabon. Within this zone, imports are subject to very low or even zero customs duties. The CEMAC zone is also considered a preferential trade area, for the Congo and the other member countries.

Three foreign trade zones, also known as special economic zones, are envisioned for the Congo. A memorandum of understanding was signed with the Government of Mauritius to solicit technical expertise on developing these special economic zones. In 2009, the Ministry to the Presidency in charge of Special Economic Zones was created to administer the nascent trade zones.

A.18 Foreign Direct Investment Statistics

Congo's economy relies primarily on exploitation of natural resources rather than industrial production. Hence, foreign direct investment is concentrated in the oil and forestry sectors, and increasingly in the mining sector. The government has increased its activity to attract investments in the telecommunications and banking sectors, and consequently investments in both sectors have risen.

Total Congolese exports to the United States were valued at $6.30 billion in 2010 and consisted mainly of oil and mineral fuels, and wood products. Goods imported to the Republic of the Congo from the United States were valued at $183 million in 2008 and consisted of vehicles, machinery, chemicals, and meat products. The 2008 balance of trade with the United States was $4.85 billion.

GDP was $15.56 billion in 2009 and $14.46 billion in 2008. GDP per capita was $3,900 in 2009, $3,700 in 2008, $3,600 in 2007. Real GDP grew at an estimated rate of 12.1 percent in 2010, 6.4 percent in 2009, and 3.7 percent in 2007.

U.S. foreign direct investment in the Republic of the Congo was $285 million in 2010. Total FDI inflow as a percentage of GDP represents 2 percent of GDP.

Following are some major companies registered as foreign businesses by the Congolese Chamber of Commerce.

Agriculture and Industry

A) Oil Sector:
- Chevron Overseas
- CMS Nomeco Congo
- Eni Congo
- Total
- X-oil
- Total Congo
- Murphy Oil

B) Forestry sector:
- CIB
- Cristal
- IFO
- Likouala Timber
- Thanry Congo
- Congo Timber
- FORALAC
- MAN FAI TAI
- TRABEC
- SICOFOR

C) Banking sector:
- Credit Lyonnais
- BCI (Banque Commerciale Internationale)
- La Congolaise de Banques
- BGFIBANK
- ECOBANK

D) Communication sector:
- AFRIPA Telecom Congo
- Airtel Congo
- Ets. Temi
- MTN
- Warid Telecommunication
- Azur

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