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DEMOCRATIC REPUBLIC OF THE CONGO
PRESIDENCY OF THE REPUBLIC
GENERAL INSPECTORATE OF FINANCE

SUMMARY REPORT OF THE
GENERAL INSPECTORATE OF FINANCE
ON THE MANAGEMENT OF MINING ASSETS
IN THE DRC BY THE PUBLIC ENTERPRISE
LA COMINIÈRE S.A

September 2022

SUMMARY REPORT OF THE MISSION TO MONITOR THE TRANSFER OF SHARES OF COMINIÈRE S.A. IN DATHCOM MINING SA

I. GENERAL

La Congolaise de l'Exploitation Minière, abbreviated La COMINIÈRE S.A., is a commercial company under Congolese law, formerly called ZAÏRETAÏN, whose entire shares belong to the Congolese State.

It has benefited with 40 mining titles from the Congolese State since its creation. To date, it holds only two (2). 37 mining titles have already been transferred to various private partners and one title is leased to CHEMAF.

Among the 37 mining titles transferred, 6 mining titles relating to LITHIUM deposits were sold in a joint venture called DATHCOM MINING with the Australian and Chinese private companies.

At the creation of DATHCOM MINING, the shares were distributed as follows in spite of the fact that it was COMINIÈRE S.A. which contributed with LITHIUM deposits and other minerals, while DATHOMIR was to provide the financing:

- 70% DATHOMIR MINING SARL ;
- 30% COMINIÈRE S.A.

II. HIGHLIGHTS

II.1. MANAGEMENT OF THE COMINIÈRE AT ODDS WITH ITS CORPORATE PURPOSE

- a) **Substitution of the corporate purpose of mining, which creates high added value, for that of simple equity investment activities in mixed companies through definitive and irrevocable transfers of mining titles.**

The corporate purpose of La COMINIÈRE S.A. as defined in its Article of Association is "to carry out all operations of studies, prospection, research and mining of cassiterite, coltan, tin etc. ".

However, a practice has been established in the General Management of COMINIÈRE SA (in violation of its Articles of Association), that of simple participation activities in mixed companies **in return for definitive and irrevocable transfers of mining titles, in exchange for minority participations of a maximum of 30% in the social capital of these joint ventures and 70% of the participations attributed to the other partners, even though they have not presented any financial guarantee.**

It is a real sell-off of the mining heritage of the State. The External Partners now definitively and irrevocably own more than 90% of the mining assets of COMINIÈRE S.A.

b) Irrational transfer of mineral rights without any prior evaluation, but in a definitive and irrevocable manner.

Abusive, systematic and irrational transfers of mining rights of the Congolese State without any prior evaluation have been noted, in exchange for a maximum of 30% of shares in the joint-ventures. The General Management of COMINIÈRE S.A. justifies these transfers by the lack of financial means, including State subsidies, as well as by the need for their survival.

Even though the Mining Code dedicates the final and irrevocable transfer of mining titles in its Chapter II, Articles 182 to 185, **final and irrevocable transfers of mining perimeters not preceded by a prior evaluation are acts of sell-off that cannot be justified by the absence of state subsidies, let alone by the need for survival.**

In the absence of any means of valuing mining titles before they are brought into the joint-ventures, a definitive and irrevocable transfer with a clause on the redistribution of the shares in the event of a valuation of the mining titles can be legally justified, which is not the case with the General Management

of COMINIÈRE S.A., who establishes definitive and irrevocable transfers of non-valued mining perimeters without any precautions.

c) Policy of Sale of mining titles motivated by the survival and not the enrichment of the State.

The investigations of the Monitoring Team have led to a contradictory finding of the absence of economic, financial and social repercussions of this policy of definitive and irrevocable transfers of the State's mining rights on the enrichment of the Congolese State, and that COMINIÈRE S.A is content to concern itself with the survival and not the enrichment of the Congolese State, owner of the mineral resources.

d) Transfer of Exploration Permits without payment of the transfer price to COMINIÈRE S.A

The Exploration Permits are transferred to the partners without payment of the transfer price to COMINIÈRE S.A., with no reaction from the General Manager a.i. of COMINIÈRE S.A., despite the fact that the transfer contract clearly provides for payment of a transfer price.

II.2. ALLOCATION OF JUICY SHARES IN JOINT VENTURES TO EXTERNAL PARTNERS WITHOUT ANY GUARANTEE OF SUBSEQUENT FINANCIAL CONTRIBUTIONS

DATHCOM Mining S.A. was initially created in partnership with DATHOMIR Mining Ressources on 17 October 2016. Its false promises of financing earned the latter the allocation of 70% of the shares, while COMINIÈRE S.A., which definitively and irrevocably transferred the mining titles, was satisfied with 30% of the shares. No proof of financing guarantees provided by its partner was given to the Monitoring team.

As if the 70% was not enough to mobilise the financing, DATHOMIR Mining Ressources was allocated a further 5% of the shares in COMINIÈRE SA on the grounds that a sister company of DATHOMIR had built the MANONO - PWETO road without being paid by the Congolese state. COMINIÈRE S.A. retained only 25%.

Despite holding 75% of the shares, the partner DATHOMIR was not, in spite of everything, able to mobilise the expected financing, but preferred, only two months after having benefited from the transfer of 5% of the shares of COMINIÈRE S.A., to sell 60% of the shares to AVZ International in violation of the provisions of the joint venture contract in its article 16 point (f) concerning its commitments and according to which, it could not transfer its shares before the date of the commercial production.

There is a clear need to note that the SPECULATION that has taken up residence in the mining sector which consists of taking Congolese mining titles for unfulfilled promises of financing.

Through this operation, DATHOMIR has made enormous profits without having paid a single penny in the partnership concluded with COMINIÈRE S.A.

II.3. SUCCESSIVE TRANSFERS OF THE SHARES OF COMINIÈRE S.A IN DATHCOM MINING S.A. IN VIOLATION OF THE LEGAL PROVISIONS ON THE DISENGAGEMENT OF THE STATE FROM PORTFOLIO COMPANIES

Law No. 08/008 of 7 July 2008 laying down general provisions relating to the withdrawal of the State from companies in the Portfolio defines in Article 2, point b, the State portfolio company as any company in which the State or any other legal person governed by public law holds the entire share capital or a stake.

In the light of the above, Article 3 of the aforementioned Act subjects the divestment to strict prerequisites, including the following:

- the valuation of the assets of the company concerned and the modalities of its valuation;
- the safeguarding of the State's interests by seeking the most advantageous conditions;
- the diversification and profitability of the State's portfolio in the medium and long term by taking advantage of the opportunities offered by the market.

By proceeding to successive transfers of shares, the prerequisites for the State's disengagement have not been respected at all.

In addition, article 7 of the above-mentioned law stipulates that the transfer of assets, shares or stocks or the transfer of management of a State portfolio company shall be carried out, as the case may be, according to one of the following techniques:

- a general or restricted invitation to tender;
- the use of private treaty market as an exceptional measure, in accordance with Article 20 of the same Act;
- a transfer to employees or the public.

All these violations have been authorised by the Ministry of Portfolio.

From a legal point of view, the responsibility of the management of COMINIÈRE S.A. as well as that of the Ministry of the Portfolio are accountable.

II.4. ABUSIVE FIXING AND TO THE DETRIMENT OF THE PUBLIC TREASURY OF THE VALUE OF TRANSFER OF THE 15% OF THE SHARES OF COMINIÈRE S.A. IN THE CAPITAL OF DATHCOM MINING SA, TO THE BENEFIT OF THE COMPANY ZIJIN MINING

On the grounds of obtaining means for exploitation, COMINIÈRE S.A. sold another 15% of its 25% shares in DATHCOM Mining to ZIJIN MINING.

The following irregularities were noted as follows:

- a) **Encroachment of the prerogatives of the Government's technical body in the choice of independent experts in charge of the valuation of the 15% of the divested shares.**

Article 11 of the above-mentioned law on divestment provides that the task of valuing the assets falls within the competence of independent experts under the responsibility of the Government's technical body, which is COPIREP.

COMINIÈRE S.A., in its planning of the sell-off of mining assets, has arrogated to itself the prerogatives of the Government's technical body to arbitrarily and hastily choose two consultants, in this case an association of mining and quarrying agents without a tax number and ALPHA BUSINESS COMPANY to carry out the same evaluation, whereas a

definitive feasibility study of the LITHIUM deposits project was already at its disposal.

b) Market value of COMINIÈRE SA's 15% of shares in DATHCOM Mining sold to ZIJIN Mining.

While the final feasibility study of the LITHIUM-only deposit project had communicated its results according to which the 100% of DATHCOM's shares were worth USD 1,028,000,000 and that the 15% of COMINIÈRE's shares were already worth **USD 154,200,000**, these (15% of the shares) were sold to ZIJING MINING for the derisory amount of **USD 33,440,000**, resulting in a loss of revenue of **USD 120,760,000**.

This sale engages the responsibility of the management of COMINIÈRE and the Ministry of the Portfolio which had given the authorisation.

c) Use of USD 33,440,000 of the proceeds from the sale of COMINIÈRE's 15% shares in DATHCOM

While the fundamental reason given for selling this 15% of the shares was to improve COMINIÈRE's operations, it was found that the amount of **USD 33,440,000** was squandered as follows:

- 5% of the transfer price, i.e., **USD 1,672,000.00** paid to FOCUS PLAIDOIRIE as commissions and fees;
- 5% of the transfer price, i.e., **USD 1,672,000.00** paid to the members of the Board of Directors as exceptional remuneration;
- **USD 700,000.00** paid to the two consultants who produced complacency studies on the basis of a price dumping for the transfer of the 15% of the shares was carried out;
- **USD 770,662.00** for remuneration of staff, agents and statutory auditors ;

- **USD 1.394,198.00** cash supplies for various expenses not audited by the Monitoring Team.

Nothing has been allocated to the operation of COMINIÈRE S.A to date and the account is almost empty.

II.5. ILLEGAL TRANSFERS OF MINING TITLES BY ASSIGNEES TO THE DETRIMENT OF COMINIÈRE SA

The contractual provisions prohibit the transfer of mining titles that constitute the contribution of COMINIÈRE S.A in DATHCOM Mining. The investigations of the Monitoring Team have led to a contradictory finding of illegal transfers of the following mining titles:

- The PE (Operating Permit) 12436 that COMINIÈRE S.A transferred on 07/12/2017 to DATHCOM Mining for exploitation was transferred by the latter on 07/12/2018 to HONGKONG YISEN which, in turn, transferred it on 17/05/2019 to HONGKONG EXCELLEN MINING INVESTMENT CONGO SARL;
- PE 12449 that COMINIÈRE S.A transferred on 07/12/2017 to DATHCOM Mining SA was transferred on 07/12/2018 by the latter to HONGKONG YISEN;
- The PE 12450 that COMINIÈRE S.A transferred on 07/06/2017 to DATHCOM Mining SA was transferred by the latter to HONGKONG EXCELLEN MINING INVESTMENT CONGO SARL.

Having been made in violation of the contractual provisions, these transfers are indeed illegal and to the detriment of the interests of COMINIÈRE S.A.

Indeed, the transfer of the Research Permits must give rise to the payment of the transfer price in favour of COMINIÈRE S.A and in addition, their transformation into an Operating Permit must also give rise to the payment of Key Money in favour of COMINIÈRE S.A. The Monitoring Team has not traced any of these revenues.

III. CONCLUSION

The General Inspectorate of Finance concludes that COMINIÈRE S.A. mining assets were intentionally sold off by its management team with the participation of the Ministry of the Portfolio.

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GENERAL INSPECTORATE OF FINANCE