

Mexico: Legislative reform on mining and territorial water concessions

On April 28, 2023 the Mexican Senate approved a legislative reform that modified the Mining Law, the Territorial Waters Law and other related environmental laws, proposing major changes to the mining and territorial waters concessions regime.

The main amendments to the Mining Law, Territorial Waters Law, General Law on Ecological Balance and the Protection of the Environment and the General Law for the Prevention and Integrated Management of Waste are described below.

1. Mining Law

Concessions will be granted by mineral or substance	Mining concessions must be requested for each mineral or substance susceptible to exploration and exploitation.
Reduction of the concession term	It is proposed to reduce the maximum term of mining concessions currently from 50 years extendable only once and for the same term (totaling up to 100 years), to 30 years extendable only once for an additional term of 25 years (totaling up to 55 years taking into account the first 5 years of pre-operational activities).
Replacement of the unrestricted land and first applicant scheme with a public tender process	Mining concessions will only be granted pursuant to a public tender process, the current scheme based on the first applicant in time for a mining lot on unrestricted land will be removed.
Removal of preferred status for mining activities and for the right to expropriate	The right to seek acquisition of land by expropriation for mining exploitation activities is removed, and interested parties will be required to enter into agreements with the owners or lawful holders of the plots of land.

<p>Economic compensation in case of land with human settlements</p>	<p>Where a plot of land subject to a public tender process is in an area that is inhabited or occupied by an indigenous or Afro-Mexican population or community, or has any other type of human settlement, the winner of the public tender process will have to sign an agreement with the community or population concerned to secure permission to use the land, and agree to compensation equal to at least 5% percent of the amount resulting from reducing the fiscal result referred to in the Income Tax Law, the sums covered by the holder of the concession for contributions not deductible for the purposes of said tax.</p>
<p>Social impact study</p>	<p>It is incorporated as an obligation of the concessionaires the realization of a social impact study and the execution of the prevention, mitigation and compensation measures that are imposed in the opinion issued in this regard by the Ministry of Economy.</p>
<p>Guarantee to cover prevention, mitigation, and compensation measures</p>	<p>Fulfillment of the measures contained in the social impact report will have to be guaranteed with a letter of credit, insurance, deposit to the Treasury of the Federation, trust or any financial vehicle that for this purpose is determined by regulatory provisions.</p> <p>If any social effects occur, the guarantee will be enforced to cover prevention, mitigation or compensation measures quantified in the social impact report or even where any effects not provided for in the report arise.</p>
<p>Free and informed prior consultation of indigenous and Afro-Mexican peoples and communities</p>	<p>Where land plots are located in areas belonging to indigenous or Afro-Mexican people, an obligation to carry out in advance a free and informed consultation is included with the status of law. This is without prejudice to the fact that this obligation is already provided in ILO Convention 169 and in the Political Constitution of the United Mexican States.</p>

<p>Authorization to transfer mining concessions and joint liability</p>	<p>Transfer of mining concessions is subject to the prior authorization from the Ministry of Economy and to fulfillment by the transferee of the requirements requested for the original concession. In the event of a breach of obligations before the transfer of ownership, transferor and transferee will be jointly liable.</p>
<p>Mining concessions may not be granted as guaranty</p>	<p>The concession holder's right to grant the concession title to secure any obligations is removed.</p>
<p>Availability of water as a condition for new concessions</p>	<p>The granting of new mining concessions and any extension thereof, will be conditional on water availability and to have a concession title for territorial waters.</p>
<p>New grounds for termination of a mining concession</p>	<p>The following events are added or further specified as grounds for termination: (i) the absence of a report on potential damage or risks to ecological balance, (ii) not having permits, concessions or authorizations from other authorities, and (iii) not having closure or waste management programs, valid territorial water concession, among others.</p>
<p>Prohibition of concessions in protected natural areas, federal zones or zones of risk to the population</p>	<p>Mining exploration and exploitation works and activities are prohibited in: (i) protected natural areas; (ii) watercourses of territorial bodies of water and their federal zones, on the underwater islands' shelves, cays and reefs, the seabed, subsoil below the exclusive economic zone, in the federal maritime-terrestrial zone and in areas of reclaimed land from the sea; and (iii) in places where the population is placed at risk.</p>
<p>Other federal permits as a condition</p>	<p>The award of mining concession titles is made conditional on completion of the prior application procedure for other federal authorizations and permits that are required for mining activities.</p>

<p>Amendments to fines</p>	<p>Infringements to the Mining Law will be subject to a fine equal to 1% or 4% of the infringing party's annual revenues, and MXN\$ 518,700 or MXN\$ 1,037,400, (\$28,700 USD or \$57,400 USD approximately) depending on the infringement.</p>
<p>Longer term for verification powers</p>	<p>The verification powers of the Ministry of Economy are extended from 5 to 10 years counted from the date of the breach or in the event of continuous breaches from the date on which the breach is cured.</p>
<p>Mine Closure Plan</p>	<p>An obligation is included for concession holders to close mining operations under a Mine Closure Plan.</p> <p>The Mine Closure Plan will be subject to approval by the Ministry of Economy and will set out the obligations, procedures and actions needed for environmental repair, restoration, rehabilitation or remediation and social mitigation or compensation, when the mining operations stop.</p>
<p>Criminal offenses</p>	<p>A chapter on mining criminal offenses is included in the law, which punishes with imprisonment extracting, selling or trading minerals without a concession.</p>
<p>Transitional rules</p>	<p>Any pending applications under review by the competent authority for new exploration or exploitation concessions will be disregarded.</p> <p>Any concessions in protected natural areas will not be extended.</p> <p>Concession holders will have 365 calendar days to file a suitable financial vehicle to secure any potential damage that may arise in the performance of the mining activities.</p>

2. Territorial Waters Law

<p>New classification for use of water in mining</p>	<p>A new specific classification for the use of territorial waters for mining is included, together with new obligations for concession holders for this new water use classification.</p>
<p>Water for mining operations</p>	<p>Currently the tillage waters are free to use. The initiative proposes to subject its use, exploitation or exploitation, to obtaining a concession for use in mining.</p>
<p>Reduction of the term for water concessions relating to use in mining</p>	<p>Where they relate to use in mining, water concessions will be granted for a maximum term of 30 years extendable for up to 25 years.</p>
<p>Additional requirements for applying for a water concession</p>	<p>Additional requirements are incorporated to request a concession of national waters for use in mining: (i) the favorable mining concession contest, and (ii) authorization of the Restoration, Closure and Post-closure Program of mines, among others.</p>
<p>Additional obligations for water concession holders</p>	<p>Additional obligations specific to the use in mining are incorporated: (i) monthly measurements of water quantity and quality, and (ii) installation of telemetric measurement devices with real-time reporting in all surface or groundwater intakes.</p>
<p>Restriction on the transfer of rights for use in mining</p>	<p>It is prohibited to transfer rights to exploit, use or apply territorial waters authorized for mining for any other use.</p>
<p>New grounds for revocation</p>	<p>New grounds for revocation are included: (i) supervening events or acts in public, general or social interest, or which cause any type of economic, social, environmental or any other type of imbalance, and (ii) failure to fulfill the restoration, closure and post-closure program.</p>

<p>Transitional rules</p>	<p>Any territorial water concession holders who carry out mining activities will have 90 calendar days to apply to the National Water Commission for a change of use for the concession from industrial to use in mining.</p>
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3. General Law of Ecological Balance and Environmental Protection

<p>Prohibited activities in protected natural areas</p>	<p>The law prohibits the performance of works related to the exploration and exploitation activities for the minerals or substances referred to in the Mining Law within protected natural areas.</p>
<p>Restoration, closure and post-closure program</p>	<p>The Initiative lays down an obligation to have a mine restoration, closure and post-closure program, authorized by the Office of the Secretary for the Environment and Natural Resources (SEMARNAT).</p> <p>This program will be drawn up to set out the actions for environmental repair, restoration, and remediation to be performed between commencement of the exploration, exploitation and beneficiation activities for the minerals or substances and the post-closure stage.</p> <p>The actions approved in the program will have to be secured with a financial vehicle.</p>
<p>Transitional rules</p>	<p>Mining concession holders will have 365 calendar days to file the mine restoration, closure and post-closure program for authorization by SEMARNAT.</p>

4. General Law on the Prevention and Integral Management of Waste

Final provision on mining and metallurgical waste	It is prohibited for mining and metallurgical waste to be finally discharged in protected natural areas, wetlands, riverbeds and federal territorial waters zones or in places where residential areas will be affected due to the course that the waste would follow.
Extended Liability	Mining waste will be a permanent and nontransferable responsibility of the mining concession holder, regardless of whether its management is performed through a third party, which will share that liability on a joint basis.

What comes next and what impact will these reforms have?

Changes in the legislation applicable to the mining industry could generate legal uncertainty in the performance of mining activities in Mexico due to the modification conditions and return expectations of investors in this sector. These reforms are likely to be challenged through constitutional review trials such as the amparo trial.

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