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Amendments to the Mining Law and Environmental Laws

The amendment to the Mining Law, the National Water Law, the General Law of Ecological Balance and Environmental Protection, and the General Law for the Prevention and Comprehensive Management of Waste was published yesterday in the Federal Official Gazette and became effective today (prior approval of the Chamber of Deputies and the Senate, on April 20 and 28, respectively). The amendment represents a significant milestone in mining legislation. This newsletter explores the key aspects of this amendment and its impact on the mining industry and the industrial sector as a whole.

Concessioned lands or areas

The amendment eliminates the possibility of granting mining claims at free plots to the first applicant. As of its entry into force, all new mining claims will be granted through a public bidding process.

It is not possible to obtain a mining claims at: areas located within lands declared mining reserves, areas with minerals declared strategic by the state, protected natural areas, areas without water availability, areas where mining activities pose a risk to the population, as well as areas where the Ministry of Economy and the Ministry of Energy determine that mining activities are incompatible with oil (and other hydrocarbon) exploration and extraction activities or with public electric power transmission and distribution activities.

Competition public bidding process for the granting of new mining claims

Once the call for competition is published, each participant can submit a proposal for economic compensation and a discovery premium. Indigenous or Afro-American communities inhabiting the territory, as well as holder of the mining claims contiguous to the lot, maintain a preference right for the granting of the mining claim. The amendment prohibits granting mining claims to the holder of two or more mining claims contiguous to the plot.

The amendment includes the granting of indefinite term assignments in favor of the Federal Public Administration parastatal entities. These assignments are limited for minerals or substances strategic or reserved to the State and cannot be transferred to private individuals or entities.

This change in the granting of mining claims entails the concentration of mining exploration activities in the Mexican Geological Service, through exploration orders issued by the Ministry of Economy. There is the possibility of entering into collaboration agreements (with a maximum duration of 5 years) for the exploration of lots with third parties who proposed the exploration to the Ministry of Economy, granting them a preferential right if the competition process is opened.

According to the transitional articles, pending applications for new mining claims will be dismissed without any further procedure.

Participation of Indigenous and Afro-American peoples and communities

The amendment establishes mechanisms to carry out prior, free, informed, culturally appropriate, and good faith consultations to obtain the consent of indigenous or Afro-American peoples and communities located in mining lots. This consultation must precede the granting of the mining claim and simultaneously with the one required for environmental impact. It is required to submit a financial instrument to guarantee the compliance of the preventive, mitigation, and compensation measures derived from the social impact assessment.

Likewise, the awarded parties shall obtain land use permission and cover a minimum consideration linked to the fiscal result of the profits obtained, which will be deposited into an account administered by the community.

Object of Mining Claims

One of the main modifications of the amendment is that mining claims are now granted per mineral(s) instead of per geographic area. In case additional mineral(s) are discovered during exploitation, the mining claim can be modified to include them, subject to payment of a discovery premium, among others. Holders shall immediately report the presence of other non-concessioned minerals, and if applicable, these minerals must be handed over to the Ministry of Economy.

Validity of Mining Claims

Mining claims will have a duration of 30 years, with the possibility to allocate the first years to operational activities. Mining claims can be extended once for a term of 25 years. After the renewal, the holder can participate in the competition for the mining lot and will have a preferential right, with the limitation the new claim will be granted for a non-renewable term of 25 years.

According to the transitional regime, mining claims granted prior to the amendment will maintain the effective-term provided in the corresponding title. In absence of specific provisions, it is understood that the renewal application will be resolved according to the new regulatory framework. It also set forth that renewals will not be granted neither for mining claims located at protected natural areas, nor for those related to mercury.

The limitation on the validity of mining claims can affect the profitability of mining projects and the ability of mining companies to secure long-term financing.

Nullity of mining claims

The Ministry of Economy has the authority to declare the nullity of mining claims in case of omission or irregularity of any element of validity of the Administrative Act, as well as the power to initiate a lesivity lawsuit against resolutions and mining claim that affect the public interest or the Federal Public Administration.

Modification of rights and obligations for holders of mining claims

- » *Execution of works and activities:* Holders are obliged to carry out the works and activities provided for by law and notify the Ministry of Economy of their execution within ninety business days following the registration of the mining claim in the Public Mining Registry or upon completion of operational activities. The obligation to submit annual verification reports is maintained, with the

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possibility of accrediting, once only and for a period of up to three years, the temporary suspension of the obligation to carry out works and activities, upon prior notice to the Ministry of Economy.

- » *Accident or incident reports:* The amendment establishes the obligation to report to the Ministry of Economy any accident that has caused damage due to mining operations or any incident that endangers the safety of individuals, their property, or the environment within the mining site. In these cases, the works and activities in the mining site will be temporarily suspended until next steps are determined. Additionally, the failure to report such incidents on two occasions within a maximum period of 72 hours from the occurrence of the events will be considered grounds for the cancellation of the mining claim.
- » *Prohibited works and activities:* Exploration, exploitation, and mining operations are prohibited within protected natural areas, watercourses or national water bodies and their federal zones, underwater basements of islands, cays, and reefs, the seabed, the subsoil of the exclusive economic zone, the federal maritime-terrestrial zone, and land reclaimed from the sea.
- » *Mine Closure Plan and Mine Restoration, Closure, and Post-Closure Program:* The Mine Closure Plan must be submitted to the Ministry of Economy within two years and up to one year prior to the closure of operations. This program shall be consistent with the Restoration, Closure, and Post-Closure Program authorized by the Ministry of Environment and Natural Resources, which shall establish the actions for the repair, restoration, rehabilitation, and environmental remediation to be carried out from the beginning of mineral exploration, exploitation, and processing activities until the post-closure phase. According to the transitional regime, current holders will have a term of 365 days to request authorization for the Mine Restoration, Closure, and Post-Closure Program from the Ministry of Environment and Natural Resources, as well as to submit a financial instrument to guarantee possible damages that may occur during the execution of mining activities.
- » *Temporary occupation or establishment of easements:* Considering the elimination of the preferential nature of mining activities, the possibility of expropriating land critical for the execution of exploitation and processing works is eliminated. The only possibility remaining is requesting the temporary occupation or the establishment of easements. In the case of new mining claims through competition public bidding process, temporary occupation or the establishment of easements may be declared once the winning has obtained the use or possession of the land necessary to carry out the activities covered by the mining claim.
- » *Water Resources Utilization:* The right to use water resulting from mining activities is maintained, provided that notice is given to the National Water Commission and governmental fees are paid (per the measurement devices to be installed). Additionally, there is an obligation to implement water reuse measures within the mining area in order to achieve a minimum of 70% recycling of treated wastewater.

A new legal framework is established for water concessions aimed for “*industrial mining use*”, with stricter regulations for granting and extending such concessions, as well as prohibiting the transfer of water concessions for other uses to the new industrial mining use. New monitoring and control mechanisms are established for these concessions to prevent the pollution of water sources, such as the prohibition of using them for transporting materials from mining operations, deepening extraction wells for this purpose, and designing networks of monitoring wells for water quantity and quality, among others.

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The amendment to the National Water Law also introduces new provisions applicable to any concessionaire, regardless of its use, including: (i) any authorization, concession, permit, or extension granted under the Law must prioritize human and domestic consumption, (ii) in the event of a risk to the availability of water for human and domestic consumption, the National Water Commission will reduce or cancel the volume of the water concession, and (iii) it adds as grounds for revocation any subsequent facts or acts of public, general, or social interest, or that cause some form of economic, social, environmental, or any other kind of imbalance.

The transitional regime set forth that holders of water concessions engaged in mining activities shall request the change of use before the National Water Commission within 90 calendar days from the entry into force of the amendment.

- » *Mining and Metallurgical Waste:* The amendment states that no deposits or final disposal sites for mining waste, tailings, slag, mine sludge, or mineral beneficiation facilities shall be constructed in protected natural areas, wetlands, reservoirs, riverbeds, federal zones, protection zones, and other national assets, or in places where the path taken by the waste in the event of a rupture would affect population centers. According to the transitional regime, holders will have a period of 365 calendar days from the notification by the competent authorities to carry out the removal or remediation of tailings or slag dams in cases where they pose risks to the safety or health of the population, productive areas, or ecosystems. This amendment may have a significant impact on current mining operations, whose disposal sites were built and operating in compliance with NOM-141-SEMARNAT-2003 and NOM-157-SEMARNAT-2009.

Furthermore, the amendment includes significant amendments to the General Law for the Prevention and Comprehensive Management of Waste, modifying both the concept of waste from the mining and metallurgical industry to mining and metallurgical waste, as well as its regulation. For example, it establishes that the waste generated during mining activities will be the permanent and non-transferable responsibility of the generator.

Assignment of Mining Claims

The amendment establishes that mining claims may be assigned with prior authorization from the Ministry of Economy. The transfer procedure will be regulated in the Regulations of the Law.

Mining Claims Guarantee

According to the amendment, mining claims can be used as guarantee for the fulfillment of obligations by the holders, provided that: (i) the mine is in operation, (ii) prior authorization from the Ministry of Economy is obtained, and (iii) a statement is made by the person in whose favor the guarantee is being constituted, indicating that in the event it is enforced, they must demonstrate within a period of 6 months that they meet the requirements to be a holder of a mining claim; otherwise, the rights to the mining claim must be transferred.

Prescription Regime

The amendment extends the term granted for the Ministry of Economy to verify compliance with obligations and impose sanctions, from 5 to 10 years, from the date of non-compliance or, if it is of a continuous nature, from the date it ceases. Except in cases related to human rights, where the obligations and responsibilities of the mining claim holder are imprescriptible.

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Verification and Compliance

Finally, the amendment includes more rigorous provisions for the verification and compliance by mining holders. Control mechanisms are strengthened, new offenses are added, and more severe sanctions are established for mining companies that fail to comply with the regulatory framework.

Overall, the amendment may have a significant impact for mining projects in Mexico, triggering the presentation of challenging recourses (such as *amparo* lawsuit). In parallel, mining companies will develop long-term risk management strategies and financial planning to ensure the sustainability and profitability of their mining projects in the new regulatory environment.

If you require any additional information regarding the amendment and its consequences or any regulatory matter, please contact our partner Brenda Rogel (brogel@ritch.com.mx).

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