

# Publication of Mining Reforms

May 11, 2023

## I. Introduction

On May 8, 2023, several amendments to the Mining Law, the National Waters Law, the General Law of Ecological Balance and Environmental Protection, as well as the General Law for the Prevention and Integral Management of Waste, regarding the mining industry (the "Mining Reform") were published in the Official Gazette of the Federation.

The reforms approved by the Congress of the Union present several differences with respect to the initiative sent by the Federal Executive<sup>1</sup>.

## II. Analysis of the Mining Reform and its Relevant Changes

### a. Reduction of mining concessions duration

The Mining Reform establishes that mining concessions will be granted for a term of 30 years from the date of registration in the Public Mining Registry, which may be extended, on a single occasion, for an additional 25 years. The first 5 years of the concession must be used for pre-operative activities.

Likewise, when the term of such extension expires, the concessionaire will have the right of first refusal to participate in the tender of the same mining area for another 25 years, which cannot be extended thereafter.

Currently, mining concessions are granted for a period of 50 years and may be extended for an equal term. The transitory provisions of the Mining Reform establish that concessions granted prior to its possible entry into force will maintain the duration provided in their respective titles.

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<sup>1</sup>. On April 5, 2023, an alert was issued describing the Federal Executive's initiative, which can be viewed at the following link: <https://macf.com.mx/Iniciativa-de-Reforma-Presidencial-en-Materia-de-Mineria->

**b. Concessions will only be granted for specific minerals or substances**

It is established that the concession titles must specify each mineral or substance susceptible to exploitation. Currently, mining concessions are granted for the all the resources found in the concession area.

It was added that, if minerals which are not contemplated in the concession title and are not reserved to the State, are found, the title may be modified to include them, subject to the payment of a premium.

Similarly, it is provided that each concessionaire has the obligation to immediately inform the Ministry of Economy in cases where presence of unauthorized minerals or substances is detected, which must be surrendered to said authority.

Likewise, the possibility of reporting non-strategic mineral deposits is contemplated, obtaining in exchange the right of first refusal on the concession of such mining area, as well as a 10% discount with respect to the highest proposal to obtain the concession.

**c. Prior consultation with indigenous and Afro-Mexican communities is established, as well as compensation in their favor**

In the case of concession areas located in territories of indigenous or Afro-Mexican communities, the Mining Reform establishes that in order to grant mining concessions or permits, the Ministry of Economy, must request the competent authorities to carry out a prior, free, informed, culturally appropriate and good faith consultation to obtain the consent of such communities. The cost of this consultation must be covered by the person to whom the concession is granted.

Likewise, the Mining Reform provides that cases where an area subject to a tender is inhabited or occupied by an indigenous or Afro-Mexican community, the winner of the tender must enter into an agreement with the community to obtain permission to use the land. This agreement must establish compensation in favor of the community of at least 5% of the profits obtained from the activity carried out under the concession.

Additionally, upon granting the concession, the concessionaire must provide the corresponding tax returns to the indigenous communities. Furthermore, the consideration will be transferred to an account administered by the community in accordance with the operating rules that will be issued by the Ministry of Economy.

**d. Authorization of the environmental impact statement**

In addition to complying with a social impact study, the concessionaire is now required to obtain authorization for the environmental impact assessment.

Furthermore, provisions have been added to ensure compliance with social impact prevention measures, such as insurance, letters of credit, trusts, among others.

**e. Elimination of the free land and first applicant scheme for granting concessions, and establishment of a tender system**

It is established that concessions be granted through a public tender process, thus, eliminating the current system of granting concessions on free land to the first applicant.

**f. Elimination of the preferential nature of mining activity**

In one of the most relevant changes, the Mining Reform eliminates the provision that states that the exploration, beneficiation, and exploitation of minerals is preferred over any other use or exploitation of the land.

Likewise, the Mining Reform eliminates the right of concessionaires to obtain the expropriation of the indispensable lands for carrying out exploration, exploitation, and beneficiation works and activities.

**g. Prohibition of granting concessions in areas with low water availability and protected natural areas**

The Mining Reform prohibits the issuance of mining concessions in natural protected areas and in areas where there is no water availability.

It should be noted that it grants the National Water Commission ("CONAGUA") to diminish and cancel already concessioned water volumes when there is a risk of non-sufficient water availability for human and domestic consumption.

**h. Indefinite duration of the permit for public sector companies**

It is established that mining permits may be granted to state-owned entities of the Federal Public Administration without being subject to a tender, which will have an indefinite duration and will only reach its term when it is demonstrated that there is no longer a cause of public utility or public interest.

**i. New requirements for the transfer of concession titles**

The Mining Reform provides that the transfer of concessions must be authorized by the Ministry of Economy in accordance with the procedure that will be provided for in the Mining Law Regulations.

**j. Ecological Balance Risks**

It has been added that, in the event of risks to the ecological balance, the Ministry of Environment and Natural Resources ("SEMARNAT") will notify to the concessionaire, allowing a period of 3 months to remedy the situation. Failure to do so will result in the suspension of the concession for 6 months. Once the suspension is granted, the concessionaire must rectify the ecological imbalance, and if they fail to do so, the concession will be cancelled.

**k. New causes for the cancellation of mining concessions**

The Mining Reform adds, among others, the following grounds for the cancellation of mining concessions:

- Failure to make timely payments of contributions for two consecutive years.
- Failure to commence work within one year from the date of the concession.
- Failure to carry out the work object of the concession within a period of two consecutive years.
- Failure to submit the Mine Closure Plan within two years and up to one year prior to the closure of operations.
- Failure to have a valid water concession for mining.
- The imminent existence of ecological imbalance or irreversible damage or deterioration of natural resources and cases of pollution.
- Not notifying, for two consecutive occasions, about accidents occurring as a result of the mine's operation that cause damage to people, property or the environment.

It has also been established that mining concessions may be used as guarantee with prior authorization from the Ministry of Economy. The creditor holding such collateral will be required to prove that they meet the requirements to be a concessionaire; otherwise, they must assign their rights

## **I. Obligation to implement environmental and social instruments**

The Mining Reform establishes the obligation for concessionaires to have a Mine Restoration and Post-Closure Programs, which must be approved by the SEMARNAT and be guaranteed by different secure financial vehicles. The transitory provisions establish a period of 365 calendar days following its entry into force to present and guarantee said programs applicable to current concessionaires.

### **m. New mining offenses**

The Mining Reform establishes as punishable offenses with a penalty of 5 to 10 years in prison and a fine of 5% of the total annual income plus approximately USD 51,870, the following conducts:

- Extraction minerals or substances without being the holder of a mining concession.
- Sale or traffic of minerals and metallurgical derivatives without having the corresponding concession..
- Presenting false information to obtain or maintain a mining concession.
- Compromise physical safety of workers by omitting compliance with the applicable regulations on mining safety.

### **n. Main amendments to the National Waters Law. Creation of water concessions for the use in mining**

Concessions for specific industrial use in mining are created, such concessions will be valid from 5 up to 30 years. The transitory provisions establish a period of 90 natural days after the entry into force to request to CONAGUA the change of use of existing concessions from industrial to mining.

Likewise, it forbids the assignment of water rights from any other industrial use to the use of mining.

It includes certain technical requirements to request for a water concession for industrial use in mining, such as the Mine Restoration, Closure and Post-closure Program, among others.



**o. Main amendments to the General Law for the Prevention and Integral Management of Waste.**

The Mining Reform creates specific categories of metallurgical waste and mining waste, which will fall under the federal jurisdiction and will be subject to the management plans registered by their generators.

Contrary to the figure of joint but differentiated liability established in the General Law for the Prevention and Integral Management of Waste, it sets forth the permanent and non-transferable liability of the holder of a mining concession. Such liability will be independent of the joint and several liability of third-party service providers for the management of mining and metallurgical waste.

**III. Potential impacts**

As a result of the changes foreseen by the Mining Reform, it is important that each company evaluates its situation to determine if there are relevant impacts and, where appropriate, define the defense that could be undertaken.

If you have any questions or comments, please do not hesitate to contact our expert team.

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