

Comprehensive law reform initiative to impact the Mexican Mining Industry

On March 28, 2023, a bill of the Federal Executive Branch was submitted to Congress aiming to reform provisions of the Mining Law, National Water Law, General Ecological Balance and Environmental Protection Law, and the General Law for the Prevention and Integral Management of Wastes, which if passed as drafted will substantially impact how mining activities are carried out in Mexico (the “**Bill Initiative**”).

The Bill Initiative contemplates fundamental changes for the country’s mining industry and its close correlation with Mexico’s environmental and national water legislation, change in the mining concession granting scheme to establish a single “public bidding” mechanism, as well as to reduce the term of the mining concessions titles from 50 to 15 years. Although the Bill Initiative has not been discussed in the respective Commissions in the Legislative Branch, it is relevant to point out some of the bill’s main considerations.

1. Regarding the Mining Law, the amendments intended to be made through the Bill Initiative are the following:
 - A. First, the Bill Initiative **increases** the regulatory burden for obtaining mining concessions, specifically through:
 - New requirements for public tender procedures to grant mining concession, which would be the only mechanism to obtain a concession.
 - Stricter standards and new authorities involved in inspections carried out on properties subject to or related to the mining concessions.
 - An extensive list of criminal conducts is added, and fines for non-compliance with the applicable regulations are increased.
 - New and very wide-ranging grounds for revocation of mining concession titles are established.
 - B. Secondly, the Bill Initiative **limits and/or eliminates rights** of the holders of mining concessions, specifically:
 - Mining concessions will have a duration of 15 years and may only be extended once. This point is certainly one of the most significant changes of the Bill Initiative, since the current legislation contemplates a 50-year term for such mining concessions, which may be extended for the same term.
 - The holders no longer have the right to dispose of the land within the concession area, nor can they use the water coming from the concessioned mines.

- Elimination of the preferential obtaining of a concession on the water of concessioned mines.
- The “free land” scheme is eliminated (adding multiple zones that cannot be subject to concessions).
- The possibility of using the mining concessions as collateral for meeting their holder’s obligations is eliminated.

C. On the other hand, the Bill Initiative also **increases the obligations** of the mining concession holders, specifically:

- Care must be taken to protect the environment, through multiple measures, such as: presenting waste management programs, giving notice to the authority of any incident that puts the ecological balance at risk, presenting a letter of credit that guarantees any possible environmental damages, and having *Restoration, Closure and Post-Closure of Mines Program*.
- When the land subject to the concession is inhabited by an indigenous or Afro-Mexican community, there must be a prior, free, informed, culturally adequate and good faith consultation and, if appropriate, enter into an agreement with said community. It is important to note that this commitment was already recognized by the Mexican State in the Convention 169 of the International Labor Organization.
- In various cases, the following must be prepared and provided to the authorities: (i) social impact studies (which must be presented once the favorable award in the mining concession tender is obtained), (ii) *Restoration, Closure and Post-Closure of Mines Programs*, (iii) letters of credit guaranteeing possible damages caused by mining activities and (iv) waste management programs.

2. In relation to the National Water Law, the Bill Initiative also makes amendments (closely linked to the above mentioned in point 1) to the following provisions:

- The figure of water concession for specific use in mining is established, which will be subject to water availability and will have a duration of 5 years (with the possibility of extensions).
- The transfer of rights of water concession titles for specific use in mining is prohibited.
- It is prohibited to grant concessions for mining use if the applicant intends to concentrate more than 30% of the total volume of average annual availability of the basin or aquifer in question.
- New and very broad grounds for revocation of concession titles, assignment and water discharge permits are established, among them, for events or supervening acts of public, general or social interest, or that cause economic, social, environmental or any other kind of imbalance.

3. With respect to the General Ecological Balance and Environmental Protection Law and the General Law for the Prevention and Integral Management of Waste, the Bill Initiative intends to modify some provisions whose purpose is to:

- Prohibit the granting of authorizations for mining activities in Protected Natural Areas.
- Implement the new figure of *Restoration, Closure and Post-Closure of Mines Program*, whose purpose is to establish a program to remove deposits from areas subject to concessions, which affect or may affect the ecosystem or contribute to environmental contamination, which will be substantiated before the Ministry of the Environment and Natural Resources.
- Establish that mining and metallurgical wastes are the permanent responsibility of the holder of the mining concession.

If this Bill Initiative is approved, the entry into force of the amendment will imply a substantial change in the mining and water concession regime and possible impacts on fundamental rights. For example, pending applications for new concessions will be dismissed outright. Persons currently holding existing concession titles will have to comply with additional obligations, such as obtaining an additional letter of credit to guarantee possible damages, as well as submitting additional authorization applications to the Ministry of Environment and Natural Resources.

The sixth transitory provision of the Bill Initiative states that concessions granted prior to the entry into force of the decree will have the term provided in the respective title, but the additional obligations indicated in the preceding paragraph must be complied with.

On the other hand, those interested in obtaining concession titles will have to re-evaluate the economic implications of this initiative, in light of the limitations it imposes and the differential treatment with respect to state entities with concessions.

These possible effects could violate fundamental rights established in the Constitution and international treaties, such as the right to equality, the guarantee of non-retroactivity of the law and freedom of trade.

It is important to analyze the specific situation of each interested party in order to determine the appropriate mechanisms to protect their interests. Moreover, in the case of foreign investors, any legal strategy should be designed in such a way that it does not imply waivers of rights under international investment protection, such as possible investment arbitration.

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