

Alert | Mining/Environmental



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Mexico’s Initiative to Amend Mining Law, Related Environmental Law Provisions Regarding Mining and Water Concessions

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On March 28, 2023, Mexico’s President presented to the Chamber of Representatives an initiative to amend several provisions of the Mining Law, the National Water Law, the General Law of Ecological Equilibrium and Environmental Protection, and the General Law for the Prevention and Integral Management of Waste regarding mining and water concessions (the “Initiative”).

The Initiative aims to significantly modify the mining concessions model to (i) resume state control of Mexico’s mineral and water resources, and (ii) protect the population’s right to a healthy environment and clean water, preserve the nation’s natural resources, and assure the right of the original populations to preserve their territories.

This reform, if approved, would include fundamental changes to the mining industry and substantially impact the development of the industry and its regulations. The Initiative proposes to modify the current regime of rights and obligations applicable to the obtaining, transfer, operation, term and expiration of mining concessions, the management of mining waste, and the granting of concessions and use of water for mining operations. If approved, these provisions would impact new mining activities as well as mining operations carried out under prior mining concessions.

Initiative

Following are some of the most significant changes proposed under the Initiative:

I. MINING LAW

- 1. Granting of new concessions through public bidding and letter of credit.** The Initiative proposes eliminating the “free land” and “first applicant” staking existing regime and, therefore, any new mining concessions would only be granted through a public bidding process, which, according to the Initiative, guarantees that the Mexican State receives the best consideration possible. As a precondition for the granting of concessions, the applicant must provide a letter of credit guaranteeing compliance with the measures established in the corresponding Social Impact Study.
- 2. Mining concession would only give right over one mineral.** Mining concessions would be granted only for a mineral or substance susceptible to exploitation. Whereas the current law permits the exploration of any mineral located within the concession, the Initiative would eliminate this possibility.
- 3. Removal of the preferential nature of mining activity.** Mining would no longer have preferential rights over other industries. Therefore, a mining concessionaire whose claim overlaps with a private property of a third party would not continue having the right to request from the Government expropriation to obtain land access and superficial rights over such private property and would have to privately negotiate access with the third-party owner.
- 4. Reduction of term and extension of new mining concessions.** The Initiative would reduce the term of new mining concessions from 50 to 15 years, which could be extended once for an equal period, totaling a maximum of 30 years. As to existing mining concessions, the Initiative provides that their current term (50 years) would remain unaffected; however, it is silent as to the number of years for which any of such concessions may be extended (50 or 15).
- 5. Transfer and constitution of security interests over the rights granted through a mining concession.** Unlike the current regime, which only requires registration before the Public Mining Registry, the transfer of a mining concession under the Initiative would require Ministry of Economy approval and would be granted when the acquirer provides evidence of compliance with the necessary requirements. Likewise, the Initiative would prohibit any security interest or liens over the rights of the mining concession for guaranteeing any obligations with third parties.
- 6. Minimum payment on profits.** The recipient of a new concession in an area with an existing population or community would be required to pay a minimum of 10% of the profits obtained from the mining activity to the affected community.
- 7. Prerequisites.** The Initiative would require a Social Impact Study and community consultation. A concession could only be granted after the completion of (i) a study that evaluates the possible social impact of the mining activity in the region and establishes prevention and mitigation measures; and (ii) a prior, free and informed consultation with the indigenous and Afro-Mexican people and communities.

8. **New environmental and social regulations.** New mechanisms would be created to regulate and prevent predatory mining activities that infringe upon the right to water, such as (i) a Social Impact Study, (ii) a Restoration, Closure and Post Closure Program; (iii) a Mine Closure Plan and letter of credit to guarantee compliance with obligations, and (iv) a Waste Management Program.
9. **Water availability as a condition for granting new mining concessions.** The feasibility of granting a concession would be determined based on the availability of water in the region and, if applicable, on obtaining a concession for the use of water for mining.
10. **New grounds for cancellation of mining concessions.** In addition to those grounds already outlined in the current law, under the Initiative a mining concession could be cancelled in the case of (i) failure to submit a report on possible damages or risks to the ecological balance; and (ii) absence of permits, concessions, or authorizations from other authorities, as well as in cases where there were no mine closure or resource management programs.
11. **Elimination of presumptive approval (*afirmativa ficta*).** Under the current law, these presumptions apply to, among others, cases where the withdrawal or reduction of a mining concession has been requested. Under the Initiative, in the absence of a response from the authority, the request would not be deemed approved.
12. **Granting of assignments in favor of parastatal entities.** Unlike the current regime where mining assignments are granted exclusively to the Mexican Geological Service, the Initiative proposes that the Ministry of Economy may grant mining assignments to parastatal public sector companies to carry out exploration and exploitation activities of minerals or substances for an indefinite period.
13. **New crimes section.** The Initiative includes a list of crimes for which sanctions could be imposed, such as (i) illegal extraction of minerals or substances; (ii) alienation or trafficking of minerals and metallurgical derivatives not granted in concession, (iii) undermining the physical safety of workers by failing to comply with the Mining Law provisions and its regulations and (iv) the illegal transfer of mining and metallurgical products out of the national territory.
14. **Issues to be considered for current concessionaires.** The Initiative would establish a series of obligations for current concessionaires, such as (i) the issuance of a letter of credit to guarantee possible damages the mining activity causes, and (ii) the removal of deposits in protected natural areas or in areas where population centers or ecosystems might be affected.

II. NATIONAL WATER LAW

1. **Creation of the water concession for mining use.** This concession would be granted subject to water availability and would be valid for five years, with the possibility to request several extensions of five years, each one during the life of the mining concession.
2. **New grounds for revocation of the water concession.** The Initiative proposes that the concession could be cancelled for several reasons, including the following: (i) events or supervening acts of public interest, and (ii) failure to comply with the Restoration, Closure and Post-closure Program provided by the General Law of Ecological Balance and Environment Protection.

III. GENERAL LAW OF ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION.

1. **Protected natural areas.** Under the Initiative, mining concessions would not be granted in Natural Protected Areas.
2. **Restoration, Closure and Post-Closure Program.** This program would monitor compliance with environmental obligations at the time of termination of the mining concession.

IV. GENERAL LAW FOR THE PREVENTION AND INTEGRAL MANAGEMENT OF WASTE.

Management, waste disposal, and liability regime. The Initiative addresses the management of mining and metallurgical waste and would prohibit final disposal of mining waste in protected natural areas, wetlands, watercourses, and federal zones of national waters. It would also give the concessionaire the permanent and non-transferable responsibility for the waste generated by mining activities, regardless of third-party management.

Next Steps

The Initiative must be approved by the Chamber of Representatives and then, if applicable, it would move to the Senate for review and possible approval. Therefore, the Congress of Mexico may modify its provisions, and its fate is uncertain.

If passed, the Initiative would affect present and future mining concessions.

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