

## **Alert** | Mining/Environmental



**May 2023**

### **Mexico Passes Bill Amending Mining Law, and Related Environmental Laws**

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On March 28, 2023, the Federal Executive presented a bill (the Bill) to the House of Representatives that would amend various provisions of the Mining Law, the National Waters Law, the Law of Ecological Equilibrium and Environmental Protection, and the General Law for the Prevention and Management of Waste with regard to mining and water concessions.

On April 20, 2023, after the United Commissions of Mining and Regional Development amended the Bill, the House of Representatives approved and forwarded it to the Senate, which approved on April 28, 2023, without any additional changes.

Finally, the Bill was sent to the Federal Executive and published through a decree (the Decree) in the Official Gazette of the Federation on May 8, 2023.

#### **Relevant Amendments**

The following tables compare the original and amended versions of each law.

**I. Mining Law**

Original Version	Amended Version
<b>Article 6</b>	
The exploration, exploitation, and processing of minerals or substances must take precedence over any other use or exploitation of the land.	Eliminates the preferential character of mining activity.
No correlative.	Prohibits granting concessions in protected natural areas or in areas where the population is at risk, as well as in areas without water availability.
No correlative.	Establishes the obligation to carry out a free, prior, and informed consultation with indigenous and Afro-Mexican peoples and communities, and to perform a social impact study.
<b>Article 7</b>	
No correlative.	Expands the powers of the Department of Economy, allowing it to nullify concessions and administrative acts regulated by the Mining Law in case of omission or irregularity of any elements of validity of the administrative act established in the Federal Law of Administrative Procedure and to promote lawsuits against administrative resolutions and concessions that harm the public interest or the Federal Public Administration.
<b>Article 13</b>	
<p>Mining concessions and assignments will be granted on free land to the first applicant for a mining lot.</p> <p>When land inhabited and occupied by an indigenous town or community is requested simultaneously by the local community and by another party, the mining concession will be granted to the indigenous community.</p>	<p>Eliminates the prior scheme. The Department will only grant mining concessions through public bidding competitions.</p> <p>When land inhabited or occupied by an indigenous or Afro-Mexican community is subject to bidding, the winning bidder must sign an agreement with the community to obtain permission to use the land and must pay consideration of at least 5% of the amount resulting from subtracting the balance from the payments made by the concessionaire for non-deductible contributions for income tax purposes.</p>
<b>Article 14</b>	
No correlative.	<p>Concessions cannot be granted on the following lands:</p> <ul style="list-style-type: none"> <li>• Areas with minerals or substances the State considers strategic.</li> <li>• Protected natural areas.</li> <li>• Areas without water availability.</li> <li>• Areas where mining activity poses a risk to the population</li> </ul>

Original Version	Amended Version
<b>Article 14 BIS</b>	
No correlative.	The concession title will be granted to the winner of the corresponding bidding process, after obtaining the necessary environmental, labor, energy, social, and any other federal permits and authorizations required, as well as the corresponding water concession for industrial use.
<b>Article 15</b>	
The concession title will be granted to the winner of the corresponding bidding process, after obtaining the necessary environmental, labor, energy, social, and any other federal permits and authorizations required, as well as the corresponding water concession for industrial use.	<p>Mining concessions are subject to the public domain regime of the Federation and will have a 30-year duration, which can be extended once for a term of 25 years, provided that the holders have not incurred any of the cancellation grounds provided in the Mining Law and apply for extension within two years and up to one year before the expiration date. Holders must also have the necessary authorizations and permits for their operation, as well as the concession of water for industrial use in mining.</p> <p>The concession holder may obtain a 25-year extension and participate in the bidding process for the same mining area once the extension has expired. In this case, the concession holder will have preference over the same area if they match the highest bid.</p> <p>The concession title must specify each mineral or substance susceptible to exploitation.</p>
<b>Article 15 BIS</b>	
No correlative.	Mining assignments will be granted by the Department to governmental entities of the Federal Public Administration, thus creating the possibility for these entities to carry out exploration, exploitation, and processing of strategic minerals or minerals reserved for the State, as well as other activities regulated by the Mining Law.
<b>Article 19</b>	
<p>Mining concessions confer the following rights:</p> <ul style="list-style-type: none"> <li>• Carry out exploration and exploitation operations and activities within covered mining lots</li> <li>• Dispose of the mineral products obtained from mining lots.</li> <li>• Dispose of the land located within the area covered by the concession.</li> </ul>	<p>Mining concessions confer the following rights:</p> <ol style="list-style-type: none"> <li>I. Carry out works and activities for the exploitation of specific minerals or substances within the mining concession.</li> <li>II. Utilize the mineral or substance obtained from the mining concession.</li> <li>III. This fraction is eliminated.</li> </ol>

Original Version	Amended Version
<ul style="list-style-type: none"> <li>• Obtain expropriation, temporary occupation, or establishment of easements.</li> <li>• Utilize the water derived from mining activities for the exploration, exploitation, and beneficiation of minerals.</li> </ul>	<p>IV. Request temporary occupation or the establishment of servitude.</p> <p>V. Utilize water derived from mining activities for the "exploitation and benefit of minerals." Note the amended version eliminates the word "exploration."</p> <p>Mining concessions may be subject to guarantees for the compliance of obligations of their holders provided that (i) the corresponding mine is in operation, (ii) the person in whose favor the guarantee is issued states they are aware that, in case of execution of the guarantee, they will have 6 months to prove that they meet the requirements to be a concessionaire or, where appropriate, transfer the rights of the concession, and (iii) prior authorization is obtained from the Department.</p>
<b>Article 23</b>	
<p>The transfer of ownership of mining concessions or the rights derived from them have effects on third parties and the Department from their registration in the Public Mining Registry. In other words, the transfer of the concession between the transferor and transferee was a private act that only required registration in the Public Mining Registry as a formality.</p>	<p>The transfer of mining concessions requires the approval of the Department which may authorize the transfer of ownership once the transferee complies with the requirements of the original concession.</p> <p>The Regulations must specify the procedure to be carried out jointly by the holder and the new beneficiary.</p> <p>The Department will not recognize any type of document or act of a private nature through which the transfer is intended to be made.</p>
<b>Article 24</b>	
<p>The withdrawals duly formulated regarding the ownership of mining concessions or the rights derived therefrom, will be effective as of the date of filing with the Secretariat.</p>	<p>The Department <u>may authorize</u> the early termination of the concession when the holder requests it and complies with the same obligations to which the closing of operations is subject under the Mining Law.</p>
<b>Article 27</b>	
<p>Obligations of mining concession holders:</p> <ul style="list-style-type: none"> <li>• Execute and verify the operations and activities specified in the Law and its Regulations.</li> <li>• Submit to the Department the statistical, technical, and accounting reports under the terms and conditions set forth in the Regulations of this Law.</li> </ul>	<p>Obligations of mining concession holders:</p> <ul style="list-style-type: none"> <li>• Execute and verify constructions specified in the Law and its Regulations and notify the Department within 90 working days of such execution or completion of pre-operational activities.</li> <li>• Submit to the Department a report on the execution and verification of activities and operations performed, which must contain the accounting and financial, technical, and</li> </ul>

Original Version	Amended Version
	statistical aspects, under the terms set forth in the Law and its regulations.
<b>Article 42</b>	
Causes for cancellation of concessions and assignments include (i) termination of validity; (ii) withdrawal; (iii) substitution derived from reduction, division, identification, or unification; (iv) commission of infractions; and (v) judicial resolution.	The amended version adds the following: (i) failure to make timely payments of contributions for two consecutive years; (ii) failure to submit the reports required by the Law and its Regulations for two consecutive years or five non-consecutive years; and (iii) failure to perform the work covered by the concession for a period of two consecutive years.
No correlative.	Chapter Eight “Notifications,” Chapter Nine “Mine Closure,” and Chapter Ten “Crimes” are added.

## II. National Waters Law

Original Version	Amended Version
<b>Article 4</b>	
No correlative.	If there is a risk of limited water availability for human and domestic consumption, the volume of water granted will be reduced or cancelled.
<b>Article 29 BIS 4</b>	
No correlative.	Causes for revocation of the concession, assignment, or discharge permit include the following: <ul style="list-style-type: none"> <li>• When false documentation has been submitted to obtain or maintain a concession.</li> <li>• If there are supervening facts of public interest or factors that cause economic, social, or environmental imbalance.</li> <li>• When mining concession holders do not comply with the Restoration, Closure, and Post-closure Program.</li> </ul>
<b>Article 37</b>	
Transfers made in violation of the provisions of the law will be null and void.	Prohibits the transfer of the rights to exploit, use, or take advantage of national waters for industrial use in mining.
No correlative.	Adds Chapter III Bis about Industrial Use in Mining.  Establishes the figure of the water concession for specific use in mining.

**III. General Law of Ecological Equilibrium and Environmental Protection.**

<b>Original Version</b>	<b>Amended Version</b>
<b>Article 46</b>	
No correlative.	No exploration and exploitation works may be carried out in protected natural areas.
No correlative.	Article 107 Bis.  Establishes the Restoration, Closure and Post Closure Program.

**IV. General Law for Residue Prevention and Integral Management.**

<b>Original Version</b>	<b>Amended Version</b>
<b>Article 1</b>	
States the motives of the Law.	Includes the management of mining and metallurgical wastes as a motive of the Law.
<b>Article 7</b>	
Lists the powers of the Federation.	Adds to the powers of the Federation the issuance of regulations, NOMs, and other legal provisions to regulate the integral management of mining and metallurgical wastes that fall under its jurisdiction.
<b>Article 42</b>	
In the event that hazardous waste management and disposal services are contracted by authorized companies and the waste is delivered to such companies, the responsibility for the operations will be theirs, regardless of the responsibility of the generator.	In the event that hazardous waste management and disposal services are contracted by authorized companies and the waste is delivered to such companies, the latter and the waste generator will share joint and several liability.  The management and final disposal of mining and metallurgical waste is the responsibility of the person who generates it.

**V. The Decree’s relevant transitory articles.**

Article 1.

The Decree takes effect the day following its publication.

Article 2.

The legal provisions that oppose the Decree are hereby repealed.

Article 4.

Within 180 days, the Federal Executive should issue the respective regulatory provisions.

Article 5.

Applications for a new concession in process will be rejected without further action.

Article 6.

The concessions granted prior to the entry into force of the Decree will have the duration established in the respective title.

## Conclusion

The Decree presents important changes in the sector and raises questions about the rights of the current concessionaires with respect to some of the new provisions.

Those concessionaires that could see their rights affected may opt for local or international channels if they are considered foreign investors by any of the international treaties involving Mexico.

*\* This GT Alert does not apply to matters or laws in the United States, nor to other jurisdictions outside of Mexico.*

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