



ICLG

The International Comparative Legal Guide to:

Mining Law 2019

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A practical cross-border insight into mining law

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Mexico

RB Abogados

Enrique Rodríguez del Bosque



1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mexican Mining Law Regulations and Article 27 of the Mexican Constitution regulate mining issues, in particular the exploration, exploitation and beneficiation of minerals or substances which in veins, strata, masses or beds constitute deposits of which the nature is different from the components of land. The Mining Law and Constitution also provide for the mining of: salt directly formed by marine waters from actual seas – surface or underground, naturally or artificially – and salts and by-products thereof, except petroleum and other solid hydrocarbons, liquid or gaseous, which are also found underground; radioactive minerals; substances contained in suspension or dissolution by groundwater, provided they do not come from a mineral deposit different from the components of the land; rocks or decomposed products that can only be used for the manufacturing of construction materials or are intended for this purpose; and products derived from the decomposition of rocks when their exploitation is through opencast work, and the salt comes from salt formed in endorheic basins.

The application of the Mining Law and its Regulations is the responsibility of the Federal Executive (President's Office) through the Ministry of Economy. The following laws govern all ancillary activities to the mining activities: the Mexican Federal Constitution; the Federal Environmental Law; the Federal Water Law; the Federal Agrarian Law (social tenure of most of the lands where mining projects are located); Federal Tax; State Civil Codes applicable on land tenure; the Federal Commercial Code; Federal Army Regulations for the storage, transport and use of explosives; Federal Labor Laws; Municipal regulations for the use of land; and Federal Environmental Norms.

1.2 Which Government body/ies administer the mining industry?

The *Dirección General de Minas* (Mexican Mines Bureau), formed under the Ministry of Economy. Notwithstanding the foregoing, other Government bodies administer the regulatory regimes relating to mining activities: *Secretaría del Medio Ambiente y Recursos Naturales* (Environmental Ministry); *Comisión Nacional del Agua* (Waters Commission); *Secretaría de la Defensa Nacional* (Army Ministry); *Secretaría del Trabajo y Previsión Social* (Labour Ministry); and the States Public Registries of Real Estate and the National Agrarian Registry.

1.3 Describe any other sources of law affecting the mining industry.

All laws and other norms and regulations are mentioned in question 1.1 above. These laws affect the industry as they regulate the activities the mining companies conduct in order to stake, maintain, explore and exploit mining concessions and to process and commercialise minerals. They also regulate environmental aspects in connection with the exploration and exploitation of these mining concessions. Other sources of law affecting the mining industry are: international treaties; administrative regulations on Federal Laws; and Court Resolutions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Understanding reconnaissance as the preceding stage to conducting mining minimum exploration activities prior to the issuance of a mining concession, an informal permission from the land owner where the mining concession is located or where the area proposed to be staked is located is required to conduct such activities. In the case that the areas of reconnaissance are already covered by an existing mining concession, the permission of the existing mining concessionary is also needed.

2.2 What rights are required to conduct exploration?

In order to conduct exploration activities, a mining concession is required covering the proposed exploration area; or a written agreement executed with the recorded owner of the mining concession before the Public Registry of Mines ("PRM") (formalised before a Mexican public notary and registered at the PRM) to explore the area is needed. In addition, permission or an agreement executed with the owner or possessor of the lands where the mining concession is located and an Environmental Impact Manifest authorised by the Environmental Authority are needed.

A mining concession allows its holder to conduct exploration, exploitation, mining and development activities.

2.3 What rights are required to conduct mining?

In order to conduct exploitation activities a mining concession is required covering the proposed exploration area; or the written

agreement executed with the recorded owner of the mining concession before the PRM (formalised before a Mexican public notary and registered at the PRM) to exploit the area is needed. In addition, permission or an agreement executed with the owner or possessor of the lands where the mining concession is located, an Environmental Impact Manifest authorised by the relevant Environmental Authority and permission from the Army Ministry to store, transport and use explosives are needed.

If the mining concessions are located in a forest reserve, a change of use of the land is required.

A water concession is needed for activities beyond the extraction of minerals activities, such as for a processing plant, and a permit for the discharge of water is also required in case such processing activities are conducted in the mine.

2.4 Are different procedures applicable to different minerals and on different types of land?

Different procedures are applicable for radioactive minerals, which are reserved for exploration and exploitation by the Mexican Government. Please also refer to question 2.5 hereinbelow.

Radioactive minerals are reserved for exploration and exploitation by the Federal State. Regarding the types of lands, in Mexico there are: private lands; Government-owned lands (Federal, Estate and Municipal); and social lands (*Ejido* and Communal lands). Please refer to question 7.1 hereinbelow.

2.5 Are different procedures applicable to natural oil and gas?

Gas derived from the exploitation of mineral coal, oil and solid, liquid or gaseous hydrocarbons, are reserved for the exclusive exploitation of the Mexican Authorities.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Only Mexican companies registered before the PRM can own mining rights to explore and exploit mining concessions. In the capital of the aforementioned Companies foreign investment can participate up to 100%. These Companies must be incorporated under laws of Mexico and have their corporate domicile within the country.

Also, social entities which are not commercial Companies and which do not allow foreign investment participation can own mining rights, such as Communities and Ejidos (social land granted to a group of individuals or communities).

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Foreign entities cannot directly own mining concessions but through their Mexican subsidiaries. As mentioned above, the mining industry has no limits on foreigners participating in the ownership of Mexican mining companies. Mexican mining companies may be 100% owned by foreign investors either individuals or entities.

Mexican mining companies that are 100% (or less) owned by foreigners are considered Mexican entities and have the same rights as a Mexican doing business.

Mexican companies with foreign investment shall be registered in the Foreign Investment Registry, notify the Mexican Foreign Investment Authority of changes in the company capital, as well as to provide periodical reports (this is mainly for statistical purposes); this has no impact on an application for a mining concession.

3.3 Are there any change of control restrictions applicable?

No, there are not.

3.4 Are there requirements for ownership by indigenous persons or entities?

In the acquisition of mining concessions, if there are simultaneous applications for the acquisition of a mining concession, indigenous communities living where the relevant mining concession is located have preferred rights to acquire the mining concession.

Mexico has subscribed the Convention for Protection of the Indigenous and Tribal People (Convention No. 169 – ILO). In accordance to this Convention, before the starting of mining activities, concessionaries shall consult indigenous communities located in areas where the mining concession is located. However, there are no mechanisms implemented in the Mexican applicable legislation in this regard nor sanctions or penalties imposed if the concessionary does not consult the indigenous community.

3.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

There are environmental laws, rules and Technical Norms (“NOMS”) to comply with in order to build and operate plants for the processing and beneficiation of mined minerals. The Mexican Official Standard NOM-141-SEMARNAT-2003, sets the procedure for preparation, design, construction, operation and post-operation of mine tailing dams.

For the exploration and exploitation of tailings, no mining concession is required.

There are no specific rules under the Mining Law for the ownership of tailings. If tailings result from the ore beneficiated by the mining concession holder, they belong to the mining concession holder. In the case of tailings derived from the beneficiation of ore in a third parties’ beneficiation plant, it usually belongs to the owner of the beneficiation plant.

In Mexico there are ancient mining works that produced tailings. Those tailings have no relationship with today’s mining concessions; for these, in accordance with civil law (*Código Civil Federal*), they belong to the owner of the lands where such tailings are located.

Furthermore, dumps (*terrerros*), in accordance with the Mexican Mining Law, belong to the mining concession holder, unless it is evident that a particular *terrerros* comes from another mining concession.

There are no restrictions on the beneficiation of minerals in a different location from where the minerals were extracted.

There are no provisions which prohibit the export of unbeneficiated minerals. Local beneficiators do not have pre-emptive rights to beneficiate minerals.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

In general terms, there are no restrictions. All import and export processes require a permit. However, in order to export iron, gold, silver and copper minerals, the producing-exporting company or individual must be registered in a Mining Sectorial Registry for the Exportation of such minerals.

For the exportation of iron, exporters are required to be the owners of the mining concession from where the minerals are extracted.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

There are no restrictions whatsoever on the transfer of mining concessions and rights thereto. Agreements assigning, or generating rights over, mining concessions must be notarised. The transfer of mining concessions or rights thereunder shall produce legal effects against third parties, the Ministry of Economy and other governmental authorities upon their registration before the PRM. Owners of mining concessions shall be only recognised as so, it is, they must be recorded as concessionaires before the PRM.

A transfer or assignment will be null and void when made to an unqualified person under the Mining Law. However, the Mining Law provides that a transfer to a unqualified person will not be null and void when it occurs pursuant to a court resolution ordering the debtor (mining concessionaire) payment of the debt, and provided further that the rights are then transferred to a capable party within 365 calendar days after the date of the issuance of the court resolution.

Government consent is not required in order to transfer a mining concession, or in the event of change of control of its holder or its parent.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Mining concessions and rights can be pledged and even mortgaged as a guarantee to raise finance. All guarantees over rights of mining concessions must be registered at the PRM in order to have full effect before third parties. Creditors often require the registration of the guarantees over mining concessions at the Movable Guarantees Registry (*Registro Unico de Garantías Mobiliarias*).

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes. The co-ownership of a mining concession (the co-ownership granting different percentages to the co-holders) may exist. A percentage of a mining concession may be transferred to a third party through an Assignment Agreement. Co-holders shall have the right of first refusal to acquire the transferable interest.

A mining concession also may be subdivided through an administrative proceeding conducted before the Mexican Mines Bureau.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

If a mining concession is held by two or more parties through a joint venture, the rules of the joint venture shall apply. If no joint venture rules exist, the right is undivided.

The co-ownership of a mining concession may be owned by: Mexican Commercial Companies; Mexican individuals; and Social Entities.

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

A mining concession holder may explore and exploit all minerals and/or substances specified in the Article 4 of the Federal Mining Law, except for those reserved to be exploited by the Mexican Government as mentioned in questions 2.4 and 2.5 above.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Please refer to the answer to question 4.1 above.

6.5 Are there any special rules relating to offshore exploration and mining?

Yes, there are special rules. It is necessary to comply with all rules governing shores, lake shores, water deposits and rivers.

Regarding mining activities in the exclusive economic zones and the continental shelf, Mexico is party to several international treaties which determine, together with the Mexican Constitution, the limits of exclusive economic zones, which mining activities shall be governed in accordance with Mexican laws, and activities in the continental shelf to be conducted in accordance with international treaties.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The mining rights covered under a concession do not include direct ownership or possession rights over the surface where a mining concession is located.

The use of the lands may be obtained through direct ownership or possession of lands (e.g. lease agreements/temporary occupation agreements/easement agreements, expropriation through an administrative proceeding).

The Mexican Constitution recognises the following surface rights:

- A. *Bienes Comunes* (social land granted to aborigines).
- B. *Ejidotes* (social land granted to a group of individuals or communities).
- C. National Lands.
- D. *Zonas Federales* (federal areas, beaches and river causes).
- E. Private Property.

The Agrarian Law governs the property rights mentioned in sections A through C above. Said lands can be legally occupied or acquired by private parties as provided in the Agrarian Law.

A concession holder may acquire all property rights mentioned above. Typically, the consideration payable for the lands is agreed between the parties. The Mining Law provides the rules under which a mining concession holder may require the expropriation or the temporary occupation of the land when it does not reach an agreement with the landowner. In case of expropriation by the Mexican Government, the consideration is payable based on an appraisal made by an agency of the Mexican Government.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

In accordance with the Mexican Mining Law, the mining activities should be preferred over any other use or exploitation of the land where the mining concessions are located (except the case of exploration and exploitation of oil and other hydrocarbons and the performance of power generation activities in which activities shall be preferred over the mining activities; and in case a mining concession and an assignation for the exploitation of oil and a mining concession coexist, the mining concession holder must comply with certain technical specifications), therefore the Mexican Mining Law and its Regulations provide the rules under which a mining concession holder may require the expropriation or the temporary occupation of the land when it does not reach an agreement with the land owner. In case of expropriation, the consideration is payable based on an appraisal made by an Agency of the Mexican Government.

The company has the right to explore and exploit the minerals underground because of the mining claim rights granted by the Federal Government (underground rights); surface rights are honoured to third parties as explained in question 7.1. Under the Mining Law, there is no obligation for the holder of a mining right to share any rights over the exploration or exploitation with the landowners or lawful occupier, but somehow a legal consent should exist between the two of them to be able to prove legally to the Environmental Authorities that the company has the legal occupancy of the surface rights and the legal use of the land. It is also important to have the social licence in order to develop the project in harmony with the community.

Please also consider that the Economy Ministry may revoke the temporary occupation agreement or to revert the surface expropriated in the following cases:

- (i) if the mining works to develop are not started within the 365 days following the issuance of the relevant resolution;
- (ii) if the mining works are suspended for a year or more;
- (iii) if the surface granted is destined to a use other than the mining activities;
- (iv) if the concessions holders do not pay the consideration determined in the relevant resolution of temporary occupation or expropriation;
- (v) if the mining concession is nullified or cancelled; and
- (vi) by a Court resolution.

7.3 What rights of expropriation exist?

In accordance with Mexican mining legislation, the owner of a mining concession may require the expropriation of the surface where the mining concession is located under the rules stated in the Mexican Expropriation Law. If the expropriation is of lands owned by *Ejidotes* or Agrarian Communities the process is carried out before the Agrarian Authorities and under the rules of the Mexican Agrarian Law. Please also refer to question 7.2 above.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Each stage requires authorisation and is subject to different requirements.

The prospective and exploration stage requires a Preventive Report where it is justified that activities undertaken comply with the Mexican official standard number 120-SEMARNAT-2010, which establishes the specifications for environmental protection for direct mining exploration activities.

The operation stage requires the submission of an Environmental Impact Statement (“MIA”) and a request for authorisation of Change of Use on Forest Land (“CUSTF”), or the requirement to qualify for the benefit of the Secretarial Agreement which establishes the possibility of the unified process through the presentation of the Unified Technical Paper (“DTU”).

In any case, the MIA or the DTU must contain a risk assessment because the operation stage is considered a high-risk activity. Also, it is necessary to prove compliance with the Official Norm, NOM-141. In case of the leaching of gold, silver and copper, it is necessary to prove compliance with the NOM 155 and 159.

For the operation stage it is also necessary to register as a hazardous waste generator, and to register a Hazardous Waste Management Plan according to the NOM-157 and a Programme for the Prevention of Accidents (“PPA”). For air emissions issues, a Single Environmental Licence (“LAU”) and a Report on Releases and Transfers of Pollutants (“COA”) is required. It is also necessary to prove compliance with the Emissions Standards (NOM-043 for particulate matters; and NOM-085 for combustion and other matters).

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Regarding the restrictions for storage of tailings or waste dams,

there is an Official Mexican Rules (Norma Oficial Mexicana) NOM-141-SEMARNAT-2003, which establishes the procedure for characterising the tailings, as well as the specifications and criteria for the characterisation and preparation site, project, construction, operation and post-operation of tailings dams.

These facilities are inspected by authorities quite often; there are no specific periods for such inspections.

In addition, there is an obligation to get a permit from the authority Program for the Prevention of Accidents (PPA); in certain cases, to submit a Risk Assessment, to register the Hazardous Waste Management Plan, to have environmental insurance and to provide notice to the authority in case of emergencies, accidents or loss of hazardous waste.

For the closure of mines, there are two different forms of closure:

1. Closure notification for hazardous waste control.
2. Closing Programme for the operation of the mine.

The first one needs the authorisation of the Contaminated Soil Remediation Programme. The second needs the authorisation of the Closure and Closing Programme.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

There are a number of obligations to comply with for the closure of a mine. However, the specifications depend on the Closing Programme authorised by the Environmental Authority for the specific mine. Basically, the obligations relate to: safety (stability of the lands where mining activities were conducted); the closing of all the entrances to underground mines; and control of hazardous material and waste.

Remediation works are performed in Mexico just in case there is soil contamination. Otherwise, a refurbishing process must be performed. Those responsible for activities that involve generation and management of hazardous materials and waste that cause contamination of sites, are required to carry out remediation works.

If hazardous substances which are considered high-risk activities are used during the exploitation phase, it is necessary to have an environmental risk insurance, which will be required in the corresponding resolution of the Environmental Impact Assessment, as a condition to start operating activities. Three insurance or guarantees may be required: (i) if hazardous substances are used; (ii) if hazardous waste is generated; and (iii) another, contained in the resolutions of the environmental impact authorisation, for the fulfilment of obligations.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Yes, there are zoning requirements for nature-protected areas.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Please refer to the answer to question 3.4.

The land native titles are described in question 7.1 and for each title there are different types of rights over the land use, such as common land use, parcel land (lots), human settlement or land squatters (possessors).

All the land native titles and surface rights have to be legally acquired or occupied to have access to the land for exploration and/or exploitation for mining purposes when the activities are conducted by a different entity than one of those mentioned in points A and B of question 7.1 above.

The possession by Communities and *Ejidors* groups of the surface where a mining concession is located may be transferred to private entities. The consent of those groups is needed to conduct mining activities where those groups own or possess the lands where mining activities will be conducted.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The principal health, safety and labour laws pertaining to the mining industry are:

- Federal Labor Law.
- Federal Social Security Law.
- Federal Regulations on Safety, Health and Work Environment.
- Official Regulation NOM-023-STPS-2012, Underground and Open Pit Mines – Safety and Health Conditions at Work.
- Official Regulation NOM-032-STPS-2008, Security for underground coal mines.

The principal regulatory entity is the Ministry of Labor and Social Welfare.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The main obligations fall on the operator of the mining project. Usually, the operator is a Mexican mining company which, through the management, must comply with safety and health dispositions. In case of negligence of the management to provide safe and healthy conditions as provided by law, the Board Members may be personally responsible for the damages suffered by workers or third parties in the mine. This responsibility may result in criminal charges.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes. The central titles registration office is the PRM, which depends on the Mexican Mines Bureau.

In accordance with the Mexican Mining Law, all acts, agreements and contracts related to the transmission of mining concessions and rights thereto shall be registered before the PRM. Promises to execute an agreement, liens, contractual obligations, royalties affecting mining concessions, etc., must also be registered before this Registry.

In addition, certain agreements for use of the lands where mining concessions are located (temporary occupation agreements/easements agreements, etc.) may be registered before the PRM. The surface covered by such agreements shall be entirely covered by a mining concession in order for these kind of agreements to be registered before this Registry.

Any person may consult the PRM and request, at their expense, certified copies of their entries and documents that relate to them, and of the absence of a registration or subsequent entries in relation to a particular entry.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

The concessionaires have a Review Action (an administrative appeal) against the resolutions of the relevant authorities that they may consider illegal. Also, concessionaires have the right to appeal any unlawful act made by the authority before the courts.

In the case that an action was brought to the Mexican Mines Bureau, the Bureau may rule ratifying, revoking or modifying the resolution appealed through the Review Action. This proceeding shall be conducted in terms of the Law of the Public Administration Process (*Ley Federal del Procedimiento Administrativo*).

In the case of proceedings brought by concessionaires through courts, the court is the institution that shall rule about the action made by the authority. A court proceeding is feasible against the resolution of the Mines Bureau of the Review Action.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Article 27, paragraphs 4 and 6, of the Mexican Constitution states that the Mexican Nation is the owner of minerals and substances that, in veins, ledges, masses or beds, constitute deposits the nature of which is different from the components of the earth. The use and exploitation of these minerals and substances specified in the Mexican Constitution and in the Mexican Mining Law, in its Article 4, as previously mentioned, may be granted through a mining concession to Mexican individuals and companies organised under the laws of Mexico.

The Mexican Constitution protects the owners of mining concessions, for all Mexican Authorities, from unlawful acts which may harm the rights of a legal owner of a mining concession.

12.2 Are there any State investment treaties which are applicable?

The Mexican state has several bilateral agreements with other countries that contemplate certain matters related to the mining industry:

- i) NAFTA. The purpose of NAFTA and other Commercial Treaties was to eliminate most of the duties imposed to exportation and importation of goods.
Mexico has a temporary importation scheme through which payment of duties are not triggered except that the equipment remains in the country after the term for its temporary importation elapses.
Furthermore, Chapter 3 of NAFTA includes certain benefits for the import of mining equipment against the countries without free trade agreements, which usually are subject to a payment of a tax that ranges from 10% to 20%.
- ii) Mexico and Japan Free Trade Agreement. With this agreement, Mexican companies will have zero rate for the exportation of up to 95% of the goods exported to Japan, including, among others, minerals.
Mexico will reduce duties in the upcoming years up to 44% of goods imported from Japan, among others, goods with electronic and steel components.
- iii) Mexico and Chile Free Trade Agreement. The agreement provides the opportunity to participate as a supplier of mining

industry inputs with a tax rate of 0% between the parties for chemical products for the flotation of minerals, and other processes performed in the mining industry including leachates, depressants, foaming agents, flocculants, sodium cyanide, sodium pentasulfide, among others.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Yes, a special mining surface fee is payable in accordance with the Mexican Mining Law and the Federal Duties Law. Mining concessionaires must pay, on a semi-annual basis, governmental mining fees, the payable amounts of which depend on: (i) the date on which the title document of a mining concession was registered before the Public Registry of Mines (the older the mining concession, the more expensive the governmental fees); and (ii) the surface (number of hectares) of the mining concession (the "Governmental Mining Fees").

Furthermore, in accordance with Article 268 of the Federal Duties Law, holders of mining concessions shall pay, on a yearly basis, the 7.5% of the positive difference that results from the income of the sale of the minerals extracted from a mining concession minus the authorised deductions (the "Governmental Royalty"). Payment of this Governmental Royalty must be made before 31 March of the following year in which the sale of minerals happened.

In accordance with Article 270 of the Federal Duties Law, in addition to the abovementioned Governmental Royalty, mining concessions holders that commercialise gold, silver or platinum shall pay, on a yearly basis, the 0.5% of the income for the sale of such minerals, (the "Extraordinary Governmental Royalty").

Finally, the mining concession holders that do not perform and verify exploration and/or exploitation works during two consecutive years, during the first 11 years of seniority counted from their issuance, shall pay on a semi-annual basis, an additional 50% of the corresponding Governmental Mining Fees in accordance with the quotas stated in the Duties Law or 100% if the concession's seniority is over 11 years.

13.2 Are there royalties payable to the State over and above any taxes?

Please refer to question 13.1 above.

Likewise, in accordance with the Mexican Mining Law, mining concessions may be granted exclusively to Mexican persons or to Mexican companies, and through assignments (for mining concessions, held by the Government, which, once they are explored, are sold to private entities by way of auctions) from the Mexican Geological Service (SGM), the owner of assignments which depends on the Mexican Government.

Once a title document for a mining concession acquired from the SGM is issued, this title document shall state the royalty amount payable to the Mexican Government as consideration for the exploration activities and discoveries made by the SGM. This royalty is payable to the SGM.

Concessionaires that own mining concessions derived from assignments of the SGM must submit semi-annual reports containing works and production in the mining lot covered by the mining concession, and these affect the payment of the royalties payable to the SGM.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not. Exploration, exploitation, and beneficiation of ore activities ruled by the Mexican Mining Law, which is Federal, likewise all mining activities are listed in the catalogue of activities ruled by the Federal Environmental Law; however, ancillary activities of mining companies which are not under the aforementioned catalogue are ruled by local legislations.

Notwithstanding the foregoing, an ecological tax approved in 2016 by the state Congress of Zacatecas started its application in 2017. The ecological tax affects, among others, the Mining Companies conducting exploration and exploitation activities. Zacatecas State is the largest silver producer in Mexico. The Mining Activities and the Environmental Laws are governed by Federal laws; therefore, the Zacatecas environmental tax has been challenged by Companies, Unions and the same Federal Mexican Government; many of the challenge proceedings are still in the process of resolution. Some of the largest mining companies have succeeded in their proceedings against the Zacatecas State ecological tax.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes; in accordance with Article 19 of the Federal Mining Law, a mining concession holder is entitled either to abandon its mining concession or to reduce it. In each case an administrative proceeding should be conducted before the Mexican Mines Bureau.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

No, there are not.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

The State may only cancel a mining concession through the corresponding administrative proceeding in the following cases: (i) in case a concession holder exploits minerals or substances not specified in Article 4 of the Federal Mining Law; (ii) in case it does not pay the consideration and the royalties payable to the SGM if it acquired its mining concession from the SGM (please refer to question 13.2); (iii) in case a mining concession holder is no longer entitled to own mining concessions (i.e. a Mexican Company becomes a Foreign Company); (iv) in case the concession holder does not properly comply with the surface fees payable in accordance with the Federal Mining Law and the Federal Duties Law; or (v) in case it does not perform and verify exploration and/or exploitation works through the filing of work assessment reports. Also, please note that the concessions holders that conduct exploitation of coal shall comply with certain additional rules and in case of incompliance of them, the Mexican Mines Bureau may be entitled to cancel such mining concessions.



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Work positions: Luismin, Mexico. Law-Student, 1982–1985. Practising General Corporate and Finance Law, Mining Law and Transactions. Creel, Garcia-Cuellar Abogados: Senior Associate Lawyer 1986–1993. Practising General Corporate and Finance Law, Mining Law, Transactions and Joint Ventures. RB Abogados, Mexico: RB abogados-RB MEXICO-LAW: Founding Partner 1993 to date. Practising: Corporate and Business Law; Mining Law; Transactions Law; Mergers and Acquisitions, Joint Ventures; and Banking and Securities Law.

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Languages: Spanish and English.



RB Abogados was founded in 1993 by Enrique R. del Bosque, who had previously worked for four years at the Mexican mining group, Luismin, which was subsequently sold to Silver Wheaton and then to Goldcorp. For eight years Enrique R. del Bosque worked as a Corporate and Transactional lawyer at one of the largest Mexican law firms.

Since its foundation, RB Abogados has focused on counselling mining transactions mainly conducted by Canadian mining companies, whilst also specialising in: incorporating Mexican companies to be able to acquire mining properties; conducting due diligences of properties and/or mining companies; structuring deals to acquire mining properties/mining concessions/lands/assets/royalties, and/or mining companies or joint ventures; and structuring credit transactions including granting guarantees to finance projects or raise funds at TSX and NYSE and royalty streaming transactions. The firm also focuses on mining obligations compliance.

RB Abogados' lawyers studied in the most recognised Mexican Universities, many of them started as students in the law firm and now have become very experienced transactional lawyers focused in mining transactions, the rest of the lawyers worked in law firms focused in commercial transactions, foreign investment, corporate law, etc. All of our lawyers speak fluent English and have English writing skills.

Our main objective is to provide legal security to investors participating in the Mexican mining industry (i.e., controlling Mexican subsidiaries, shareholders to the Mexican subsidiaries' parent companies, and banks and financial institutions as lenders/investors).

Other titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
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- Merger Control
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