

# Mexico

Enrique Rodríguez del Bosque

RB Abogados

## Mining industry

### 1 What is the nature and importance of the mining industry in your country?

In accordance with the information reported by the Mexican National Institute of Statistics and Geography, during 2014 the mining industry represented 3 per cent of the GDP of Mexico. Furthermore, it is one of the main economic driving forces in Mexico. Its importance lies in the set of benefits arising from this activity, such as employment generation in areas where few industries operate, foreign investment, growth of its value chain and in the contribution to the cultural development of the country.

In addition to its contribution to GDP, the social benefits of mining spread to 24 out of the 32 states of the Mexican Republic, which makes Mexico the main destination for foreign investment in exploration of minerals in Latin America and the fourth worldwide.

### 2 What are the target minerals?

The 2014 report of the Mexican Mining Chamber of Mexico states the target minerals in Mexico as gold (27 per cent), silver (19.5 per cent), lead (2.8 per cent), copper (20.9 per cent), coal (2.8 per cent), zinc (6.6 per cent), iron (52 per cent) and fluorite (1.4 per cent).

At a global level, Mexico holds third place in the top producers of 18 major minerals, such as copper, zinc, lead and coal, it stands as the largest producer of silver and the eighth-largest producer of gold.

### 3 Which regions are most active?

In accordance to the 2014 report of the Mexican Mining Chamber, the most active regions in the mining industry regarding target minerals are as follows:

- Gold: Zacatecas (23.1 per cent), Chihuahua (16.9 per cent), Durango (11.3 per cent), Guerrero (7.3 per cent), Sonora (29.6 per cent) and others (11.8 per cent);
- Silver: Zacatecas (41 per cent), Chihuahua (16.9 per cent), Durango (14.2 per cent), Sonora (6.2 per cent), Oaxaca (4.1 per cent) and others (17.6 per cent);
- Lead: Zacatecas (52.8 per cent), Chihuahua (22.1 per cent), Durango (11.5 per cent) and others (13.6 per cent);
- Copper: Sonora (78.4 per cent), Zacatecas (9.1 per cent), San Luis Potosí (4.8 per cent), Chihuahua (3.6 per cent) and others (4.1 per cent); and
- Zinc: Zacatecas (42.6 per cent), Chihuahua (18.2 per cent), Durango (16.6 per cent), State of Mexico (6.9 per cent), Aguascalientes (3.9 per cent) and others (11.8 per cent).

## Legal and regulatory structure

### 4 Is the legal system civil or common law-based?

In Mexico, the legal system is civil law-based.

### 5 How is the mining industry regulated?

The federal government regulates the mining industry through the Ministry of Economy, particularly, through the General Bureau of Mining Regulation (GBMR).

Other governmental bodies that administer the regulatory regime relating to mining activities are the Environmental Ministry, the Waters

Commission, the Army Ministry, the Labour Ministry, the local public registries of real estate properties and the Agrarian Registry.

### 6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The laws regulating the mining industry are the Mexican Political Constitution, Mexican Mining Law, its Mining Regulation and the Mining Handbook Services (jointly, the Mining Law).

Additionally, other laws govern ancillary activities to the mining activities: Federal Environmental Law, the Federal Waters Law, Federal Agrarian Law (communities and social organisations lands' tenure), Federal Explosives and Weapons Law (for the storage, transportation and use of explosives), Federal Labour Law (this law governs labour relationships and safety at the mines facilities), local Civil Codes (applicable to private lands' tenure), federal and local tax laws, Federal Commercial Code, municipal regulations for zoning the use of the lands and Federal Environmental Norms.

The principal regulatory body in Mexico that administers the Mining Law is the GBMR, however, as mentioned in question 5, other governmental bodies administer the regulatory regimes relating to mining activities.

### 7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

Mexico follows international standards in this regard. Currently, the classification system used by Mexico is similar to that contained in the National Instrument 43-101 of Canada.

In order to report mineral resources, the following classification is applied:

- inferred mineral resource;
- indicated mineral resource; and
- measured mineral resource.

Furthermore, reports on mineral reserves are classified as follows:

- probable mineral reserve; and
- proved mineral reserve.

## Mining rights and title

### 8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

Mexico, as a nation, is the direct owner of all mineral deposits within the national territory as provided in the Constitution. The exploration and exploitation of such mineral resources are concessional to private parties pursuant to concessions granted by the federal government.

The GBMR is the agency of the federal government in charge of granting mining concessions and supervising the mining concessionaries to comply with Mining Law while holding mining concessions, while conducting mining activities and while granting rights to third parties over the

mining concessions for them to conduct mining activities, which are also subjected to the Mining Law.

Mining concessions grant to their holders the right to explore and exploit all minerals and substances specified in the Mining Law, except for those reserved to be exploited by the Mexican government, such as gas derived from the exploitation of mineral coal, oil and solid, liquid or gaseous hydrocarbons.

Mining concessions do not grant the ownership or possession rights over the surface where they are located. When the concession holder does not have surface rights to access the lands where the mining concession is located, it can directly negotiate the use of land for mining activities with the owners of the surface rights. In the case that no agreements are reached for the use of the surface, mining concessionaires are entitled to start a procedure contemplated in the Mining Law to obtain the following:

- the expropriation;
- a temporary occupation; or
- an easement.

**9 What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?**

Legal information about ownership, agreements, liens and encumbrances of mining concessions is available at the Public Registry of Mining (PRM).

General mining information, including maps, mining cartography, geological and geophysical reports, information of ore deposits, technical data, tectonic and volcanic information, satellite images, hydrographic information, natural protected areas, general statistics on production, etc, for the mining districts (areas in which the Mexican territory is divided by the GBMR) for mining purposes is available at the Mexican Geological Service (MGS) through the 'Geoinfomex System'. Official Mexican mining cartography is also publicly available at the subdirectories of the GBMR in the corresponding states.

As part of their obligations before the GBMR, mining concessions' title-holders shall annually submit work assessment reports containing economical information on investments incurred in their mining concessions, as well as statistics reports. Information submitted is used to create statistics on mining activities in the Mexican territory, and is used to generate public and private databases.

The MGS also conducts exploration activities in areas allotted to them by the GBMR. Its results are also publicly available.

**10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?**

The most common way for private parties to acquire mining concessions is staking them.

Private parties may also acquire mining concessions from the MGS. The MGS offers mining concessions to private parties through public auctions, with data derived from its own surveys and exploration activities.

Once the GBMR issues the mining concessions to private parties, after complying with certain technical and legal requirements, the rights granted to their holders are freely assignable. All Mexican private individuals and Mexican entities registered before the PRM are legally capable to hold mining concessions or rights deriving therefrom. Mexican entities are those incorporated in accordance to Mexican laws. Foreign investment may participate in up to 100 per cent of the capital of a Mexican entity.

In accordance to the Mining Law, mining concessions allow their title holders to conduct exploration and exploitation works.

**Process to acquire mining concessions through staking**

Mining concessions are granted over free areas to the first petitioner in time of a mining claim. The location of a mining concession is determined by a fixed base point of the land that is named the 'starting point', which is linked to the claim's perimeter.

The first step to acquire a mining concession through a staking, is to submit an application for a mining concession.

The applications for mining concessions must be submitted before the corresponding GBMR's agency depending on the location of the claim to be staked.

A mining expert shall conduct due diligence, considering the following:

- a review of the official Mexican mining cartography in the subdirectories of the GBMR in the states (see question 9);
- a recognition of the field;
- a definition of the perimeter;
- the field works; and
- a satellite GPS positioning in order to obtain the coordinates of the starting point of the claim.

If the due diligence report complies with all applicable requirements, the GBMR must issue the relevant title document within the following 15 days.

**Energy sector**

Due to the Mexican energy reform, enacted in August 2014, the GBMR, before issuing a mining concession, is required to consult with the Ministry of Energy (SENER), in order to verify that the area requested for mining concession is not considered an area of interest for SENER to conduct oil, gas or power generation activities.

Since oil, gas and power generation activities are now considered as priority activities in Mexico, the SENER may oppose the issuance of the relevant mining concession or may recommend the granting of it, excluding the area where the priority activities may be conducted, to the GBMR.

The Mining Law imposes, among other, the following main obligations to title holders of mining concessions:

- exploration or exploitation activities must start within 90 days of the concession being granted and recorded before the PRM, with the obligation to conduct and evidence minimum investments in the area under the mining concession or the extraction of economically useful minerals in the amounts provided under the Mining Law and provide the relevant work assessment reports showing the foregoing on an annual basis;
- pay governmental mining concession's fees, for which the amount payable depends on the following:
  - the date on which the mining concession was registered before the PRM (the older the mining concession is, the higher the governmental fees are); and
  - the surface covered by the mining concession (number of hectares) (Governmental Mining Fees);
- comply with applicable legislation regarding technical, safety and environmental standards;
- provide the Ministry of Economy with statistical, technical and accounting reports in terms of the Mining Law;
- allow inspection visits from the Ministry of Economy; and
- inform the Energy Ministry in the case of finding any hydrocarbons where the mining concession is located.

As mentioned, there are no reconnaissance or other kind of mineral licences, only mining concessions as described here.

**11 What is the regime for the renewal and transfer of mineral licences?**

Mining concessions are granted for a term of 50 years from the date of their registration in the PRM and are subject to renewal for an additional term of 50 years if:

- the holder does not incur in a cause of cancellation of the concession by any act or omission so penalised by the Mining Law; and
- the holder requests the extension within five years prior to the expiry date.

The transfer or assignment of concessions or rights thereunder may be freely made to any party having legal capacity. 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 with the PRM. Owners of mining concessions shall be only recognised as so, if they are recorded as concessionaires with 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 an 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.

A 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.

**12 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?**

In Mexico, mining concessions may only be granted to Mexican individuals, Mexican Companies, land granted by the government to a group of individuals for agricultural and ranching purposes, agrarian communities, townships and aboriginal communities. In the case of companies, they must be incorporated in accordance with Mexican laws, and their corporate purpose shall include the exploration or exploitation of minerals and substances subject to the Mining Law. Foreign participation of up to 100 per cent ownership of such companies is permitted.

**13 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?**

Mining rights are protected through the applicable legislation and the applicable administrative and judicial authorities; therefore, Mexican authorities are in charge of the resolution of controversies that may arise from mining operation.

Foreign arbitration awards shall follow a homologation proceeding before a Mexican court, in order to be enforceable in Mexico.

**14 What surface rights may private parties acquire? How are these rights acquired?**

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 (eg, lease agreements, temporary occupation agreements or expropriation through an administrative proceeding).

The Mexican Constitution recognises the following surface rights:

- (i) social land granted to aborigines;
- (ii) social land granted to a group of individuals or communities;
- (iii) national land;
- (iv) federal areas, beaches and river beds; and
- (v) private property.

The Agrarian Law governs the property rights mentioned in (i)–(iii). 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. 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 the case of expropriation by the Mexican government, the consideration is payable based on an appraisal made by an agency of the Mexican government.

**15 Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?**

Beside the exploration activities conducted by private parties, exploration of national territory for the purpose of identifying and quantifying the nation's potential mineral resources is carried out by the MGS, through mining allotments, which are issued to this entity by the Ministry of Economy, the registration whereof is published in the federal official gazette. No other state agencies conduct mining activities.

Once MGS explore the relevant allotments, they are sold to private parties by way of public auctions. Mining concessionaires must pay royalties to the MGS as part of the consideration payable for the exploration activities and discoveries made by the MGS.

**16 Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?**

In the case of mining concessions, certain governmental authorities (ie, Environmental Ministry, Communications and Transport Ministry,

Agrarian Ministry and others), due to an event of national security or public interest, may decide to revert the concessions granted to private parties (the Reversion Decision). The Reversion Decision decree shall include the general rules to determine the consideration to be paid to the concession holder and the investments made in the concession. The depreciation of the expropriated assets, equipment and facilities attached to the mining concession shall be considered in order to calculate such consideration, through the payment of a fair market value compensation.

If the affected party agrees with the amount of consideration payable, it shall be final. If not, it has the right to file a claim before a Mexican court, which will take the final decision.

In accordance with the North America Free Trade Agreement (NAFTA), Mexico may only expropriate property in case of public interest and on a non-discriminatory basis. In such events, expropriations will require a fair market value compensation, including accrued interest. In the event of any violations of the NAFTA and international laws, investors have the right to international arbitration.

**17 Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?**

The federal government has issued specific decrees for the incorporation of natural protected areas. The federal government has established 176 natural protected areas throughout the country. Each natural protected area has zones where mining activities are forbidden or highly regulated; these limitations are applicable to private and public property within those areas.

**Duties, royalties and taxes**

**18 What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?**

In addition to governmental mining fees, all mining concessions are subject to the payment of certain fees to the Mexican government, which are based on production.

In accordance to the Federal Duties Law (Duties Law) holders of mining concessions shall pay the following:

- 7.5 per cent of the income from the sale of minerals extracted from a mining concession minus the authorised deductions, on an annual basis (the Governmental Royalty); and
- in the case of commercialisation of gold, silver or platinum, concessionaires shall pay an additional 0.5 per cent of the income for the sale of such minerals on an annual basis (the Extraordinary Governmental Royalty).

Finally, holders of mining concessions that do not perform and verify exploration or exploitation works for two consecutive years, during the first 11 years of seniority counted from their issuance, shall pay on a biannual basis, an additional 50 per cent of the corresponding governmental mining fees in accordance with the quotas stated in the Duties Law or 100 per cent if the concession's seniority is over 11 years.

**19 What tax advantages and incentives are available to private parties carrying on mining activities?**

Mexican tax legislation does not grant specific tax incentives to mining companies. However, there are other general tax incentives that can be taken, such as immediate deduction of some fixed assets, tax credit of the special tax over services and production related to diesel consumption and credit of the fees paid over the use of the mining concession.

**20 Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?**

Unfortunately, Mexican tax legislation does not contemplate the tax stability agreement concept, which could support the mining industry in the early years of operation.

The only possibility under Mexican legislation is to negotiate, upfront, the values to be used in transactions between related parties. The period that could be negotiated is up to five years and it is commonly known as an advance price agreement. This negotiation is basically from a transfer pricing perspective.

**21 Is the government entitled to a carried interest, or a free carried interest in mining projects?**

Except for the royalties mentioned in question 15, in accordance with applicable Mexican legislation, the government is not entitled to carried interests in mining projects.

**22 Are there any transfer taxes or capital gains imposed regarding the transfer of licences?**

The transfer of mining concessions is subject to taxation in connection with income tax (considering the gain triggered in the sale, similar to a capital gain) and value added tax (similar to a transfer tax) at a rate of 16 per cent.

**23 Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?**

As mentioned in question 10, since exploration and exploitation activities conducted by foreign investors in Mexico must be made through Mexican companies, and these companies are considered for all legal effects as Mexican residents, there are no distinctions for duties, royalties and taxes payable by Mexican companies with 100 per cent Mexican investment and Mexican companies with 100 per cent foreign investment.

**Business structures****24 What are the principal business structures used by private parties carrying on mining activities?**

The most common business structures used are corporations and limited liability corporations, regulated by Mexican Corporations Law.

**25 Is there a requirement that a local entity be a party to the transaction?**

No, there is not.

**26 Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?**

Mexico has entered into several bilateral agreements with foreign countries, which includes, among others, the following free trade agreements: the NAFTA with the US and Canada, the G3 with Colombia and Venezuela, the Trans-Pacific Partnership with Japan, Canada, the US, Australia, New Zealand, Malaysia, Brunei, Singapore and Vietnam, and other commercial agreements with the EU, Israel, Chile, Costa Rica, etc.

Additionally, the Mexican government has subscribed several bilateral agreements, for the avoidance of double taxation, with the following countries, among others: Argentina, Australia, Austria, Bahrain, Barbados, Brazil, Canada, China, Colombia, United Arab Emirates, Germany, Greece, Hungary, Hong Kong, India, Indonesia, Iceland, Italy, Kuwait, Lithuania, Luxembourg, Malta, New Zealand, Panama, the Netherlands, Peru, Poland, Qatar, the US, the UK, the Czech Republic, Russia, South Africa, Switzerland, Turkey, Ukraine and Uruguay.

All international commercial treaties subscribed to by Mexico include a chapter concerning protecting investment from unlawful acts of authority (ie, chapter 11 of NAFTA).

Mexico has followed the OECD rules in the negotiation of all the tax treaties and even when there could be some minor differences between the tax treaties, in general terms, the conditions agreed are similar.

Notwithstanding the above, it is fairly common to have finance agreements or royalty agreements in place and usually the payments are made to countries in which the tax treatment for such payments is more favourable. Due to the terms of the Mexican legislation these payments are usually made to residents of countries with tax treaties with Mexico.

**Financing****27 What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?**

The principal sources of financing for mining activities carried out by Mexican companies, subsidiaries of foreign companies, are the stock exchange institutions of their countries, with the Toronto stock exchange

and the New York stock exchange being the most active for the parent companies of Mexican subsidiaries. Once the money is raised from the applicable stock exchange, the resources are sent to the Mexican subsidiaries, either as capital contributions or as loans. Also foreign private banks lend money to foreign parent companies or directly to the Mexican subsidiaries. During the last 10 years, successful streaming, royalties and off-take agreements have been structured to finance mining projects in Mexico.

Additionally, a Governmental Mining Trust Fund (FIFOMI) and the Mexican Government Mining Bank, have provided funds to private parties for the development of mining activities. FIFOMI grants the same treatment to Mexican companies with 100 per cent Mexican investment as to Mexican companies with 100 per cent foreign investment.

The Mexican stock exchange hosts mining companies but only with production projects and a number of valuable assets. There are 40 Mexican and foreign mining companies whose securities are listed in the Mexican stock exchange.

**28 Does the government, its agencies or major pension funds provide direct financing to mining projects?**

As mentioned in question 27, the FIFOMI and the Mexican Government Mining Bank provide funds to private parties for the development of mining activities.

**29 Please describe the regime for taking security over mining interests.**

Lenders usually request the following guarantees:

- over 100 per cent of the shares of the Mexican companies that own the mining concessions, through pledge agreements over the shares;
- over mining concessions, usually through non-possessory pledges or mortgages;
- over owned lands and real estate, through mortgages; and
- over machinery, equipment and other moveable assets through non-possessory pledges.

In order to be effective before third parties these guarantees must be granted before a Mexican public notary in order to be able to register them with the corresponding public registry: mining concessions mortgages or non-possessory pledges with the PRM; all moveable assets, including machinery and equipment, with the Moveable Assets Guarantees Registry (federal jurisdiction) and lands and real estate with the local public registry of real estate (local jurisdiction).

It is also possible to grant a pledge over the minerals extracted from the mining concessions.

**Restrictions****30 What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?**

There are no restrictions for the exportation or the importation of machinery and equipment required in connection with exploration or exploitation activities.

**31 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?**

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 sectoral 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.

**32 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?**

There are no restrictions on the importation of funds or investment for exploration, extraction, export or sale of minerals to any national or foreign private party.

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**Environment**
**33 What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?**

The principal environmental laws applicable in Mexico to the mining industry are the following:

- General Law of Environmental Equilibrium and Environmental Protection;
- General Law for the Prevention and Management of Waste;
- General Law on Climate Change;
- General Law of Sustainable Forestry Development;
- regulation of the General Law of Environmental Equilibrium and Environmental Protection regarding environmental impact assessment;
- Regulations of Natural Protected Areas; and
- Mexican Official Norms (NOMS) related to environmental matters: NOM 120, NOM 141, NOM 147, NOM 155, NOM 157 and NOM 159, among others.

The principal environmental regulatory bodies are as follows:

- the Ministry of Environment and Natural Resources (SEMARNAT); and
- the Federal Environmental Prosecutor.

**34 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?**

Exploration, exploitation and processing of minerals require the filing of an environmental impact assessment, as well as the filing of a preventive report, in some cases.

Applicants must notify the environmental authority of actions that seek to make it to determine whether the filing of an environmental impact assessment is required, or may be performed without authorisation.

The authorisation of the preventive report for the exploration phase should be granted within 20 business days, and for the land use change on forest land the authorisation should be granted within 60 business days.

**35 What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?**

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

If hazardous substances considered highly risky are used during the exploitation phase, it is necessary to have environmental risk insurance, that will be required in the corresponding resolution of the environmental impact assessment, as a condition to starting operating activities. Three insurance or guarantees may be required, as follows:

- if hazardous substances are used;
- if hazardous waste is generated; and
- another, contained in the resolutions of the environmental impact authorisation, for the fulfilment of obligations.

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**Health & safety, and labour issues**
**36 What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?**

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

- Federal Labour 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; and
- Official Regulation NOM-032-STPS-2008, Security for Underground Coal Mines.

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

**37 What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?**

The Mexican Official Standard NOM-141-SEMARNAT-2003, sets the procedure for preparation, design, construction, operation and post-operation of mine tailings 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 benefited 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; these, in accordance with civil law, belong to the owner of the lands where tailings are sited.

Furthermore, dumps, in accordance with the Mexican Mining Law, belong to the mining concession holder.

**38 What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?**

There are no exclusive restrictions or limitations imposed in connection with mining activities; however, the following restrictions apply in general:

- at least 90 per cent of the workers must be Mexican;
- for technical activities, workers must be Mexican unless there is a very particular and specific expertise that may only be performed by a foreigner, but only temporarily. Foreign workers are required to train Mexicans in the area of speciality dominated by them. Usually when foreign geologists, mining engineers, metallurgical engineers, environmental engineers and technicians are hired for Mexican projects they are hired as decision makers and management officers; and
- doctors (physicians) working for companies must be Mexican individuals.

Furthermore, foreigners require special authorisation from the National Migration Institute in order to be hired in Mexico for lucrative activities.

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**Social and community issues**
**39 What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?**

The principal community engagement regulations are the Mexican Constitution (its spirit is social and its focus is in protecting vulnerable groups), some provisions of the Mining Law (see question 38), the Federal Labour Law and the Agrarian Law and regulations thereof.

Mexico has also subscribed to several international treaties (see question 41).

The main regulatory entities are the Ministry of Economy through the GBMR, the Labour Ministry and the Agrarian Ministry.

**40 How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?**

Mexico has subscribed to the Convention for Protection of Indigenous and Tribal People (ILO Convention No. 169). Concessionaires must consult indigenous communities located in areas where mining concessions are located.

However, there are no mechanisms implemented in the applicable Mexican legislation in this regard, nor sanctions or penalties imposed if the concessionaire does not consult the indigenous community.

Additionally, in the acquisition of mining concessions, if there are simultaneous applications made by indigenous groups or tribal people and private miners for the staking of a mining concession, the indigenous communities living where the relevant mining concession is located have preferred rights to obtain the mining concession.

### Update and trends

According to the Mexican Mining Chamber, both domestic and foreign investment in Mexico decreased by 59 per cent during 2015, mainly due to new taxes and the general drop in the price of metals.

Regarding legislative trends, on 29 September 2015, a point of agreement was reached whereby the foundation of a special mining committee was proposed, in the deputy chamber, to deal with matters of workers in the mining industry, the attraction of investment, the development of suppliers of goods and services for companies and a greater benefit for the areas where mining properties are operated.

In Mexico the following significant transactions took place in 2015: Grupo Mexico acquired the El Pilar mine, First Majestic took control of Silver Crest and the amalgamation of Alamos Gold and AuRico Gold companies made an impact due to the fact that both companies own projects in Mexico and because it has transformed Alamos into a stronger, leading low-cost producer.

In April 2016 the Energy Ministry announced that it had authorised mining companies to import diesel from other countries, which represents a benefit for the mining industry, as governmental company PEMEX had been the sole supplier of fuels before this energy amendment.

#### 41 What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

The Mexican government has subscribed to several conventions, including the following:

- Indigenous and Tribal Peoples Convention (No. 169 - ILO);
- Fund for the Development of Tribal Peoples in Latin America and the Caribbean;
- Performance Standards on Social and Environmental Sustainability of the International Financing Corporation; and
- Equator Principles.

### Anti-bribery and corrupt practices

#### 42 Describe any local legislation governing anti-bribery and corrupt practices.

Currently the Senate is discussing a draft of Anti-Corruption Law, which will include a national anti-corruption system as the executor and sanctioning body. A public contracting anti-corruption federal law exists but it covers only the activities relating to contracting with the federal government.

The current governmental authority in charge of the surveillance of the performance of public officers is the Ministry of Public Service, which determines the legality of federal acquisitions, audits expenses from federal resources and coordinates Internal Control Organs in each federal agency, among other tasks.

The federal Criminal Code and state Criminal Codes include dispositions penalising the bribery and some other corrupt practices.

#### 43 Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Foreign mining companies generally have anti-corruption and anti-bribery policies implemented from abroad, to be fulfilled not only by the company itself, but for all those with whom the company enters into any type of agreement, either for goods or services. On the other hand, public Mexican mining companies generally implement anti-corruption and anti-bribery policies through a corporate governance system that is responsible for ensuring transparency in the administration, the experience of their organisational values and accountability to its stakeholders.

#### 44 Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

The accession of Mexico to the EITI Standard is in progress. However, to date, Mexico has not enacted legislation nor has it adopted international practices regarding the EITI Standard in connection with disclosure of payments.

### Foreign investment

#### 45 Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

As mentioned, Mexican mining companies may be owned up to 100 per cent by foreign investors, either as individuals or entities. Mexican mining companies partially- or fully-owned by foreign investors are considered Mexican entities and have the same business rights as Mexicans.

The only obligation of Mexican companies with foreign investment is to be registered with the foreign investment registry and report changes to their capital structure and periodically report their finance conditions to the Mexican foreign investment authority.

### International treaties

#### 46 What international treaties apply to the mining industry or an investment in the mining industry?

Mexico has several bilateral agreements with other countries that contemplate certain matters related to the mining industry.

#### NAFTA

The purpose of NAFTA and other commercial treaties was to eliminate most of the duties imposed on the exportation and importation of goods.

Mexico has a temporary importation scheme through which payment of duties is not triggered except where the equipment remains in the country after the term of 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 are usually subject to a tax that ranges from 10 to 20 per cent.

# RB Abogados

Enrique Rodríguez del Bosque

erdelbosque@rbmexicolaw.com

Insurgentes Sur 1787, floor 6  
Colonia Guadalupe Inn  
Delegación Álvaro Obregón  
Mexico City, Mexico  
ZP 01020

Tel: +52 55 5682 0303  
www.rbmexicolaw.com

**Mexico and Japan Free Trade Agreement**

With this agreement, Mexican companies will have a zero tax rate for the exportation of up to 95 per cent of the goods exported to Japan, including, among others, minerals.

Mexico will reduce duties on goods imported from Japan, eg, goods with electronic and steel components, by up to 44 per cent in the upcoming years.

**Mexico and Chile Free Trade Agreement**

This agreement provides the opportunity to participate as a supplier of mining industry inputs with a tax rate of zero per cent 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 and sodium pentasulfide, among others.