

# Mexico

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## MINING INDUSTRY

### Standing

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

According to the information reported by the Mexican National Institute of Statistics and Geography, in 2018 the mining industry represented 8.2 per cent of the industrial GDP and 2.4 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 mining, 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, which made Mexico the third destination for foreign investment in exploration of minerals in Latin America and the sixth worldwide in 2018.

### Target minerals

2 | What are the target minerals?

The 2019 report of the Mexican Geological Service (MGS) on the status of the mining industry in Mexico in 2018 (the 2019 MGS Report), states that the target minerals in Mexico are gold (16.1 per cent), quarried aggregate (12.9 per cent), basalt (12.8 per cent), copper (12.8 per cent), silver (10.3 per cent), zinc (5.5 per cent), iron (2.5 per cent), lead (1.5 per cent) and molybdenum (1.5 per cent).

At a global level, Mexico is one of the 13 top producers of 24 major minerals, such as silver, gold, copper, zinc, lead and coal, and it stands as the largest producer of silver. Its ranking as the largest producer of other minerals is as follows: fluorite (second); wollastonite (third); bismuth and celestite (fourth); molybdenum, lead and diatomite (fifth); cadmium, selenium, zinc, feldspar and gypsum (sixth); gold, barite and salt (seventh); copper (ninth); tungsten and manganese (10th); kaolin and graphite (11th); and iron (13th).

During 2018 there were significant increases in the production of certain metallic minerals as follows: gold, silver, copper, zinc, iron, molybdenum and cadmium manganese. There was also a significant increase in the production of barite, bentonite, celestite, fluorite, wollastonite, magnesium sulfate, salt, coal and gypsum, among other minerals.

Notwithstanding the foregoing, the production of lead, selenium and bismuth has decreased.

### Regions

3 | Which regions are most active?

According to the 2019 MGS Report, the most active regions in the mining industry regarding target minerals are as follows:

- gold: Sonora (34 per cent), Zacatecas (13 per cent) and Chihuahua (18.5 per cent);
- silver: Zacatecas (37 per cent), Chihuahua (21.4 per cent), Durango (15.7 per cent) and Sonora (6.6 per cent);
- lead: Zacatecas (55.5 per cent), Chihuahua (16.6 per cent) and Durango (8.9 per cent);
- copper: Sonora (81.3 per cent), Zacatecas (6.3 per cent) and San Luis Potosí (3.9 per cent);
- zinc: Zacatecas (48.1 per cent); and
- iron: Coahuila.

## LEGAL AND REGULATORY STRUCTURE

### Basis of legal system

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

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

### Regulation

5 | How is the mining industry regulated?

The federal government regulates the mining industry through the Ministry of Economy, particularly, through the Mexican Bureau of Mines (MBM).

Other government bodies that administer the regulatory regime relating to mining activities are: the Environmental Ministry; the National Waters Commission; the Army Ministry; the Labour Ministry; the local public registries of real estate properties; and the Agrarian Registry. Of these, the local public registries of real estate properties and the Agrarian Ministry administer the surface rights needed to conduct mining activities.

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 (the Mexican Constitution) and the Mexican Mining Law, its Mining Regulation and the Mining Handbook Services (collectively, the Mining Law).

The following laws govern ancillary activities to mining activities:

- the Federal Environmental Law;
- the Federal Waters Law;
- the Federal Agrarian Law (communities and social organisations lands' tenure);
- the Federal Explosives and Weapons Law (for the storage, transportation and use of explosives);
- the 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;
- the 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 MBM; however, other government bodies administer the regulatory regimes relating to mining activities.

There have been no major amendments in the past year to the aforementioned laws.

### Classification system

#### 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.

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.

Under Mexican laws there is no official classification system for reporting mineral resources and mineral reserves.

## MINING RIGHTS AND TITLE

### State control over mining rights

#### 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 Mexican Political Constitution (the Mexican Constitution). The exploration and exploitation of such mineral resources are concessional to Mexican private parties (concessionaires) pursuant to concessions (mining concessions) granted by the federal government.

The Mexican Bureau of Mines (MBM) is the federal agency in charge of granting mining concessions and supervising the concessionaires to comply with the Mexican Mining Law, its Mining Regulation and the Mining Handbook Services (collectively, the Mining Law) while holding mining concessions, conducting mining activities and granting rights to third parties (operators) over the mining concessions for them to conduct mining activities, which are also subjected to the Mining Law.

Mining concessions grant to their concessionaires or their duly authorised operators, the right to explore and exploit all minerals and substances specified in the Mining Law, except for those reserved to be exploited by the federal government, such as energy minerals and radioactive minerals.

Mining concessions do not grant the ownership or possession rights over the surface where they are located. When the concessionaire or the operator does not have surface rights to access the land where the mining concession is located, it can directly negotiate the use of land for mining activities with the owners or possessors of the surface rights. If no agreements are reached for the use of the surface, concessionaires and operators are entitled to start a procedure contemplated in the

Mining Law to obtain the following: expropriation; temporary occupation; or easement.

### Publicly available information and data

#### 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 on 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 MBM) 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 MBM in the corresponding states.

As part of their obligations to the MBM, concessionaires must annually submit work assessment reports containing financial 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 MBM. Its results are also publicly available.

### Acquisition of rights by private parties

#### 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 through public bidding processes, with data derived from MGS's own surveys and exploration activities.

Once the MBM 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 of holding mining concessions or rights deriving therefrom. Mexican entities are those incorporated in accordance with Mexican laws. Foreign investment may participate in up to 100 per cent of the capital of a Mexican entity.

In accordance with the Mining Law, mining concessions allow their concessionaires, or third parties authorised by the concessionaires, to conduct exploration and exploitation works.

### Process to acquire mining concessions through staking

Mining concessions are granted over free areas to the first petitioner that makes a mining claim, except in the cases mentioned below.

The location of a mining concession is determined by a fixed base point of the land known as 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 MBM's agency depending on the location of the claim to be staked. If there are simultaneous applications for a mining concession requesting the same area, a lottery procedure will be conducted by the relevant MBM's regional office. Aboriginal and tribal communities shall have preferential rights to acquire a mining concession when a lottery is conducted. Additionally, concessionaires holding mining concessions with perimeters adjacent or surrounding areas with a maximum area of 10 hectares (a mining concession known as a gap) also have preferential rights to acquire concessions with this maximum area.

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

- a review of the official Mexican mining cartography in the regional offices of the MBM;
- recognition of the field;
- a definition of the perimeter;
- the field works; and
- a satellite GPS position to obtain the coordinates of the starting point of the claim.

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

### Energy sector

As a result of the Mexican energy reform enacted in August 2014, the MBM, before issuing a mining concession, is required to consult the Ministry of Energy (SENER) to verify that the area requested for a 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 a priority in Mexico, 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 MBM.

The Mining Law imposes, among others, the following main obligations to the concessionaires:

- commence exploration or exploitation activities within 90 days of the concession being granted and recorded before the PRM, and 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 government mining concession fees, for which the amount payable depends on the following: (1) the date on which the mining concession was registered before the PRM (the older the mining concession is, the higher the government fees are); and (2) the surface covered by the mining concession (number of hectares);
- comply with applicable legislation regarding technical, safety and environmental standards;
- provide the Ministry of Economy with statistical, technical and accounting reports in compliance with the Mining Law;
- allow inspection visits from the Ministry of Economy; and
- inform SENER if any hydrocarbons are found where the mining concession is located.

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

## Renewal and transfer of mineral licences

### 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 concessionaire does not cause the mining concession to be cancelled because of any act or omission penalised by the Mining Law; and
- the concessionaire requests the extension within five years prior to the expiry date.

The transfer or assignment of mining concessions or rights thereunder may be freely made to third parties with legal capacity. The transfer of mining concessions or rights thereunder shall produce legal effects against third parties, the Ministry of Economy and other government authorities upon their registration with the PRM; the filing of the relevant agreement transferring the mining concession or rights thereunder, shall be filed before the PRM to achieve registration of the new concessionaire or the new holder of the rights so transferred in its records. Owners of mining concessions shall be only recognised as owners 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 (concessionaire) to pay the debt, and provided further that the rights are then transferred to a capable party within 365 calendar days of the date the court resolution was issued.

Government consent is not required to transfer a mining concession, or in the event of change of control of a concessionaire commercial company or the parent thereto. The change of control of a commercial company that is a concessionaire does not represent the transfer of the mining concession before the PRM; however, many transactions in transfer or joint venture mining projects (eg, mergers and acquisitions (M&A)) are carried out through the sale of shares of the concessionary commercial company or by increasing the company's capital to include a third party as a joint venture partner.

In accordance with the Federal Economic Competition Law (the Competition Law), depending on the amount of the M&A transaction, and other issues, the transaction must be reported to the Mexican Competition Authority (COFECE), for COFECE to determine whether it will result in a monopoly. Normally an M&A transaction does not represent a monopoly transaction because the minerals produced are commodities and, therefore, their prices are determined by third parties that are not involved in the transaction. All transactions should be cleared by COFECE before they are completed.

Although all concentrations that occur in Mexico or have effects in Mexico are subject to the Competition Law and may be investigated by COFECE, the Competition Law sets forth certain monetary thresholds that trigger the obligation of economic agents to notify concentrations before they are consummated. In this regard, a transaction will be subject to a pre-merger filing by reaching at least one of the following thresholds:

- when the originating act or sequence of acts, notwithstanding the place of performance, are within Mexican territory, directly or indirectly, an amount in excess of the equivalent of 18 million times the unit for measure and update (UMA), which is 1,563,840,000 pesos;
- when the originating act or sequence of acts imply the accumulation of 35 per cent or more of the assets or stock of an economic agent, whose annual sales originating in Mexican territory or assets in the country are worth an amount in excess of the equivalent of 18 million times the UMA; or

- when (1) the originating act or sequence of acts imply an accumulation within Mexican territory of assets or capital stock in excess of the equivalent to 8.4 million times the UMA (approximately 729,792,000 pesos), and (2) two or more of the economic agents participating in the concentration have annual sales originating in Mexican territory or assets in Mexican territory that are worth, jointly or separately, an amount in excess of 48 million times the UMA (4,170,240,000 pesos).

A transaction would be subject to a pre-merger filing by reaching at least one of these thresholds.

Any acts that infringe this article shall be null and void, without prejudice to the economic agents' administrative, civil or criminal liability and that of the persons who ordered or contributed to the execution of the acts, as well as the notary public or attesting official who may have intervened.

All concentrations that occur in Mexico or have effects in Mexico are subject to the Competition Law; thus, even if a transaction does not reach any of the above-mentioned thresholds, COFECE has the power to investigate a transaction during the year following completion.

### Duration of mining rights

#### 12 | What is the typical duration of mining rights?

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 concessionaire is not subject to cancellation of the mining concession as the result of any act or omission that contravenes the Mining Law and if the concessionaire requests the extension within five years prior to the expiry date.

A mining concession will be cancelled before expiration if the concessionaire has:

- not paid mining fees as provided in the Mining Law and the Federal Duties Law;
- not filed the work assessment reports evidencing minimum investments incurred in the mining concessions;
- dropped the mining concession through the corresponding administrative procedure;
- exploited or extracted minerals or substances not permitted by the Mining Law;
- not paid the corresponding royalties to the MGS, if the concession was acquired from the MGS;
- conducted mining activities without the relevant authorisations and permits necessary; or
- lost its capacity to own mining concessions (eg, if a company changes its Mexican nationality).

### Acquisition by domestic parties versus acquisition by foreign parties

#### 13 | 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?

Up to 100 per cent foreign investment is allowed in Mexican companies that can acquire and operate mining concessions. In Mexico, mining concessions may only be granted to Mexican individuals, Mexican companies (companies incorporated under the laws of Mexico and with corporate domicile within the country), 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. These companies must be recorded before the PRM. Since a Mexican company is a company incorporated under the

laws of Mexico, there are no distinctions on the rights to be acquired by a Mexican company whose capital is 100 per cent Mexican investment and a Mexican company whose capital is 100 per cent foreign investment.

### Protection of mining rights

#### 14 | 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. The Mexican judicial system adheres to the rule of law and due process, therefore Mexican authorities must resolve controversies that arise from mining operations.

In accordance with certain provisions of the Federal Code of Civil Proceedings, in the event of a dispute between the parties to an agreement involving mining concessions, an arbitration award cannot be homologated (executed) in Mexico since mining matters are the exclusive competence of federal courts.

### Surface rights

#### 15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?

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, easements agreements or expropriation through an administrative proceeding).

The Mexican Constitution recognises the following surface rights:

- 1 social land granted to aborigines;
- 2 social land granted to a group of individuals or communities;
- 3 national land;
- 4 federal areas, beaches and river beds; and
- 5 private property.

The Agrarian Law governs the property rights mentioned in points (1) to (3). These lands can be legally occupied or acquired by private parties as provided in the Agrarian Law.

A concessionaire 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 concessionaire or an authorised operator of a mining concession 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.

The MBM may revoke the temporary occupation resolved by it or to revert the ownership of the surface expropriated to its former owner in the following cases:

- if the mining works to develop are not started within 365 days of the issuance of the relevant resolution granting the temporary occupation or resolving the expropriation of the surface where the mining concessions are located;
- if the mining works are suspended for a year or more;
- if the surface granted is destined for a use other than mining;
- if the concessionaire or the authorised operator does not pay the consideration determined in the relevant resolution of temporary occupation or expropriation;
- if the mining concession is nullified or cancelled; and
- by a court resolution.

## Participation of government and state agencies

**16** 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?

In addition to 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.

After the MGS has explored the relevant allotments, they are sold to private parties by way of public bidding processes. Concessionaires must pay royalties to the MGS as part of the consideration payable for the exploration activities and discoveries made by the MGS.

## Government expropriation of licences

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

In the case of mining concessions, certain government authorities (including the Environmental Ministry, the Communications and Transport Ministry and the Agrarian Ministry), because of an event of national security or public interest, may decide to revert the concessions granted to private parties (the reverse decision). The reverse decision must 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 must be calculated to determine the consideration to be paid, which will be fair market value compensation.

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

In accordance with the North American Free Trade Agreement (NAFTA), Mexico may only expropriate property if there is public interest and on a non-discriminatory basis. In this event, expropriations will require fair market value compensation, including accrued interest. In the event of any violations of NAFTA and international laws, investors have the right to international arbitration. The United States-Mexico-Canada Agreement, which will replace NAFTA, was signed by Canada, the United States and Mexico in November 2019, but has not yet entered into force.

## Protected areas

**18** 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. It has established 182 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.

In addition, there are certain areas protected by the Anthropology and History National Institute (INAH) where there are archaeological vestiges or historical findings. Each area protected by the INAH has zones where mining activities are forbidden or highly regulated. If, while conducting mining works within a mining concession, the concessionaire or the authorised operator finds archaeological vestiges or historical findings, it must provide notice of these findings to the INAH. The INAH may determine if the areas should be protected by it. If those areas potentially have strong archaeological or historical value, the INAH may submit a request to the government to expropriate those areas.

As a result of the Mexican energy reform enacted in August 2014, the MBM, before issuing a mining concession, is required to consult the Ministry of Energy (SENER) to verify that the area requested for a 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 a priority in Mexico, 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 MBM.

## DUTIES, ROYALTIES AND TAXES

### Duties, royalties and taxes payable by private parties

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

Mining is subject to income tax and the commercialisation of the minerals are subject to value added tax payable by the purchaser, except when minerals are exported, in which case the value added tax is zero. Furthermore, in addition to mining fees, all mining concessions are subject to the payment of certain additional fees to the federal government, which are based on production.

In accordance with the Federal Duties Law, concessionaires 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 government royalty); and
- in the case of commercialisation of gold, silver or platinum, an additional 0.5 per cent of the income for the sale of such minerals on an annual basis (the extraordinary government royalty).

Finally, concessionaires 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 government mining fees in accordance with the quotas stated in the Federal Duties Law or 100 per cent if the concession's seniority is over 11 years.

### Tax advantages and incentives

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

Mexican tax legislation does not grant specific tax incentives to concessionaires or operators of mining concessions. However, there are other general tax incentives, 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.

### Tax stabilisation

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

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.

### Carried interest

22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

In accordance with the Federal Duties Law, concessionaires 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 government royalty); and
- in the case of commercialisation of gold, silver or platinum, an additional 0.5 per cent of the income for the sale of such minerals on an annual basis (the extraordinary government royalty).

There are also royalties payable to the Mexican Geological Service over mining concessions granted deriving from bidding processes. Otherwise, in accordance with applicable Mexican legislation, the government is not entitled to a carried interest in mining projects.

### Transfer taxes and capital gains

23 | 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.

### Distinction between domestic parties and foreign parties

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

As mining activities conducted by foreign investors in Mexico must be made through Mexican companies, and these companies are considered for all legal purposes to be Mexican national entities, 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

### Principal business structures

25 | 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 the Mexican Corporations Law.

### Local entity requirement

26 | Is there a requirement that a local entity be a party to the transaction?

For a party to own mining concessions and rights deriving therefrom, it must be an entity incorporated under Mexican laws and duly registered before the Public Registry of Mining; however, foreign companies can own royalties over mining concessions and participate in transactions involving them. In addition, financing institutions, either Mexican or foreign, can own a mining concession for one year if guarantees over the mining concession are executed in the event of default under the obligations those mining concessions are guaranteeing. After one year has elapsed, the financing institution must assign the relevant mining concessions or rights thereto to a Mexican entity or a Mexican individual capable of holding them.

### Bilateral investment and tax treaties

27 | 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, including, among others, the following free trade agreements: NAFTA with the United States and Canada (soon to be replaced by the United States–Mexico–Canada Agreement), the G3 with Colombia and Venezuela; the Comprehensive and Progressive Agreement for Trans-Pacific Partnership with Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam; and other commercial agreements with, among others, Chile, Costa Rica, the European Union and Israel.

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

All international commercial treaties to which Mexico is a party 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 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. Because of the terms of the Mexican legislation, these payments are usually made to residents of countries with tax treaties with Mexico.

## FINANCING

### Principal sources of financing

28 | 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 concessionaires that are Mexican 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 foreign-based 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. Mexican banks generally do not fund mining companies. During the past 10 years, successful streaming, royalties and offtake agreements have been structured to finance mining projects in Mexico.

Additionally, the Government Mining Trust Fund (FIFOMI) and the Mexican Government Mining Bank have provided funds to private parties for the development of mining activities. The 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 valuable assets. There are around 40 Mexican

and foreign mining companies whose securities are listed on the Mexican Stock Exchange.

### Direct financing from government or major pension funds

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

The FIFOI and the Mexican Government Mining Bank provide funds to private parties for the development of mining activities. Pension funds in Mexico have as assets shares of Mexican mining companies listed on the Mexican Stock Exchange and securities issued by foreign companies with mining Mexican subsidiaries listed on stock exchanges around the world.

### Security regime

30 | 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 duly registered at the Public Registry of Mining (PRM);
- over owned lands and real estate, through mortgages duly registered at the local public registry of real estate; and
- over machinery, equipment and other movable assets through non-possessory pledges duly registered at the Movable Assets Registry.

To be effective before third parties, these guarantees must be granted before a Mexican public notary to register them with the corresponding public registry: mining concessions mortgages or non-possessory pledges with the PRM; all movable assets, including machinery and equipment, with the Movable Assets Guarantees Registry (federal jurisdiction); and land 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

### Importation restrictions

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

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

### Standard conditions and agreements

32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

Mexico does not use standard conditions for agreements covering equipment supplies. Most common commercial agreements used are leasing and purchase agreements. In the event of forward sales, it is common to enter into title reservation agreements or security agreements using the supplies as security.

In case of disputes between the parties, it is common to include arbitration provisions in the agreements involving supplies; however, parties can also use relevant legal resources before Mexican courts.

### Mineral restrictions

33 | 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, to export iron, gold, silver and copper minerals, the producing or 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 or having rights over them as its operators duly recorded before the Public Registry of Mining.

The following minerals are reserved for exploitation by government-owned companies: energy minerals and radioactive minerals.

### Import of funds restrictions

34 | 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.

## ENVIRONMENT

### Principal applicable environmental laws

35 | 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:

- the General Law of Environmental Equilibrium and Environmental Protection;
- the General Law for the Prevention and Management of Waste;
- the General Law on Climate Change;
- the General Law of Sustainable Forestry Development;
- the Regulation of the General Law of Environmental Equilibrium and Environmental Protection regarding environmental impact assessments;
- the regulations regarding natural protected areas; and
- Mexican Official Standards (NOMS) related to environmental matters, including NOM 120, NOM 141, NOM 147, NOM 155, NOM 157 and NOM 159.

The principal environmental regulatory bodies are the Ministry of Environment and Natural Resources and the Federal Environmental Prosecutor.

### Environmental review and permitting process

36 | 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 may require the filing of an environmental impact assessment. Some actions 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.

## Sustainability

### 37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

As of 2017, a fiscal incentive is granted to income taxpayers who carry out research and technological development projects, consisting of applying a tax credit equivalent to 30 per cent of the expenses and investments made in the year in technology research or development, against income tax arising in the year in which the credit is determined. This tax credit will not be cumulative for the purposes of the tax.

The Interinstitutional Committee for the Application of Fiscal Incentives for Technology Research and Development, a branch of the National Council for Science and Technology, authorised the allocation of 319 million Mexican pesos for fiscal incentives programmes. No mining industry sector projects were registered at the time; however, in 2018, 12 mining companies and 10 mining-related services requested their registration in the National Registry of Scientific and Technological Institutions and Companies. Upon registration, they will be able to participate in the support and incentive programmes applicable in accordance with the Science and Technology Law.

The Environment and Natural Resources Ministry is the government authority in charge of the preservation and restoration of ecological balance and may, on a case-by-case basis, establish measures to be adopted by mining companies for environment conservation and implementation of mining projects.

In addition, Mexico, as a party to the Kyoto Protocol, has implemented clean development mechanisms (CDMs), by which companies may invest in greenhouse gas emissions mitigation projects within developing countries. In return, Mexico receives certified emission reduction units (CERs). The countries where the projects are carried out benefit from technology transfers, investment capital flows for mitigation projects and the results they offer for sustainable development policies.

In 2013, the situation regarding CERs changed because of a huge drop in prices resulting from the wide offer of bonds and the low demand for them. Consequently, Mexico has not commenced new projects in recent years; however, the projects that are already registered as CDMs will continue to obtain CERs and those that have a letter of approval may be registered in the future.

## Closure and remediation process

### 38 | 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 cases of 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 are used during the exploitation phase, it is necessary to have environmental risk insurance as it will be required in the corresponding resolution of the environmental impact assessment as a condition to starting operating activities. Insurance terms or guarantees may be required if hazardous substances are used or hazardous waste is generated. They may also be required for the fulfilment of obligations contained in the resolutions of the environmental impact authorisation.

## Restrictions on building tailings or waste dams

### 39 | What are the restrictions for building tailings or waste dams?

Regarding restrictions for building tailings or waste dams, there is a Mexican Official Standard, 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. There are no qualifications necessary for the person in charge of operating and managing dam waste.

These facilities are inspected by authorities quite often. There are no specific periods for inspections.

There is an obligation to get a permit from the authority under the Programme for the Prevention of Accidents and, in certain cases, to submit a risk assessment, to register a 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.

There are no specific requirements for emergency drills with the local community.

The Federal Law of Environmental Responsibility provides that the main responsibility for rescuing people and remediation, damages and penalties rests with the mining company involved in the event.

## HEALTH AND SAFETY, AND LABOUR ISSUES

### Principal health and safety, and labour laws

#### 40 | 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:

- the Federal Labour Law;
- the Federal Social Security Law;
- the 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.

### Management and recycling of mining waste

#### 41 | 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?

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 Mexican Mining Law, its Mining Regulation and the Mining Handbook Services (collectively, the Mining Law) for the ownership of tailings. If tailings result from the ore beneficiated by the concessionaire, they belong to the concessionaire; in the case of tailings derived from the beneficiation of ore in a third party's beneficiation plant, they usually belong 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; in accordance with civil law, they belong to the owner of the lands where they are situated.

Furthermore, dumps, in accordance with the Mining Law, belong to the concessionaire.

### Use of domestic and foreign employees

#### 42 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.

- At least 90 per cent of workers must be Mexican.
- For technical activities, workers must be Mexican unless there is specific expertise that may only be provided by a foreigner, but only temporarily. Foreign workers are required to train Mexicans in the 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.
- Doctors (physicians) working for companies must be Mexican individuals.

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

## SOCIAL AND COMMUNITY ISSUES

### Community engagement and CSR

#### 43 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 Political Constitution (the Mexican Constitution) (its spirit is social and its focus is in protecting vulnerable groups), some provisions of the Mexican Mining Law, its Mining Regulation and the Mining Handbook Services (collectively, the Mining Law), the Federal Labour Law and the Agrarian Law and regulations thereof.

Mexico is a party to the following treaties, among others, relating to CSR issues:

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

The main regulatory entities are the Ministry of Economy through the Mexican Bureau of Mines (MBM), the Labour Ministry and the Agrarian Ministry.

### Rights of aboriginal, indigenous or disadvantaged peoples

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

In accordance with Convention No. 169 and other treaties, Mexico recognises human rights of the indigenous people grouped in communities. Some of these treaties state that the issuance of mining concessions is subject to a consultation with indigenous peoples and communities; however, there are no local laws or local rules that include the mechanisms to implement the consultation, therefore the MBM has not enforced the consultation when granting mining concessions.

However, a constitutional rights protection claim was recently filed by members of a township located in the state of Puebla against the MBM, the Ministry of Economy and the President, demanding the cancellation of mining concessions granted to a mining company that had not conducted a consultation. The township's grounds for demanding cancellation were that the above-mentioned treaties were signed by Mexico and then ratified by the Senate, converting them as enforceable applicable laws, as provided in the Mexican Constitution. Consequently, they demanded that Congress amend the Mining Law to include the indigenous consultation as a requirement when granting mining concessions. A district court specialising in civil, administrative and labour *amparo* proceedings and federal lawsuits in the state of Puebla resolved that Congress must amend the Mining Law to incorporate provisions on the right to consultation, and to obtain the free and informed consent of indigenous peoples and communities. Additionally, the MBM, the Ministry of Economy and the President were ordered to cancel two mining concessions that they had granted in 2003 and 2009, respectively, whose surface areas are partially located on land owned by townships that have self-identified as indigenous communities. The MBM, the Ministry of Economy and the mining company whose concessions were cancelled subsequently appealed the decision.

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

### International law

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

In accordance with Convention No. 169 and other treaties, Mexico recognises human rights to the indigenous people grouped in communities. Some of these treaties state that the issuance of mining concessions is subject to a consultation with indigenous peoples and communities; however, there are no local laws or local rules that include the mechanisms to implement the consultation, therefore the MBM has not enforced the consultation when granting mining concessions.

## ANTI-BRIBERY AND CORRUPT PRACTICES

### Local legislation

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

The Mexican legal framework on anti-bribery and corrupt practices comprises the following:

- the Mexican Political Constitution (in particular the Decree published on 27 May 2015 modifying, adding to and removing several anti-corruption provisions set forth in the Constitution);
- the Ethics Code published by the Ministry of Public Service on 20 August 2015;
- the Federal Criminal Code;
- the state criminal codes;
- the Federal Anti-Corruption Law for Government Contracting;
- the General Law of the National Anti-Corruption System (this law regulates the National Anti-Corruption System); and
- the General Law for Administrative Responsibilities (which entered into force in July 2017).

Activities governed by the above-mentioned laws include the offering, giving or receiving of bribes by government officers in exchange for any action or omission resulting in a benefit or advantage to the offering corporation or individual. These laws also regulate:

- the responsibilities and penalties to be imposed on individuals and corporations for violations incurred in connection with the federal procurement procedures as well as violations incurred in international commercial transactions;
- public policies and procedures to coordinate government authorities in the prevention, detection and punishment of corruption;
- public bindings, permits, licences, authorisations and concessions; and
- the adoption of anti-bribery compliance programmes by corporations.

### Foreign legislation

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

Notwithstanding that Mexico's anti-corruption laws do not require companies to adopt a compliance programme, the General Law for Administrative Responsibilities provides for possible reductions in penalties for companies being prosecuted for serious administrative offences if the corporation incorporated an adequate compliance programme at the time the relevant offence occurred. 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, which is responsible for ensuring transparency in their administration, organisational values and accountability to stakeholders.

### Disclosure of payments by resource companies

#### 48 | 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 EITI's Board denied Mexico's request to extend the reporting deadline for publishing its 2017 EITI Report. The request, which was made on 16 January 2020, asked for an extension of the deadline to 31 March 2020. However, the EITI stated that Mexico is ineligible for an extension and is suspended temporarily from 13 February 2020. If the outstanding EITI report is not published by 30 June 2020, the suspension will remain in force until the EITI Board is satisfied that the country has met Requirement 4.8 (data timeliness). The EITI Board will delist Mexico if the suspension remains for more than one year.

To date, Mexico has not enacted legislation or adopted international practices regarding the EITI Standard in connection with disclosure of payments.

## FOREIGN INVESTMENT

### Foreign ownership restrictions

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

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 national 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, in some specific cases, periodically report their financial status to the Mexican foreign investment authority.

## INTERNATIONAL TREATIES

### Applicable international treaties

#### 50 | What international treaties apply to the mining industry or an investment in 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.

A new North American Free Trade Agreement, the United States–Mexico–Canada Agreement, was signed by Canada, the United States and Mexico in November 2019, but it has not yet been enacted.

### 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 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 coming 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.

## UPDATE AND TRENDS

### Recent developments

#### 51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

There has not been enough relevant information published by the Mexican Mining Chamber, the National Institute of Statistics and Geography of Mexico and the Mexican Geological Service to assess the performance of the Mexican mining industry in 2019.

However, there are certain aspects of the mining industry that could be improved to attract foreign and domestic investment with the purpose of recovering the international competitiveness that Mexico had in the first decade of this century. Those aspects are:

- achieve a competitive tax policy (which is necessary to achieve 100 per cent deductibility of pre-operational exploration expenses);
- issue more mining concessions (during 2019 the MBM only issued one new mining concession);
- release surfaces of mining concessions cancelled in the past for the new mining concessions;

- provide legal certainty by:
  - prohibiting the implementation of inappropriate local laws: an example of this is the environmental tax approved in 2016 and enacted during 2017 by the Congress of Zacatecas, a state that has been heavily involved in the development of mining activity;
  - implementing laws ruling the coexistence of mining concessions and oil, gas and power generation activities, which are considered a priority in Mexico; and
  - implementing laws or amending existing laws ruling the consultation with aboriginal communities prior to the issuance of mining concessions;
- improve policies and strategies related to fighting organised crime;
- provide certainty on land tenure; and
- achieve effective security of assets.

In April 2019, Goldcorp and Newmont Mining Corporation successfully completed their merger creating Newmont Goldcorp, the world's largest producer of gold. Newmont Goldcorp is now the owner of Peñasquito mine, the fifth-largest producer of silver and the second-largest mine in Mexico.

In the last quarter of 2019, Industrias Peñoles, SAB de CV completed the construction of the Capela mine in the state of Guerrero with a total investment of US\$334 million.

In 2019, operations resumed at the San Martín mine, one of the largest mines in Mexico owned by Grupo Mexico, to which US\$57 million has been allocated for investment. The mine has 300,000 tonnes of ore reserves.

During the fourth quarter of 2019, Alamos Gold Inc completed construction of the Cerro Pelon mine, spending US\$4 million, which brought total construction costs to US\$25.2 million (of which US\$21.8 million was spent in 2019).

In September 2019, the Los Gatos mine in Satevó, Chihuahua was inaugurated. The mine will directly employ 510 persons in its operation and was built with a joint investment of US\$366 million by Japanese company Dowa and US company Sunshine Silver Mining.




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