



New Mining Code – A new Milestone for Mining in Brazil

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Since 2009, the Brazilian Federal Government has been discussing internally and with the business sector, a proposal for a new legal framework for mining in the country, which should replace the current legislation in force since 1967.

Mining has ever since acted as an incentive for the development of the country, creating a demand for infrastructure and services, generating employment and income, and fostering the move of populations to the inside of the country, further reducing regional economic differences. The new Mining Milestone will allow a higher degree of planning for the sector and help the Government to ensure a more rational use of the mineral resources for the sustainable growth of the Brazilian country.

In wait for the new legislation which is envisaged to be passed shortly no new mining permits were issued since November, 2011. Indeed, on June 18, 2013, a proposal for a new mining legislation, the so called “New Mining Code” was sent by the Executive Branch to Congress on constitutional urgency, meaning that each of the Chambers now has only 45 days to debate and vote on the proposal.

However, it must be said that, despite the strategic importance of the sector for the Brazilian development, throughout the process of discussion of the new legislation, the participation of the social organizations was small.

Indeed, only on June 18, when the proposal was sent to Congress, did the population, the media and the organized sectors of society have access to the new law proposal.

Further, at this point, it should be said that, although there is a lot of optimism amongst the Federal, State and Municipal Governments, and major sectors of the political community as to the approval of the project, although with certain changes, it is still a project and the extent of such changes is uncertain.

A major controversial point of the proposal are the new rates of the Federal Contribution on Mineral Exploitation (CFEM) –the mining royalty – which should increase for most minerals including iron, alumina, potassium, gold and diamonds.

Nevertheless, the steadily inviting situation of the country for foreign investors in the mining sector has for long been demanding a new mining code and the forthcoming changes certainly consist in a considerable incentive.

Proposed Changes

Creation of a National Council of Mineral Policy (NCMP):

- Advisory Entity to the Presidency of the Republic in the formulation of policies for the mineral sector.
- Creation of a National Mining Agency (ANM)

The new regulatory framework is expected to be fully passed within the next year, meaning until the beginning of the second half of 2014, by when a New National Mining Agency (ANM) should already have been created to regulate the market, and allow the Government to act with increased administrative and financial autonomy. By then, the ANM will have determined the blocks of mines to be awarded by tender to the Private Sector, and those are envisaged to be active. The New Milestone for Mining in Brazil allows a higher degree of planning for the sector and allows the Government to intervene in order to guarantee the rational use of the mineral resources. This is a major social and political background for the New Milestone and the envisaged changes.

The ANM, similarly to other regulatory agencies will be responsible not only to regulate the market, but to manage the information and fiscalize the mineral sector and to guarantee the equilibrium of the market, restraining practices which may harm its regular operation.

Further, the main highlight of the new legal framework is to increase the general ceiling of the mining royalty rate from 2% to 4%, while for iron, being the most important mineral for the Brazilian economy, the rate is expected to be 4%. The basis of calculation should switch from net revenues to gross billing. It is further destined to put an end to the life-long mining permits. Instead, the mining permits are envisaged to be granted for 40 years, extendable for subsequent periods of 20 years.

For other minerals, the rates are still uncertain. However, a surprising proposition is that they should be determined by presidential decree, and not by law, granting the Executive a considerable degree of power and flexibility to intervene in the market. This tends to be a major point of discussion in Congress, as pointed out herein below.

Proposal for new regimes of mineral exploitation:

The mineral rights will be granted to Brazilians or to business companies or to cooperatives, with headquarters and management in the country.

The concessions will be granted either through public tenders or through public bids, or yet, through public calls, the latter being subject to a simpler procedure.

With regard to the distribution of the CFEM, the rules remain the same:

- 65% for the Municipalities;
- 23% for the States; and
- 12% for the Federal Government..

The changes in the tax policy referred above, namely the increase of royalties from 2% of the net revenues to 4% of the gross income, however, were received with skepticism by the business community.

Although being proposed as part of a set of rules envisaged to grant more freedom to the sector, the new Mining Code may lead to a certain standstill in a first moment, due to the increase in the production costs and the level of uncertainty it bears. According to an article published in "The Economist", the above mentioned increase of royalties would increase the corresponding tax revenues from R\$ 1,7 billion to R\$ 4,2 billion.

On the other hand, the proposal brought a certain degree of relief; to the extent that the Government will not cancel the mining permits already applied for and will not levy the CFEM on highly productive mines. At the end of the day, the discussion in Congress now tends to be focused on two main points: the change in the basis for calculation of the royalties and the establishment of the tax rates by Presidential Decree.

President Dilma Rousseff pointed out that "Brazil is creating an environment of great security for long-term investments. The country grows and modernizes itself, when it sets new milestones".

"By means of the proposal presented to Congress, in the future contracts there will be a sole title for the exploitation of minerals and not, the issue of a grant of research and then an authorization of mining. We have unified grant and authorization because the process will comprise blocks of areas. The research will be a phase within the grant. This procedure will give the entire process a higher degree of legal security", said the Secretary for Geology, Mining and Transformation of the Ministry of Mines and Energy, Carlos Nogueira.

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