

Mexico Energy Alert: Amendment to Multiple Laws and Administrative Regulations Related to Mining and National Water Concessions

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A bill presented by Mexico's president, Andres Manuel Lopez Obrador, amending various provisions affecting mining and water concessions (the "Order") went into effect on May 9, 2023. The Order amends multiple provisions of (i) the Mining Law; (ii) the National Waters Law; (iii) the Ecological Balance and Environmental Protection Act (the "EBEPA"); and (iv) the General Law for the Prevention and Integral Management of Waste for mining and water concessions.

Several significant features of the Order are summarized below:

- The Order amends the Mining Law to:

(i) reduce the duration of concessions to thirty (30) years;

(ii) limit concessions to a single type of mineral;

(iii) include new events to cancel concessions (e.g., failure to commence work within one year from the date of the concession);

(iv) require performance of a social impact study and previous consultation of the indigenous communities;

(v) require that all concessions be subject to a public bid procedure with the following minimum conditions: (a) inclusion of the best economic conditions for the Mexican State; and (b) a requirement that the bidding entity provides a letter of credit to ensure its compliance with the specific measures provided in the social impact study; and,

(vi) include as felonies the extraction of minerals without a concession or the filing of false information to obtain or maintain a concession, which would be punishable up to ten (10) years of imprisonment.

- The modifications to the National Waters Law include: (i) a new water concession for specific use in mining, for a maximum term of five (5) years, renewable for an additional period; (ii) new grounds for revocation of a water concession (e.g., non-compliance with the Restoration, Closure and Post-closure Program provided for in the General Law of Ecological Balance and Protection of the Environment); (iii) limits on the volume of water that may be used for a water concession for mining purposes; and (iv) additional requirements for a water concession (e.g., monthly measurements of water quantity and quality and installation of telemetric measuring devices).
- As to the Ecological Balance and Environmental Protection Act, the Order prohibits carrying out any work in protected natural areas that is related to the exploration and exploitation of

minerals or substances referred to in the Mining Law, and requires the filing and maintenance of a Restoration, Closure and Post-closure Program.

- The Order also amends the General Law for the Prevention and Integral Management of Waste as to mining and water concessions, to make each mining concessionaire permanently and untransferable liable for the management and operation of its concession, and jointly liable with any third party managing or operating the concession on behalf of the concessionaire.

In summary, the Order seeks to limit the participation of private companies in the Mexican mining sector by modifying the current regime of rights and obligations applicable to obtaining, operating, and terminating mining concessions, including mining waste management and water use for their operations. This Order not only will have an impact on new mining concessions, but also on mining concessions already granted.

For more information, please contact any of the attorneys listed below.

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