
Amendments to the Mining Code brought in by Law 21420

Legal flash Santiago de Chile

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On February 4, 2022, Law 21420, which reduces or eliminates tax exemptions (the “Law”), was published in the Official Gazette, amending a number of regulatory texts, including the Mining Code.

We highlight:

- › The purpose of the Law is to increase tax collection by reducing or eliminating tax exemptions in different sectors of the economy. This increase will be used to improve the quality of life of the elderly by increasing pensions and tax benefits, while at the same time improving the tax system, making it simpler and more equitable.
- › To this end, and to establish different forms of financing to guarantee and provide the new Universal Guaranteed Pension, the Law introduced a number of amendments to various regulatory texts, including the Mining Code. These amendments will become effective on February 4, 2023, one year after the publication of the Law in the Official Gazette.
- › The main amendments to the Mining Code are related to the duration of mining exploration concessions, changes in the value and calculation method of mining fees, and the incorporation of new requirements for filing possessory actions by mining concession holders, among others.



Main amendments to the Mining Code

- › **Mining exploration concessions:**
 - Their duration is extended from two to four years from the date of the ruling under which they are established. Once the four-year period has elapsed, the concession will be deemed to have expired for all legal purposes.
 - The possibility of requesting an extension to the concession is eliminated, given the duration of the concession.
 - A new article 112 bis is included establishing that, once the concession has expired, the concession holders will not be able to request a new exploration concession totally or partially covering the area that the expired concession covered, either by themselves or through an intermediary party. Intermediary party means the spouse, civil partner or relative up to the third degree of consanguinity or second degree of affinity. Any person that has an employment relationship with the former concessionaire or is an attorney-in-fact will also be considered as such. Likewise, if the former concessionaire is a legal entity, an intermediary party will be understood to be any of the persons mentioned in article 100 of Law 18045.

- › **Mining operation concessions:**
 - Article 59 is amended to reduce the term for the claimant to request a property survey from the original 200 to 220 days to 90 to 120 days from the date of the claim is filed with the appropriate court. However, the deadline for requesting the survey is increased from 20 to 30 days.
 - The field survey operation is eliminated, as well as the obligation on the part of the surveyor or engineer performing the survey to place boundary markers at the vertices of the property or of the perimeter of the group of properties. The obligation imposed on concession holders to maintain and preserve the boundary markers placed at the vertices of the property or the perimeter of the group of properties is also eliminated. Likewise, the penalty for demolishing, altering or moving such markers is eliminated.
 - Article 78 is amended to reduce the term for submitting the survey report and plan for the property or group of properties from 15 to 10 months from the time the claim is filed to the appropriate court.

- › **Increased requirements for bringing possessory actions:**
 - A new subsection is added to article 96, limiting the exercise of possessory actions of the mining concessionaire against the owner, possessor or mere holder of the surface property totally or partially comprising the concession, only to those cases in which the mining concessionaire is the holder of a mining easement or other real right encumbering such property.



- This amendment entails considerable benefits for the energy, real estate, agricultural and infrastructure sectors in general, since it greatly limits mining concession holders from filing possessory actions—mainly claims about new works by mining concession holders acting as profiteers that, not intending to carry out mining activities within their concession, sought to obtain profits from other parties that planned to develop a project on the land in their concession in exchange for not hindering the implementation of such projects by filing such actions.
- › **Increase in the mining concession fee:**
 - A new article 142 bis is included, modifying the annual mining fee regime. The exploration mining concession fee is increased from 1/50 of a UTM for each full hectare to 3/50 of a UTM for each year the concession is in effect. In the case of mining operation concessions, currently 1/10 of a UTM for each full hectare, the value will be determined based on the years of the concession term as follows:
 - 4/10 of a UTM for the first 5 years;
 - 8/10 of a UTM from year 6 to year 10;
 - 9/10 of a UTM from year 11 to year 15;
 - 1.2 UTM from year 16 to year 20;
 - 3 UTM from year 21 to year 25;
 - 6 UTM from year 26 to year 30; and
 - 12 UTM from year 31.
 - However, and despite increasing the value of the annual fee for mining concessions, a benefit is incorporated for properties in which work has begun and continues, in which case the fee will be 0.3 of a UTM for each full hectare of the concession. For the purposes of this benefit, work will be understood to have begun when it is carried out on a property or group of properties that permanently allow mining operations.
 - For properties included in a mining project that has obtained an Environmental Classification Resolution or entered the Environmental Evaluation System, but where mining operations have not started, the fee will be equivalent to 0.3 of a UTM per full hectare.
 - The National Geology and Mining Service (the "**Service**") will publish a list of the concessions benefiting from the reduced fees on January 15 every year.
- › **Provision of geological information:**
 - Article 21 is amended to provide that, once the concession is terminated or the concession term expires, the holders of mining exploration concessions must submit all the geological information obtained to the Service. In addition, holders of mining operation concessions must submit to the Service all the geological information obtained every two years. Failure to do so will carry fines up to 100 UTM.
- › **Datum amendment:**
 - Article 43 is amended to reflect the change from datum 56 to datum SIRGAS with respect to the geographical coordinates or UTM.



- To unify the coordinate system for mining concessions in force as of February 4, 2023, the Service will publish the concessions with the new datum SIRGAS coordinates in the time and form determined by the regulations.

Entry into force

- › Although the Law will enter into force on April 1, 2022, the amendments to the Mining Code will go into effect one year after the Law is published in the Official Gazette, i.e., on February 4, 2023.
- › Within six months following the entry into force of the amendments to the Mining Code, the Mining Code Regulations and other necessary regulations or administrative rules must be amended.
- › Exploration concessions registered in the appropriate Mining Registry that are in force and have not been extended at the date of entry into force of the Law will be understood to be established for four years from the date granted.
- › Holders of concessions currently in force must submit the geological information they have two years from the entry into force of the Law.
- › The procedures for establishing mining concessions that are pending at the date of entry into force of the Law will continue to be governed by the regulations that were in force at the time they were started.
- › With respect to the validity of the new concession fee regime, all operation concessions whose protection obligation began prior to February 4, 2023 will complete their first year of validity on the last day of February following the date of entry into force of the Law.



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