



**VEIRANO**  
ADVOGADOS

# MINING

## CLIENT ALERT

**JUNE/2018**

### NEW MINING CODE REGULATIONS (Decree No. 9,406/18)

On June 13, 2018, President Temer enacted Decree No. 9,406/18, which modernizes certain aspects of the Brazilian Mining Code Regulations. It is important to clarify that the Mining Code itself has not been modified and the new rules shall only become effective upon the enactment of a further Decree installing the National Mining Agency (ANM). We have highlighted below some of the main aspects of the new regulations. On the same date President Temer also enacted Decree No. 9,407/18 setting forth new rules for the distribution of governmental royalties (CFEM) among affected Municipalities and the Federal District.

#### PRACTICE AREA

Mining

#### COORDINATION

Pedro Garcia

For further information, please send a message to **[news@veirano.com.br](mailto:news@veirano.com.br)**

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SUBJECT	NEW RULES
Definition of Mining Activity	<ul style="list-style-type: none"><li>The new Mining Code Regulations include among the mining activities the exploitation of tailings and wastes (which shall be supported by the ANM) and the mining closure/decommissioning. It emphasizes the mining companies' responsibilities for the recovery of affected areas.</li></ul>
Definition of Resources and Reserves	<ul style="list-style-type: none"><li>Mining deposits shall be defined based on their inferred, indicated and measured resources and their probable and proved reserves, as set forth by an act of the ANM, adopting internationally acceptable reporting standards.</li></ul>

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<b>Feasibility of Deposits</b>	<ul style="list-style-type: none"> <li>▪ The economic feasibility of a deposit shall be assessed by means of a preliminary study of the mining venture based on the production and transport costs, market conditions, the measured and indicated resources, the conceptual mining plan and the future cash flow of the company.</li> </ul>
<b>Additional Exploration Works</b>	<ul style="list-style-type: none"> <li>▪ Once the exploration phase is completed (i.e., after filing of the exploration report), the titleholder or its successor may, upon prior communication to the ANM, continue to carry out exploration to convert measured or indicated resources into proved or probable reserves. The results of these additional exploration works can not be used to rectify or amend the results filed in the Final Exploration Report.</li> </ul>
<b>Validity Term of Exploration Licenses</b>	<ul style="list-style-type: none"> <li>▪ Exploration licenses shall continue to be granted for a period of at least one year and up to a three-year term.</li> <li>▪ As a general rule, exploration licenses can be renewed once. Nonetheless, the term of the license may be extended on a successive basis in case of hurdles to access the respective surface areas or lack of obtainment of consent or license to be issued by the competent environmental entity, provided that the titleholder evidences that it has complied with the requests issued in connection with the judicial or environmental proceedings, as the case may be, and has not contributed, by action or omission, for the lack of access to the area or issuance of the environmental license or consent. Licenses subject to renewal applications shall remain valid until a decision is made.</li> </ul>
<b>Unified Exploration Report</b>	<ul style="list-style-type: none"> <li>▪ Under the new Regulations, one or more titleholders of close exploration licenses for the same mineral shall be able to produce an Unified Exploration Report, subject to further regulations to be issued by the ANM.</li> </ul>
<b>Online Tender Process – Preliminary Public Offer</b>	<ul style="list-style-type: none"> <li>▪ The areas that become clear of title as a result of acts of the ANM or the Ministry of Mines and Energy or due to cancelation of the former title shall continue to be made available to third parties in a tender proceeding, including online tenders based on the best offer (price). The ANM may initiate a preliminary public offer to assess interest in the respective area (should there be a single interested party, it shall be notified to file an application for the exploration license in 30 days).</li> </ul>
<b>Application for Environmental License</b>	<ul style="list-style-type: none"> <li>▪ In case the titleholder timely evidences that it has applied for the environmental license before the competent entity, it must demonstrate, at every six-month until the issuance of the license, that the licensing proceeding is ongoing and pending completion, evidencing that it has been taking all measures required to obtain such license.</li> </ul>

SUBJECT	NEW RULES
Penalties	<ul style="list-style-type: none"> <li>The non-compliance with the terms and provisions of the Mining Code and the Regulations may entail, among others, administrative fines ranging between R\$329.00 and R\$3,293.00 and cancellation of title.</li> </ul>
Filing of Corporate Documents with ANM	<ul style="list-style-type: none"> <li>Failure to file and update the titleholder's corporate documents and shareholders agreements with the ANM shall result in penalties.</li> </ul>
Mining Easements and Expropriation	<ul style="list-style-type: none"> <li>Mining companies may request the ANM to issue Public Interest Statements for the purposes of creating mining easements and expropriating surface lands owned by third parties.</li> </ul>
Security over Mining Concessions	<ul style="list-style-type: none"> <li>The Regulations ratify the possibility of mining concessions being offered as security for financing.</li> </ul>
Suspension, Interruption and Renouncing of Mining Operations	<ul style="list-style-type: none"> <li>Pre-notification and approval by the ANM for the suspension of operations for periods longer than 180 days shall continue and any decision in this connection shall necessarily trigger a site visit by the ANM officials. Companies may waive or drop mining concessions subject to completing the mine closure/decommissioning.</li> </ul>
National Mineral Reserves	<ul style="list-style-type: none"> <li>The ANM may grant, in specific national interest circumstances, exploration licenses and mining concessions for minerals different to the ones subject to the specific national mineral reserve.</li> </ul>
Extraction Permits	<ul style="list-style-type: none"> <li>The ANM may authorize the extraction of minerals before granting of the Mining Concession. Such authorizations shall be valid from 1 to 3 years and may be renewed once.</li> </ul>

We are at your disposal if you have any questions or need additional information.

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