

POTENTIAL CHANGES AND FORTHCOMING OPPORTUNITIES IN THE BRAZILIAN MINING SECTOR

I. Introduction

In view of the rising worldwide demand for natural resources, the Brazilian Government has recently released important information on potential changes to the Brazilian mining regulations and on new opportunities for private entrepreneurs in mining initiatives in Brazil. This article summarizes some of the highlights of such changes and opportunities.

The background of the proposed changes would basically be intended to invigorate the State's participation in the regulatory proceedings, to maximize the exploitation of ore deposits, to avoid speculation with mineral rights and to attract new investments to the mining sector.

As to new opportunities, these would be essentially associated with investments in new nuclear energy plants (which would require additional uranium reserves), the increasing requirement for fertilizers in the country and the international demand for rare earths.

II. Proposed changes and the new organizational structure of the Brazilian mining regulators

Even though the actual bill of law which would implement the changes to the mining regulations has not been released yet, some presentations have been made by representatives of both the Ministry of Mines and Energy and the National Department of Mineral Production (the "DNPM") describing what would be the most important aspects of said proposal. In addition, the Minister of Mines and Energy, Mr. Edison Lobão, has recently announced that the approval of the aforementioned proposals shall be one of the top priorities of his mandate this year.

One of the most significant changes consists in the institutional reorganization of the mining regulators. Such reorganization would occur by means of the creation of a new body called National Council of Mineral Policies (the "CNPM") and the replacement of the DNPM by a new and independent regulatory agency (the "Mining Agency").

The CNPM is expected to be an advisory board to the President, suggesting and analyzing policies and actions for the benefit of the mining sector. The MME shall maintain its authority on the general supervision of the mining sector along with the CNPM. The Mining Agency shall substitute the DNPM in all its current functions and authority, performing the control and inspection over the mining activities and being in charge to grant mineral rights to private entrepreneurs.

There are also certain relevant changes in the granting of mineral rights to private parties. As to title ownership, individuals will no longer be entitled to obtain exploration licenses. Only registered mining companies will be allowed to carry out exploration activities. Nonetheless, an individual will be allowed to form a single-stockholder company and then apply for an exploration license. Furthermore, in order to avoid speculation with exploration licenses, the Government intends to change their validity terms - currently corresponding to 01 to 03 years (renewable for an equal term) - to an initial 5-year term renewable for an additional 3-year term. Another modification is the implementation of the concept of "minimum investments", according to which, in case titleholders fail to make the minimum investments set forth by the Mining Agency, the license may be cancelled and its holder subject to fines.

Concerning mining concessions (which is the title that enables mining companies to actually exploit mineral deposits), unlike the current titles - which are granted by the MME upon recommendation of the DNPM - the new concessions would be based on a standard Concession Contract. As far as it has been disclosed, the standard Concession Contracts would include provisions: (i) allowing the rights arising from the Concession Contract to be offered as security; (ii) setting forth local content requirements (minimum local acquisitions of equipment, hiring local personnel and services); and (iii) limiting exploitation to 35 years (possibly extendable, if justification can be evidenced).

In addition to the foregoing, the Government intends to create special areas which would be of allegedly "national relevant interest and would only be exploitable by the winners of special tender proceedings. There is no further detail on where those areas would be other than the fact that the CNPM would be the responsible body for their determination.

A recurring subject in debates among mining players and authorities refers to the potential increase of the royalties payable to the Government (*Compensação Financeira pela Exploração Mineral - CFEM*). So far, however, this change was removed from the proposal to change the mining regulations and Mr. Lobão has disclosed that the matter is still being reviewed by a special Committee formed by members of the MME and the Ministry of Finance. Mr. Lobão has shown sensitivity to the fact that the Governmental royalties can not be reviewed without proper consideration to the other taxes applicable to mining companies.

III. Upcoming opportunities in the Brazilian mining sector

Apart from the regulatory side of the mining sector, Mr. Lobão has also announced that Brazil shall invest R\$1 trillion in the expansion of mining and energy infrastructure, which has immediately called the attention of several mining and energy companies across the globe. The Government is focusing on investments in fertilizers, exploration of rare earths (which will most likely be a trend in the forthcoming years due to the launch of electric cars) and particularly uranium.

Note that the Brazilian Government currently holds a monopoly to exploit nuclear ores in Brazil. However, in view of the expected new nuclear energy plants and given that Brazil has the 6th largest uranium reserve in the world, most of the major players worldwide are eager for new opportunities for private parties to participate in the exploration and exploitation of uranium in the country.

Some recent initiatives of the Government indicate the flexibilisation of said monopoly, such as the Proposal for Constitutional Amendment No. 171/2007. Pursuant to this proposal, private entities would be allowed to participate in the exploration and exploitation of nuclear ores in Brazil. The improvement, industrialization and trade of nuclear ores, however, would be kept under the monopoly of the Federal Union.

Another clear sign that the Brazilian Government is in fact considering changes to these restrictions was the implementation of the first partnership between the Brazilian Nuclear Industries (the "INB") and Galvani - a private company - for the joint exploitation of a deposit of phosphate, which has a large reserve of attached uranium. The framework implemented for the above partnership was basically a cooperation agreement between INB and Galvani, according to which Galvani shall be in charge of the exploitation of the deposit of phosphate, having the obligation to deliver any uranium ores to INB,

which will in turn reimburse Galvani for the costs pertaining to the exploitation and transfer of the uranium ores to INB, with no profit margins on the uranium side of the operations to Galvani.

It is clear therefore that the combination of the forthcoming regulatory framework modernization with strong governmental investments in energy and infrastructure shall create very interesting opportunities to private investors in Brazil.

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