

New Attempt To Reform The Moroccan Mining Code

Mining Bulletin

The mining industry has played a crucial role in laying down the foundations of Morocco's economy. Virtually non-existent until the after the First World War, the mining industry saw remarkable development from that moment on. Today, the mining sector represents 10% of the nation's GDP, and 30% of its exports, in addition to employing more than 40,000 people throughout the Kingdom.[1]

Long-Awaited Reform

The industry is governed by a mining code that dates back to 1951. After a few failed attempts at reform, efforts to modernize a framework that has become obsolete and inadequate finally bore fruit when draft reform bill 33.13 was recently approved by Morocco's government council on July 17, 2014.

The draft bill contains a number of measures designed to bring new life to the mining industry and attract investment (notably foreign investments) by introducing new types of exploration authorizations, broadening the scope of the mining legislation to include other industrial mineral substances (with the exception of construction and civil engineering materials, which are governed by other legislation), as well as by converting existing mining concessions and operating permits into ten-year mining permits that can be renewed until reserves are depleted.

The new mining code will also have a new jurisdiction -- mining titles will in future be issued by the ministry of mines, not by the regional prefects.

Purely Legislative Provisions

While the current mining code contains both legislative and regulatory provisions, the new draft code contains only legislative rules. In the absence of a draft implementing decree specifying what rules apply to mining procedures, among other things, it is impossible to get an overall view of the reform or to assess the effects and consequences it will have on investments (specifically the terms and conditions governing public participation and environmental impact assessments).

Mining Authorizations and Titles

The draft provides for the following mining authorizations and titles: exploration authorizations, prospecting permits and mining permits. Exploration authorizations will be subject to an agreement being entered into with the administration for a two-year term renewable only once for a period of one year. No person may hold more than four exploration authorizations at one time.

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Prospecting and mining permits will be transferable, but perimeters may not be shared. Prospecting permits will be granted for a period of three years, but may only be renewed once for a four-year period.

Articles 42 and 44 stipulate that the discovery of a deposit confers on the holders of prospecting permits the exclusive right to apply for, but not to obtain, a mining permit covering the perimeter of the discovered deposit, for which an application must be filed before the permit expires. These provisions suggest that a permit application may be refused for reasons other than failure to apply within the permit's void period. The draft bill gives no indication as to the grounds of such a refusal. This point will need to be clarified, however, since it is crucial that prospecting permit holders be able to count on receiving a licence as soon as resources are discovered.

Under article 46, the beneficiary of an operating licence must be a legal person incorporated under Moroccan law. This specification differs from the proposed framework governing exploration authorizations and prospecting permits, which makes no mention of any restriction as to a legal person's nationality and suggests that foreign entities will be able to hold prospecting rights on Moroccan soil. Operating licences will be granted for a ten-year term and will be renewable for successive periods of ten years until the reserves are depleted.

Environmental Protection and Public Participation

Article 60 of the draft bill provides that mining permit holders must file an environmental impact assessment and demonstrate environmental acceptability in compliance with the legislation and regulations in effect. What the concept of "environmental acceptability" entails is somewhat nebulous, but the regulatory texts will presumably clarify the subject. Article 61 requires mining permit holders to develop an abandonment plan that meets the conditions set by regulation.

Unlike the current mining code, the draft reform bill makes no mention of public participation, a subject that may be dealt with in the regulatory provisions.

Transparency

Article 64 stipulates that permit holders must provide the administration with all information on their mines, including mining activity statistics and the products that are extracted and marketed. That information, however, cannot be made public or communicated to a third party without the prior consent of the permit holders. The draft bill also imposes similar disclosure requirements on the holders of exploration authorizations and prospecting permits.

Occupation of Land

The draft bill grants the holders of prospecting or mining permits a right of access as well as a right to perform work and establish the facilities their activities require should that permit be located on land belonging to a third party (article 69). If no agreement is reached with the landowner, holders of such permits may petition the administration for a "temporary land occupation" right, provided that the landowner receives an indemnity mutually agreed upon between the parties or, in the absence of such an agreement, set by a court of competent jurisdiction (articles 70 to 72). If the "temporary land occupation" right is for a term of more than five years, or if that land is no longer suitable for its former use once the holder of the prospecting or mining permit has engaged in its activities, the landowner may compel the holder of the "temporary land occupation" right to acquire the land at a price agreed upon between the parties or, in the absence of such

an agreement, set by a court of competent jurisdiction (article 73).

Sanctions

Heavier fines will now be imposed. For example, the bill provides for a prison sentence of six months to two years and/or a fine of 50,000 to 500,000 dirhams (approximately CAD\$6,500 to CAD\$65,000) for any person that engages in exploration, prospecting or mining activities without a mining title (article 105).

Vested Rights

The draft bill also recognizes the existence of “vested rights” by confirming the habou rights to certain salt deposits (article 111) as well as the existing customary rights to certain deposits (article 112). In both cases, the list of these rights is fixed by regulatory instrument.

Temporal Effect

Article 119 states that mining concessions valid on the effective date of this law will remain subject to the previous law, although the new law will apply upon their renewal. As for the holders of valid prospecting or mining permits, article 120 provides that they must present an application to renew their prospecting permit or, where applicable, have it converted into a mining permit within one year following the effective date of this law, failing which the existing permits will be revoked by the administration.

The new mining code will come into force once it is approved by both legislative bodies, but the legislative calendar on this point is as yet unknown.

[1] Data from the Ministry of Energy, Mines, Water and the Environment of Morocco.