

Mining Legal Alert



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The effects of Chilean Law No. 21,420, which reduces or eliminates the tax exemptions indicated therein, amending the Mining Code, have been postponed.

Law No. 21.536 (the “**Law**”) was published in the Official Gazette on January 26, 2023. This Law defers the effects of Law No. 21,420 in the mining sector which reduces or eliminates the tax exemptions indicated in it and consequently modifies the Mining Code. Mainly, the Law modifies the Tenth Transitory Article of Law No. 21,420 in such sense that the amendments to the Mining Code indicated in its Article 10 will become effective as of January 1, 2024.

The bill, of initiative of the President of the Republic Gabriel Boric Font, was filed to the Chamber of Deputies in November 2022, being approved by the latter and by the Senate on January 2023.

According to such bill, filed to Congress through Bulletin No. 15,511-08 by the Chilean President, the delay in the implementation of Law No. 21,420 is intended to prevent future inconveniences in the application of the modifications set forth by Law No. 21,420 due to specific gaps and inconsistencies generated by such law. For this reason, the Chilean President has submitted a second bill to modify the following: (i) Mining Code; (ii) Law No. 21,420; (iii) Constitutional Organic Law on Mining Concessions; (iv) Law No. 18,097; and (v) Decree Law No. 3,525 that creates the National Geology and Mining Service (“Sernageomin”). This Second Bill (the “Bill”) found in Bulletin No. 15510-08 of the Lower Chamber of Congress is currently in the Mining and Energy Committee and in the Finance Committee, with no urgency associated with it.

The Second Bill considers the following modifications:

- **Clarification and strengthen of the content on the obligation of mining concession's owners to report basic geological information at the end of their term.** Regarding the report of geological information obtained from exploration works, the Bill proposes that the information to Sernageomin must be provided through a especially prepared for this purpose report within 30 days following the expiration of the respective mining concession. In addition, a three-year confidentiality benefit is recognized for the concessionaire who has carried out advanced exploration activities, based on the fact that such information may be strategically and commercially sensitive for its owner. Finally, in the event that the concessionaire does not comply with submitting this report, it is proposed to increase the applicable fine, and the concessionaire will not be able to access the benefit of a reduced mining fee .
- **To establish a new procedure for transforming the Coordinate Reference System of the existing mining concessions.** Law No. 21,420 establishes the SIRGAS Datum as the U.T.M. Coordinate Reference System of the mining concessions and a procedure for transforming the coordinates. Taking into consideration that the implementation of this Law within the foreseen terms is not feasible, the Bill proposes to establish a rule of general application in the Mining Code which establishes the procedure by means of which the transformation of the coordinates of the concessions in force will be performed, in case of a change in the Datum in the Mining Code Regulation. Therefore, the Bill adjusts the provisions of Law No. 21,420 by replacing the proposed implementation of the SIRGAS system with the one to be defined eventually in the Mining Code Regulation.
- **Enable a one-time four-year extension for owners of exploration mining concessions.** Law No. 21,420 has modified the term of the exploration concessions currently having a duration of four years without the possibility of being extended. However, considering that exploration activities may last longer and the necessary permissions for their execution can take one or two years – especially the Environmental Approval Resolution (*“Resolución de Calificación Ambiental”*) –, the Bill proposes that the concessionaire must have the right to request an extension for an additional period of up to 4 years, by proving certain requirements such as the effective performance of exploration activities within the area and by promptly delivering to the Chilean State the information obtained during the exploration works.
- **Regulate in a better manner the prohibition to constitute new exploration concessions in a same area.** In regards to the prohibition to constitute more than an exploration concession in a same area, and for the effect of preventing that areas in national territory are captured by the same owner through successive exploration concessions, the Bill proposes to establish that from the presentation of the exploration claim and up to 1 year from its expiration, its owner cannot acquire, by himself or through an intermediary, a new exploration concession that includes, totally or partially, the same area. Likewise, the Bill proposes including a penalty for the offenders that consists of losing the preference to constitute a mining exploitation concession in the area covered by the exploration concession. This penalty must be declared by the corresponding Court. Moreover, any third party can make the complaint, and in this case, the latter will acquire the preference to constitute the mining exploitation concession over the area overlapped that is owned by the offender.

- **Clarification and expansion of the conditions to access the reduced mining fees.** Although the Bill maintains the changes introduced by Law No. 21,420, it proposes some adjustments regarding this matter:
 1. Regarding the reduced mining fees for those concessions currently being worked on, it proposes replacing the concept “*Mine Site*” set forth in the Mining Safety Regulations with “*Mining Operation*” set forth in Law No. 20,551, which regulates the Closure of Installations and Mining Sites, which allows to incorporate as “*work*” any advanced geological exploration activity, (that subject to the Environmental Impact Assessment System (“*Sistema de Evaluación de Impacto Ambiental*”). In short, the Bill acknowledges the mining activities from the exploration to exploitation and closure of a mining operation as “*work*”.
 2. Incorporating a third hypothesis applicable to the small-scale mining segment, which consists of allowing the owners of mining projects processing any of the permits established in the Mining Safety Regulations (Title XV) to access a reduced mining fee of 1/10 UTM per full hectare.
 3. Eliminating the obligation to publish the lists of mining exploitation concessions subject to the payment of reduced mining fees on January 15 of each year.
- **Eliminating the mining concession constitution system by sight (Art. 45 of the Mining Code).**
- **Adjusting the procedure to define the list of survey experts.** The Bill proposes that the annual list of survey experts must be defined and approved by an exempt resolution issued by Sernageomin.
- **Modification applicable to the publications made by Sernageomin.** The Bill proposes that Sernageomin can make the publications ordered by the Mining Code on its institutional website instead of the Official Gazette.
- **Datum change.** Regarding the change of datum, Law No. 21,420 provides that once obtained the final resolution of Sernageomin establishing the coordinates, these must be registered in the corresponding Custodian of Mines within six months, or the ownership titles will expire. In this way, it is proposed to simplify the Datum change system through a standard rule that allows registration in the National Registry of Mining Concessions kept by Sernageomin instead of the corresponding Custodian of Mine. This provision will facilitate the process and avoid unnecessary expenses in the Custodian of Mines registration.
- **Modifying Sernageomin powers to require the submission of basic geological information.** For consistency and to avoid duplicity, it is proposed to eliminate number 16 of Article 2 of Decree-Law No. 3.525 of 1980, which also regulates the submission of information to Sernageomin.

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