

3 February 2010

## **REGULATION ON THE RECLAMATION OF LANDS DESTROYED RESULTING FROM MINING ACTIVITIES**

This article provides brief information regarding the Regulation on the Reclamation of Lands Destroyed Resulting from Mining Activities (the “New Regulation”) which was enacted on 23 January 2010 and identifies the new rules sanctioned by the New Regulation. The New Regulation repealed the previous Regulation on Reclamation of the Lands Destroyed Resulting from Mining Activities (the “Old Regulation”), dated 14 December 2007.

Most of the provisions of the New Regulation are similar to the Old Regulation. For convenience, we will provide a general summary of the reclamation activities and analyze the differences between the Old Regulation and the New Regulation.

### **I. SCOPE**

The New Regulation determines the principles and procedures regarding the reclamation of lands and the environment which have been destroyed as a result of all mining activities and digging activities conducted for material and soil supply.

Mining activities (i) conducted within forest areas, pastures and agricultural lands; (ii) conducted within the areas that are below the reservoir area in dam and pond projects; and, (iii) that are excluded from the scope of the Environmental Impact Assessment Regulation (the “EIA Regulation”) are excluded from the scope of the New Regulation.

### **II. THE RECLAMATION PLAN**

The New Regulation provides that mining companies shall prepare a “reclamation plan” in the form provided within annexes of the New Regulation as an exhibit to the Environmental Impact Assessment (“EIA”) Report. Reclamation plans shall be prepared by the institutions qualified to prepare EIA Reports.

The commitments scheduled in the reclamation plan shall start simultaneously with the digging and pouring activities; shall continue during the pendency of the mining activities; and shall finalize within two years after the mining activities are completed. In addition to the above stated two-year reclamation period, the mine area shall be subject to another three-year monitoring period or any other monitoring period specifically provided within the scope of the EIA Regulation, depending on the type of the mine.

The license holders and/or the operators are also required to submit a monitoring report to the Regional Directorate of Environment and Forestry (the “Regional Directorate”) by the end of

January of each year. Monitoring activities shall be conducted by the Regional Directorate following the opinions of the relevant municipality or the relevant private provincial administration. However, if the area subject to reclamation activities contains forestry, supervision of monitoring activities shall be conducted by the Forest General Directorate. If the area subject to reclamation activities is a pasture or an agricultural land, supervision of monitoring activities shall be conducted by the Ministry of Agriculture and Rural Affairs.

Cancellation of a mine license for any reason shall not release the license holder to perform its reclamation obligations. In this regard, the holder of the cancelled license shall have the obligation to finalize the reclamation activities within six months following the notification of the decision regarding the cancellation of the license.

### **III. MAJOR DIFFERENCES BETWEEN THE OLD REGULATION AND THE NEW REGULATION**

- The exclusion provided in the Old Regulation (i.e. forest areas) is extended by the New Regulation to include the above listed areas.
- The Old Regulation provided a five-year monitoring period following the two-year reclamation period (beginning with the completion of the mining activities) whereas the New Regulation provides a three-year monitoring period.
- The Old Regulation did not specify any obligation for exploration activities. The New Regulation asserts that exploration activities which are not within the scope of the EIA Regulation are not required to prepare a reclamation plan. However, if the operation activities do not begin following the expiry of the exploration period, the exploration license holders are under the obligation to rehabilitate the mining exploration area within six months.
- The finalization and approval of reclamation activities were under the authority of the Local Environment Committee pursuant to the Old Regulation, whereas now such activities shall be finalized and approved by the Regional Directorate.
- The monitoring reports were submitted to the Regional Directorate by the end of March of each year pursuant to the Old Regulation; whereas now such reports shall be submitted by the end of January each year.
- The mining companies, which are currently conducting their activities and which have not yet submitted a reclamation plan, shall prepare a reclamation plan. The Old Regulation provided that the reclamation plan shall be submitted together with an undertaking approved by a Notary Public ensuring that it will comply with the reclamation plan. However, the New Regulation does not require submission of such an undertaking together with the reclamation plan.

#### IV. IMPLEMENTATION OF THE NEW REGULATION

The temporary articles of the New Regulation govern the status of the projects that have not yet submitted a reclamation plan and the projects whose reclamation plan evaluation process is still pending. Accordingly:

- (i) The mining companies, which are currently conducting their activities and have not yet submitted a reclamation plan, shall prepare a reclamation plan and submit it to the Regional Directorate within six months as of the effectiveness date of the New Regulation.
- (ii) The mining companies, (a) which have started their activities before 7 February 1993 (the effective date of the Old EIA Regulation) and are currently conducting their activities within the scope of Temporary Article 3 of the Old EIA Regulation and have not yet prepared a reclamation plan; and (b) whose mining activities are outside of the scope of the EIA Regulation and which have not yet prepared a reclamation plan, shall prepare a reclamation plan and submit it to the Regional Directorate within one year as of the effective date of the New Regulation.
- (iii) The mining companies, whose reclamation plan had been prepared and submitted pursuant to the Old Regulation and are currently under the evaluation process, shall be assessed and approved according to the provisions of the Old Regulation.

Failure to fulfill the obligation to prepare a reclamation plan and other obligations provided in the New Regulation is subject to sanctions set forth in the Environmental Law No. 2872 (*i.e.*, administrative fine, suspension or termination of the activities). ⊕