

THE MINING LAW  
REVIEW

SIXTH EDITION

**Editor**  
Erik Richer La Flèche

THE LAWREVIEWS

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REVIEW

The Mining Law Review

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# PORTUGAL

*Rui Botica Santos and Luis Moreira Cortez*<sup>1</sup>

## I OVERVIEW

Even if the public perception of the mining projects currently being developed in Portugal may be limited to the communities where such projects are developed, the fact remains that Portugal's mining industry has had a very significant boost over the last years.

The exact numbers are not public, but growing interest of foreign investors in Portugal's resources coupled with the exploration of new minerals, notably lithium, has significantly increased the mining operations throughout the country and new relevant investments are formalised every week.

As such, and in order to create a conducive environments to attract private investment in this sector, new base legislation has been approved with significant amendments to the previous legal framework, with the aim of obtaining an increasing level of initiative from investors. Law No. 54/2015 of 22 June has been approved, revoking Decree-Law No. 90/90 of 16 March, along with all administrative regulations that were in under the revoked Decree-Law. However, the new base legislation provides that all regulations approved through Decree-Law No. 90/90 will remain in force until new complementary legislation is approved, as well as the determination of reserve areas, captive areas and protection perimeters. The new legislation will apply to contracts and licences issued after its coming into force, but the parties to previous exploration contracts may choose, through agreement, to adjust the contract to the new rules within a one-year period after its coming into force.

Regarding the risk factors to be taken into consideration by investors, it must be stressed that Portugal is governed by the rule of law, which in turn guarantees political and legal stability and the independence of the judiciary. This fact, together with the growing attention and support that the government has been giving to the mining industry (and to its investors), reduces the risk factors that are, *per se*, inherent in mining activities and common to all states where the rule of law prevails.

The territory of Portugal covers 50 per cent of the Iberian Pyrite Belt (IPB), which is considered to be the main metallogenic province in the EU. The IPB is the primary source of base metals in the EU.

Somincor, a company owned by the Lundin Mining Group, operates the Neves Corvo mines, which are among the largest copper mines in Europe. They are located in southern-central Portugal, within the IPB. This copper project is considered to be the most important mining project in Portugal and one of the most important investments in Portugal.

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<sup>1</sup> Rui Botica Santos is a partner and Luis Moreira Cortez is an associate lawyer at CRA – Coelho Ribeiro & Associados.

In addition to the Neves Corvo and Aljustrel mines (which are both copper and zinc projects), there is another significant mining operation in central Portugal (Panasqueira, a tungsten project).

As far as mining projects with short-term potential are concerned, the EsanMet/EDM joint venture for several areas in the IPB and the EDM/Alminas joint-venture for Gavião (a copper project) show great potential and expectations among the investors. There are also other ongoing mining projects that have drawn the attention of certain investors, the most prominent being the ongoing gold project in Jales-Gralheira, the gold project developed by Colt Resources in Montemor and the ongoing iron projects developed by MTI and CPF in Moncorvo and Carviçais.

The lithium project of Mina do Barroso, in which the UK company Savannah Minerals has recently acquired a majority participation, and the zinc/copper project in Lagoa Salgada evidence huge potential and are two of the most promising concessions in the country.

Ozdogu Portugal, a subsidiary of Ozdogu Group based in Turkey, has just started activity in Portugal and has a very interesting, ambitious plan, with clear priority given to copper projects in the Iberian Pyrite Belt.

Concerning uranium projects, EDM has been granted the monopoly over the exploration and exploitation of this resource through a legal instrument. However, no activity has been registered in this particular area due to political decisions made by the government.

Portugal's mineral potential is considered to be far from being fully exploited. The local geological resources are diverse and of a complex nature:

- a* northern Portugal is fortunate to have tungsten and tin deposits (associated with the contact between granite and metal sediments), and also precious metals, and uranium and lithium deposits;
- b* northern-central Portugal has a predominance of granitic rocks;
- c* as for south-central Portugal (in addition to gabbros, diorites, serpentinites, anorthosites, granodiorites, tonalites and granites), the most important mineral occurrences are base metals associated with the Cambrian-Ordovician volcanic sedimentary complex, precious metals, tungsten and tin, as well as the potential presence of chrome, nickel, cobalt, platinum, and basic and ultra-basic rocks. Non-metallic minerals currently include ornamental rocks and marble, in particular;
- d* in the south, acid volcanic rocks in the volcanic sedimentary complex form the metallotect of the polymetallic massive sulphides deposits that are typical of the IPB; and
- e* non-metallic resources also include sands, gypsum, clay, kaolin, limestone, diatomite and salt.

## II LEGAL FRAMEWORK

The main legal sources are EU law and national laws. As an EU Member State, Portugal follows and complies with EU directives and regulations. Since they are part of the public domain, mineral resources are subject to laws passed in parliament, government legislation (decree-laws) and secondary legislation (i.e., specific regulations produced at either government or ministerial level). The ministry in charge of this sector is the Ministry of the Economy, but other ministries such as the Ministry of Health, the Ministry of the Environment, and the

Ministry of Labour and Social Security, may also have a role whenever the laws or regulations in question impinge on their areas of responsibility. Some local or municipal regulations may apply to the licensing of the mining infrastructure.

Mining activity in Portugal is essentially governed by two laws that establish the legal framework governing the both within and outside the public domain.

Law No. 54/2015 of 22 June (Mining Law), which revoked Decree-Law No. 90/90, establishes the new base legislation regarding the 'General Legal Framework for the Discovery and Use of Geological Resources', and Decree-Law No. 88/90, of 16 March (the Mineral Deposits Regulation), still in force, complements the previous regulation.

There is, however, other complementary specific legislation that affects mining activity, including:

- a* Decree-Law No. 162/90 of 22 May, which approves the General Health and Safety at Work in Mines and Quarries Regulation;
- b* Ordinance No. 598/90 of 31 July, as amended by Ordinance No. 897/95 of 17 July, which establishes the fees payable with regards to exploitation and operation geological resources;
- c* Decree-Law No. 10/2010 of 4 February, which lays down provisions for the construction, operation and closure of landfills of waste resulting from the mining activity, and which has implemented European Parliament and Council Directive No. 2006/21/CE;
- d* Decree-Law No. 151-B/2013 of 31 October, as amended by Decree-Law No. 179/2015 of 27 August, which approves the legal framework of governing environmental impact assessments of public and private projects that may significantly affect the environment, pursuant to Directive No. 2011/92/UE of the European Parliament and Council of 13 December;
- e* Decree-Law No. 127/2013 of 30 August, which establishes the legal framework regarding industrial emissions, applicable to the integrated prevention and control of pollution, pursuant to Directive No. 2010/75/UE of the European Parliament and Council;
- f* Ordinance No. 395/2015 of 4 November, which establishes technical rules governing the procedures established by the legal framework regarding environmental impact assessments;
- g* Decree-Law No. 198-A/2001 of 6 July, which establishes the legal framework governing the environmental rehabilitation of degraded mining areas;
- h* Decree-Law No. 183/2009 of 10 August, as amended by Decree-Law No. 88/2013 of 9 July, which establishes the legal framework governing the issue of licences, and the installation, operation, closure and post-closure maintenance of landfills of waste disposal, and which transposes Council Directive 1999/31/EC of 26 April, regarding the deposit of waste in landfills, into Portuguese law, amended by the European Regulation (CE) No. 1882/2003 of the European Parliament and Council of 29 December, and applies Resolution No. 2003/33/CE of 19 December 2002;
- i* Decree-Law No. 165/2002 of 17 July, as amended by Decree-Law No. 156/2013 of 5 November, which establishes the powers and duties of the bodies involved in protection against ionising radiation and in general protection principles, and transposes the corresponding provisions of Council Directive 96/29/EURATOM of 13 May, which establishes basic safety standards for the protection of the health of the general public and workers against the dangers of ionising radiation, into Portuguese law;

- j* Decree-Law No. 169/2012 of 1 August, which approves the Responsible Industry System and regulates the industrial activity, the installation and exploration of responsible corporate areas, as well as the procedure for accrediting entities within the system;
- k* Decree-Law No. 84/90 of 16 March, which approves regulations concerning the exploration and exploitation of spring water;
- l* Decree-Law No. 85/90 of 16 March, which approves regulations concerning the exploration and exploitation of industrial mineral waters;
- m* Decree-Law No. 86/90 of 16 March, which approves regulations concerning the exploration and exploitation of mineral water;
- n* Decree-Law No. 87/90 of 16 March, which approves regulations concerning the exploration and exploitation of geothermal resources;
- o* Decree-Law No. 270/2001 of 6 October, as amended by Decree-Law No. 340/2007 of 12 October, which approves the legal framework regarding the exploration and exploitation of mineral masses (quarries); and
- p* Decree-Law No. 109/94 of 26 April, which approves the legal framework regarding the exploration, exploitation and production of oil.

The Ministry of the Economy is the main government body that defines, implements and evaluates the geological and energy policies, and issues the main administrative decisions on the licensing, granting and claiming of mining concessions through its Energy and Geology General Directorate (DGEG). The Ministry of Environment is responsible for matters such as environmental impact and assessment, territorial planning and regional development policies as well as pollution. Labour protection and health and safety matters fall under the auspices of the Ministry of Labour. The autonomous regional governments of Madeira and Azores may intervene in the licensing process if the project is located in those regions.

There is no standard classification for public reporting of mineral resources and reserves. According to international practice, the reporting terminology is as follows: 'inferred', 'indicated' and 'measured' for mineral resources; and 'probable' and 'proved' for mineral reserves.

### **III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS**

#### **i Title**

Paragraph 84 of the Portuguese Constitution provides that 'mineral deposits, mineral and medicinal water sources and natural subterranean cavities below the ground, save for such rocks, ordinary earth and other materials as may habitually be used for construction' belong to the public domain (i.e., to the state).

Therefore, all mineral deposits and occurrences in Portuguese territory and in its marine exclusive economic zone that, due to their rarity, high specific value or importance in terms of the industrial application of their content, may be of special interest to the Portuguese economy (ore deposits, hydro-mineral and geothermal resources) vest in the state. Mineral masses (rocks and other mineral occurrences not qualified by law as mineral deposits) can, however, be privately owned.

If a specific geological resource meets both classifications, the legal framework that confers the highest economic importance and permits better development of all of its potential benefits is applicable.

Title to mineral deposits cannot be transferred to private parties, but paragraph 12 of the Mining Law provides, with regard to the rights in respect of resources belonging to the public domain, that the following rights may be vested:

- a* preliminary assessment rights, for undertaking studies that allow better understanding of the existing resources;
- b* exploration, allowing operations with a view to discovering resources and the determination of their characteristics, until the confirmation of the existence of economic;
- c* experimental exploitation rights, for occasions where it is impossible to establish exploitation works normally; and
- d* exploitation, allowing the execution of activities following exploration (i.e., the commercial exploitation of resources).

The exploratory works may be undertaken directly by the state, or granted to private individuals or companies by means of administrative contracts (licences or concessions).

For purposes of the confirmation and commercial exploitation of resources, Portuguese territory and the Portuguese exclusive economic zone are classified as either:

- a* reserved areas over which there are rights conceded over the public domain's geological resources; or
- b* the remaining available areas.

Prospecting and exploration rights, as well as commercial exploitation rights, can be granted in respect of both types of area.

According to Article 15, paragraph 2 of the Mining Law, the commercial exploitation of mineral resources is subject to the prior issuance of establishment licences, which are issued to the landowner, or to a third party if there is a prior commercial exploitation contract between the third party and the landowner. The Ministry of Economy keeps a record of all identified mineral resources and the prospection, exploration and commercial exploitation concessions.

## **ii Surface and mining rights**

### ***Procedures for acquisition of mining rights***

Mining rights are acquired through a licence for exploration or concession (exploitation) contracts with the state.

Applications for exploration and exploitation rights must be submitted to the DGEG, together with the supporting documents required by law.

According to Article 9 of the Mining Law, the granting of such rights must always be preceded by a consultation procedure with the municipalities of the areas in question, and other competent authorities within the fields of environmental protection, territorial planning, cultural heritage, forests, etc, that will give their expert opinion on the eventual constraints or implications of the development of these activities. However, this consultation will not be applicable to the granting of preliminary assessment rights, which do not have to be preceded by this procedure.

### ***Preliminary assessment rights***

The concession of preliminary assessment rights, as provided in Articles 16 and 17 of the Mining Law, allows potential investors to develop studies in order to evaluate the geological

potential and obtain more information about the existing resources in a specific area. Any entity with technical, economic and financial capacity for the development of mining activities may apply for the concession rights from DGEG. These preliminary assessment rights cannot be transmitted and can be granted for a maximum period of one year, without the possibility of extension.

Once the duration period of these rights is over, the applicant should inform DGEG if they wish to vacate the area or request the granting of exploration, exploitation or experimental exploitation.

### ***Exploration licence***

Once an application has been assessed and found to be in order (i.e., all the required documents have been submitted, and compliance with the objective conditions governing the grant of the rights applied for is confirmed), and provided that there are no reasons to reject the application summarily, the DGEG notifies the applicant to post a provisional bond.

At this stage the applicant must present at least the following documents:

- a* an application addressed to the Ministry of the Economy;
- b* a geographical map that identifies the proposed area;
- c* a summary description of the application for the exploration and research rights that identifies the minerals included in the application;
- d* the project's deadline and its possibility to be extended, and over what periods;
- e* a general plan of the works to be done;
- f* the amount of the proposed investment and the type of finance, as well as the payments to be made to the state; and
- g* evidence of the competence, reliability, and technical and financial capacity, of the applicant.

Once the provisional bond is posted, the application must be published in the Official Bulletin, national newspapers and newspapers in the proposed concession area, giving public notice of the application and inviting interested parties to submit substantiated objections within 30 days.

After this period, the DGEG may request the applicant to provide additional information regarding the conditions proposed.

Once the procedure has been concluded, the DGEG must, within 90 days, submit the application, together with its own opinion, to the Minister of the Economy for a decision.

The Minister of the Economy may order a call for proposals for prospecting activities in defined areas and, with regard to specific resources, by means of an open or limited public tender.

If a public tender or limited tender (among those companies that have expressed an interest in the area) is launched, the procedure for granting the prospecting rights may take six to 12 months. Should this not be necessary, the procedure is shorter and can be completed in just two months from the publication of the application.

Generally, the prospecting and research contract establishes the royalties that will be payable in the event that an exploration concession is granted.

### ***Experimental exploitation concession***

If, during or after the expiry of the validity period of an exploration licence, the revealed resources have characteristics that do not allow the immediate establishment of the



exploitation project, the licence-holder may request the detachment of the area and an experimental concession. Experimental concessions are usually granted for two years, and allow surveys and works involved in the testing and surveying of the mineral.

An experimental concession has the advantage of not requiring annual releases of areas, and is the stage that immediately precedes the granting of an exploration concession. However, this stage is not mandatory, and an exploration concession may be granted without a prior experimental concession.

The administrative contract that establishes the experimental concession addresses the following aspects:

- a* the deadline, which cannot exceed five years, including possible extensions;
- b* exploitation conditions and other activities to develop;
- c* mandatory complementary studies;
- d* investment and work plan;
- e* compensation to be paid to the state;
- f* financial bonds to be posted; and
- g* environmental and landscaping recovery obligations.

### ***Exploitation concession***

Exploitation rights can be granted to the holder of preliminary assessment rights, exploration rights or experimental exploitation rights that reveal the existence of mineral deposits. In the case where none of these apply, exploitation rights may be granted over available areas or over areas that are the subject of such rights, if the correspondent contracts do not include those geological resources and if there are no incompatibilities arising from the development of both activities.

The procedure for granting an exploitation concession is similar to the exploration concession procedure. However, the documents that must be filed with the application are much more extensive, as the applicant has to prove the existence of a commercial mineral deposit and compliance with all required conditions.

The following must be submitted in support of the application, in addition to the documents referred to above with regard to the prospecting and surveying licence:

- a* a brief description of the mineral deposit;
- b* the names of those responsible for the technical management of future operations;
- c* the applicant's commercial registry certificate;
- d* an undertaking signed by the proposed technical manager;
- e* a detailed report including a description of the mineral deposit, and the drawings necessary in order to understand the same;
- f* a topographical map;
- g* a plan showing the mining and minerallurgic facilities, and the antipollution and land reinstatement measures to be implemented;
- h* environmental impact study and permits (if required); and
- i* a pre-feasibility exploitation study.

A concession can be granted directly, upon application by the interested party, or via a public tender or some other administrative procedure to that end.

Depending on the type of award (i.e., direct or by public tender), the procedure takes between six and 18 months.

### ***Conditions for the granting of the rights***

Concession contracts provide that the concessionaire assumes the obligation to make a specified minimum investment and to create jobs. Typically, these investments must be secured by bank guarantees (or some other reliable means, as agreed with the DGEG).

Prospectors, operators and grantees of an exploitation concession must commence the works within three months of signing the contract, and must indemnify third parties with regard to loss and damage directly caused by their activities.

Furthermore, prospectors and operators must:

- a* work according to the approved plan; and
- b* implement all prescribed safety measures.

Holders of an exploitation concession must:

- a* initiate the necessary exploitation works within a year counting from the execution of the concession contract, unless a different deadline is determined in the contract;
- b* indemnify third parties over damages arising from the exploitation activity;
- c* ensure that there is constant activity on-site, unless otherwise authorised;
- d* comply with the health and safety at work and environmental protection rules;
- e* use the resources in accordance with adequate technical norms and in the best public interest, and refrain from dangerous mining practices;
- f* whenever possible, and provided that exploitation compatibility exists, to operate public domain resources with a confirmed economic value in the delineated area;
- g* report data regarding the nature and status of the resource, within the timing stipulated by the grantor; and
- h* refrain from overambitious works that may compromise the best economical exploitation of the resources.

Holders of an experimental exploitation concession must, in addition to the obligations referred to above, carry out the works to correctly identify the resources within the agreed terms. A bank guarantee to secure the working programme expenditure is also required. The amount of the guarantee varies depending on the extent of the investment. The guarantee is released once the conclusion of the proposed and contractual investment has been confirmed by the relevant Portuguese authorities.

### ***Term of the award of the rights***

Exploration licences are generally issued for an initial period of three years, extendable for two additional one-year periods. According to the law, the total term of exploration licences, including extensions, cannot exceed five years, except in certain justified cases.

The law establishes a maximum term for exploitation licences of 90 years, including possible extensions.

### ***Security over mining assets***

A mortgage over a licence is allowed if it is restricted to securing finance related to work and development expenditure in the concession area. Any security related to activities of

the companies or groups other than those related to the concession area are subject to prior government consent.<sup>2</sup> The enforcement of the mortgage is restricted to the procedures set out in the relevant provision and a public tender process will be required.

All relevant mining assets are considered part of the concession, and its sale or transfer is also subject to prior authorisation from the Portuguese government. Such restriction is only applicable, in practical terms, to major and relevant mining assets.

### ***Protection of mining rights***

The Constitution and the law provide a stable legal framework. Access to the courts is unrestricted, save for the usual legal restrictions. The mining sector is supervised by the Ministry of the Economy and the Secretary of State for Energy, and its administrative decisions or penalties may be appealed to the Administrative Court. The performance of concessions is governed by the general law.

Private parties may acquire the right to explore or to exploit the public domain by administrative contract. Such contracts contain the following provisions:

- a* mutual rights and obligations;
- b* the area and identification of the land;
- c* the commencement and termination dates;
- d* the renewal conditions;
- e* the operations programme;
- f* the investment plan; and
- g* other specific legal clauses.

Subject to lease, the private parties may also occupy buildings in the area granted that are recognised by the government as necessary for the operations.

Private parties that have either previously owned a quarry, or made a quarry contract with the owner of a mineral mass or spring water, must obtain an establishment licence and may occupy non-public domain areas that are necessary for the temporary prospecting and exploration, subject to the payment of rent and a collateral fee. Areas subject to exploration or exploitation contracts, and surrounding areas, may be subject to public easement.

There is no difference between the rights granted to Portuguese parties and those granted to foreign parties. Parties that are not resident in the EU must first have been established in accordance with the law of a Member State of the EU.

### ***Additional permits and licences***

In order to conduct exploratory works, concessionaires must conduct a prior environmental impact study (EIS) in order to obtain an environmental licence.

### ***Closure and remediation of mining projects***

There are environmental obligations that must be undertaken after the closure of a mining project, particularly environmental recovery obligations.

Depending on the nature of the exploitation, and the areas and infrastructure covered, the obligations relating to the closure of the mine can be quite demanding, both technically and financially.

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<sup>2</sup> Article 14, paragraph 3 of the Mining Law.

Guarantees to secure mine closure obligations are provided via the creation of a mine closure fund, to which annual transfers are made in accordance with the closure costs and the lifetime of the mining project. The contributions to this fund may be treated as costs for the purposes of the calculation of the mine operator's net income.

The fund must be subject to restrictions that limit the use of the fund assets for the purpose for which the fund was created.

#### **IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS**

##### **i Environmental, health and safety regulations**

The main provision is Law No. 54/2015, which provides that all direct and indirect safety, health and environmental interests of workers must be protected.

The main regulatory bodies are the Ministry of Labour and Social Security, the Ministry of Health and the Ministry of the Economy. Decree-Laws Nos. 274/89, 162/90, 441/91, 26/94 and 141/95, 82/99, and Implementing Decree No. 34/92 (regarding uranium), develop and complement the primary provisions.

##### **ii Environmental compliance**

The executive bodies are the Ministry of Environment and the Ministry of Labour and Social Security. The primary legislation is Law No. 11/87, which creates the general legal framework governing the environment, and Law No. 54/2015 and Decree-Law 88/90, which are complemented by the following Decree-Laws:

- a* Decree-Law No. 151-B/2013 of 31 October, as amended by Decree-Law No. 179/2015 of 27 August, which approves the legal framework of governing environmental impact assessments of public and private projects susceptible of producing significant effect in the environment, pursuant to Directive No. 2011/92/UE of the European Parliament and Council, of 13 December;
- b* Decree-Law No. 169/2012;
- c* Decree-Laws Nos. 78/2004, as amended by Decree-Law No. 126/2006, and Decree-Law No. 102/2010 (regarding air pollution); and
- d* Decree-Law No. 9/2007, as amended by Decree-Law No. 278/2007 and Decree-Law No. 182/2006 (regarding noise).

Portugal complies with the EU environment directives and regulations. Mining projects require environmental permits. Both the operation and closure of geological resources are subject to technical rules, and environmental protection, sustainability and landscape recovery measures (i.e., those included in plans approved by authorities such as the environment and municipal authorities). Decree-Law No. 151-B/2013 of 31 October, as amended by Decree-Law No. 179/2015 of 27 August, provides that mining projects are subject to an environmental impact assessment (EIA), which includes an EIS, in order to determine the direct and indirect effects and consequences of the project on the environment, and to recommend sustainable remedies to compensate for or minimise those effects.

An environmental licence is also required. An environmental licence is an administrative instrument that ensures that the best industrial techniques available are used, including remedies to minimise waste production, and air, noise, water and soil pollution (as per Decree-Law No. 127/2013 of 30 August, which establishes the legal framework regarding for industrial emissions, applicable to the integrated prevention and control of pollution,

pursuant to Directive No. 2010/75/UE of the European Parliament and Council). This licence takes into account the content of the EIA. The time involved in obtaining a permit varies, but normally takes between eight and 12 months.

An EIA may not be required for mining exploitation projects involving mining works affecting fewer than five hectares or with production below 150,000 tons per year.

### **iii Third-party rights**

There is a strong body of equity legislation in Portugal, although there are no specific legal provisions regarding indigenous, aboriginal, or other currently or previously disadvantaged, peoples, which affect the acquisition or exercise of mining rights.

### **iv Additional considerations**

There are no other social, environmental and political considerations that could have a direct impact on mining rights or mining projects.

## **V OPERATIONS, PROCESSING AND SALE OF MINERALS**

### **i Processing and operations**

There are no special provisions or limitations with regard to the import of equipment and machinery, other than those in the EU Health and Safety Directive.

There are also no general restrictions or limitations on the processing, export or sale of metallic minerals, although the government reserves the right to monitor the processing, export and sale of metallic minerals for statistical and auditing purposes.

Regarding the use of foreign labour and services, the general Portuguese labour rules apply, under which a foreigner must be duly authorised to work in Portugal (i.e., possess a work visa). There are no specific provisions applicable to mining operations.

### **ii Sale, import and export of extracted or processed minerals**

There is a specific legal framework governing the mining, sale and export of uranium. There are, however, no general restrictions or limitations on the import, export or sale of processed minerals.

### **iii Foreign investment**

There are no restrictions or limitations in Portugal on the imports of funds for mining activities, or on the use of proceeds from the export or sale of metallic minerals. There are no restrictions on foreign investment, and no difficulties in capital repatriation. Foreign investment in mining companies or mining projects is not subject to government review.

Although the government may require evidence of the technical and financial capacity of the concessionaires of mining projects, the criteria applicable to foreign investors are the same as those applicable to Portuguese investors.

Depending on the existing programmes, it is possible to obtain financial and fiscal incentives for the development of mining projects. These projects are managed by the Portuguese Agency for Trade and Investment.<sup>3</sup>

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3 [www.portugalglobal.pt](http://www.portugalglobal.pt).

## VI CHARGES

### i Royalties

Royalties are defined in the concession agreements entered into by the state and concessionaires.

Royalties were, until recently, generally calculated on the basis of two calculations, at the discretion of the state:

- a* a percentage of the mine head value of the ore (1 per cent to 4 per cent); or
- b* a percentage of the net smelter return on sales (up to 10 per cent).

In the recent past, and when minerals prices were booming, the state tried to change its approach with regard to royalties by introducing a progressive formula linked to the net smelter return on sales, with a minimum of zero per cent and a maximum of 25 per cent. The higher rates up to 25 per cent apply only to cases in which the markets operate with speculative prices. This approach was abandoned due to the crises in the sector.

### ii Taxes

Two taxes apply directly to the companies under Portuguese law: corporate income tax and municipal tax.

The standard rate of corporate income tax rate is currently 21 per cent. However, an additional corporate tax of 3 per cent accrues for companies with a taxable income over €1.5 million, 5 per cent for taxable incomes over €7.5 million and 7 per cent for taxable incomes over €35 million. The municipal tax is fixed yearly by the municipal authority and applies to companies trading within the area of the municipality. The rate of this tax is up to 0.5 per cent of the company's taxable income.

Depending on the phase and the development of the investment project, certain tax credit incentives and other incentives for industrial investments may be applicable.

### iii Duties

There are no specific provisions with regard to the duties applied to minerals.

### iv Other fees

Under exploitation contracts, holders of exploitation rights are required to pay an annual fee to the state for the duration of the contract. This fee varies depending on the area of the concession.

## VII OUTLOOK AND TRENDS

The approval of the new base legislation and the change of government policy with regard to the calculation of royalties (see Section VI.i, *supra*) (which applies only to new contracts or in the renegotiation of existing contracts, but is not unilaterally applicable to existing contracts) have significantly increased the ability of the applicable legal framework to attract private investment to the mining sector, and have specified and further detailed aspects that were previously omitted or insufficiently determined by the previous legislation.

Save for the latest amendments to the base legislation, there appear to be no plans to significantly alter the existing laws and regulations.

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Rui Botica Santos is a partner in CRA – Coelho Ribeiro e Associados, a Portuguese law firm with great expertise in mining law. Rui is also a partner in CRA Timor, a law firm established in East Timor, which focuses on international mining law and oil and gas transactions. Rui is a qualified lawyer in Portugal; Brazil, East Timor and Macau. He also undertook a mining short course – Domestic and International Issues, organised by the Rocky Mountains Mineral Law Foundation (US/May 2009).

Rui has been primarily involved in negotiating international acquisitions and public offerings in the mining sector, and has also provided advice to junior and senior mining companies on applications and negotiations for exploration and prospecting licences; exploitation concessions; renegotiation of concessions; and negotiation of grants for mining exploration projects.

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