

LAW N°18.097

ORGANIC CONSTITUTIONAL LAW ON MINING CONCESSIONS

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The Government Junta of the Republic of Chile has passed the following
BILL:

Title I
MINING CONCESSIONS

Article 1: The mining concessions can be either for exploration or exploitation. Whenever this law refers to mining concession it shall be understood that it includes one and the other.

Article 2: Mining concessions represent real and immovable rights; different and independent from the surface land ownership, in spite of belonging to the same owner; opposable to the State and to any person; transferable and transmissible; susceptible to mortgage and other immovable rights and, in general, to any act or contract; and are ruled by the same civil laws applicable to other immovable rights, except when they may oppose to the provisions of this law or the Mining Code.

Article 3: The rights granted by mining concessions are exercised on the object constituted by the concessible mineral substances that exist in the territorial extension that the Mining Code determines, which consists of a solid whose depth is undefined within the vertical planes that limit it. All mineral substances, metallic and non-metallic and, in general, all fossil substances in any form that they present in nature, are subject to concession, including those existing in the subsoil of maritime waters under the national jurisdiction that have access through tunnels from the mainland, and any person interested in them, can constitute a mining concession. The grantable mineral substances contained in deads, slang or tailing, which have been abandoned by their owner, are susceptible to mining concession together with all other grantable mineral substances that might exist in the respective territorial extension. Liquid and gaseous hydrocarbons, lithium, deposits of any kind found in maritime waters under national jurisdiction and deposits of any nature situated totally or partially in areas that are deemed by law to be important to the national security with mining effects, are not susceptible to mining concession, notwithstanding the mining concessions validly constituted prior to the corresponding declaration of non-grantability or importance to national security. Surface clays, artificial salt pits, sands, rocks and other materials used directly in construction, are ruled by the common law or by the special provisions set forth in the Mining Code to this effect; they are not considerate mineral substances.

Article 4: The territorial extension of a mining concession may be divided, but each part resulting from such division cannot be inferior to the minimal land extent that a concession can have in accordance with the Mining Code, and it shall have to be equal to that minimal extent or a multiple of it; all of which is understood notwithstanding the intellectual division or quota that can be made. No more than one mining concession can be constituted on grantable substances existing in a same territorial extension.,

Article 5: The mining concessions shall be granted by resolution of the ordinary courts of justice, in a procedure followed before them and without decisive intervention of any kind or any

other authority or person. Any person can acquire, under any title, such mining concessions, or quotas thereof, over the substances that this law determines. Only those persons that the Mining Code indicates in the provisions, that must be approved by a qualified quorum according to the constitutional regulations in force, are excluded. The first person to file a claim for the establishment of a mining concession respect to a territorial extension not protected by a mining concession in effect, is deemed to be the discoverer, who shall have preference to constitute it, unless there has been force or fraud to be early in the proceedings or to delay those of the person who really discovered it first. If the party who initiates the proceedings is a person who executes mining work under command or behalf of another, it shall be understood that the proceeding is carried out for this person. If the State deems necessary to exercise its rights to exclusively explore and exploit grantable substances, it shall act through companies owned by it or those in which it participates, and constitute or acquire the respective mining concession that are authorized for that purpose in accordance with the constitutional regulations in force. The Mining Code is to regulate the way to assert rights, whether during the constitution procedure or after it, of those who are impaired by the constitution of the mining concession. Once the mining concession is constituted, the judge shall order its registration according to that Code, which shall also deem some other publicity measure.

Article 6: The holder of a judicially constituted mining concession, has the right of property thereon, protected by the guarantee set forth in number 24 of article 19 of the Political Constitution. The deprivation of the rights to initiate or continue the exploration, extraction and appropriation of the substances object of a mining concession, constitutes privation of the essential attributes of ownership thereof.

Title II **THE RIGHTS OF THE MINING CONCESSIONAIRES**

Article 7: Every mining concessionaire has the exclusive right to prospect and excavate in lands of any domain with mining purposes within the boundaries of the territorial extension of his concession. Such right shall be exercised in accordance with the provisions set forth in this law and it shall be subject to the limitations prescribed in the Mining Code. The limitations shall always be established to prevent damages to the owner of the land or to protect public interest purposes. They shall consist in the need to obtain permission from the owner of the land or from the corresponding authority, as the case may be, to exercise the right to prospect and excavate in certain lands. The Code shall establish a concentrated, economic and expeditious procedure to obtain such permission in the event of refusal from the party who must granted it. However, only the owner of the land shall be able to permit prospection and excavation in houses and appurtenances thereof or in lands that contain trees or vineyards.

Article 8: Holders of mining concessions, are entitled to the establishment of the necessary easements for the mining exploration and exploitation. Regarding this concession, the surface lands are subject to the burden of being occupied to the extend required by mining operations, by ore yards and dumps, deads, slag and tailings; ore extraction and benefaction plants; electric substations and communication lines, canals, reservoirs, piping, housing, constructions and supplementary works; and to the encumbrance of transit and of being occupied by roads, railways, piping, tunnels, inclined planes, cableways, conveyor belts and all other means used to connect the operations of the concession with public roads, benefaction facilities, railroads

stations, shipping ports and consumer centres. Such concessions are subject in favour of others, and to the applicable extent, to the burdens established in relation to the surface lands that without preventing or hindering their operation, are useful to others and, likewise, to the burden to be crossed by mining tunnels and mining work intended to provide or facilitate ventilation, drainage and access. Establishment of easements, exercise thereof and compensations therefor shall be agreed upon the interested parties or established by court decision under the special brief procedure contemplated in the law or, should the law not contemplate such special procedure, under the generally applicable summary proceedings. Easements in favour of mining concessions are essentially temporary; may not be utilized in purposes other than those for which they were established, and will cease when their utilization is discontinued. Easements may be expanded or restricted according to the development of the work connected therewith. Mining concessionaires will have the water rights established by law in their favour.

Article 9: All mining concessionaires have the right to protect their concessions by all means provided by the law, with respect to the State as well as to privates; to initiate, for that purpose, actions such as file recovery, possessory and others established by the law, and to obtain the corresponding compensation for damages. Concessionaires may impetrare from the competent judge the proper measures to preserve and defend their concessions. Particularly, concessionaires are acknowledged the right to visit mining works that could affect their rights, under the circumstances, forms and with the effects set forth in the Mining Code.

Article 10: The exploration concessionaire has the exclusive right: 1. To freely open test pits and carry out other mining exploration works, observing the police and safety regulations and articles 7 and 8; 2. To file court proceedings to establish exploitation concession, within the limits and term of duration of the exploitation concession whose exercise shall give him preferential right to establish it even after the extinction of the latter in accordance with the Mining Code; 3. To appropriate grantable ores that they may need to be extracted in connection with the exploration and research operations; and 4. To receive compensation, in case of expropriation, for the patrimonial damage actually suffered.

Article 11: The exploitation concessionaire has the exclusive right: 1. To freely explore and exploit the mines over which his concession is granted and to take all the actions aimed at these objectives, with the exception of the observance of the police and safety regulations and the provisions in article 7 and 8; 2. To appropriate all mineral substances mined that are subject to concession at the time of judicial establishment thereof, located within the boundaries of the concession; and 3. to receive compensation, in the event of expropriation of the concession, for the patrimonial damage that has effectively been inflicted, which shall consist in the commercial value of the right to initiate and continue the extraction and appropriation of the substances object of the concession. In the absence of agreement, the judge, previous expert's opinion, shall determine the amount of such compensation. Experts shall establish the commercial value of the concession, calculating, on the basis of the ore reserves of grantable substances that the expropriated party can demonstrate, the present value of the net cash flow of the concession.

Title III **OBLIGATIONS OF THE MINING CONCESSIONAIRES**

Article 12: The protection system referred to in article 19 number 24 paragraph 7 of the Political Constitution, shall consist on the annual payment, in advance, of a license to a fiscal benefit, in the manner and for the amount to be set forth in the Mining Code. The debts from unpaid licenses can only be made effective in the respective concession, notwithstanding their caducity thereof according to letter a), paragraph one of article 18. Amounts paid for mining licenses for an exploitation concession, shall be credited to the income tax payment derived from the mining activities carried out in the respective concession, according to the provisions of the Mining Code.

Article 13: Exploration concessionaires cannot establish exploitation, notwithstanding the provisions of number 3 of article 10.

Article 14: The mining concessionaire is bound to indemnify the damage inflicted to the owner of the surface land or other concessionaires as result of the works he carries out, according to the proceedings and regulations that the Mining Code establishes. It can be demanded from him to give a previous bail bond to be liable for the value of the indemnifications, according to this Code.

Article 15: Mining concessionaires, as such, are obliged to observe the provisions of the State's right to first buy, at the current market price and terms, the mineral products that this law declares of strategic value for containing certain substances in significant quantities. The Mining Code shall establish the form, opportunity and modalities in which the State can exercise this right, the sanctions for the infringements and the way to solve the difficulties that arise. Are of strategic value, the mineral products where thorium and uranium are present significantly. For the effects of this and the following articles, it is understood that a substance has a significant presence within a mining product when is susceptible to be reduced from a technical and economic stand point.

Article 16: The circumstance that a deposit contains non-grantable substances does not prevent the constitution of a mining concession with respect to the grantable substances existing in the same deposit. The mining concession does not entitle its holder to appropriate the non-grantable substances with significant presence within the appropriable mining product. The State can take possession of them, according to what the Mining Code establishes.

Title IV **DURATION AND TERMINATION OF MINING CONCESSIONS**

Article 17: Notwithstanding what is established in the following article, the exploration concession cannot last over four years, however, the exploitation concession can last indefinitely.

Article 18: Mining concessions expire, when the holders' ownership over them expires for: a) judicial resolution that declares free land, in the event there were not bidders in the public auction of the judicial proceedings originated by the absence of the payment of the license, and

b) because the concessionaire does not require the registration of his concession in the term indicated by the Mining Code. The exploration concession expires, in addition, because of infringement of the provisions in article 13. Mining concessions also expire because of the resign of its holder, according to the law.

Final Title **THE VALIDITY OF THIS LAW**

Article 19: The law herein shall enter into force along with the new Mining Code, simultaneously.

TRANSITORY PROVISIONS

Article 1º transitory: Mining concessions standing at the date of entry into force of the new Mining Code shall persist under the rule of the latter. However, regarding their benefits and burdens and with respect to their extinction, the provisions of that Code shall prevail.

Article 2º transitory: Mining concessions overlapped by the application of articles 82 and 83 of the Mining Code of 1932 shall keep their effectiveness, excepting those that derive from the application of the rule contained in the final sentence of paragraph one of this last article. Likewise, the overlapped mining concessions standing, constituted in virtue of the legal provisions in force previous to the Code enabling the overlapping for involving the ownership of different substances, shall be kept. In order to prevent the constitution of new overlapped mining concessions, the new Mining Code shall establish the form to determine which of the mining concessions in force already overlapped is to be extended to the rest of the substances that were conceded to the one that expires or that were not conceded at all. Likewise, that Code shall determine the form in which the mining concession in force is to be extended, in the event of being only one, to the substances that were not conceded. For the purposes of the above sections, it is considered: 1. that coal, thorium and uranium were included in paragraph one of article 3 of the Mining Code of 1932; and 2. that the substances indicated in article 4 of that Code, except oil in liquid or gaseous state, were referred to in paragraph two of the mentioned article 3. The provisions in the above sections are notwithstanding the mining concessions that constitute, by application of the provisions in article 4 transitory, concessions that shall be understood constituted previously to the extensions referred to in the present article.

Article 3º transitory: Holders of ownership over rocks, sands and other materials applicable directly to construction, constituted for other determined industrial or ornamentation application, in force at the date of the publication of the new Mining Code shall continue to be in possession of their rights acting as exploitation concessionaires, under the rules and conditions that with respect to these mining concessions this law indicates in the new Code. Once expired or terminated the concession, these substances shall once more belong to the owner of the land. If such ownership belonged to the owner of the land, they shall expire immediately solely by the application of the law.

Article 4º transitory: Within 180 days after the publication of the new Mining Code, shall only be valid the actions to begin the judicial proceedings to constitute mining concession in the lands where they were located, that the State agencies or companies that the Mining Code indicates

carry out within that term with respect to the deposits or substances that in virtue of this law stop being reserved to the State. Provisions established in this article are understood notwithstanding the transferrals that these organisms or companies are bound to by contracts validly created. The overlaps produced in virtue of the above section are valid. Overlaps produced as the result of the manifestations that, within the term that the new Mining Code establishes, the holders of judicial concessions to explore, the holders of administrative concessions to explore or exploit, as well as the holders of applications of such concessions present with respect to the substance or substances conceded or applied for.

JOSE T. MERINO CASTRO, Admiral, Commander in Chief of the Navy, Member of the Government Junta.- FERNANDO MATTHEY AUBEL, General, Commander in Chief of the Air Force, Member of the Government Junta.- CESAR MENDOZA DURAN, General Director of the Armed Police, Member of the Government Junta.- CESAR RAUL BENAVIDES ESCOBAR, Lieutenant General of the Army, Member of the Government Junta. For I have considered passing the above law, I authorise it and I sing it in signal of enactment.

Take it to effect as law of the Republic. Be it registered in the Contraloría General of the Republic, be it published on the Official Gazette and be it inserted in the Recopilación Oficial of the Contraloría. Santiago, January 7th 1982.- AUGUSTO PINOCHET UGARTE, General of the Army, President of the Republic.- Hernán Felipe Errázuriz Correa, Minister of Mining.