



*República del Ecuador*

# **LEY DE MINERÍA**

Ley 45 - Registro Oficial - Suplemento 517 de 29 - ene. - 2009

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# **MINING LAW**

**Law 45**

**Official Register Supplement 517 of Jan. 29th, 2009**

**Last modification: Apr 29th, 2016**

**State: Reformed**



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NATIONAL ASSEMBLY  
LEGISLATIVE AND AUDIT COMMISSION

Legal letter No. SCLF-2009-045

Quito, January 27th, 2009

Mr.

Luis Fernando Badillo

Deputy Director of the Official Registry

City

From my consideration:

The Legislative and Audit Commission, in accordance with the powers conferred by the Constitution of the Republic of Ecuador and the Constituent Mandate No. 23, discussed and approved the draft Mining Law.

In a meeting on January 26th, 2009, the Plenary of the Legislative and Audit Commission met and acquiesced to the partial objection presented by the Constitutional President of the Republic.

For exposure, and as provided in the article 138 of the Constitution of the Republic of Ecuador and the article 30 of the Mandate 23, I enclose the text of the Mining Law, so that it may be published in the Official Register.

Sincerely,

f.) Dr. Francisco Vergara O., Secretary of the Legislative and Audit Commission.

CONSIDERING:

That the current mining legal framework is insufficient and does not respond to national interests, therefore, it is necessary to correct and stop the environmental, social, and cultural damage, by safe and efficient regulations, under the new development model desired by the country;

That the Constitution of the Republic of Ecuador, in the Art. 408, establishes that “The non-renewable natural resources and, in general, subsoil products, minerals and hydrocarbon reservoirs, substances whose nature is different from that of soil, including those found in areas covered by the waters of the territorial sea and the maritime zones, as well as biodiversity and its genetic heritage and the radioelectric spectrum are inalienable, imprescriptible, and non-attachable of the State “;

That non-renewable natural resources are considered a strategic sector as established by the Constitution in Article 313, on which the State reserves the right to administer, regulate, control, and manage strategic areas with the principles of environmental sustainability, precaution, prevention, and efficiency; as well as exceptionally delegate to private initiatives, in accordance with Article 316 of the Constitution of the Republic of Ecuador;

That “The State recognizes various forms of organization of production in the economy, including community, cooperative, business, public or private, associative, family, national, autonomous, and mixed,” as stipulated in the Constitution of the Republic of Ecuador in its Article 319;

That the State shall promote the proper living of the population, and shall encourage those forms of production that preserve their rights and protect nature;

That the State shall guarantee the right to work, recognizing all its modalities, in dependency relation or autonomous with labor inclusion of self-support and human care and productive social actors to all male and female workers;

That the State shall promote the development of economic activities through a legal order and political institutions that promote, encourage, and defend them, through compliance with the Constitution and the law;

That “The State shall avoid the concentration or hoarding of productive

factors and resources, promoting their redistribution, and eliminating privileges or inequalities in the access to them”, as established by the Constitution of the Republic in Art. 334;

That the State shall encourage and support the development and dissemination of knowledge and technologies oriented to production processes;

That the Municipal Governments shall regulate and control the exploitation of arid and petrous materials found on the rivers beds, lakes, sea beaches, and quarries;

That the Constitution of the Republic of Ecuador, in Art. 395, states that “The State shall guarantee a sustainable development model that is environmentally balanced and respectful of cultural diversity, that conserves biodiversity, the natural regeneration capacity of ecosystems and that ensures the satisfaction of the needs of present and future generations”; and,

In the exercise of its powers, ISSUES the following.

## **MINING LAW**

### **Section I Fundamental Provisions**

#### **Chapter I General Precepts**

**Art. 1. Purpose of the Law:** This Mining Law regulates the exercise of the sovereign rights of the Ecuadorian State to administer, regulate, control, and manage the strategic mining sector, in accordance with the principles of sustainability, precaution, prevention, and efficiency. Petroleum and other hydrocarbons are excepted from this Law.

The State may delegate its participation in the mining sector to joint mining companies in which it has a majority shareholding or to the private initiative and the popular and solidarity economy for prospecting, exploration, and exploitation, or for profit, smelting, and refining, if

applicable, in addition to the internal or external commercialization of mineral substances.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 316*

*LAW OF COMPANIES, Arts. 308, 309*

**Art. 2. Scope of application:** In order to regulate the delegation envisaged in the preceding article, this Mining Law regulates the relationships of the State with the joint mining companies; with natural or juridical persons, local or foreign, public, mixed, private and those of each other, regarding the obtaining, conservation, and extinction of mining rights and the execution of mining activities.

**Art. 3. Supplemental rules:** These are applicable in mining, in the relationship State - individuals, and of these with each other, the regulation: Administrative, Contentious-Administrative, food sovereignty, tributary, penal, criminal procedure, public companies, corporate, civil; civil matters, decentralized autonomous governments, cultural heritage and more normative of the positive Ecuadorian legislation applicable to the geological mining sector, in all that corresponds and is not expressly regulated by this law.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 15, 413*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 87*

## **Chapter II**

### **Formulation, Execution, and Managing the Mining Policy**

**Art. 4. Definition and direction of the mining policy:** It is the attribution and duty of the President of the Republic the definition and direction of the mining policy of the State.

For the development of said policy, its execution, and application, the State shall work through the Sectorial Ministry and the entities and organisms determined in this law.

The State shall be in charge of administrate, regulate, control, and

manage the development of the mining industry, prioritizing sustainable development and promoting social participation.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 3, 57, 147*

**Art. 5. Institutional Structure:** The mining sector shall be structured as follows:

- a) The Sectorial Ministry;
- b) The Mining Regulation and Control Agency;
- c) The National Institute of Geological, Mining, and Metallurgical Research; and,
- d) The National Mining Company, and
- e) The municipalities as per their corresponding competencies.

**Art. 6. Sectorial Ministry:** As defined by the Presidency of the Republic, it is the governing and planning organ of the mining sector. This body is responsible for the application of policies, guidelines and applicable plans in the corresponding areas for the development of the industry, in accordance with the provisions of the Constitution and the law, its regulations and development plans that are established at the national level.

The State shall determine, in accordance with the provisions of article 279 of the current Constitution and in accordance with the principles of good living, as well as its economic, environmental, social and cultural needs, the areas susceptible to exploration and mining exploitation, having as priorities the rationality in the use of natural resources, the generation of new development zones, and the principle of regional equilibrium.

The National Mining Policy shall tend to promote at all levels the innovation, the technology, and research that allow the internal development of the sector; for this process, the Sectorial Ministry shall coordinate with the instances of science and technology and higher education that exist in the country.

The State shall establish mechanisms for promotion, technical assistance, training, and financing for sustainable development for artisan mining and small-scale mining. Likewise, it shall establish incentive systems for environmental protection and the generation of more efficient productive units.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 71, 154, 386, 408*

**Art. 7. Competencies of the Sectorial Ministry:** Corresponds to the Sectorial Ministry:

- a. The exercise of the stewardship of the public policies in the geological-mining area, the issuance of agreements and administrative resolutions required for the management thereof;
- b. Exercise the representation of the State in matters of mining policy;
- c. Evaluate policies, plans, and projects for the development, administration, regulation, and management of the mining sector;
- d. Execute in a deconcentrated manner the public policy defined for the development of the sector;
- e. In coordination with public and/or private institutions, universities and polytechnic schools, promote the scientific and technological research in the mining sector;
- f. In coordination with the governing body of national planning, define the National Development Plan of the mining sector;
- g. Supervise the fulfillment of the objectives, policies, and goals defined for the sector that execute natural people and legal public and/or private individuals;
- h. Establish the parameters and indicators for the monitoring, supervision, and evaluation of the management of public enterprises and informing the Executive about the results of such execution and measurement;
- i. Create Advisory Councils that allow citizen participation in decision making for mining policies;
- j. Grant, manage, and extinguish mining rights; and,
- k. Any others competence established in the laws and current executive decrees, as well as in the regulations of this law.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 3*

**Art. 8. Mining Regulation and Control Agency:** The Mining Regulation and Control Agency is the technical-administrative body in charge of the exercise of the state power of surveillance, audit, intervention, and control of the phases of the mining activity undertaken by the National Mining Company, the joint mining companies, private initiative, small-

scale mining, and artisan mining and livelihoods, in accordance with the regulations of this law and its regulations.

The Mining Regulation and Control Agency, as an institution of public law, with legal personhood, administrative, technical, economic, financial and, own equity, is attached to the Sectorial Ministry and has the competence to supervise and adopt administrative actions contributing to the rational and technical use of the mining resource, and the fair perception of the benefits corresponding to the State as a result of its exploitation, as well as, to the fulfillment of the obligations of social and environmental responsibility assumed by mining rights holders.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 274*

*MINING LAW, Arts. 93*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 7*

**Art. 9. Powers of the Mining Regulation and Control Agency:** The following are the powers of the Mining Regulation and Control Agency:

- a) To ensure the correct application of this law, its regulations and other applicable regulations in mining matters;
- b) To dictate the regulations and technical plans for the correct operation and development of the sector in accordance with this law;
- c) To issue reports of the processes of granting, conservation and extinguishing of mining concessions, authorization for installation and operation of processing, treatment, smelting and refining plants, and of the subscription of exploitation contracts, by the Sectorial Ministry;
- d) To keep a registry and cadastre of mining concessions and publish them through IT and electronic means;
- e) To hear and resolve appeals and other claims filed regarding to the resolutions issued by the decentralized units, of which it becomes aware;
- f) To hear, process, and resolve in the administrative legal protection proceedings;
- g) To inspect the mining activities carried on by the rights holders and mining titleholders;
- h) To monitor that in the mining activities executed by the mining rights holders no children or teens are working, or providing services of any kind and to ensure compliance with article 43 of the Constitution of the Republic;

- i) To punish, as stipulated in the law and its regulations to the mining activity holders, if the observation referred to in subparagraph h) above, it is established that children or teens are working, and to inform to the competent child and adolescent authorities of the non-observance of current regulations;
- j) To appoint an auditor in the cases determined by law;
- k) To set the concession rights in the mining sector in accordance with the provisions of this law and the regulations hereof, as well as collect the corresponding amounts from fines and sanctions;
- l) To exercise the technical control and apply the sanctions of the case to ensure the correct application of the sector's policies and regulations;
- m) To open, substantiate and decide the procedures for imposing the sanctions established in this law;
- n) To watch, evaluate and disseminate market behavior and statistics of the mining sector;
- o) To grant licenses to market the mineral substances determined in this law; and,
- p) Any others in accordance with this Law and the applicable regulations.

The Bylaws of the Regulation and Control Agency shall determine the competencies of the Regional Agencies that are created, within the framework of the powers contained in this law.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 46*

*LABOR CODE, Arts. 138*

*CHILDHOOD AND ADOLESCENCE CODE, Arts. 81, 87*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 8, 97*

**Art. 10. National Institute of Geological, Mining and Metallurgical Research:** The National Institute of Geological, Mining, and Metallurgical Research is created in accordance with the norms of article 386 of the Constitution of the Republic of Ecuador as a public institution responsible for carrying on research, technological development and innovation activities in Geological, Mining and Metallurgical matters.

The National Institute of Geological, Mining, and Metallurgical Research has legal personhood, in addition to administrative, technical, economic, financial autonomy and its own patrimony; it is adhered to the Sectorial Ministry and has the authority to generate, systematize, focus and

manage geological information throughout the entire national territory, to promote the sustainable development of mineral resources and prevent the occurrence of geological threats and those caused by man, in support of territorial ordering.

The organization and operation of this institution must be in accordance with the provisions of this law and its regulations.

**Art. 11. Board of Directors of the Mining Regulation and Control**

**Agency:** The Mining Regulation and Control Agency shall have a Board of Directors formed by three members that shall not be in a relationship of employment with this entity. It shall be integrated by:

- a) The Sectorial Minister or his permanent delegate, who shall preside over it and have a deciding vote;
- b) The National Planning Secretary or his delegate; and,
- c) A delegate of the President of the Republic.

The Board of Directors shall appoint an Executive Director and shall establish by resolution, the administrative and financial structure of the Mining Regulation and Control Agency.

The Executive Director shall be in charge of complying with the resolutions of the Board of Directors; shall exercise the legal representation of the Agency and shall have the faculties and attributions assigned by the governing organ.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013

**Art. 12. National Mining Company:** It is a public law company with legal personhood, its assets, endowed with budgetary, financial, economic and administrative autonomy, destined to the management of mining activity for the sustainable use of resources subject of this law, in compliance with the provisions thereof and its regulations. The Public Mining Company, subject to the regulation and specific control established in the Public Companies Law must act with high-quality parameters of business, economic, social and environmental criteria.

For the fulfillment of its purpose, the National Mining Company may

associate, establish joint economy companies, celebrate partnerships, temporary unions, strategic alliances and in general, any act or contracts permitted by national laws in order to comply with its own corporate purpose and achieve national objectives, with natural or legal persons, local or foreign, public or private.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 313  
ORGANIC LAW OF THE COMPTROLLER GENERAL OF THE STATE,  
Arts. 1, 2  
LAW OF COMPANIES, Arts. 314  
ORGANIC LAW OF PUBLIC COMPANIES, (KNOWN IN SPANISH AS  
LOEP), Arts. 3. 4*

**Art. 13. Administrative Systems:** Public servants that render their services in the entities and organisms that this law creates, shall be subject to the Organic Law of Civil Service and Administrative Career and salary unification and homologation of the Public Sector, except those of the National Mining Company, who shall be governed by its own regulations in accordance with the Constitution of the Republic.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 229, 261  
ORGANIC LAW OF PUBLIC SERVICE, (KNOWN IN SPANISH AS  
LOSEP), Arts. 4, 87*

**Art. 14. Jurisdiction and competence:** Individuals or legal entities, local or foreign, who hold mining rights or carry out mining activities are subject to the laws, courts, and judges of the country. In the case of foreign individuals and legal entities, they shall abide by the terms of Article 422 of the Constitution of the Republic of Ecuador.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 66, 307  
CIVIL CODE (PRELIMINARY TITLE), Arts. 13  
LAW OF COMPANIES, Arts. 6, 406, 415, 418  
CODE OF PRIVATE INTERNATIONAL LAW SANCHEZ DE  
BUSTAMANTE, Arts. 3*

**Art. 15. Public utility:** The mining activity is declared of public utility in all

its phases, inside and outside the mining concessions. Consequently, it is appropriate to constitute easements, as necessary, within the framework and limits established in this law, considering the prohibition and exception stated in article 407 of the Constitution of the Republic of Ecuador.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous communities, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 323*

*CIVIL CODE (BOOK II), Arts. 852, 859, 870*

*ORGANIC LAW OF THE NATIONAL PUBLIC PROCUREMENT SYSTEM, Arts. 58*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 34, 47, 447, 448*

### **Chapter III**

#### **The Domain of the State and Mining Rights**

**Art. 16. Domain of the State over mines and deposits:** Non-renewable natural resources and, in general, subsoil products, minerals, and substances of a nature other than that of soil, including those found in areas covered by the waters of the territorial sea, are inalienable, imprescriptible, non-attachable and non-seizable property of the State. The dominion of the State over the subsoil shall be exercised independently of the right of ownership over surface lands with mines and deposits.

The exploitation of natural resources and the exercise of mining rights shall be subject to the National Development Plan, the principles of sustainable and sustainable development, the protection and conservation of the environment and participation and social responsibility, and must respect the heritage of the exploited areas. Its exploration and rational exploitation shall be carried out in accordance with national interests, by natural or legal persons, public, mixed or private companies, national or foreign, granting them mining rights, in accordance with this law.

The exploration and exploitation of mining resources shall be based on a strategy of public environmental sustainability that shall prioritize the control, comptroller, regulation, and prevention of pollution and environmental remediation, as well as the promotion of social participation and citizens' oversight.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 1, 317, 406*

*CIVIL CODE (BOOK II), Arts. 605, 606, 607, 609*

*ORGANIC LAW OF THE COMPTROLLER GENERAL OF THE STATE, Arts. 27*

*Jurisprudence:*

*Judicial Gazette, MINING CONCESSION, Mar 11th, 2003*

**Art. 17. Mining Rights:** By mining rights are understood those that emanate from mining concession titles, mining exploitation contracts, licenses and permits, as well as from authorizations to install and operate processing, smelting and refining plants, and also from trade licenses.

#### **Chapter IV Parties Subject to the Mining Law**

**Art. 18. Parties subject to the mining law:** Legally capable individuals and legal entities, local and foreign, public, joint ventures or private companies, community and self-management companies, whose corporate purpose and operation comply with the legal provisions in effect in the country are subject to this mining law.

*Concordances:*

*CIVIL CODE (BOOK I), Arts. 570*

*CIVIL CODE (BOOK IV), Arts. 1462, 1463*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 2. 3*

**Art. 19. Domicile of foreigners:** Foreign natural or legal persons, to be holders of mining rights, must have a legal domicile in national territory

and shall receive the same treatment as that granted to any other natural or legal person.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 9*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 13*

*CIVIL CODE (BOOK I), Arts. 45, 46*

*LAW OF COMPANIES, Arts. 5, 6, 415, 418*

*TAX CODE, Arts. 60, 61*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 23*

**Art. 20. Unqualified persons:** Anyone who has or has had conflicts of interest or may benefit from privileged information, any natural or legal persons linked to the decision-making organs of the mining activity, either through direct participation or through of its shareholders and their relatives up to fourth degree of consanguinity and second of affinity, or the former officials of the ministry of natural resources, ministry of energy and mines, ministry of mines and petroleum or their immediate relatives up to fourth degree of consanguinity, and second degree of affinity and the natural or legal persons linked to the decision-making institutions of the mining sector, indicated in Section IV “of the contracts” Chapter I “capacity, disqualification or nullity” of the Organic Law of the National System of Public Procurement, inter alia, shall not be granted a mining concession.

*Concordances:*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 9*

*ORGANIC LAW OF THE NATIONAL PUBLIC PROCUREMENT SYSTEM, Arts. 62*

*LABOR CODE, Arts. Four. Five*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 23*

## **Chapter V Mining Activity**

**Art. 21. National mining activity:** The national mining activity is developed through public, joint or private, community, associative, and family companies, by self-management or natural persons, in accordance with this law. The State executes its mining activities through the National Mining Company and may establish joint economy companies. The mining

activities undertaken by public, community or self-management, public/private joint ventures and private companies or individuals enjoy the guarantees corresponding to them and deserve state protection, in the manner established in the Constitution and in this law.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 283, 315, 319*  
*LAW OF COMPANIES, Arts. 308*

**Art. 22. Legal Regime of the National Mining Company and of private concessionaires:** The obtaining and exercise of the mining rights of the National Mining Company shall be subject to the legal regime established in this law and in accordance with the provisions of article 316 of the current Constitution. Likewise, the private concessionaires in which it participates shall also be subject to the provisions of this law and to the common legal regulations applicable to national investment and the development of productive activities in the country.

*Concordances:*

*LAW OF COMPANIES, Arts. 300, 312*

**Art. 23. Inspector in mining activities:** The Mining Regulation and Control Agency shall designate an inspector in mining activities, who is not under the control and supervision of the corporate administrative authority and of cooperatives, when it is verified on written complaint by an interested party or ex officio, that the mining rights holder has contravened any of the provisions of this law and the others that regulate the mining sector, whose events may cause damage to partners, shareholders or third parties.

The Mining Regulation and Control Agency, in the administrative act that designates the inspector, shall establish the operations and documents that require the signature and the approval of the latter. In any case, the inspector shall act as administrator and his/her functions shall be: to accurately keep an exact account of the products, machinery, and expenses of the concessionaire in order to render it in due time duly documented; to perform effective supervision of the work; and, shall monitor the fulfillment of their duties to all (sic) personnel both administrative and field staff.

The fees received by inspector shall be those determined by the Mining Regulation and Control Agency, whose payment shall be in charge of the holder of the mining rights through this regulatory organ.

If the complaint is manifestly unfounded, the Regulation and Control Agency shall reject it and impose on the petitioners or complainants the administrative and civil sanctions determined in this law, without prejudice of the criminal sanctions determined by their respective legal organ.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1572, 2035, 2036, 2059*

*LAW OF COMPANIES, Arts. 356, 357*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 66*

## **Chapter VI**

### **Special Mining Areas and Prior Favorable Administrative Acts**

**Art. 24. Special Mining Areas:** The President of the Republic may declare Special Mining Areas, subject to Article 407 of the Constitution of the Republic, to those in which there is potential for mining development and are not under concession, in order for the Sectorial Ministry, through its ascribed entities, perform cadastres, geological-mining research or any other types of activities of scientific interest, within their respective competencies. In the declaration of Special Mining Area shall be expressly established the term thereof, which may not be more than four years; once this term has expired, it shall be lifted without the need of any provision that declares it. In any case, the declaration shall respect legally established rights or those that derive from them. Mining concessions may not be granted in these areas during their validity.

During the four following years from the end of the validity of a Special Mining Area, the National Mining Company shall have a preferential right to request mining concessions in said area. Likewise, if during the same four-year period referred to above, a third party requests a mining concession covering all or part of the land that has been covered by that Special Mining Area, the National Mining Company shall have a right of the first option to grant a mining concession in the said area. The Mining Regulation and Control Agency shall give effect to the procedure for

exercising the right of the first option under the terms, conditions, and time periods established in the General Regulations of this law.

The mining areas and mining projects where the Ecuadorian State has conducted geological research, exploration or have established prefeasibility or feasibility studies shall be returned to the State.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 20, 21, 53*

**Art. 25. Protected areas:** The extractive activity of non-renewable resources in protected areas is prohibited. Exceptionally, said resources may be exploited at the grounded request of the Presidency of the Republic, and upon declaration of national interest by the National Assembly, in accordance with the provisions of Article 407 of the Constitution of the Republic of Ecuador.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 72, 318*  
*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 9*  
*GENERAL REGULATIONS TO THE MINING LAW, Arts. 47*

**Art. 26. Prior Administrative Acts:** In order to execute the mining activities, mandatory and motivated administrative acts previously granted by the following institutions within the scope of their respective competencies shall be required:

- a) From the Ministry of the Environment, the respective environmental license duly granted; and,
- b) The Single Water Authority, regarding the possible affectation to bodies of superficial and/or subterranean water and of the fulfillment to the order of priority on the right to access to water.

Additionally, the mining concessionaire shall present to the Sectorial Ministry an affidavit made before a notary in which it expresses the knowledge that the mining activities do not affect: roads, public infrastructure, authorized ports, sea beaches and seabed; telecommunications networks; military installations; oil infrastructure; aeronautical facilities; electrical networks or infrastructure; or archaeological vestiges or natural and cultural heritage.

If the highest authority of the mining sector ex officio or at the request of a party warns that the activities of the applicant may affect the aforementioned assets or heritage, it shall request the respective authorization from the competent entity, which shall issue its ruling within thirty days. Failure to do so during this period shall mean that there is no opposition or impediment to the start of mining activities, and the responsible official shall be dismissed. Regarding the issuance of the reports of such administrative acts, the application of the rules of the administrative legal procedure of the Executive Function shall be applied.

The Municipal and Metropolitan Governments, in the exercise of their powers, by ordinance, shall regulate, authorize and control the exploitation of arid and petrous materials.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th from 2013.

Note: The third paragraph repealed by the twelfth derogatory provision of Law No. 0, published in the Official Registry Supplement 180 of February 10th, 2014.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 318  
ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN  
SPANISH AS COOTAD), Arts. 55, 57, 141, 562  
GENERAL REGULATIONS TO THE MINING LAW, Arts. 50*

## **Chapter VII Phases of Mining Activity**

**Art. 27. Phases of mining activity:** For the purposes of applying this law, the phases of the mining activity are:

- a) Prospecting, which consists in the search for signs of mineralized areas;
- b) Exploration, which consists of determining the size and shape of the deposit, as well as the content and quality of the mineral in it. The exploration may be either initial or advanced and also includes the economic evaluation of the deposit, its technical feasibility and the design of its exploitation thereof;
- c) Exploitation, which includes the set of mining operations, projects and minig works destined to the preparation and development of the deposit

and the extraction and transport of the minerals;

d) Beneficiation, which consists of a set of physical, chemical and/or metallurgical processes to which the mined minerals are subject to increase their useful or legal content;

e) Smelting, which consists of the process of melting minerals, concentrates or precipitates thereof, in order to separate the metallic product desired from other accompanying minerals;

f) Refining, which consists of the process for converting metallic products into high purity metals;

g) Commercialization, which consists of the purchase and sale of minerals or the celebration of other contracts that have for their object the negotiation of any product resulting from the mining activity; and,

h) Mine Closure, which consists of the termination of mining activities and the consequent dismantling of the facilities used in any of the phases previously referred to, if they are not of public interest, including environmental repair according to the closure plan duly approved by the competent environmental authority.

The State shall propitiate the industrialization of minerals resulting from exploitation activities, promoting the incorporation of added value with maximum efficiency, respecting the biophysical limits of the nature.

In all phases of the mining activity, the obligation of environmental repair and remediation is implicit in accordance with the Constitution of the Republic of Ecuador, the law and its regulations.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 14, 66, 72, 396, 397*

## **Section II Mining Rights**

### **Chapter I Prospecting**

**Art. 28. Freedom to prospect:** Any natural or juridical person, national or foreign, public, joint or private company, community, associative,

family and self-management companies, except for those prohibited by the Constitution of the Republic and this law, have the power to freely prospect in order to search for mineral substances, except in protected areas and those included within the boundaries of mining concessions, in urban areas, populated areas, archaeological zones, property declared to be of public utility and in the Special Mining Areas. When applicable, the favorable prior administrative acts referred to in the article 26 of this law shall be obtained.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 407*

*LAW OF HYDROCARBONS, 1978, Arts. 31*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 13*

*CIVIL CODE (BOOK I), Arts. 42, 564*

## **Chapter II**

### **Mining Concession**

**Art. 29. Public auction for the granting of mining concessions:** The Sectoral Ministry shall call a public auction for the granting of every metal mining concession.

Likewise, it shall call to a public auction for the granting of mining concessions of expired concession areas or those that have been returned or reverted to the State, in which the petitioners shall participate and submit their respective bids in accordance with the procedure established in the General Regulations of this law.

The granting of mining concessions, which, according to Article 31 of this Law, is carried out by the State through the Sectorial Ministry, in respect to the areas of which it disposes of, are exempt from the auction or public auction processes mentioned in the preceding paragraph by delegation to foreign state-owned companies or their subsidiaries, joint economy companies or consortiums in which they have majority participation,

for which the State must observe the principle of transparency in the adjudication, applying the constitutional norms and criteria previously established in the law, its regulations and the agreements preceding its granting.

In the annual and multiannual planning of the Sectorial Ministry, it must obligatorily contain differentiated areas susceptible to metallic mining concessions for small-scale mining, artisan mining and, on the other hand, large-scale mining.

In the public auction for small mining concessions only and natural persons or legal entities that are in this category may participate in accordance with the procedures and requirements established in this law and its general regulations.

The natural and legal persons who are in the category of artisan miners, in no case may have foreign companies as partners or shareholders.

The general regulations of this law shall establish the procedure for the auction and the sale, as well as the requirements and conditions for their participation in them.

Note: Second paragraph added by Law No. 0, published in Official Register Supplement 37 of July 16th, 2013.

Note: The fifth paragraph replaced by the sixth reform provision of Law No. 0, published in the Register Official Supplement 652 of December 18th, 2015.

*Concordances:*

*MINING LAW, Arts. 138*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 27, 28, 29*

**Art. 30. Mining concessions:** The State may exceptionally delegate participation in the mining sector through concessions. The mining concession is an administrative act that grants a mining title, over which the owner has a personal right, which is transferable prior to the mandatory qualification of the suitability of the mining rights transferee by the Sectorial Ministry, and on this one may be establish garments, assignments under warranty and other guarantees provided by law, in accordance with the requirements contemplated in this law, pursuant to

the conditions and rules of this law and its general regulations.

The registration of a transfer of the mining title shall be authorized by the Mining Regulation and Control Agency once it receives the communication from the concessionaire informing the cession of its mining rights, in accordance with the procedure and the requirements established in the general regulation of this law. Said act shall be perfected with the inscription in the Mining Registrar.

On the basis of the legal reports, the State shall authorize the transfer of the mining title after at least two years have elapsed from the grant thereof.

The buildings, installations and other objects permanently affected by the investigation and extraction of minerals, as well as to their benefit, are considered as concession's accessories.

The tax and corporate domicile of the mining rights holders shall be the region where the mining concession or the largest area of the sum of mining areas in the case of concessionaires with mining titles in different provinces or the main exploitation or industrialization project is located. This obligation must be accredited at the time of requesting the grant of a mining concession and shall not be modified without the express authorization of the Mining Regulation and Control Agency.

Note: Second paragraph amended by article 43 of Law No. 0, published in Official Gazette Supplement 405 of December 29th, 2014.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 316*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 31*

*CIVIL CODE (BOOK II), Arts. 686*

*LAW OF COMPANIES, Arts. 21, 85, 113*

*TAX CODE, Arts. 61, 62*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 58*

**Art. 31. Granting of mining concessions:** The State shall exceptionally grant mining concessions through an administrative act in favor of natural or legal persons, national or foreign, public companies, joint or private

companies, community, associative and self-managed companies, in accordance with the prescriptions of the Constitution of the Republic, this law and its general regulation thereof.

The mining title without losing its personal character confers the owner the exclusive right to prospect, explore, exploit, beneficiate, merge, refine, market and dispose of all mineral substances that may exist and obtain in the area of said concession, becoming the beneficiary of the economic returns obtained from these processes, within the limits established in this regulation and after compliance with its tax obligations; the mining concessionaire can only execute the activities that this title confers upon compliance with the requirements established in Article 26.

The mining title is a title of value based on the regulations issued by the Superintendence of Companies and the Superintendence of Banks, once the mining reserves contained in the concession are duly valued by the Mining Regulation and Control Agency under the terms of the respective Regulation for Qualification Resources and Mining Reserves.

The granting of non-metallic mining concessions and construction materials shall not be subject to the public auction referred to in this Law; the General regulation shall establish the procedure for such purpose, which explicitly must contain the technical and economic solvency requirements, investment amounts, location, area, time periods for the development of exploration and exploitation activities, benefit, social responsibility, and use.

The use of front man shall be sanctioned in accordance with the current Criminal Code.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 405, 407*  
*TAX CODE, Arts. 15, 18*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 12, 22, 27*  
*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 141*

**Art. 32. Unit of measure:** For the purposes of applying this Law, the unit of measure for the grant of a mining title shall be called "mining hectare". This unit of measure, comprises a volume of pyramidal shape, whose vertex is the center of the earth; its outer limit is the surface of the ground and corresponds planimetrically to a square of one hundred meters per side, measured and oriented according to the UTM coordinate system of the Mercator Transverse Projection, in use for the National Topographic Map.

Exceptions to these rules occurs when one side of a concession that borders international frontiers, protected areas and/or beach areas in which case the limit of the concession shall be the boundary line or the sea beaches, as the case may be.

The mining title is susceptible of material division or accumulation, within the limit of one minimum mining hectare and a maximum of five thousand mining hectares per concession.

The technical aspects that correspond to the shapes, dimensions, relationship between the minimum and maximum dimensions of the concessions, orientation, delimitations, graphs, verifications, positioning, measurements, cadastral systems and the like that are required for the procedures of granting, conservation and extinction of mining rights shall be included in the General Regulations of this law.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 39*

**Art. 33. Administrative processing fees for concession:** Those interested in obtaining mining concessions shall pay in the concept of rights for each application procedure of mining concession and for a single time, the sum equal to five unified base salary. The value of this right shall not be reimbursable and must be deposited in the manner established in

the General Regulations of this law.

Any application that has not been attached to the respective payment voucher shall not be accepted for processing.

The costs demanded by other administrative acts of rigor shall be included in the General Regulations of the law.

**Art. 34. Maintenance patent fee for concession:** By and only in the month of March of each year, the mining concessionaires shall pay an annual maintenance patent fee for each mining hectare, which shall include the current calendar year at the date of payment and shall be paid according to the scale indicated in the following paragraph. In no case, nor by administrative or judicial means, shall be granted an extension for the payment of this patent fee.

The conservation patent from the granting of the concession until December 31st of the year, in which the initial exploration period expires, the maintenance fee shall be equivalent to 2.5 percent of a unified base salary per mining concession hectare. This maintenance patent fee shall be increased to 5 percent of a unified base salary for each mining concession hectare for the advanced exploration period and the economic evaluation period of the deposit. During the exploitation stage of the mining concession, the concessionaire must pay a conservation patent fee equivalent to 10 percent of a unified base salary for each mining concession hectare.

The first payment of the maintenance patent fee shall be made within a term of thirty days counted from the date of granting the mining title and shall be valid for a period of time from the concession grant date to December 31st of that year.

An annual maintenance patent fee is established for simultaneous exploration-exploitation activities carried out under the special regime of small mining equivalent to 2% of the unified monthly remuneration per mining hectare.

Note: The fourth paragraph replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. 35. Concession size and excess:** Each mining concession shall not exceed five thousand contiguous mining hectares.

If there is a free space between two or more mining concessions that does not add up to a mining hectare, such space shall be denominated as excess, which may be granted to the adjoining concessionaire who requests it.

The general regulations of this law shall establish the procedure for the application and the grant of such excess space.

**Art. 36. Term and stages of the mining concession:** The mining concession shall have a term of up to twenty-five years that may be renewed for like periods as long as a written request from the concessionaire has been submitted to the Sectorial Ministry to such end, before its expiration and previously obtained the favorable report of the Mining Regulation and Control Agency and the Ministry of the Environment.

In the event that the Sector Ministry does not issue the corresponding resolution within a 90-day period from the filing of the petition indicated above, the positive administrative silence shall occur, in which case the mining title shall be renewed for ten years considering the objective renegotiation of the contract that merits. The officer(s) who by omission produced the silence procedure shall be administratively, civilly or criminally liable.

The mining concession shall be divided into the exploration stage and an exploitation stage. In turn, the exploration stage shall be divided into the initial exploration period, the advanced exploration period and the integral economic evaluation period of the deposit. That shall incorporate the main minerals, secondary, and others that have economic value.

Note: Third paragraph amended by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 233*

*ORGANIC LAW OF THE COMPTROLLER GENERAL OF THE STATE,  
Arts. 5, 56, 75*

*ORGANIC LAW OF PUBLIC SERVICE, (KNOWN IN SPANISH AS  
LOSEP), Arts. 41*

**Art. 37. Exploration stage of the mining concession:** Once the mining concession is granted, the concessionaire shall perform exploration work in the concession area for a period of up to four years, which shall constitute the initial exploration period.

However, before the expiration of said initial exploration period, the mining concessionaire shall have the right to request the Sectorial Ministry to grant another period of up to four years to carry out the advanced exploration period, in which case its request shall contain the express waiver to a portion of the surface of the total extension of the originally granted concession.

The Sectorial Ministry shall process this request as long as the mining concessionaire has complied with the activities and minimum investments in the mining concession area during the initial exploration period. Once the request indicated in the aforementioned terms has been received, the Sectorial Ministry shall issue an administrative resolution declaring the initiation of the advanced exploration period. However, in the event that the Sector Ministry does not issue the corresponding resolution within a period of 60 days of submitting the application, the positive administrative silence shall occur. The officer(s) who by omission produced the silence procedure shall be administratively, civilly or criminally liable.

Once the initial exploration period or the advanced exploration period has been completed, as the case may be, the mining concessionaire shall have a period of up to two years to perform the economic evaluation of the deposit and request, prior of the expiration thereof, the initiation of the stage of exploitation and the corresponding subscription of the Mining Exploitation Contract, in the terms indicated in this Law. The mining concessionaire shall have the right to request the Sectorial Ministry to extend the period of economic evaluation of the deposit for a period of up to two years from the date of the administrative, act that receives said request, the concessionaire having to pay the annual conservation patent

fee for the period of economic evaluation of the deposit, increased by 50 percent.

In the event that the mining concessionaire does not request to initiation of the exploitation stage in the terms indicated above, the mining concession shall be declared extinguished by the Sectorial Ministry.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 233  
ORGANIC LAW OF THE COMPTROLLER GENERAL OF THE STATE,  
Arts. 5, 56  
MINING LAW, Arts. 41  
ORGANIC LAW OF PUBLIC SERVICE, (KNOWN IN SPANISH AS  
LOSEP), Arts. 41*

**Art. 38. Submission of exploration reports:** Up to March 31st of each year and throughout the term of the exploration phase of the mining concession, the concessionaire shall present to the Sectorial Ministry an annual report of activities and investments in exploration carried out in the area of the mining concession during the previous year and an investment plan for the current year. These reports shall be duly audited by a professional certified by the Mining Regulation and Control Agency under the terms of the Regulation for Qualifying Resources and Mining Reserves.

In the event that the concessionaire does not comply with the aforementioned investment plan, it may avoid the expiration of its mining concession by paying an economic compensation equivalent to the amount of the unrealized investments, as long as it has made investments equivalent to eighty per cent of said minimum investments. The payment of this compensation shall be accredited in the annual report of the exploration activities and investments referred to in this article. These values shall be reflected in the balance sheet and the statements to the Internal Revenue Service.

The payment of the compensation established in the preceding paragraph does not exempt the concessionaire from the obligation of submitting the report referred to herein.

**Art. 39. Exploitation stage of the mining concession:** The mining

concessionaire shall have the right to request the Sectorial Ministry during the validity period of the economic evaluation of the deposit, to move on to the exploitation stage and the consequent subscription of the Mining Exploitation Contract or the Services Provision Contract, as the case may be, that empowers the concessionaire to exercise the rights inherent to the preparing and developing the deposit, as well as the extraction, transportation, benefit, and commercialization of its minerals.

No mining concessionaire may have one or more titles that together cover more than five thousand mining hectares from the exploitation stage. Nevertheless, the general regulation of this law shall establish the technical criteria for establishing the protected areas for mining projects in the exploitation stage.

The request indicated above must contain the minimum requirements set forth in this law, its general regulations and must be accompanied by a report duly audited by a certified professional in the terms of the respective Regulation. This report shall document the payment of administrative processing fees and conservation patents fees that correspond, as well as, the activities and minimum exploration investments required by law.

The Sectorial Ministry may request the mining concessionaire to extend or supplement the information provided in its application within a period of thirty days. The information delivered by the mining concessionaire shall have the category of confidential and shall not be used or disclosed to third parties unless written authorization of the owner.

Once the request indicated in the aforementioned terms has been received, the Sectorial Ministry shall issue an administrative resolution declaring the initiation of the exploitation stage. However, in case the Sectorial Ministry does not issue the corresponding resolution within a period of 60 days from the filing of the request or 30 days from the submission of the documents that expand or complement the information delivered, the positive administrative silence shall occur. The officer(s) who by omission produced the silence procedure shall be administratively, civilly or criminally liable. In this case, the mining concessionaire may directly access the exploitation stage according to the model of Contract referred to in article 40 or 41 of this law, where the terms of the contractual relationship shall be agreed upon.

Notwithstanding the foregoing, in the event that as a result of the economic evaluation of the deposit the mining concessionaire decides not to initiate the construction and assembly, it shall have the right to request the suspension of the initiation of the exploitation stage. This suspension shall not last more than two years from the date of the administrative act that receives said request and shall entitle the State to receive economic compensation equivalent to one annual unified base salary for each mining concession hectare during the term of the suspension.

In the event that the mining concessionaire does not request to initiate the exploitation or suspension stage in the terms indicated above, the mining concession shall be extinguished.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 23*

### **Chapter III The Contractual Modalities**

**Art. 40. Contract for Services Provision:** The State, through the Sectorial Ministry, may sign a Contract for Services Provision of under the terms and conditions established by the Sectorial Ministry and those offered by the borrower at the time of the award.

The Contract of Services Provision shall contain both the remuneration of the mining borrower and its obligations in environmental management matters, submission of guarantees, relationship with the communities and activities of the partial or total closure of the mine. The contract model shall be approved by the Sectorial Ministry through a ministerial agreement.

In this case, the borrower shall not be obliged to pay the royalties established in this Law or the taxes derived from extraordinary profits. Notwithstanding the foregoing, the Government shall allocate the economic resources corresponding to 3% of the sales of the mined minerals, for sustainable local development through the municipal governments and parish boards and, if applicable, to the instances of the government of the indigenous communities, for which the respective regulations shall be established.

For everything else, the provider shall have the same rights and obligations

established in the case of mining exploitation contracts specified in the following article.

The conclusion of contracts for the provision of services between the State through the Sectorial Ministry and foreign state-owned companies or consortiums in which they have a majority participation shall be made directly, based on prior agreements reached by the parties.

Note: Fifth paragraph added by Law No. 0, published in Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 307*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 56*

*LAW OF COMPANIES, Arts. 6, 415*

**Art. 41. Mining Exploitation Contract:** Within a six months period from the resolution that declares the initiation of the exploitation phase, the mining concessionaire shall sign a Mining Exploitation Contract with the State through the Sectorial Ministry which shall contain the terms, conditions and time periods for the stages of construction and assembly, extraction, transport, and commercialization of the minerals obtained within the limits of the mining concession.

The model of this contract shall be approved by the Sectorial Ministry through a ministerial agreement.

Likewise, the contracts shall contain the obligations of the mining concessionaire in matters of environmental management, submission of guarantees, relationship with the communities, payment of royalties and activities of the partial or total closure of the mine including the payment of all environmental liabilities corresponding to a period equivalent to that of the concession.

The Mining Exploitation Contract must also contain the Base Price for applying the regulations determined in the current tax legislation.

The contract shall establish the right of the mining concessionaire to suspend the mining activities subject to payment of an economic compensation in favor of the State, in the event that the technical or market

conditions prevent it from complying with the deadlines established for each of the stages and activities. indicated above.

The mining concession holder shall not carry out exploitation works without having previously signed the respective contract. Notwithstanding the foregoing, the concessionaire shall take over the minerals that it eventually obtains as a result of the exploration work.

In the development of the activities of the exploitation stage, the mining concessionaire shall comply with the environmental regulations in effect and shall not be able to carry out said activities without the corresponding Environmental License. The resolution of disputes and/or disputes that are the subject of these contracts may only be submitted to the judges of the Judicial Branch of Ecuador or to an arbitration instance in Latin America.

The State may agree with the mining concessionaires the payment of income and royalties generated by the exploitation of metallic minerals, with the refined product of their exploitation in accordance with the provisions of this law.

Note: Subsection eight added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 190, 422*

*ORGANIC LAW OF INTERNAL TAX REGIMEN, LORTI, Arts. 16*

*CIVIL CODE (BOOK IV), Arts. 1551, 1561, 1564*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 136*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 57*

**Art. 42. Semester production report:** From the exploitation of the deposit, the mining concessionaries shall submit to the Sectorial Ministry each semester prior to January 15th and July 15th of each year audited reports regarding its production in the previous calendar semester, in accordance with the technical guidelines prepared by the Mining Regulation and Control Agency.

These reports shall be signed by the mining concessionaire or its legal representative and by its technical advisor, who shall prove his

professional status in the fields of geology and/or mining.

The audits and technical verifications of such reports shall be carried out by Universities or Polytechnic Schools that have Faculties or Schools of Geology, Mines, Earth Sciences and/or Environmental Sciences equipped with sufficient technical capacity to carry out the report, evaluation or verification; or professionals and/or signatures certified by the Mining Regulation and Control Agency.

The costs demanded by the intervention of the entities conducting the evaluations shall be the exclusive account of the concessionaire.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 74, 79*

**Art. 43. Mining or metallurgical residue:** Mining or metallurgical residues constitute waste, dumps, tailings, and dross resulting from any mining-metallurgical activities.

The mining-metallurgical waste is an accessory part of the concession, processing plant or smelter from which they come, although they are outside them. The mining right holder can take advantage of them freely.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 659*

**Art. 44. Abandoned residue concession:** The right to beneficiate, melt, refine or commercialize the abandoned mining-metallurgical residue is granted along with the rights conferred to the mining concession holder over other mineral substances that exist within the limits of the requested concession, in accordance with the prescriptions of this law.

Mining or metallurgical waste is considered abandoned:

- a) Of an extinguished mining title;
- b) Of a processing or smelting plant whose authorization has expired or has ceased to work for a period of two years, except for force majeure or fortuitous event verified before the expiration of the term; and,
- c) When it is not possible to determine ownership of them.

Prior to the grant of a requested mining concession, the Mining Regulation and Control Agency must certify the concurrence of any of the aforementioned cases.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 645*

## **Chapter IV The Plants of Benefit, Smelting, and Refining**

### **Art. 45. Authorization for installation and operation of plants:**

The Sectorial Ministry may authorize the installation and operation of processing, smelting or refining plants to any natural or juridical person, national or foreign, public, joint or private company, community, associative, family and self-management companies, requesting it in accordance with the provisions of this law and its general regulations. It shall not be a requirement to hold a mining concession to submit the said request.

For small-scale mining, the State shall authorize the operation of mineral processing plants, consisting exclusively of crushing and milling, with an installed capacity of 10 tons per day and processing plants; which include crushing, grinding, flotation and/or cyanidation with a minimum capacity of 50 tons per day.

Individuals or legal entities that request authorization for installation and operation of processing, smelting or refining plants must have the respective Environmental License, even if they are concessionaires.

To obtain the authorization, the requirements shall be established in the current environmental regulations and in the general regulations of this law. Owners of processing plants, which process minerals from other mining concessions, and which generate tailings that contain mineral products must pay a royalty, corresponding to 3%, on the alienation to any title of the mineral products obtained from the tailings when they are recovered.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

*Concordances:*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 136*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 8, 11, 12*

**Art. 46. The right of mining concessionaire to install plants:** The mining concessions holders may install and operate processing, smelting and refining plants, under the protection of their concessions without needing to request the authorization provided in the previous article, as long as that said plants are destined to treat the minerals of their concessions. When minerals from other concessions are processed, authorization shall be required.

**Art. 47. Semester reports:** The titleholders of processing, smelting and refining plants shall submit semester reports of their activities to the Sectorial Ministry, consigning the information required by the competent authority, together with a summary of the investments, work and production obtained from and the technical results of the operation.

**Art. 48. Rights and obligations:** The titleholders of processing, smelting and refining plants enjoy the rights referred to in the Section III Chapters I and II, and are subject to compliance with the obligations established in the Section IV of this law in where applicable.

## **Chapter V**

### **Commercialization of Mineral Substances**

**Art. 49. Right to free trade:** Mining concessions holders may freely market their production inside or outside the country. However, in the case of gold from small-scale mining and artisan mining, the Central Bank of Ecuador shall trade it directly or through public and private economic agents previously authorized by the Bank.

The Board of Monetary and Financial Policy and Regulation through regulation shall establish the preferential right to purchase gold by the Central Bank of Ecuador to public and private economic agents authorized by the Bank.

Note: Article replaced by Law No. 0, published in the Official Register

Supplement 37 of July 16th, 2013.

Note: Article replaced by Law No. 0, published in the Official Registry Supplement 332 of September 12th, 2014.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 306*

*CODE OF COMMERCE, Arts. 6, 7*

**Art. 50. Trade license:** Natural or legal persons who without being mining concessions holders and dedicate themselves to the activities of commercialization or export of metallic mineral substances or the export of non-metallic mineral substances, must obtain the corresponding license in the Sectorial Ministry, in accordance with the provisions of the general regulations of this law. The same license must be obtained by mining concessionaires who trade metallic mineral substances or export non-metallic ones from areas outside their concessions.

The natural or legal persons engaged in the internal commercialization of non-metallic mineral substances, as well as jewelry artisans, shall not require this license.

*Concordances:*

*CODE OF COMMERCE, Arts. 22*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 11*

**Art. 51. License term and renewal:** The trade licenses granted to the natural or legal persons mentioned in the previous article are valid for periods of three years, are non-transferable and may be renewed for equal periods of agreement with the provisions of the general regulations of this law.

**Art. 52. Registry of Traders:** The Mining Regulation and Control Agency shall keep the Registry of Traders of metallic mineral substances and of exporters of metallic and non-metallic minerals in order to keep a statistical control of the internal trade activities and of the exportation of these mineral substances, as well as to verify and safeguard compliance with the obligations established in this law.

**Art. 53. Obligation of the traders:** The obligations of the traders of legally authorized mineral substances are:

- a) Be established as withholding agents subject to current tax regulations;
- b) Make statements in detail, recording all withholdings and deductions made; and,
- c) Send a semi-annual report to the Sectorial Ministry about the origin, volume and value of purchases; destination, volume and value of sales; withholdings made and any statistical information that may be required by the Sectorial Ministry. Said reports shall be sent in simplified forms that the Mining Regulation and Control Agency elaborates for the purpose.

*Concordances:*

*TAX CODE, Arts. 30*

**Art. 54. Trade License cancellation:** Failure to comply with the obligations appointed in the previous article shall result in the cancellation of the trade license, without prejudice to the corresponding responsibilities.

**Art. 55. Clandestine trade of mineral substances:** Clandestine trade in mineral substances shall be considered as:

- a) The mining concessions holders that internally trade metallic mineral substances or export metallic or non-metallic minerals from other concessions without the license required in article 50; and
- b) Mining producers that sell metallic mineral substances to persons or entities not authorized to market them.

**Art. 56. Illegal exploitation of minerals:** They shall incur in illegal exploitation of mineral substances who carry out operations, works, and mining work in any of its phases without any title for it or without the corresponding legal permission.

**Art. 57. Penalties for illegal mining activity:** Illegal mining activity exercised by natural or legal persons, or groups of people, national or foreign, without the titles, authorizations, permits or licenses, shall be sanctioned according to the prescriptions of this article without prejudice to those applicable in environmental, tax or criminal matters, to which it may apply.

The goods, machinery, equipment, supplies and vehicles that are used in illegal or unauthorized activities of exploitation, benefit or processing,

smelting, refining and clandestine trade of mineral substances shall be subject to: special confiscation, seizure, immobilization, destruction, demolition, disablement or neutralization, as the case may be, executed by the Mining Regulation and Control Agency with the collaboration of the National Police and subsidiarily of the Armed Forces. Those who consider themselves the authors of such activities or owners of such assets shall be sanctioned by the aforementioned Agency with a fine of two hundred to five hundred unified base salary depending on the seriousness of the infraction, without prejudice to the payment of a value equivalent to the total of the minerals illegally extracted, as well as the obligation to restore ecosystems and compensation to the people and communities affected.

The fines referred to this Law shall be paid to the Mining Regulation and Control Agency within five days from the date on which the Resolution causes a state. If the administratively sanctioned offender does not comply with the obligation to pay, said Agency shall make the collection in the exercise of the coercive jurisdiction attributed in this Law.

The fines collected by the Mining Regulation and Control Agency shall be used to fulfill the purposes inherent in its competence.

The effects on the environment and damage to the ecosystem and biodiversity produced as a result of illegal exploitation or invasions shall be considered as aggravating factors when dictating the resolutions regarding administrative protection.

The procedures that make these measures effective shall be included in the General Regulations of this Law.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 76, 396*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 13*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 87, 99*

Art. ... Penalties to holders that allow illegal mining activities in their areas.- Without prejudice to the revocation of the delegation made by the State, through the declaration of expiration of the concession, authorization,

permit or license, shall apply the same fines as provided in the previous article to the mining rights holders granted by the Ecuadorian State, which allow the commission of illegal mining activities, by third parties not legally authorized to do so or who lack the respective environmental license for their mining activities in their respective areas or places of operation.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

### **Section III Rights of Mining Concessionaires**

#### **Chapter I Rights in General**

**Art. 58. Continuity of work:** Mining activities may be suspended in the case of trespassing or when the protection of the health and life of the mining workers of the communities located within the perimeter of the area where mining activity is carried out, as provided for in the general regulations of this law, when required by the Civil Defense or when the competent environmental authority verifies the breach of the Environmental License. In any case, the provision for suspension of mining activities shall be ordered exclusively by the Sectorial Minister, by reasoned resolution.

The mining concessionaire who is prevented from carrying out his mining work normally, due to force majeure or duly proven case, may request from the Sectorial Ministry, the suspension of the term of the concession for the period of time that the impediment lasts. For this purpose, the Sectorial Ministry, by reasoned resolution shall admit or deny said request.

*Concordances:*

*LABOR CODE, Arts. 42, 412, 436, 545*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 95*

**Art. 59. Construction and complementary facilities:** Mining concessions holders may build and install within their concession, processing plants, smelting and refining, residue accumulation deposits, buildings, camps,

storage areas, pipelines, plants of pumping and motive power, pipes, workshops, electric power transmission lines, ponds, communication systems, roads, railways and other local transport systems, canals, docks and other means of boarding, as well as carrying out activities necessary for the development of its operations and facilities, subject to the provisions of this law, the current environmental regulations and all the corresponding legal regulations prior agreement with the property owner of the surface lot or, in the case easements were granted, in accordance with the provisions of the Constitution of the Republic, the present law and its general regulation.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 859, 867, 870*

**Art. 60. Use of water and constitution of easements:** The execution of mining activities in general and the authorization to operate processing, smelting and refining plants, require the permission of the sole water authority for the economic use of water and may request the easements that were necessary in accordance with the procedures established in the law regulating water resources.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 867*

**Art. 61. Authorization for the use of water:** The mining concessionaires that obtain the permit for the use of the sole water authority shall present to the Sectorial Ministry the technical study that justifies the suitability of the work to be carried out and that has been approved by the competent water authority.

Water obtained by man during mining work may be used by the mining concessionaire with the prior authorization of the sole water authority, with the obligation to discharge of such water, observing the requirements, permissible limits, and technical parameters established

in the applicable environmental legislation.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 612*

## **Chapter II**

### **Trespassing, Administrative Protection, Invasion of Mining Areas and Opposition**

**Art. 62. Reporting trespassers:** The holders of mining concessions or permits to carry out artisan mining are forbidden from doing work in an outside concession. Trespassing works shall be reported to the Mining Regulation and Control Agency, together with the concession title and an updated certificate of the patent fee payment. The regulation of this law shall determine the procedure for this procedure for such process.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 66*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 9*

*CIVIL CODE (BOOK II), Arts. 962*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 90, 91*

**Art. 63. Administrative Protection:** The holder of a mining right or the legal holder may request through the Mining Regulation and Control Agency, to prevent the illegal exercise of mining activities, de facto occupation or any other impending disturbance, against the right to protection contemplated in this chapter.

The State, through the Mining Regulation and Control Agency shall grant administrative protection to the mining rights holders in case of complaints of trespassing, dispossession, invasion or any other form of disturbance that prevents the exercise of their mining activities.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 960, 965*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 101*

**Art. 64. Abandonment and eviction order:** The Mining Regulation and Control Agency, based on the resolution that grants the protection and at the request of the claimant shall issue a ruling ordering the illegal occupant to leave the area that is subject of the protection action within a maximum period of three days, under the prevention of eviction in case of non-compliance.

If despite the above prevention, the illegal occupant does not leave the area, the Mining Regulation and Control Agency, at the request of a party shall issue an eviction order that shall be enforced by the competent police authority of the province in question.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 960*

**Art. 65. Punishment against trespassers of mining areas:** Those who with the purpose of obtaining personal or third-party benefits, individually or collectively, invade special mining areas under concession and those with artisan permits, undermining the rights of the State or the mining rights holders shall be sanctioned with a fine of two hundred unified base salary and the confiscation of tools, equipment and production obtained, without prejudice to the demand for protection and the criminal sanctions that the case requires.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 960*

**Art. 66. Filings oppositions:** The mining concessions holders may file oppositions alleging overlapping when requests are made for other concession superposing their own.

## **Section IV Mining Titleholders' Obligations**

### **Chapter I General Obligations**

**Art. 67. Labor Obligations:** The mining concession holders shall be exclusively liable for the obligations concerning the labor force they hire and in no way be extended to the State. In the case of workers linked to the mining activity, they shall receive 3% of the percentage of profits and the remaining 12% shall be paid to the State and to the Decentralized Autonomous Governments that shall allocate it to projects in social investment and territorial development in the areas where mining activities are carried out. These projects must be consistent with the National Development Plan.

In the case of small-scale mining workers, it shall be 10% of the percentages of profits and the remaining 5% shall be paid to the State and the Decentralized Autonomous Governments that shall allocate it to social investment and territorial development projects in the areas where mining activities is carried out.

The investments made by the Decentralized Autonomous Governments should be channeled through the State Bank to make the corresponding disbursements.

Note: Article replaced by Second Amendment Provision of Law 00, published in the Official Register Supplement 583 of November 24, 2011.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 327*

*LABOR CODE, Arts. 8, 97*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 86*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 165*

**Art. 68. Mining-industrial safety and health:** The mining rights holders have the obligation to preserve the mental and physical health and life of their technical staff and workers by applying the mining-industrial safety and health regulations provided in the relevant legal and regulatory provisions,

endowing them with health services and permanent attention, in addition, sanitary and comfortable living conditions in stable work camps, according to plans and specifications approved by the Mining Regulation and Control Agency and the Ministry of Labor and Employment.

The mining concessionaires are required to have approved and in validity an Internal Regulation of Occupational Health and Mining Safety, subject to the provisions of the Mining Safety Regulation and other pertinent Regulations that for this purpose are dictated by the corresponding institutions.

*Concordances:*

*LABOR CODE, Arts. 410, 412, 424, 434*

**Art. 69. Prohibition of child labor:** The work of children or adolescents of any kind in any mining activity is prohibited, in accordance with what is stipulated in the numeral 2 of Article 46 of the Constitution of the Republic. Failure to comply with this provision shall be considered a serious infraction and shall be sanctioned for the first and only time with a fine indicated in the regulations of this law; and, in the case of the violation is repeated, the Sectorial Ministry shall declare the expiration of the concession, the termination of the contract or the artisan permits. In the case of women's work, they shall receive special treatment in accordance with the regulations of this law.

*Concordances:*

*CHILDHOOD AND ADOLESCENCE CODE, Arts. 81, 82, 87*

*LABOR CODE, Arts. 30, 134, 136, 137, 138, 140*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 97*

**Art. 70. Compensation for loss and damages:** The mining concessions or permits holders are required to perform their work with methods and techniques that minimize damage to the soil, the environment, the natural or cultural heritage, the adjacent concessions, to third parties and, in any case, compensate any damage or harm they cause in the performance of their work.

The non-observance of the methods and techniques referred to in the preceding paragraph shall be considered as grounds for mining activities suspension, in addition to the corresponding sanctions.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 403*

**Art. 71. Conservation of boundary milestones:** The mining concessions or permits holders are required to keep the boundary milestones under fine penalty that shall be established by the Mining Regulation and Control Agency according to the rules contained in the general regulation of this law.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 97*

**Art. 72. Alteration of boundary milestones:** The mining concessions or permits holders cannot alter or transfer the boundary milestones denoting the limits of their concessions, under penalty of paying a fine of 100 unified base salary that shall be imposed by the Mining Regulation and Control Agency according to the rules contained in the general regulations of this law and without prejudice to the corresponding criminal liability if they had proceeded maliciously, as provided by the Criminal Code whose penalty shall also be imposed to whoever demolishes, alters or transfer boundary milestones of mining concessions.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

**Concordances:**

**CIVIL CODE (BOOK II), Arts. 878**

**MINING LAW, Arts. 114**

**GENERAL REGULATIONS TO THE MINING LAW, Arts. 97**

**Art. 73. Maintenance of and access to records:** The mining rights holders are required to:

- a) Keep accounting, financial, technical, employment, statistical production, work progress, consumption of materials, energy, water and other data that adequately reflect the development of its operations; and,
- b) Provide the access of duly authorized officials by the Sectorial Ministry

and its attached entities to the books and records referred to in the previous paragraph in order to evaluate the mining activity carried out.

Once this information is delivered to the Sectorial Ministry, it shall become public in the framework established by current legislation.

*Concordances:*

*CODE OF COMMERCE, Arts. 37, 39*

*ORGANIC LAW OF INTERNAL TAX REGIME, LORTI, Arts. 19*

*LAW OF COMPANIES, Arts. 45*

**Art. 74. Inspection of facilities:** The mining rights holders are obligated to allow the inspection of their facilities or operations to duly authorized officials by the Sectoral and Environmental Ministries and their ascribed entities. Said inspections shall not interfere in any case with the normal development of the mining works. If the inspection is not allowed or is hindered, the person exercising the competent functions shall inform the Sectorial Ministry of the respective jurisdiction, which may suspend the mining activities.

**Art. 75. Employment of national personnel:** The mining rights holders of are obligated to employ Ecuadorian personnel in a proportion not less than 80% for the development of their mining operations. In the remaining percentage, Ecuadorian specialized technical personnel shall be preferred, if not existing, foreign personnel shall be hired, who must comply with current Ecuadorian legislation.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 288*

*ORGANIC LAW OF THE NATIONAL PUBLIC PROCUREMENT SYSTEM, Arts. 37, 52*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 13*

*LAW OF COMPANIES, Arts. 418, 419*

**Art. 76. Training of personnel:** The mining rights holders are required to maintain permanent training and educational processes programs for their personnel at all levels. These programs must be communicated periodically to the Sector Ministry.

**Art. 77. Support to the local workforce and formation of technicians**

**and professionals:** The mining concessionaires shall preferably hire workers who live in the localities and areas surrounding their mining projects and shall maintain a policy of human resources and social welfare that shall integrate the worker's families.

Likewise, in their operation plans and coordination with the Mining Regulation and Control Agency, the mining concessionaires shall welcome second and third level education students in their mining activities to carry out internships and practices in the field of mining and disciplines related, providing them with the necessary facilities.

## **Chapter II Environmental Preservation**

**Art. 78.** The mining rights holders, prior to the initiation of activities, must prepare and submit studies or environmental documents to prevent, mitigate, control and repair the environmental and social impacts derived from their activities; studies or documents that must be approved by the competent Environmental Authority with the granting of the respective Environmental License. The Environmental Regulation for Mining Activities, which shall be dictated by the ministry of the branch shall establish the requirements and procedures for the application of this article.

For the procedure of presentation and qualification of environmental studies, environmental management plans and environmental licensing, the permissible limits and technical parameters required shall be those established in the applicable mining environmental regulations.

The mining activities prior to obtaining the respective environmental administrative authorization require the presentation of economic guarantees determined in the applicable environmental mining regulations.

The mining rights holders are obligated to submit, one year after the Environmental License has been issued, an environmental compliance audit that allows the control entity to monitor, supervise and verify compliance with environmental management plans and applicable environmental regulations. After this, the Environmental Compliance Audits shall be presented every two years, without prejudice to this, the

environmental guarantees must remain in force each year.

In the artisan mining regime, the approval of environmental cards shall be required, while, under the regime of small mining, the environmental license must be granted for simultaneous exploration/exploitation operations. For this purpose, specific and simplified environmental studies must be available.

In the medium and large mining regimes, for the initial exploration period, the approval of environmental records shall be required, for the advanced exploration an environmental declaration, while, for the exploitation stage and the subsequent phases, environmental studies shall be required, which must be modified or updated depending on the results. On the basis of these instruments, the corresponding environmental licenses shall be granted.

Once the mining rights holders comply satisfactorily with the requirements established in the applicable regulations, the approval of environmental documents, studies or licenses must be granted within a maximum period of six months counted from their presentation. If this is not done within that period, it shall be understood that there is no opposition or impediment to the initiation of mining activities. The official whose omission allowed the positive administrative silence shall be dismissed.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 72, 396*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 31*

*ORGANIC LAW OF THE COMPTROLLER GENERAL OF THE STATE, Arts. 22, 27*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 136*

**Art. 79. Water treatment:** The mining rights holders and artisan mining who, with the prior authorization of the sole authority of the water, use water for their work and processes, must return them to the original channel of the river or to the basin of the lake or lagoon from where they

were taken, free of contamination or complying with the permissible limits established in the current environmental and water regulations, so as not to affect the rights of people and nature constitutionally recognized.

The treatment to be given to water to guarantee its quality and the observance of the parameters of corresponding environmental quality shall be foreseen in the respective system of environmental management, with observance of the foreseen in the pertinent laws and its regulations.

The reuse of water through recirculation systems is a permanent obligation of the concessionaires

Depending on the degree of non-compliance with this provision, temporary or permanent suspension of mining activities may be arranged, for which purpose the procedure established in this Law and its general regulations shall be followed.

Note: Fourth paragraph replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 12, 71, 318  
GENERAL REGULATIONS TO THE MINING LAW, Arts. 95*

**Art. 80. Replanting and reforestation:** If the mining activity requires work that necessary includes the removal of the vegetation layer and tree clearing, the mining right holder shall be obliged to proceed with revegetation and reforestation of said area preferably with native species, as established in the environmental regulations and the environmental management plan.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 409*

**Art. 81. Stockpiling of residue and prohibition for disposing wastes:** Miners and artisan mining rights holders must take strict precautions to accumulate mining-metallurgical waste to avoid contamination of soil, water, air and/or biota of the places where they are deposited, in all its phases including the closing stage, constructing facilities such as waste

dumps, landfills, tailings deposits or dams or other technically designed and constructed infrastructures that guarantee safe and long-term management.

The discharge of waste from rubble, tailings or other untreated waste, from any mining activity, into rivers, creeks, lagoons or other places where there is a risk of contamination is prohibited.

Failure to comply with this provision shall result in punishments that may include the cancellation of the concession or permit.

*Concordances:*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 54, 84, 136, 431*

**Art. 82. Conservation of flora and fauna:** Environmental impact studies and environmental management plans shall contain information about the species of flora and fauna existing in the area, as well as performing monitoring studies and respective mitigation measures of impacts in them.

**Art. 83. Waste management:** The management of waste and solid, liquid and gaseous emissions that the mining activity produces within the limits of the national territory must comply with the provisions of the Constitution and current environmental regulations.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 15, 264, 415  
ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 431*

**Art. 84. Protection of the ecosystem:** The mining activities in all their phases shall have measures of protection of the ecosystem, subject to the provisions of the Constitution of the Republic of Ecuador and current environmental regulations.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 73, 404, 406*

**Art. 85. Closure of mining operations:** The mining concessions

holders and processing, smelting and refining plants shall include in their Environmental Impact Studies for the exploitation, processing, smelting or refining mining activities, the closure planning of its activities, incorporated in the Environmental Management Plan and with its respective guarantee; planning that must start at the pre-feasibility stage of the project and continue throughout its useful life, until the final closure and abandonment.

The closure plan for mining operations shall be reviewed and updated periodically in the annual Environmental Programs and Budgets and in the Environmental Compliance Audits, with information on investments or estimates of closing costs, activities for closure or partial or total abandonment of operations and for the rehabilitation of the area affected by mining activities of exploitation, benefit, smelting or refining.

Likewise, within the term of two years prior to the planned completion of the project, for the exploitation, processing, smelting or refining mining activities, the mining concessionaire shall submit to the National Environmental Authority, for approval, the Definitive Operations Closure Plan that includes the recovery of the sector or area, a plan to verify its compliance, social impacts and its compensation plan and the updated guarantees indicated in the applicable environmental regulations; as well as, a plan to incorporate new forms of sustainable development.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. 86. Environmental damage:** For all the legal effects derived from the application of the provisions of this article and the current environmental regulations, the competent legal authority is the Ministry of the Environment.

For environmental crimes, against cultural heritage and damages to third parties, the provisions of the Constitution of the Republic of Ecuador and current civil and criminal regulations shall apply.

Failure to comply with the obligations contained in this Chapter shall result in administrative sanctions to the mining rights holder and permits holder by the Sectorial Ministry, without prejudice to civil and criminal actions that may result. The administrative sanctions may include the suspension of the mining activities that are part of said operation or the expiration.

The procedure and requirements for the application of said sanctions shall be included in the general regulations of the law.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 3, 14, 396*

**Art. ... Prohibition of the use of mercury in mining operations:** Without prejudice to the application of environmental mining regulations, the use of mercury in the country in mining activities is prohibited according to the mechanisms that the national environmental authority establishes for the purpose, in conjunction with the institutions with legal authority over the matter.

The non-observance of this prohibition shall be sanctioned with the revocation of the mining right, without prejudice to criminal sanctions to which it may apply.

Note: Article added by Law No. 0, published in Official Register Supplement 37 of July 16th, 2013.

### **Chapter III**

#### **Social Management and Community Participation**

**Art. 87. Right to information, participation and consultation:** The State is responsible for executing the processes of participation and social consultation through the corresponding public institutions in accordance with constitutional principles and current regulations. Said competition is non-delegable to any private entity.

These processes shall aim to promote the sustainable development of the mining activity, safeguarding the rational use of the mining resource, respect for the environment, social participation in environmental matters and the development of the places located within the areas of influence of a mining project.

In the event that a consultation process results in a majority opposition from the respective community, the decision to develop the project shall be adopted by reasoned resolution of the Sectorial Minister.

Every mining concessionaire must respect the right of people to access the processes of information, participation and consultation in the environmental management of mining activities. For any consultation process, the ministry of finance shall provide the respective budget through the sector ministry.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 57, 398*

**Art. 88. Information Processes:** From the granting of a mining concession and during all stages of this, the concessionaire, through the State, shall adequately inform the competent authorities, decentralized autonomous governments, communities and entities that represent social, environmental or association interests about the possible impacts, both positive and negative, of the mining activity.

The environmental authority shall give free access to the environmental and social studies formally requested, as well as to the reports and technical resolutions issued by the competent authority, in the manner determined by the Law.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 18  
ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN  
SPANISH AS COOTAD), Arts. 136, 141, 146*

**Art. 89. Participation and Consultation Processes:** Citizen participation is a process whose purpose is to consider and incorporate the community's

criteria into the social and environmental management of a mining project, this process must be carried out in all phases of the mining activity, within the framework of the procedures and mechanisms established in the Constitution and the law.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 57*

**Art. 90. Special Consultation Procedure for indigenous peoples:**

The processes of citizen participation or consultation shall consider a special mandatory procedure for communities, peoples, and nationalities, based on the principle of legitimacy and representativeness, through their institutions, for those cases where exploration or exploitation is carried out in their ancestral lands and territories and when such work may affect their interests. In accordance with article 398 of the Constitution of the Republic.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 57, 398*

**Art. 91. Denouncing Threats or Social and Environmental Impacts:**

There shall be popular action to denounce mining activities that generate social, cultural or environmental impacts, which may be denounced by any natural or juridical person to the Ministry of the Environment, prior compliance with the requirements and formalities of a complaint, such as the recognition of signature and initials.

The Ministry of the Environment shall adopt timely measures to avoid environmental damages proved scientifically, resulting from mining activities.

In case of doubt over the environmental damage resulting from any action or omission, the Ministry of the Environment in coordination with the Mining Regulation and Control Agency shall adopt effective and timely

protective measures, which simultaneously and in the same order shall order the practice of actions by which the damage is to be checked.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 72, 397*

## **Chapter IV Royalties Payment**

**Art. 92. Royalties on mining activities:** The State, as the owner of the non-renewable natural resources shall be entitled to receive the payment of royalties from the mining concessionaires that carry out exploitation activities.

The royalties paid by the concessionaires shall be established based on a percentage on the sale of the main mineral and of secondary minerals and shall be paid semiannually in the months of March and September of each year. The amounts for royalties must be duly reflected in the semi-annual production reports and in the declarations submitted to the Internal Revenue Service.

The commercialization of metallic mineral substances exploited by the mining concessionaires, shall be subject to a payment of 2% of the total value of each transaction, for royalties, in accordance with the terms, reference prices, contents, conditions and forms that based on technical parameters and through resolution establish the Internal Revenue Service. This payment shall be considered as a prior payment in the semi-annual declarations. Proof of payment is an enabling document for foreign trade operations.

The mining concessions for which exploitation contracts are signed in which the payment of anticipated royalties is agreed upon are exempt from payment.

Note: Article replaced by article 8 of Law No. 0, published in the Official Gazette Supplement 744 of April 29th, 2016.

**Art. 93. Royalties for exploitation minerals:** The economic benefits for the State shall be subject to the provisions of article 408 of the Constitution

of the Republic; that is to say, that the State shall participate in the benefits of the use of these resources in an amount no less than for the concessionaire who mines them.

For this purpose, the mining concessionaire must pay a royalty equivalent to a percentage on the sale of the main mineral and secondary minerals not less than 5% on sales and, in the case of gold, copper and silver, not greater than 8%, additional to the corresponding payment of the income tax; of the percentage of profits attributed to the State in accordance with this law; of the extraordinary income tax; and, of the value added tax determined in the current tax regulations.

The evasion of the payment of royalties shall be cause for revocation, without prejudice to the civil and criminal effects that may arise.

Sixty percent of the royalty shall be used for social investment projects primarily to cover unsatisfied basic needs and territorial or productive development, through the National Government or the Decentralized Autonomous Governments. The investments made by the Decentralized Autonomous Governments shall be channeled through the State Bank for disbursements.

When the case merits, 50% of this percentage would correspond to the government instances of the indigenous communities and/or territorial circumscriptions. These resources shall be distributed prioritizing the needs of the communities that are in areas of influence directly affected by the mining activity.

Minority mining rights holders shall pay for royalties 3% of the sales of the main mineral and secondary minerals, taking as reference the standards of the international market.

The royalty percentage for the exploitation of non-metallic minerals and construction materials shall be calculated based on production costs.

The total of the royalties coming from arid and petrous materials shall be destined to the autonomous decentralized municipal and metropolitan governments where they are generated.

The Regulation of this law and the Mining Exploitation Contract shall

establish the parameters for the application of royalty payments, as well as the requirements for their distribution.

In the General Regulations of this Law, the necessary provisions for the application of article 408 of the Constitution of the Republic of Ecuador shall be established.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 274*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 81*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 55, 141*

## **Section V**

### **Relationships between Mining Right Holders and between Mining Right Holders and Landowners**

#### **Chapter I**

#### **Permits and Emergency Operations**

**Art. 94. Permit to neighbors:** The mining concessions holders, property owners and processing, smelting and refining plants shall allow the owners of the adjacent property or neighboring holders to have access to their facilities, galleries or sinkholes, in the following circumstances:

- a) When there is a well-founded danger that the work carried out may cause damage to the adjacent mine;
- b) When landslides or deterioration in galleries, tunnels, and other facilities could be repaired with greater ease and in a timely manner from the tunnels, galleries or neighboring facilities, even if temporary communications had to be opened. In any case, the costs shall be borne exclusively by the beneficiary; and,
- c) When trespassing is suspected.

If this permit is denied, the interested party may go to the Mining Regulation and Control Agency to obtain it.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 975, 988*

**Art. 95. Damage caused by water accumulation:** When the damages caused by water accumulation used in the mining work on a nearby or adjacent concession, the aggrieved party shall require in writing that the party who caused the damage fully drain out the accumulation within maximum 48 hours, in addition to any compensation for the damages caused.

The cost of the drainage operation shall be borne exclusively by the party causing the damage although the injured party may cover the expenses, with the right of reimbursement.

The injured party must go to the Mining Regulation and Control Agency, in order to achieve compliance with the provisions of this article, as well as to report on the matter to the National Water Secretary.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 72*

*CIVIL CODE (BOOK II), Arts. 872, 901, 902, 984*

**Art. 96. Use of groundwater in neighboring concessions:** The mining rights holders may take advantage of the underground waters obtained in their mining concession or in an adjoining one, once the party who found it has ceased to use them, in accordance with the provisions of the law that regulates water resources and control over environmental management.

## **Chapter II Trespassing**

**Art. 97. Trespassing prohibition:** The mining concessions holders are forbidden for trespassing with their work in an outside concession without

the permission of the adjoining one. Any non-consented trespassing obliges the party who carries it out to paralyze the work, to pay the value of the minerals extracted, deducted the costs of extraction and compensation for the damages caused.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 878, 879, 965*

**Art. 98. Work suspension:** When trespassing is reported, the administrative complaint must be acknowledged before the competent authority of the Mining Regulation and Control Agency, which after investigation shall order the suspension of work in the litigation area and shall dictate the resolution that corresponds in the controversy.

**Art. 99. Criminal trespassing:** It is presumed in fact as fraudulent, the trespassing that exceeds 20 meters measured from the limit of the concession. Likewise, trespassing shall be considered fraudulent when the work is continued after the suspension of work has been decreed by the Mining Regulation and Control Agency. In these cases, the payment of the value of the mined minerals or their restitution shall be made without any deduction and without prejudice to the criminal responsibility of the person who trespasses to commit the crime of usurpation.

### **Chapter III Easements**

**Art. 100. Types of easements:** From the moment in which a mining concession is constituted or the installation of processing, smelting and refining plants is authorized, the superficial properties are subject to the following easements:

- a) That of being occupied to the full extent required by the facilities and constructions of the mining activity. The mining concessionaire shall obligatorily pay the owner of the property a monetary value for the concept of use and enjoyment of the easement, as well as the corresponding payment for damages and loss that shall be granted to him. If there is no agreement, the Regulation and Control Agency shall determine that value;
- b) Those of transit, aqueduct, railway lines, aerodromes, lifts, ramps, conveyor belts and all other transport and communication systems;

- c) Those established in the Regime Law of the Electricity Sector in the case of electrical service installations; and,
- d) The others necessary for the development of mining activities.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 859, 864, 867, 868*

*INTERNATIONAL CODE OF PRIVATE LAW SANCHEZ DE BUSTAMANTE, Arts. 131*

**Art. 101. Voluntary easements and agreements:** The mining rights holders may agree with the landowners for easements covering the extensions of land they need for the proper exercise of their mining rights, either in the exploration or exploitation stages, as well as for its facilities and constructions, with exclusive destination for mining activities.

In the case of zones belonging to the Cultural Heritage, for the granting of an easement must have the authorization of the National Institute of Cultural Heritage and shall be subject to the conditions established in the administrative act issued by said Institute.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 870, 924*

**Art. 102. Easements over adjacent concessions:** In order to provide or facilitate ventilation, drainage or access to other mining concessions or to processing, smelting or refining plants, easements may be established over other adjacent concessions or in free areas.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

**Art. 103. Constitution and extinguishment of easements:** The constitution of the easement over properties, free areas or concessions is essentially transitory, which shall be granted by public deed and if ordered by resolution of the Mining Regulation and Control Agency shall be record in a protocol. These instruments shall be registered in the Mining Registry.

These easements are extinguished with mining rights and cannot be used for purposes other than those of the respective concession or plant; and can be expanded or restricted as required by the concession or plant activities.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 859, 929*

**Art. 104. Compensation for damages:** The easements are established after determining the amount of compensation for any damage caused to the landowner or to the owner or servant concessionaire, and may not be exercised until the value thereof has been deposited in advance.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

**Art. 105. Expenses for creating an easement:** The expenses for creating easements shall be paid solely by the beneficiary concessionaire or the plant owner.

Note: See Judgment of the Constitutional Court, in which it declares the Conditional Constitutionality of this article referring to the declaration of public utility regarding territories of indigenous, Afro-Ecuadorian and Montubian communities, see Official Register Supplement 176 of April 21st, 2010, page 1.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 868, 894*

## **Section VI Extinguishment of Mining Rights**

### **Chapter I Expiration of Concession Term and Permits**

**Art. 106. Expiration term:** The mining concession and the permits shall be extinguished by the expiration of the term granted or of any extension thereof.

The Mining Regulation and Control Agency shall order the cancellation in the respective registries once the term of a mining concession expires, or in the case that the mining concessionaire has not requested to initiation of the exploitation phase or the renewal of the term of concession in the framework of a Mining Exploitation Contract, in accordance with this law.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1510*

### **Chapter II Reduction and Waiver of the Concession**

**Art. 107. Powers of concessionaires:** At any time during the validity of a mining concession, its holders may reduce or renounce them totally in accordance with the procedure established in this law and in its General Regulations, provided that said resignations or reductions do not affect rights of third parties.

The waiver gives does not imply a cancellation of the registration of the title in the corresponding registers, leaving the area covered by said mining concession free. In the case of a reduction, a legend shall be inserted into the registration of the area remaining in the possession of the mining concessionaire.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1583*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 64, 65*

### **Chapter III**

#### **Caducity of the Concession and Permits**

**Art. 108. Caducity of mining rights:** The Sectorial Ministry in exercise of its jurisdiction and competence may declare the expiration of the mining rights, in the event that its holders have incurred in the causes of expiration established in articles 69, 79, 81, 93 and 125, and in this Chapter, and more provisions of this Law.

In every procedure for declaration of expiration, the right to due process shall be ensured, which includes the basic guarantees enshrined in Article 76 of the Constitution of the Republic of Ecuador. The process of declaration of expiration may be initiated ex officio by the Sectorial Ministry, by complaint of a third party duly substantiated and investigated by the Sectorial Ministry or at the request of other Ministries that are related to the mining activity. The administrative procedure shall be subject to the provisions of this Law and those of its General Regulations.

The technical report on the factual grounds that may serve as support for the declaration of expiration shall be made by the Mining Regulation and Control Agency.

The Sectorial Ministry shall send the holder with the technical report of the Mining Regulation and Control Agency, so that within 45 days, it certifies compliance with its obligations or presents its disclaimers and the evidence supporting its defense.

If the Sectorial Ministry does not find a basis to continue with the expiration process or if the cause has been invalidated by the concessionaire in said

term, it shall declare it concluded and order the file archiving. Otherwise, if there are obligations pending compliance, by means of a duly motivated administrative resolution, it shall order the concessionaire to remedy the breach within a period of 60 days. The Sectorial Ministry may request the motivated pronouncement of other state entities within the process of declaration of expiration.

If the concessionaire does not correct the breach within the established term, the Sectorial Ministry shall declare by means of motivated resolution the expiration of the mining rights.

Only for the declaration of expiration by the cause foreseen in article 117 of this Law, it shall be necessary to previously have an enforceable judicial sentence.

The concessionaire may file the administrative and jurisdictional actions and remedies provided in the Ecuadorian regulations.

Initiated an administrative procedure of declaration of expiration, the mining concessionaire shall not be able to renounce the mining concession.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 94*

**Art. 109. Effects of caducity:** Caducity extinguishes the mining rights conferred by the State, through concessions, authorizations, permits or licenses referred to in this Law. The declaration of expiration of the mining concession in firm shall produce the following effects:

a) The revocation of the exceptional delegation conferred by the State for the exercise of mining activities and the restitution of the area subject to the concession to it without the right to payment or compensation of any kind to the former mining owner, together with all the accessories assets, including those destined by the concessionaire to the mining activities in all its phases. The Mining Regulation and Control Agency shall have the right to provide the concessionaire with a reasoned reason for the removal, at the same cost, of the assets that in its judgment are not suitable for the

mining activity. Notwithstanding the foregoing, the State shall exercise its power to intervene in such mining concessions, permits, licenses and other mining rights, in accordance with this law and its general regulations, while the expiration process lasts.

b) The termination of the mining exploitation contract on the expired concession, when there is a signed contract.

Notwithstanding the effects indicated in the preceding paragraphs, in case of declaration of expiration, the responsibility of the former owner shall remain for environmental damage that also implies the obligation to restore ecosystems and compensation to individuals and communities, should there be room to do so.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 396*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 7*

**Art. 110. Caducity for non-payment:** The concessions expire when their owners have stopped paying the patent fees, royalties and other rights or taxes established in this law.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1585*

**Art. 111. Caducity for failure to submit exploration reports or for failure to accredit activities and minimum investments:** Failure to submit to the Sectorial Ministry an annual report on exploration activities and investments made in the area shall be cause for revocation. of the mining concession.

**Art. 112. Caducity for failure to submit production reports:** The mining concession shall expire if its owners do not accompany, within the term established in article 42 of this law, the audited reports regarding their production.

**Art. 113. Caducity for failure unauthorized mining and for submitting false information:** The mining concession shall expire in the event that its owner performs exploitation work, directly or indirectly, prior to the signing of the respective Mining Exploitation Contract.

Likewise, the mining concession shall lapse in case the reports indicated in this law contain false information or that maliciously alter its technical and economic conclusions.

The technical and legal qualification of the facts that shall serve as the basis for the declaration of caducity shall be formulated by the Mining Regulation and Control Agency.

**Art. 114. Caducity for malicious alteration of the milestones:** The malicious alteration of the boundary milestones duly proven shall be a cause for caducity of the mining concession.

*Concordances:*  
*CIVIL CODE (BOOK II), Arts. 878, 879*

**Art. 115. Caducity for a Declaration of Environmental Damage:** The Sectorial Ministry shall declare the expiration of the mining concessions when environmental damages occur, without prejudice to the obligation of the concessionaire to repair the environmental damages caused.

The qualification of the environmental damage, both in its technical and legal aspects shall be carried out by reasoned resolution of the Ministry of the Environment, in accordance with article 78 of this law. When water resources are affected by mining activities, the environmental damage classification must consider the pronouncement of the water's sole authority.

The procedure and requirements for the declaration of environmental damage shall be contained in the general regulation of the current environmental regulations.

*Concordances:*  
*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 396*

**Art. 116. Caducity due to damage to the Cultural Heritage of the**

**State:** The Sectorial Ministry, following a technical report from the National Institute of Cultural Heritage shall declare the expiration of the mining concessions in the event that its activities have caused serious damage, permanent or irreparable to the cultural heritage of the State, in accordance with the provisions of the Constitution of the Republic and the Cultural Heritage Law.

The procedure and requirements for the declaration of damage to the cultural heritage shall be contained in the regulation that is issued for that purpose.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 3, 379*

**Art. 117. Caducity due to the Violation of Human Rights:** The Sectorial Ministry shall declare the expiration of a mining concession if there has been a violation of human rights, either by the concessionaire or its representatives, as well as its contractors, especially of the security companies that act on behalf of the concessionaire or whoever takes their place, for which they must previously have an enforceable judgment issued by a competent judge that determines a violation of human rights.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 3, 11*

**Art. 118. Lack of capacity to request mining concessions:** Individuals or legal entities that have lost their status as mining concessionaires due to the breach of one or more legal or contractual obligations derived from the mining concession shall not be able to obtain a concession in those areas covered, totally or partially, by the original concession or in another mining area within three years from the execution of the corresponding administrative act of expiration of said concession.

*Concordances:*

*ORGANIC LAW OF THE NATIONAL PUBLIC PROCUREMENT SYSTEM, Arts. 19, 98*

**Art. 119. Liabilities and punishments:** Anyone who exercises the competent public functions that has not complied with one or more of the legal obligations established in this law, shall be administratively, civilly

and criminally liable for said noncompliance.

The professionals responsible for delivering legal, technical, economic or environmental information to the competent authorities shall be civilly and criminally liable for the presentation of false or malicious information.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 233  
ORGANIC LAW OF PUBLIC SERVICE, (KNOWN IN SPANISH AS  
LOSEP), Arts. 41*

## **Chapter IV Nullity of Mining Rights**

**Art. 120. Nullity of concessions:** The titles of the mining rights granted in contravention of the provisions of this law shall be null. The concession granted on another legally valid and registered one, in the part in which it is superimposed on it, shall also be null as long as it does not produce the effects of the causes for caducity.

*Concordances:*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 9, 10  
CIVIL CODE (BOOK IV), Arts. 1485, 1697  
INTERNATIONAL CODE OF PRIVATE LAW SANCHEZ DE  
BUSTAMANTE, Arts. 183  
GENERAL REGULATIONS TO THE MINING LAW, Arts. 90*

**Art. 121. Declaration of nullity:** It is the responsibility of the Sectorial Ministry to know and resolve the nullity of a mining concession denounced by the subjects of mining rights and third parties harmed. The nullity shall entail the return of the mining area to the mining concessionaire with preferential right or in its case to the State, making it an unclaimed area.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1699, 1700*

**Art. 122. Ownership rights over mining assets:** Except as provided in Article 109 of this Law in relation to the expiration of concessions, due to

the extinction of mining rights, the former owner does not lose his right to property over buildings, machineries, facilities, and other work elements, which may be withdrawn at their own cost with the authorization of the Sectorial Ministry.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th from 2013.

*Concordances:*

*CIVIL CODE (BOOK I), Arts. 122*

## **Section VII Mining Contracts**

### **Chapter I Applicable Rules and Contracts Requirements**

**Art. 123. Applicable rules:** The contracts between concessionaires or of these with third parties, related to mining rights and activities shall be subject to the provisions of article 125 of this law and also by the rules of private law in all aspects not contrary to this law.

**Art. 124. Requirements:** The mining contracts, for their validity, must be celebrated by public deed and registered in the Mining Registry in charge of the Mining Regulation and Control Agency and comply with all the constant requirements in this law. All contracts must be published on the websites of the Mining Registry.

*Concordances:*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 16*

*CIVIL CODE (BOOK IV), Arts. 1561, 1717, 1718*

*LAW OF FEDERATION OF LAWYERS OF ECUADOR, Arts. 48*

### **Chapter II ASSIGNMENT OR TRANSFER AND IRREVOCABLE PROMISE**

**Art. 125. Transferable rights:** Mining rights in general are subject to

assignment and transfer, prior authorization of the Mining Regulation and Control Agency and are freely transferable due to death. Said transfers are perfected with the inscription in the corresponding book of the Mining Registry in charge of the Mining Regulation and Control Agency. The registration rights shall be established in the General Regulations of this law.

The assignment and transfer of rights that emanate from a mining concession shall be null and have no value if it does not precede the authorization of the Mining Regulation and Control Agency, without prejudice of the declaration of expiration as provided in this law.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 686, 696, 702, 787*

*CIVIL CODE (BOOK III), Arts. 993, 999*

*CIVIL CODE (BOOK IV), Arts. 1485, 1631, 1843*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 59*

**Art. 126. Irrevocable Promise:** It can be held agreements of irrevocable promises of assignment or transfer of rights and shares in a mining title or in general related to any other mining rights by fulfilling the same requirements and obligations established in the previous article.

In this type of contracts, it is optional for the promissory assignor to execute or not the final contract, but it is mandatory for the offeror to execute the final contract.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1570*

**Art. 127. Non-rescindable contracts due to fundamental injustice:** Contracts for the assignment or transfer and exchange of rights and shares on mining titles or other mining rights cannot be rescinded the due to a fundamental injustice.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1828, 1829*

**Art. ... Transfer of shares or holdings:** The direct or indirect transfer of the shares or holdings or any other right of an analogous nature in the

share capital of the mining concessionaires, and that together represent more than 10% of the same with voting rights, must register in the Mining Registry. To this end, the legal representatives of the concession companies, within 30 days after the registration of the transfers in the corresponding social books, shall notify the Sectorial Ministry the transfers made by the shareholders or partners, which represent more than 10 % of the shares or holdings with the right to vote, for which purpose they must record the made known data in the form to be drawn up by the said Ministry.

The transactions through which the percentage of rights indicated in the previous paragraph on a mining concession in stock exchanges in Ecuador or abroad transferred indirectly are also subject to the said registry.

In case of doubt about the value of the transaction, the concessionaire shall present to the Sectorial Ministry the documents related to the respective legal business in order for it to determine the amount of the registration right. If the transaction involves mining projects in several jurisdictions, the Sectorial Ministry shall only take into consideration those existing mining projects and activities in Ecuador.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

Note: First and second subparagraphs reformed by article 44 of Law No. 0, published in the Official Registry Supplement 405 of December 29th, 2014.

### **Chapter III**

#### **Assignment as Guarantee and Pledges**

**Art. 128. Assignment as Guarantee:** The buildings, processing, casting and refining plants or the rights derived from mining titles can be subject of an assignment given as guarantee.

The contracts of cession in guarantee on the aforementioned assets shall be granted in the form of public deed and registered in the Mining Registry in charge of the Mining Regulation and Control Agency.

**Art. 129. Pledges:** Pledges may be established on the movable assets destined to the operation of the concession and on mineral substances extracted from the deposit.

The pledge agreements inserted as legend in the registration of mining concessions in the Mining Registry in charge of the Mining Regulation and Control Agency.

*Concordances:*  
*CIVIL CODE (BOOK IV), Arts. 2287*

**Art. 130. Legal actions:** In the case of articles 128 and 129 above, the creditor may take legal actions until the auctioning of the encumbered asset. The judicial authority shall not order the interruption of the mining work.

*Concordances:*  
*CIVIL CODE (BOOK IV), Arts. 2299*

## **Section VIII** **Condominiums, Cooperatives and Associations Engaged in Mining Activities.**

### **Sole Chapter** **Condominiums, Cooperatives and Associations**

**Art. 131. Constitution of mining condominiums:** Condominiums are established on a mining concession, when the State grants the mining title to several individuals who have requested it through a single application, subject to the provisions of this law.

*Concordances:*  
*CIVIL CODE (BOOK IV), Arts. 1957*

**Art. 132. Liability of condominium participants:** Condominiums do not imply the existence of a legally constituted company. Condominium participants are jointly and severally liable for the obligations derived from their capacity of mining titleholders.

Condominium participants shall appoint a common attorney-in-fact through a public deed registered in the Mining Registry. In case of not doing so, the notification served on one of the parties shall produce legal effects for all participants.

*Concordances:*

*CIVIL CODE (BOOK IV), Arts. 1528, 1975, 1985, 1999*

**Art. 133. Rights and obligations of cooperatives, associations, condominiums and small businesses:** Cooperatives, associations, condominiums and smalls businesses engaged in mining activities are entitled to the same rights and obligations established in this Law mining right holders. They may enter into associations and execute all types of mining contracts with national or foreign individuals or companies.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, ARTS. 66*

## **Section...** **Medium and Large Mining Industry**

### **Chapter I** **Medium Mining Industry**

Note: Section added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. ... Medium-scale Mining:** It is considered medium-scale mining industry to that which, because of the size of the deposits depending on the type of metallic and non-metallic mineral substances, has been possible to quantify reserves that allow exploiting more than the volume of processing established for the special regime of small-scale mining and up to the volume established in the following articles.

It may be possible to opt for the mode of medium-scale mining; those enterprises which have begun their operations under the regime of small-scale mining and in the evolution of their simultaneous exploration and exploitation have come to the quantification of mineral resources and

reserves that allow the increase of production.

Notwithstanding the foregoing, the Sectorial Ministry, with the technical and economic report of the Mining Regulation and Control Agency, shall adopt the necessary administrative actions regarding the modification of the small-scale mining regime to the medium-scale mining preserving the interests of the State and fostering the development of this sector.

The characteristics and conditions, mentioned in the first subparagraph of this article, are inherent to those that correspond to the amount of investments, exploitation volume, installed capacity of benefit or processing, and technological conditions, according with the norms of the Regulation of this Law.

The concessions holders in this regime, shall be exempt from execution of the exploitation contracts referred to in Article 41 of the Mining Law, but are obliged to submit to the Sectorial Ministry, the production manifestos, in the same terms as those established in this Law.

The national or foreign investment that is made in medium-scale mining activities shall be subject to the provisions of the Organic Code of Production, Trade and Investment.

The payment of the annual conservation patent for the medium-scale mining modality shall be made subject to the provisions of article 34 of this Law, except for its final clause, applicable to the special regime of small-scale mining.

Note: Chapter and Article added by Law No. 0, published in Official Register Supplement 37 of July 16, 2013.

**Art. ... State participation:** The mining concessionaire in the mode of medium-scale mining shall pay a fee equivalent to a percentage of four (4) percent on the sale of the main mineral and secondary minerals, in addition to the corresponding payment to income tax and value added tax.

In the case of workers linked to the mining activity, they shall receive 5% of the percentage of profits and the remaining 10% shall be paid to the State, which shall allocate it, solely and exclusively, to local development projects.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. ... Production volumes:** The production volumes in the mode of medium-scale mining shall be subject to the following ranges:

- a) For metallic minerals: From 301 to 1000 tons per day in underground mining; from 1001 to 2000 tons per day in open-pit mining; and, from 1501 to 3000 cubic meters per day in alluvial mining;
- b) For non-metallic minerals: From 1001 to 3000 tons per day; and,
- c) For construction materials: From 801 to 2000 cubic meters for mining on alluvial terraces; and, from 501 to 1000 metric tons in open-pit mining in hard rock (quarry).

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. ... Large-scale mining:** Large-scale mining is considered to be mining that exceeds the maximum volumes established for medium-scale mining.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

## **Section IX Special Regimes**

### **Chapter I Artisan and Sustenance Mining**

**Art. 134. Artisan mining:** For the purposes of applying this Law and in accordance with the norms of the Organic Law of the Popular and Solidarity Economy and of the Popular and Solidarity Financial Sector, the term “artisan mining” includes and applies to the popular economic units, individual, family and domestic enterprises that perform work in free areas.

The activities of artisan mining are characterized by the use of machinery and equipment with limited capacities for loading and production in accordance with the instructions approved by the Board of Directors of the Mining Regulation and Control Agency for the extraction of minerals. The commercialization of such materials in general allows to cover the needs of the community, of the people or family group that carry those activities out, only, within the territorial circumscription with respect to which the corresponding permission has been granted.

By their nature, artisan mining activities are not subject to the payment of royalties or patents, but they are subject to the tax regime in order to guarantee the income corresponding to the State.

The Sectorial Ministry shall grant permits for a term of up to 10 years to carry out artisan mining activities, renewable for equal periods whenever there is a written request prior to the expiration thereof and based on a favorable report from the Mining Regulation and Control Agency and the Ministry of Environment. Permits for artisan mining may not affect the rights of a mining concessionaire holding a current title; notwithstanding the foregoing, mining concessionaires may authorize artisan mining works in their concession area, through the execution of operating contracts regulated by the Sectorial Ministry.

In the event that in exercise of the State power to regulate, control and manage the strategic mining sector, the Sectorial Ministry deems convenient and necessary the granting of the permits mentioned in the previous paragraph in concession areas, with the exception of those subject to the special regime of small-scale mining, it shall confer them after a favorable report from the Mining Regulation and Control Agency. In these cases, the compliance with environmental, mining, labor, social, tax and other obligations that are stipulated in the Regulations of the Special Regime for Small-scale Mining and Artisan Mining shall be the exclusive responsibility of its beneficiaries, without they can be imputed, or the effects of their non-compliance, to the mining concessions holders.

Permits granted for underground artisan mining work may not exceed 4 hectares of mining or 6 hectares for open-pit work. It is expressly forbidden to grant more than one permit to the same person for activities of artisan mining, as well as the performance of work directly or by interposed people outside the localities in which such work is performed.

In any case the administrative procedures carried out by the Sectorial Ministry and its ascribed entities, for granting, administration, extinction and registration must be simplified and at no cost to the petitioner. In the same way and for notarial purposes, the permits granted for artisan mining shall be considered as of an indeterminate amount.

For purposes of control and adequate environmental management, the artisan mining permits granted for the exploitation of metallic minerals, with the exception of the exploitation of alluvial deposits, shall be limited to extraction work. Their processing must be carried out in plants that have the proper authorization for its installation and operation, in addition to the environmental license that the case requires.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 66*

*CIVIL CODE (BOOK IV), Arts. 1957*

**Art. ... Production and processing capacity:** Considering the different nature and concentration of the minerals and depending on the distribution of the mineralization, as well as the exploitation and/or processing methods technically selected for their rational use, the following production capacities are established under the regime of artisan mining of mineralized material:

- a) For metallic minerals: Up to 10 tons per day in underground mining and 120 cubic meters per day in alluvial mining;
- b) For non-metallic minerals: Up to 50 tons per day;
- c) For construction materials: Up to 100 cubic meters per day for alluvial mining or unconsolidated materials; and, 50 metric tons per day in open-pit mining on hard rocks.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. ... Exercise of State power:** In the exercise of the State power to administer, regulate, control and manage the strategic mining sector, the

Sectorial Ministry, with the technical and economic report of the Mining Regulation and Control Agency, shall adopt the necessary administrative actions with respect to the assignment, conservation and extinction of the rights granted under the regime of artisan mining, including in these those of modifying the permit regime and opting for the concession modality foreseen for small-scale mining, protecting the interests of the State and promoting the development of this sector. In this case, the accumulation of mining areas granted under the modality of permits for artisan mining may be carried out, notwithstanding that the Sectorial Ministry, in application of the norms of articles 313 and 316 of the Constitution of the Republic of Ecuador, ex officio, can redefine the areas subject to granting concessions, by conferring titles of concessions in replacement of permits for artisan mining.

In the exercise of this same power, the accumulation of mining areas also proceeds in the case of small, medium and large-scale mining, within the limits of the size of the concessions established in this law.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. 135. Extinction of artisan mining rights:** Permits granted to artisan miners shall be extinguished in the forms and conditions established in section VI, chapters I and III of this law.

*Concordances:*  
*MINING LAW, Arts. 106, 108*

**Art. 136.** The Sectorial Ministry shall promote special programs for technical assistance, environmental management, mining safety and training and professional training for artisan mining. For this purpose, it may rely on the support of universities and polytechnic schools that have specialties corresponding to these areas.

## **Chapter II** **Small-Scale Mining**

**Art. 137. Incentive for national mining production:** In order to promote full employment, the elimination of underemployment and unemployment,

and to encourage the productivity and competition, the accumulation of scientific and technological knowledge, the State, through the delegation to the private initiative, cooperatives and associations of popular and solidarity economy, shall promote the development of national mining under the special small-scale mining regime, guaranteeing the right to carry out the said activity on an individual and collective basis following the principles of solidarity and social responsibility.

*Concordances:*

*ORGANIC LAW OF THE NATIONAL PUBLIC PROCUREMENT SYSTEM, Arts. 5, 52*

**Art. 138. Small-scale mining:** A small-scale mining is considered to the one, due to the characteristics and geological mining conditions of metallic, non-metallic mineral substances and construction materials deposits, as well as its technical and economic parameters, that makes its rational exploitation feasible directly, without the prejudice of the fact that it can be preceded by exploration work, or that the exploration and exploitation work is carried out simultaneously.

To the geological-mining characteristics and deposits conditions, mentioned in the previous paragraph, suitable for the development of work in small-scale mining, and different to mining activities on a larger scale, are inherent those corresponding to the area of concessions, to the amount of investments, volume of exploitation, installed capacity of benefit or processing, and technological conditions, in accordance with the norms of the Regulations of the Small-scale Mining Special Regime and Artisan Mining.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 16*

**Art. ... Production capacity under the small-scale mining regime:** Depending on the degree of minerals concentration in the deposits and depending on the way in which the mineralization is distributed, as well as the technically selected methods of exploitation and/or processing for its rational use, the following production ranges (sic) are established for each operator:

- a) For metallic minerals: up to 300 tons per day in underground mining; up to 1000 tons per day in open-pit mining; and, up to 1500 cubic meters per day in alluvial mining;
- b) For non-metallic minerals: up to 1000 tons per day; and,
- c) For construction materials: up to 800 cubic meters for mining on alluvial terraces; and, 500 metric tons per day in open-pit mining in hard rock (quarry).

Within this regime, in each mining area, one or more mining operations may be carried out by its owner or its legally authorized operators to do so, as long as the characteristics or technical conditions of exploitation of the deposits justify them.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Art. ... Manifests and production reports:** Holders of concessions in small-scale mining shall be exempt from the exploitation contracts referred to in article 41 of the Mining Law, but they are obliged to submit to the Sectorial Ministry, manifests and production reports, by sworn declaration made before a Notary in which the number of mining hectares in exploration and exploitation, respectively, shall be indicated. The annual production reports duly audited shall be submitted until March 31 of each year to the Sectorial Ministry, in accordance with the technical guidelines prepared for this purpose by the Mining Regulation and Control Agency. The falseness found in the declaration of the previous reference shall be sanctioned in accordance with the Organic Comprehensive Criminal Code.

The lack of presentation of production manifests or their updates shall be sanctioned with the temporary suspension of activities until the submission of said manifests is fulfilled. The delay in the presentation of the indicated documents may not exceed the term of ninety days, after that the definitive suspension of activities shall take place.

The production manifests and other declarations of the mining right holders, made by public deed, must be included in the text of the requests, petitions and other formal or procedural documents.

For all purposes, including those of fiscal and tax order, the Mining

Regulation and Control Agency shall establish the amounts of extraction, processing and export of minerals as well as their contents or law. The Regulation to this Law shall define the general, technical and statistical parameters for the exercise of this attribution.

Note: Article added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

Note: Article amended by Law No. 0, published in the Official Registry Supplement 180 of February 10th, 2014.

**Art. 139. Mining concessions for small-scale mining:** The State shall grant mining concessions for small-scale mining in favor of natural and legal persons, pursuant to the stipulations in this law and its general regulation, which shall establish a special regime.

Mining concession for small-scale mining shall be issued by the Sectorial Ministry following the procedure established in the Regulation, conferring upon the titleholder the exclusive right to prospect, explore, exploit, benefit, smelt, cast, refine and market all mineral substances that may exist and be obtained in the area of such concession, without limitations other than those indicated in this law.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 14*

**Art. 140. Registration:** In order to access the rights and benefits that this chapter grants to the mining rights holders, they must register as small-scale miners with the mining administrative authority of the Sectorial Ministry. The procedure and registration requirements shall be included in the regulations of this law.

**Art. 141. Obligations:** Mining concessionaires that carry out small-scale mining activities must comply with the mining concessionaire's obligations contained in Section IV of this law.

Small-scale mining titleholders shall be subject to compliance with current environmental regulations and with the concurrence and approval of the training programs promoted by the National Institute of Geological Research.

### **Chapter III Construction Materials**

**Art. 142. Construction materials concessions:** The State, through the Sectorial Ministry, may grant concessions for the use of surface clays, sand, rocks and other materials used directly by the construction industry, except when they come from riverbed, lakes, sea beaches and quarries, which are subject to the limitations established in the general regulation of this law. The general regulation of this law shall also define what are the construction materials and their exploitation volumes.

Within the framework of article 264 of the current Constitution, each Municipal Government shall assume the competences for regulating, authorizing and overseeing the exploitation of arid and rocky materials, found in the riverbed, lakes, lagoons, ocean beaches and quarries, pursuant to the Special Regulation that shall establish the requirements, limitations and procedures for this purpose. The exercise of such competence shall adhere to the principles, rights and obligations contemplated in the municipal ordinances issued for such purpose. They shall not establish conditions and obligations different from those in this law and its regulations.

*Concordances:*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 55, 141, 562*

*CIVIL CODE (BOOK II), Arts. 606*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 44*

**Art. 143. Rights and obligations of construction materials concessionaires:** Concessionaires shall be authorized to explore the said materials without having to sign a Contract; the exploitation shall be carried out after the signing of the respective contract and may constitute the easements required for the proper exercise of the rights emanating from its concession.

Notwithstanding the foregoing, the landowner shall have the preferential right to request a concession that coincides with the area he owns. If the landowner freely and voluntarily, through a public instrument, grants authorization for the use of his property for a concession, this authorization shall implicitly carry the waiver of his right of preferential

refusal for being granted a concession on said property.

On the other hand, the construction materials concessionaire shall comply with the obligations stipulated in articles 38, 41 and 42, Chapter I of Section III and in Chapters I, II and III of Section IV of this Law. Furthermore, the concessionaire shall pay the royalties established in this Law for small-scale mining.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 867*

*MINING LAW, Arts. 93*

**Art. 144. Unrestricted use of construction materials for public works:**

The State, directly or through its contractors, may freely use construction materials for public works in areas under concession and not under concession.

The social and public purposes of unrestricted use require clearance from the Sectorial Ministry. The term and the exploitation volumes shall be ruled and shall be applied solely and exclusively regarding the technical requirements on production and for the time that the execution of the public work lasts.

Said materials may be used solely and exclusively in benefit of public works for which unrestricted use was required. The use for other purposes shall be regarded as illegal mining, which shall be subject to what is determined in this law.

State contractors shall not include in their expenses the values corresponding to the freely exploited construction materials. In case of proven that such unrestricted use was for other purpose, the punishment shall be a fine equivalent to 200 times the unified base salary and in case of repeat the public works contract shall be terminated.

Authorizations for free use are subject to accomplish all the provisions of this law, especially those of the environmental rules.

Contractors who engage in unrestricted use are obligated to comply with the Environmental Management Plan.

*Concordances:*

*MINING LAW, Arts. 56, 57*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 49*

*ORGANIC CODE OF TERRITORIAL ORGANIZATION, (KNOWN IN SPANISH AS COOTAD), Arts. 141*

## **Chapter IV Non-Metallic Minerals**

**Art. 145. Non-Metallic minerals exploitation:** Exploration and exploitation of non-metallic mining shall comply with the general norms applicable to mining concessions in the terms provide in this Law and its General Regulations, including the payment of royalties.

The general regulation of this law shall define which are the non-metallic mineral substances and the form of State's participation in the benefits, in accordance with the provisions of the second paragraph of Article 408 of the Constitution of the Republic.

The State's interest shall be taken into account regarding the use of said non-metallic minerals in the construction of infrastructure works of national benefit.

*Concordances:*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 25, 26*

## **Chapter V Mining Activities on Seabed**

**Art. 146. Investigation and operation on seabed:** The exploitation of any kind of mineral substances on the seabed is responsibility of the National Institute of Geological, Mining and Metallurgical Research and of the National Mining Company, which may enter into research agreements and service contracts, respectively, with national or foreign natural and legal persons subject to the requirements and conditions listed in the Special Regulation that the President of the Republic shall issue for that purpose.

*Concordances:*

*CIVIL CODE (BOOK II), Arts. 606, 609*

## **Section X Tax and Economic Provisions**

**Art. 147. Accelerated Depreciation:** Mining right holders that have signed a Mining Exploitation Contract may request to the Internal Revenue Service special treatment for accelerated depreciation for those fixed assets with a shorter useful life as a consequence of the greater wear and tear caused by the operation of a mining project. The Internal Revenue Service, following a report from the Mining Regulation and Control Agency, shall qualify or reject the request.

Assets subject to accelerated depreciation are those included in the General Regulation of the law.

*Concordances:*

*ORGANIC LAW OF INTERNAL TAX REGIME (KNOWN IN SPANISH AS LORTI). Arts. 10*

*GENERAL REGULATIONS TO THE MINING LAW. Arts. 85*

**Art. 148. Simplified Tax Regime for artisan miners:** Artisan miners may benefit from the Simplified Tax Regime for Income Tax and Value Added Tax under the conditions, terms and requirements stipulated in the Internal Tax Regime Law.

*Concordances:*

*ORGANIC LAW OF INTERNAL TAX REGIME (KNOWN IN SPANISH AS LORTI). Arts. 97*

**Art. 149. Purchases of gold:** Purchases of gold by the Central Bank of Ecuador directly or indirectly, as well as purchases made by public and private economic agents duly authorized by the Bank itself, shall be subject to zero-rated Value-Added Tax.

Note: Article replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

Note: Article replaced by Law No. 0, published in the Official Registry Supplement 332 of September 12th, 2014.

## **Section XI**

### **Administrative, Administrative Litigation and Collections Jurisdictions**

**Art. 150. Jurisdiction and competence:** The Mining Regulation and Control Agency shall exercise jurisdiction and regulatory competence and control in mining matters, by fulfilling the duties and asserting the powers conferred to them in this law and its general regulations.

The disputes that could arise between the parties to this mining law and administrative authorities concerning mining matters shall be solved by the district administrative litigation courts.

In any case, the rules on jurisdictional guarantees, protection action, access to public information and protection rights established in the Constitution of the Republic shall always be followed.

All procedures for granting, administering and extinguishing mining rights must have the prior technical report of the Mining Regulation and Control Agency, which must be issued within a term not exceeding thirty (30) days, counted from the date on which the request or requirement is received. In case of not issuing the aforementioned term, the Sectorial Ministry shall adopt the reasoned resolution that the case requires.

Note: Fourth subparagraph added by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

*Concordances:*

*CONSTITUTION OF THE REPUBLIC OF ECUADOR, Arts. 11, 18, 88,  
167*

*MINING LAW, Arts. 9*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 8*

**Art. 151. Collections Jurisdiction:** The Internal Revenue Service exercises coercive jurisdiction for the collection of royalties, patents,

taxes, and interest for late payment, fines, economic compensation in favor of the State and other surcharges as procedural costs generated in its execution.

*Concordances:*

*TAX CODE, Arts. 149, 158*

*ORGANIC LAW OF INTERNAL TAX REGIME, (KNOWN IN SPANISH AS LORTI). Arts. 107*

## **Section XII**

### **Procedures for the Waiver and Termination of Mining Rights**

**Art. 152. Waiver of mining hectares:** One or more mining hectares included in a mining concession may be waived, provided that the waiver does not impair third-party rights. The total or partial waiver shall be subject to what is determined in the general regulation.

*Concordances:*

*CIVIL CODE (PRELIMINARY TITLE), Arts. 11*

*CIVIL CODE (BOOK IV), Arts. 2013, 2364*

*GENERAL REGULATIONS TO THE MINING LAW, Arts. 64, 65*

**Art. 153. Voluntary or contentious jurisdiction:** Waiver constitutes a voluntary jurisdiction procedure, which may become litigation proceeding when appealed by third parties who have been harmed.

**Art. 154. Waiver requests:** Requests to waive a claim shall be submitted to the appropriate office of the Sectorial Ministry and this shall expressly request the cancellation or modification of the respective registrations, and stating whether the waiver is a total or partial waiver. The general regulation shall establish the requirements and procedures to be followed for processing and resolution.

*Concordances:*

**GENERAL REGULATIONS TO THE MINING LAW, Arts. 65**

**Art. 155. Form and perfection:** Once the waiver is approved, this approving act shall be registered as a protocol at the Notary Public and

registered in the Mining Registry in charge of the Mining Regulation and Control Agency.

**Art. 156. Third-party rights:** If it appears that the background from the waiver affects or may affect the third-party rights, the authority of the Sectorial Ministry to review the process shall order the waiving party, by way of public deed, to grant the consent of those for the waiver.

If such consent is not substantiated, the Sectorial Ministry authority shall notify and summon third parties by publishing a notice, on a onetime basis, in a widely circulated national newspaper and a local newspaper.

**Art. 157. Opposition:** The following are causes for opposition: the existence of preparatory contracts, pledges, enabling contracts, leases, exploitation contracts, mineral sales contracts and embargoes with respect to the concession covering the mining hectares subject to the waiver.

The filing of an opposition claim shall be made through administrative channels, which shall be processed at the competent office of the Sectorial Ministry. The resolution thereof may be appealed before the higher instance, within a period of five days from the notification to the respective parties.

**Art. 158. Approval of waiver.** Once the resolution that approves the waiver has been issued and perfected by its registration in the Mining Registry, the interested party shall provide to the appropriate office of the Sectorial Ministry a certified copy of such actions for cadastral purposes.

## **General Provisions**

**First:** If, as a result of the activities referred to in this law, minerals or other radioactive substances are discovered in economically exploitable concentrations, the mining rights holder shall communicate the discovery to the Sectorial Ministry accordingly.

**Second:** Any violation of the rules contained in this law that is not a cause for extinguishing mining rights shall be sanctioned by the Sectorial Ministry or its associated entities within the framework of its competences with a fine that cannot be less than twenty times nor higher to five hundred

times the unified base salary, plus 0.1% of the investment, depending on the seriousness of the offence, without prejudice to the civil and criminal liability that offenders may have incurred.

The right to due process shall be respected in all cases. The fines shall be deposited in the entities legally authorized to collect taxes.

**Third:** The State is the owner of the royalties, patents, labor profits attributable to the State in the corresponding percentage, in accordance with this Law and the adjustment that is necessary to comply with article 408 of the Constitution, which shall be collected through the Internal Revenue Service. For this purpose, it shall be vested with all of the powers and attributes granted by the current tax regulations and this Law.

Note: Provision replaced by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Fourth:** The administrative acts that extinguish or place under caducity mining concessions as a result of Mandate No. 6 are enforceable.

**Fifth:** All environmental damage generates objective liability.

**Sixth:** It is prohibited all type of mining activity in the zones declared to be ancestral territories of peoples in voluntary isolation, according to the provisions of the Constitution of the Republic.

**Seventh:** Omission by public officers and servants resulting in administrative procedure shall be administratively and civilly punished, depending on the seriousness of the offense. If any presumption of liability for willful misconduct on the part of the officer whose omission triggered administrative silence procedure is proven, criminal action may be filed with the courts.

In the case administrative acts are not issued within the terms established in the articles of this law, administrative silence procedure shall occur, which must be established by way of a resolution by a competent judicial instance.

**Eighth:** For the province of Galapagos, unrestricted use permits shall be authorized strictly for construction materials

## **General Provisions**

**First:** Mining concession holders, in the event of taking the provisions of Article 46 of the Mining Law and opting for the installation of the aforementioned plants, shall include in their environmental studies and environmental management plans the information related to the installation and operation of the said processing plants.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Second:** The Ecuadorian State may delegate participation in the strategic mining sector to the private initiative and to the popular and solidarity economy, exceptionally, regarding the provisions contained in the second paragraph of article 316 of the Constitution of the Republic of Ecuador; through the granting of rights in the manner stipulated in this law, being prohibited any other modality not foreseen or recognized in the law and in its regulations. The same prohibition is established for the registration of mining titles in the Mining Registry, in charge of the Mining Regulation and Control Agency, which lacking of origin in the exceptional delegation, under the administrative concession modality, that are not registered in the said Mining Registry.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Third:** In order to protect the interests of the State, in all those cases in which the existence of gold is evident in riverbed, lakes, lagoons, sea beaches and quarries, and concession titles have been granted in respect of non-metallic minerals or construction materials, the Ministry of Non-Renewable Natural Resources, with the report of the Mining Regulation and Control Agency and the National Institute of Geological, Mining, and Metallurgical Research, shall proceed to order the reform of the title of the concession, or change of the concession modality object that allows the use of the resources.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16, 2013.

**Fourth:** Losses suffered in a mining concession may not be compensated

or consolidated with the profits obtained from other mining concessions granted to the same owner. Likewise, the said losses or gains may not be compensated with those obtained in the performance of other economic activities other than mining carried out by the said holder.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Fifth:** The suspension of mining activities established in this Law and its regulations shall be ordered exclusively by the Sectorial Ministry, by reasoned resolution. Notwithstanding the foregoing, suspensions based on environmental matters as a preventive and/or corrective measure, in relation to legal or illegal mining activities, must be executed by the National Environmental Authority in accordance with the provisions of Article 396 of the Constitution of the Republic of Ecuador.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Sixth:** The processes of qualification or registration under the special regime of small-scale mining and artisan mining are subject to the pre-existence of mining ownership.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Seventh:** Repealed.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

Note: Provision repealed by article 45 of Law No. 0, published in the Official Registry Supplement 405 of December 29th, 2014.

**Eighth:** The State, through the Sectorial Ministry, the National Institute of Geological, Mining and Metallurgical Research and the Ministry of Environment, shall develop training and technical assistance programs aimed at artisan miners and small-scale miners, which shall be periodic.

In the same way, the State through public banking shall try to create

financial products for the acquisition of modern technology and friendly with the environment.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

### **Transitory Provisions**

**First:** Mining concessionaires with mining concessions based on Article 8 of Constituent Mandate No. 6, shall maintain their mining rights and may resume their activities. Within a period of 120 days, from the enactment of the corresponding regulation, they must have regularized and harmonized their procedures with this regulation.

In the case of processing plant owners presently in operation, they shall accommodate themselves to this law within one year as of the date of effectiveness hereof.

Failure to comply with this provision shall result in the extinguishment of the mining title and, therefore, the expiration of the mining concession or the operating permit for the processing plant granted prior to the enactment of this law.

**Second:** Once this law has been published in the Official Registry, the President of the Republic, through executive decree, shall order the issuance of administrative acts for the integration, organization, regulation and control of the bodies hereby created, until then the National Mining Office, the regional mining offices and the Mining Environmental Protection Office exercise, on a temporary basis, the powers and duties of the of the Mining Regulation and Control Agency and the National Geology Office the duties of the National Institute of Geological, Mining and Metallurgical Research, provided that they do not oppose the regulations of this law.

**Third:** The Property Registrars, in the term of 90 days, counted from the enactment of this Law, shall send to the Mining Regulation and Control Agency all information and original files about mining concessions registered and any other procedure regarding mining activity. The acts and procedures carried out in the Mining Registry shall be subject to the rules of the Register Law were applicable.

**Fourth:** Within the period of 120 days, from the effective date of this law, the corresponding regulations shall be enacted.

**Fifth:** Within 90 days from the enactment of this law, the Sectorial Ministry shall issue the ministerial decree that contains the terms, conditions and the periods for returning mining areas and mining projects as referred to in the last paragraph of article 24.

**Sixth:** Within 180 days from the enactment of this law, the Executive shall send to the National Assembly the Bill of the Law of Promotion, Participation and Training of Small-scale Mining and Artisan Mining.

**Seventh:** Within 180 days the Executive branch shall issue the special regulations for protecting life, health and the environment in Josefina, Portovelo, and Nambija areas.

**Eighth:** Within a period of 180 days from the promulgation of this law, the Sectorial Ministry shall conduct a census for artisan miners that do not have authorizations to carry out mining activities and who prove that they have worked at least two years from completion of the aforementioned census in order to regularize their situation.

**Ninth:** Processing plants with a permit at the time this law is enacted and in operation, with an installed capacity less than that indicated in the preceding articles, may continue their operations once they obtain the environmental license in the terms determined in this law and the regulations.

### **Transitory Provisions**

**First:** The applicable norms in mining matters regarding the procedures and processes of granting, conservation and expiry of mining rights, as well as those pertaining to trespassing, administrative protection, oppositions, invasions, easements, expirations, annulments, precautionary acts, temporary suspensions or closures of activities, fines, increases in production volumes, revocation of permits, formalization processes, changes of concession modality, jurisdiction and administrative competence of the Sectorial Ministry and the Mining Regulation and Control Agency, shall be stated in the General Regulation of this Law and

in the regulations established by the Agency.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Second:** Within six months of the enactment of this Law, the Board of the Central Bank of Ecuador shall issue the regulations of its jurisdiction, necessary for the commercialization of gold, especially those required to offer the mining holders the logistical and operative facilities that this commercialization requires.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Third:** For the eradication of the use of mercury in mining activities, natural or juridical persons, national or foreign persons and the mining rights holders, from the enactment of this law and for a period of two years, shall apply alternative methods that allow eliminating this substance in a progressive way in the recovery processes of the mineral.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Fourth:** Repealed.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

Note: Provision repealed by article 46 of Law No. 0, published in the Official Registry Supplement 405 of December 29th, 2014.

**Fifth:** The mining activities that are carried out in areas in respect where the mining concessionaires have complete tasks in accordance with the provisions of articles 37 and 38 of the Mining Law and that have similarly evidenced before the Sectorial Ministry their interest in to negotiate and enter into mining exploitation contracts in accordance with articles 39 and 41 the of said Law, shall not be able to benefit from the special regime of small-scale mining or medium-scale mining.

Note: Provision given by Law No. 0, published in the Official Register

Supplement 37 of July 16th, 2013.

**Sixth:** For the case of people who perform artisan mining activities, identified in the Mining Census of 2010 and those who, until the enactment of this law, have not been regularized, the Sectorial Ministry within a maximum period of 180 days shall conclude their legalization according to the norms of the Mining Law and the present reform.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

**Seventh:** The Sectorial Ministry, through the fulfillment of the faculties granted in this law, shall prevent that in the concession regime it develops situations of monopoly or concentration. To this end, in the General Regulations to this law shall be established rules that avoid monopolies or concentrations.

Note: Provision given by Law No. 0, published in the Official Register Supplement 37 of July 16th, 2013.

### **Final Provisions**

**First. Repeal:** It is hereby repealed the Law of Mining 126, published in Official Register No. 695, Supplement of May 31th, 1991 and its regulations and Decree Law 2000 - Law for the Promotion of Investment and Civic Participation, published in the Official Register No. 144 of August 18th, 2000, as soon as it reforms the aforementioned Mining Law, and all the legal and regulatory dispositions contrary to this law.

**Second. Effectiveness:** This law shall enter into effect as of the date of its publication in the Official Register. Its rules shall prevail over other laws and can only be modified or repealed by express provision of another law destined specifically for such purposes. Consequently, the laws or decrees, which in any way violate this rule or those established in the Constitution, shall not be applicable.

Given and signed at the headquarters of the National Assembly, located in the Metropolitan District of Quito, on the twenty-six of January in the year Two Thousand and Nine.



Instituto Nacional de  
**Investigación Geológica  
Minero Metalúrgico**



**ARCOM**  
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y Control Minero

