

LEGAL ALERT

NEW "MINING LAW"

DECREE-LAW NO. 30/2021, OF 7 MAY

Decree-Law no. 30/2021 was published on 7 May, regulating **Law no. 54/2015, of 22 June** (which approved the legal framework applicable to the revelation and exploitation of geological resources existing in the national territory), with regards to mineral deposits.

In general terms, the new law establishes that the **activities of revelation and exploitation of mineral deposits**, which are part of the State's public domain, may be subject to the following rights of private use, when exercised by private parties:

- (i) **Mineral deposit revelation** activities (*i.e.*, activities aiming the discovery of mineral deposits and the determination of their characteristics):
 - Preliminary evaluation (*avaliação prévia*);
 - Prospect and research (*prospecção e pesquisa*);
 - Experimental exploration (*exploração experimental*);
- (ii) **Mineral deposit exploitation** activities (*i.e.*, exploration activities of the resources in question, with recognized economic value):
 - Exploration (*exploração*).

The new law assumes the existence of three structural axes in the legal regulation of the activity of revelation and exploitation of mineral deposits: (i) compliance with the most demanding standards of **environmental sustainability** in the activity of extraction of mineral deposits, in accordance with the principles of “green mining”; (ii) improved provision of **information and public**

participation and of intervention of municipalities; and *(iii)* fair distribution of the **economic benefits of the exploitation** between the State, municipalities and populations.

Thus, in addition to regulating the procedures for granting revelation and exploration rights of mineral deposits, including when such rights are granted through a tender procedure initiated by the Government or the General Directorate of Energy and Geology (*Direção Geral da Energia e Geologia – DGEG*), the new law provides for important novelties to be considered. The following are noteworthy:

1. **Public participation** by all interested parties in the procedures prior to the award of rights to reveal or explore mineral deposits, through the [Participa.pt](https://participa.pt) portal, including, in some cases, public information sessions;
2. **Electronic processing** of all procedures for granting reveal or exploration rights of mineral deposits, under terms to be regulated by ministerial order;
3. Possibility of conditioning future explorations of mineral resources to their **industrial transformation and commercialization in national territory** and express inclusion, among the essential elements to be defined in the exploitation concession contracts, of **obligations relating to the production, transformation or commercialization of ores** which may represent **benefits for the technical and economic development of the country**;
4. When possible, exclusion of the areas that may be subject to tender procedures of: *(i)* nationally protected areas; *(ii)* areas classified under international law provisions; and *(iii)* areas included in the Natura 2000 Network (*Rede Natura 2000*);
5. Provision of a **bond** to ensure the compliance with the obligations set out under the contracts granting revelation or exploration rights of geological resources, to be released after verification that all obligations regarding the closure of the exploitation, including those provided under the environmental and landscape recovery plan (*plano ambiental e de recuperação paisagística*), have been fully complied with;
6. Provision of a dynamic **environmental and landscape recovery plan**, included in the mining plan (*plano de lavra*), to be reviewed every five years, regarding which any potential amendments may require the reinforcement of the bond provided. The expiration of the contract does not extinguish the obligations set out under the environmental and landscape

recovery plan or under the closure of the exploitation plan, therefore the bonds being maintained.

With specific reference to the **exploration rights of mineral deposits**, to be granted by concession, we highlight the following provisions:

1. Explicit provision of a mandatory **consultation to the Environmental Impact Assessment (EIA)** authority on the need to conduct the EIA procedure, even when the project is not covered by the thresholds established in the respective legal regime;
2. Mandatory **location of the headquarter of the concessionaire in the municipality of the area to be explored**, unless the concessionaire is already headquartered in another municipality where it holds a concession in force;
3. **Certification of the mining plan** (*plano de lavra*), when referring to metallic mineral deposits, by DGEG, the Portuguese Environment Agency (*Agência Portuguesa do Ambiente – APA*) and the Authority for Working Conditions (*Autoridade para as Condições do Trabalho – ACT*), according to the respective areas;
4. Possibility of DGEG setting up a **commission to monitor the explorations**, when it deems justified;
5. Provision of a **plan for the closure of the mining exploration**, to be approved with the concession of the operation and including measures to minimize the social, economic and environmental impacts of the end of the operation, as well as the technical measures for its closure.

The new diploma entered into force on May 8, 2021, determining its immediate application to pending procedures for granting rights of prospection and research, experimental exploration or exploration of mineral deposits, as well as the repeal of previous legislation on the matter from the 1990s.

The new law also provides for the presentation, within two years after its entry into force, of the **National Strategy for Geological Resources** by DGEG and the National Laboratory of Engineering and Geology (*Laboratório Nacional de Engenharia e Geologia – LNEG*), which should be a sectorial program to be reviewed every five years.

[João Tiago Silveira \[+ info\]](#)

[Diana Ettner \[+ info\]](#)

[Filipa Moraes Vaz \[+ info\]](#)

[Catarina Brito Ferreira \[+ info\]](#)

[Joana Alves de Abreu \[+ info\]](#)

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