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# MINING LAW AND ITS REGULATION GUATEMALA

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MINISTRY OF ENERGY AND MINES  
GENERAL DIRECTORATE OF MINING

GUATEMALA, CENTRAL AMÉRICA



<b>CONTENTS MINING LAW</b>	
<b>Description</b>	<b>Page</b>
<b>PART I</b>	
GENERAL DISPOSITIONS	2
<b>CHAPTER II</b>	
MINING ADMINISTRATION	5
<b>CHAPTER III</b>	
RECONNAISSANCE	7
<b>CHAPTER IV</b>	
EXPLORATION	8
<b>CHAPTER V</b>	
EXPLOITATION	9
<b>PART II</b>	
SPECIAL AREAS OF MINING INTEREST	11
<b>PART III</b>	
<b>CHAPTER I</b>	
COMPETENTE AGENCIES	12
<b>CHAPTER II</b>	
APPLICATIONS	13
<b>CHAPTER III</b>	
PROCEDURES	14
<b>CHAPTER IV</b>	
SUBSTANTIATION, SUSPENSION, CANCELATION AND EXTINCTION OF MINING RIGHTS	15
<b>CHAPTER V</b>	
SANCTIONS	16
<b>CHAPTER VI</b>	
RECOURSE	17
<b>PART IV</b>	
<b>CHAPTER I</b>	
EXCLUSIVE FUNDS	17
<b>CHAPTER II</b>	
FINANCIAL REGIME	18
<b>PART V</b>	
<b>CHAPTER I</b>	
CONTROL OF MINING OPERATIONS	19
<b>PART VI</b>	
<b>CHAPTER I</b>	
USE AND UTILIZATION OF WATERS	20
<b>CHAPTER II</b>	
RIGHTS OF WAY	20
<b>CHAPTER III</b>	
WASTE, SAFETY CONDITIONS AND PROHIBITIONS	22
<b>CHAPTER IV</b>	
ADDITIONAL PROVISIONS	22
<b>PART VII</b>	
FINAL PROVISIONS	23
ANNEX	25

<b>CONTENTS REGULATION</b>	
	<b>Page</b>
<b>CHAPTER I</b>	
GENERAL DISPOSITIONS	29
<b>CHAPTER II</b>	
ENVIRONMENTAL DISPOSITIONS	30
<b>CHAPTER III</b>	
EXPLORATION OF CONSTRUCTION MATERIALS	31
<b>CHAPTER IV</b>	
SPECIAL AREAS OF MINING INTEREST	31
<b>CHAPTER V</b>	
APPLICATIONS AND NOTIFICATIONS	32
<b>CHAPTER VI</b>	
DETERMINATION OF QUOTATION VALUES, CALCULATION OF ROYALTIES, INTERESTS, ADJUSTMENTS AND PAYMENT ORDERS	34
<b>CHAPTER VII</b>	
PROHIBITIONS AND SANCTIONS	36
<b>CHAPTER VIII</b>	
FINAL DISPOSITIONS	37

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**LAW DECREE NUMBER 48-97**

**CONGRESS OF THE REPUBLIC  
OF GUATEMALA**

**WHEREAS**

The Political Constitution of the Republic of Guatemala, Article 125 , declares that the technical and rational exploitation of hydrocarbons, minerals and other non-renewable natural resources is in the public interest, entrusting to the State to sponsor the necessary conditions for their exploration and exploitation;

**WHEREAS**

The subsoil, hydrocarbon and mineral deposits as well as whatsoever other organic or inorganic substances of the subsoil are property of the State and the State will dispose of its utilization and exploitation in the manner most beneficial to the nation;

**WHEREAS**

The current Mining Law does not permit the adequate development of mining, nor can it be adapted to changes in the world mining industry, becoming an obstacle to the competitive and appropriate development of this activity in Guatemala;

**THEREFORE**

In the exercise of the powers conferred by paragraph a) of Article 171, of the Political Constitution of the Republic of Guatemala,

**DECREE:****The following:****MINING LAW****TITLE I  
FUNDAMENTAL DISPOSITIONS****CHAPTER I****GENERAL DISPOSITIONS**

**Article 1. Object.** The present law regulates the set of reconnaissance, exploration, and exploitation activities and mining operations in general.

**Article 2. Competency.** The Ministry of Energy and Mines is the body of the State commissioned to formulate and coordinate the policies, plans and programs of government for the mining sector, transacting and resolving administrative problems and complying with their responsibilities as described in this Law and its Regulations.

**Article 3. The procedures** of the present Law are applicable to all the persons, individual or corporate, that develop mining operations and, specifically, reconnaissance, exploration and exploitation activities of mining products that constitute natural deposits of the subsoil.

**Article 4. Exceptions.** The application of this Law will not apply to activities related to:

- a) Petroleum and the liquid and gaseous hydrogen carbides:
- b) The substances contained in suspension or dissolved in ground waters as long as they do not originate from a deposit of minerals different from the components of the land.

**Article 5. Construction Material.** The persons that extract superficial clays, sands, stone and other materials directly destined for construction, excluding decorative stones, remain exempt from obtaining an exploitation license, if and only if such exploitation is not done with commercial or industrial purposes, having to meet with that prescribed in the Law for Protection and Improvement of the Environment. Nevertheless, when these materials are found associated with minerals in exploitable concentrations, the respective license must be obtained. The Municipalities will oversee the rational exploitation of these materials. The Regulation of this Law will regulate all aspects of these exploitations.

**Article 6. Abbreviations and Definitions.** For the purposes of this Law the following abbreviations and definitions will apply:

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a) **Abbreviations:**

State:	State of Guatemala;
Republic:	Republic of Guatemala;
Government:	Government of the Republic of Guatemala;
Ministry :	Ministry of Energy and Mines;
Directorate:	General Directorate of Mining;
Department	Department of Audit and Finance of the Ministry of Energy and Mines.

b) **Definitions**

**Calendar Year:** period of twelve consecutive months, from the first day of January to the thirty first day of December inclusive, according to the gregorian calendar.

**Exploration Year:** period of twelve consecutive months, counted from day following the date of notification to the interested party of the resolution of the grant of a mining right of exploration.

**Exploitation Year:** period of twelve consecutive months, counted from the day following the date of notification to the interested party of the resolution of the grant of a mining right of exploitation.

**Areas of Mining Interest:** areas in which mining resources of economic importance have been identified or evaluated and where the State declares them as such, so as to proceed to exploration in the immediate future under convocation.

**Fee:** Periodic fee charged against a license or mining right grant or land use in the public domain, regulated in mining by granted area, developed or not.

**UTM Coordinates:** Universal Transverse Mercator Planar Coordinates.

**Mining Right:** Jurisdictional relationship created between the State and an applicant through an administrative act of the Ministry or the Directorate, and that comprises licenses for the execution of mining operations.

**Mining Exploitation:** Extraction of rocks, minerals or both, to dispose of them for industrial, commercial or utilitarian purpose.

**Mitigation Study:** Technical report that describes the reconnaissance an exploitation operations and the consequences of such operations for the environment, with a view to protection and conservation.

**Mining Exploration:** Set of administrative, office and field work, superficial as well as underground, necessary to locate, study and evaluate a deposit.

**License:** Authorization granted by the Directorate or the Ministry to an applicant, to accomplish reconnaissance, exploration and exploitation operations.

**Minerals:** Substances formed by natural processes, by the integration of elements substantially originating from the earth's crust, that exist in the territory of the Republic.

**Mining:** Comprises all reconnaissance activity, exploration and exploitation of mining products.

**Mining Operations:** All and each of the activities that have the development of mining as a goal.

**Period of Reconnaissance:** Consecutive six month period, counted from the day following the date of notification to the interested party of the resolution of the grant of a mining right of reconnaissance.

**Mining Products:** Rocks or minerals extracted from a deposit or the products resulting from their separation.

**Mining Reconnaissance:** Set of administrative, office and field work, superficial as well as underground, necessary to locate and identify areas for mining exploration.

**Royalty:** Compensation paid to the State for the exploitation of mining products or of construction materials. A royalty is not considered a tax.

**Decorative Rock:** All those mineral substances that are used for ornament, such as: marbles, serpentinites, gneiss, phyllites, travertine, onyx, jasper and any other related material.

**Right of Way:** It is understood by a right of way, all those arrangements that it will be necessary to constitute, having as objective to permit mining operations and especially reconnaissance, exploration and exploitation activities.

**Mining Right Titleholder:** Any person that obtains a favorable resolution from the Ministry or from the Directorate, to undertake mining operations pursuant to this Law.

**Deposit:** Any accumulation of rocks or natural concentration of one or more minerals.



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## CHAPTER II

### MINING ADMINISTRATION

**Article 7. Public Need and Utility.** It is of public need and utility, the promotion and development of mining operations in the country, as well as their technical and rational exploitation.

**Article 8. Ownership of Deposits.** The State is owner of all deposits that exist within the territory of the Republic, its continental platform and its exclusive economic zone. Its domain over the same is inalienable and imprescriptible and these deposits enjoy the guaranties and prerogatives that correspond to all properties of the State.

**Article 9. Applicant for Mining Rights.** Any individual, person or corporate, national or foreign, may be the holder of mining rights provided they comply with the requirements of this Law and regulations.

**Article 10. Prohibitions to Acquiring Mining Rights.** Without prejudice to dispositions in other laws, any mining rights, can be acquired by:

- a) Those who holds an office by popular vote, Ministers and Vice-Ministers of States.
- b) All functionaries or public employees that have, directly or indirectly, capacity to intervene, rule or resolve in mining rights cases.
- c) Insolvents persons with the State or with the municipalities with respect to the fulfillment of such obligations related to the mining activity, provided that fulfillment of such obligations is found to be unresolved.

In the case of the persons referred to in clauses a) and b) of this Article, these prohibitions will continue for one year after leaving office, excluding mining rights obtained prior to the date on which the office was assumed or rights acquired by inheritance.

**Article 11. Mining Right by Inheritance.** With the death of the titleholder, a mining right is transferable in favor to his or her heirs, who are obligated to present previously to the Directorate an authenticated photocopy of the Certificate of Death of the deceased titleholder of the mining right, as well as an authenticated photocopy of the probated will and testament, in which appear the heirs to said mining right. The heirs must register the ownership of the mining right in the Registry Department of the Ministry the Directorate, at the request of the heirs, and so that operations of mining right are not interrupted, may grant provisional authorization for continuance of same.

**Article 12. Priority of Applications.** When more than one request for a mining right is presented for the same area, the application presented first will have priority. If it an outstanding reconnaissance license exists, the titleholder will have full priority to request and obtain the license of exploration in areas comprised within the reconnaissance license.

In the same manner, if an outstanding license of exploration exists, the titleholder will have full priority to request and obtain the license of exploitation in areas comprised within the license for exploration. In both cases, the titleholder must make the application before the end of the term of the reconnaissance or of the exploration license and comply with the requirements of this Law.

**Article 13. Unit of Measure of Area.** For the purposes of this Law, the measure unit to be used for the areas granted of a mining right is the square kilometer.

**Article 14. Augmentation of Licenses.** In the case of reconnaissance and exploration licenses, when different minerals than those authorized are discovered, the titleholder has the right to augment the license to include the new minerals.

**Article 15 Territorial Extension.** The reconnaissance licenses are granted for areas not less than five hundred square kilometers nor greater than three thousand square kilometers; licenses of exploration are granted for areas up to one hundred square kilometers and licenses of exploitation for areas up to twenty square kilometers.

Notwithstanding, the Ministry may grant licenses of exploration or of exploitation for greater areas, when deemed necessary with respect to the importance of the mining project, said need having been demonstrated with a technical-economic study signed by a registered professional.

**Article 16. Advisory and Technical Assistance.** The Directorate will provide the following services:

1. Advisory and technical/administrative assistance to applicants and mining right titleholders.
2. Information on abandoned or expired mining rights, as well as on the favorable areas for exploration or exploitation of mineral resources, when such information is available in the Directorate.

**Article 17. Real Property.** The license of exploitation is considered a real property title of limited term. The license is a title, susceptible of recording in the Registry of Property.

**Article 18. Mortgage of a License.** The real right granted, is mortgageable for the exclusive purpose of obtaining financing for operations within the license of exploitation.

**Article 19. Mitigation Study.** The titleholders of either reconnaissance or of exploration licenses must present a mitigation study, related to the mining operations to be carried out in the authorized area. This will be presented to the Directorate before beginning corresponding work and will be resolved within a period of thirty days. If said period lapses without resolution, the submitted study will be deemed to be accepted.

**Article 20. Environmental Impact Study.** Persons interested in obtaining a mining exploitation license will present an environmental Impact Study for its evaluation and approval to the corresponding entity which will be a requisite for the granting of the corresponding license. This study will be presented to the National Commission of the

Environment and when the area for exploitation is located within the limits of an area under protection it will be also presented to the National Council of Protected Areas. Such study will be presented before beginning the corresponding projects and will be resolved within thirty days. After this time and not being resolved, it will be taken as accepted.

### CHAPTER III

#### RECONNAISSANCE

**Article 21. License and Determination of Area:** The reconnaissance license confers to the titleholder the exclusive right to identify and locate possible areas for exploration, within the license's territorial limits and to unlimited depth in the subsoil.

The area of the license will be constituted by a closed polygon not less than five hundred square kilometers nor greater than three thousand square kilometers, defined by UTM coordinates, with sides oriented in north – south and east – west directions, or by international or the maritime coastal boundaries.

**Article 22. Form of Grant:** The Ministry, through the Directorate, will grant the reconnaissance license, extension or assigning of the same, issuing a corresponding administrative resolution to the effect.

Said license will be granted for a six month term, which may be extended at the request of the titleholder for an additional period of up six months. The reconnaissance term is extendable without further process if the request for extension is presented before the expiry of the license.

When the titleholder of a reconnaissance license, within the period of validity of the same, opts to request a license of exploration, the term of the reconnaissance license is extended until the grant of the license of exploration. The Directorate will have a maximum term of thirty days to resolve the request.

**Article 23. Obligations of the Titleholder:** The titleholder of a reconnaissance license is obligated:

- a) To begin field projects within a maximum of thirty days, beginning on the day following the notification of the resolution of the granting of the license.
- b) To give immediate notice to the Directorate of the finding of minerals different from those comprised in the license.
- c) To present to the Directorate within a three month period from the completion of each period of reconnaissance a report, duly signed by a qualified, registered professional, that contains the following points:
  1. Name and association of the minerals recognized in the area.
  2. Localization of possible deposits.

3. Description of operations and projects carried out, in office as well as field, including plans and maps, as well as the amount of the expenditure incurred.
- d) To compensate totally for the damages and prejudices caused to third persons in undertaking operations.
- e) To give notice to the Directorate of any change of address for the receipt of notices.

## CHAPTER IV

### EXPLORATION

**Article 24. License and Determination of Area.** The license of exploration confers to the titleholder the exclusive right to locate, study, analyze and evaluate the deposits which have been granted, within the license's territorial limits and to unlimited depth in the subsoil.

The area of the license will be constituted by a closed polygon not greater than one hundred square kilometers, delimited by UTM coordinates, with sides oriented in north – south and east – west directions, or by international or maritime coastal boundaries.

**Article 25. Form of Grant.** The Ministry, through the Directorate, will grant a license of exploration, extension or cession of the same, issuing a corresponding administrative resolution to the effect.

Said license will be granted to a maximum term of three years, and may be extended by request of the titleholder for up to two additional periods of two years each, having to reduce the titled area by fifty percent with each extension. In duly justified cases, the Directorate may authorize reductions to the outstanding area of less than fifty percent. The term of exploration will be extended without further process if the request for extension is presented before of the expiry of the license.

When the titleholder of a license of exploration, within the period of validity of the same, opts to request a license of exploitation, the term of the license of exploration is extended until the license of exploitation is granted. The Ministry will have a maximum term of thirty days to resolve the request.

**Article 26. Obligations of the Titleholder.** The titleholder of an exploration license is obligated:

- a) To begin field projects within a maximum period of ninety days, beginning on the day following the notification of the resolution of the granting of the license.
- b) To give immediate notice to the Directorate of the finding of minerals different from those comprised in the license.

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- c) To present to the Directorate within three months of the complete exploration year a report, duly signed by a qualified registered professional, that contains the following points:
1. Name and association of the explored minerals.
  2. Description of the deposits, describing their location.
  3. Description of operations and projects carried out, in office as well as field, including plans and maps, as well as the amount of expenditure incurred.
  4. Results of physical tests, beneficiation, metallurgy and chemical analyses performed, or a declaration of the fact that these were not made.
  5. The final annual report should contain the estimate of the volume of the deposits located.
- d) To compensate totally for, damages and prejudices caused to third person in the undertaking of operations.
- e) To give notice to the Directorate of the change of address for the receipt of notices.

## CHAPTER V

### EXPLOITATION

**Article 27. License of Exploitation.** The license of exploitation confers to the titleholder, the exclusive right to develop the deposits which have been granted to him, within the license's territorial limits and to unlimited depth in the subsoil.

**Article 28. Form of Grant.** The Ministry will grant a license of exploitation, its extension or cession of the same, issuing a corresponding administrative resolution to the effect.

Said license is granted for a maximum term of up to twenty five years, and may be extended at the request of the titleholder for another period of up to twenty five years. The term of the license of exploitation can be extended without further process if the request for extension is presented before the expiry of the license.

**Article 29 Determination of Area.** The area of exploitation will constitute a closed polygon not greater than twenty square kilometers delimited by UTM coordinates, with sides oriented in north – south and east – west directions, or by international or coastal boundaries.

**Article 30. Augmentation of Minerals.** When minerals different from those authorized in the license of exploitation are discovered, the titleholder will have the right to augment the license so as to include the new minerals immediately. The request of augmentation should be accompanied by a judgment issued by a qualified registered professional certifying, the existence of such minerals.

**Article 31. Obligations of the Titleholder.** The titleholder of the license of exploitation is obligated to:

- a) To present a copy of the environmental impact study approved by the National Commission of the Environment prior to beginning the exploitation.
- b) To begin operations leading to the exploitation of the deposit within a maximum term of twelve months, counted from day following the notification of the resolution that grants the license of exploitation. Notwithstanding, said term may be extended when the characteristics of the projects require it or when additional circumstances justify it.
- c) Technically exploit the deposit.
- d) To pay within the prescribed term the corresponding surface fees and royalties.
- e) To compensate totally for damages and prejudices caused to third persons in the undertaking of operations.
- f) To submit an annual report in writing to the Directorate, within three months following the end of each calendar year, which shall contain:
  - 1. Name and address to receive notices from the titleholder of the mining right.
  - 2. Name of the extracted mining products.
  - 3. Weight or volume of the extracted mining products.
  - 4. Name, weight or volume of each mining product sold locally or exported indicating the buyer and selling price.
  - 5. Technical summary of the mining operations performed.
  - 6. Amount of royalties and fees paid during the period, attaching a photocopy of payment receipts.
- g) To register the mining right in the General Registry of Property.
- h) To present within a six month term, counted from the date of notification of the resolution of the granting of the license, an authenticated photocopy of the Commercial Patent.
- i) To permit the inspection of accounting documentation related to the mining right for the current calendar year, providing access to the appointed auditor.
- j) To present a report and plans indicating the actual state of the mine workings in the event of a temporary or definite suspension of operations.
- k) To give notice to the Directorate of the finding of other economically useable minerals.

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## PART II

### SPECIAL AREAS OF MINING INTEREST

**Article 32. Declaration of Special Areas of Mining Interest.** When it is in the interest of the State and with prior opinion of the Directorate, the Ministry through a decree will declare zones with mining potential as Special Areas of Mining Interest. If upon declaration, exploration or exploitation right already exist within the Special Area, these will remain in force and excluded from the Area.

**Article 33. Objective.** The Special Areas of Mining Interest will be declared for the purpose of:

- a) Facilitating the location and technical evaluation of deposits existing within them and, once the economic potential of the deposits is known, to proceed to the immediate utilization of same.
- b) Assuring the State that the utilization of the deposits will be undertaken by an individual or corporation with the technical and financial capacity to allow the rational, efficient and sustained exploitation of the evaluated mineral resources.

**Article 34. Motive for Declaration.** Special Areas of Mining Interest will be declared in areas where studies have identified or evaluated the existence of mineral resources of economic importance; in the case of studies by third parties, the favorable opinion of the Directorate is required.

**Article 35. Invitation to Tender and Award.** Within a six month term beginning with the coming into force of the Decree creating the Special Area of Mining Interest, the Ministry will invite to tender, at the domestic and international level, those interested in exploring or developing the Area and will have to award it or declared void within a period of thirty days following the date fixed in the Invitation. If the Area proceeds to award, this will consist of the extending of a license of:

- a) Exploration in the areas in which an evaluation of existing deposits does not exist; or,
- b) Exploitation in the areas in which evaluation of known deposits does exist.

The procedure for invitation to tender and award will be established in the Regulation of this Law.

**Article 36. Exemption from Invitation to Tender.** Areas exempt from invitations to tender referred in the previous article are areas to be evaluated by institutions or international organizations, through agreement or accord, and constitute an obligation of the State. When this agreement or accord is due, it will be proceeded as indicated in the previous article.

**Article 37. Voided Invitation to Tender:** In the case where no interested party responds to the invitation to tender, or that no tender received fulfills the requirements, the Invitation will be declared void. The declaration of the area will remain in force and the Ministry through the Directorate, may undertake evaluation projects in the area for a maximum period of three years, in which it will have twelve months to begin said projects.

Once the exploration projects have been concluded by the Directorate, or at expiry of the maximum period to complete them, the Ministry will invite to tender again, according to article thirty five of this Law.

If one or more applicants present themselves subsequent to the invitation to tender being declared void, these must comply with all the requirements established in the terms of reference of the invitation to tender, granting the mining right to the applicant which demonstrates greater technical and financial capacity according to the procedure established in the Regulation of this Law.

**Article 38. Cancellation of a Special Area of Mining Interest.** The cancellation of a Special Area of Mining Interest will be immediate in any of the following cases:

- a) When the twelve months established in the first paragraph of the previous article have lapsed and the Directorate has not begin any projects of exploration on the subject area.
- b) When the second invitation to tender is declared void as established in the second paragraph of the previous article.
- c) By decision of the Ministry, once the invitation to tender is declared void.

**Article 39. Applications for Mining Rights on Special Areas of Mining Interest.** Mining rights may not be granted which are distinct from mining rights derived from the invitation to tender within the special areas of mining interest during the period that the respective declaration is in force.

## PART III COMPETENCE AND ADMINISTRATIVE PROCEDURES

### CHAPTER I COMPETENT AGENCIES

**Article 40. Administrative Competency.** The State, through the Ministry and the Directorate, according to their attributes, will recognize, process and resolve all administrative problems related to mining operations defined in this Law, its Regulation and the mining sector in general



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## CHAPTER II

### APPLICATIONS

**Article 41. Requirements for Mining Rights Applications.** Any application must be presented to the Directorate in original and a copy of the brief and its annexes, and should comply with the following general requirements:

- a) Names and complete surnames of the applicant, age, civil status , profession or trade, nationality, domicile, official identification number or passport and place designated to receive citations and /or notices, in the case of an individual.
- b) In the case of corporate individuals, in addition to the relevant data of the previous clause, testimony or authentic copy of the articles of incorporation of the registered company, in definitive or provisional form, in the General Mercantile Registry of the Republic. For the company's request for a mining right to be admitted, their shares should be nominative only.
- c) Justification of those individuals appearing as proxy or legal representative, duly represented in their respective registers.
- d) Clear and precise petition of the class of mining right requested.
- e) An express declaration of the fact that no prohibition whatsoever exist to being titleholder of a mining right.
- f) Name with which the mining right will be designated, which should be different from the name of mining rights already in force or request in process.
- g) Location, description and extent of the requested area, accompanied by an original or photocopy of the topographic sheet at a convenient scale, duly signed by a registered Civil Engineer, Mining or Geological Engineer.
- h) The mining products proposed for reconnaissance, exploration or development.
- i) The term requested for the mining right.
- j) A general description of the work program to complete, duly signed by a registered civil engineer or geologist. The titleholder is obligated to fulfill said program or to provide notice of modifications that will be technically necessary.
- k) Place and date.
- l) Authenticated signature of the applicant.

**Article 42. Subsequent Negotiations.** In subsequent negotiations on the same matter, personal information regarding the applicant will not be necessary, but the name and the number of the case file must be identified.

**Article 43. Time to Correct Omission.** When an application is presented that does not comply with the requirements of this Law, a period of thirty days beginning from the corresponding notification will be granted to the interested party so as to correct it. In duly justified cases the Directorate may concede an extension of another thirty days. If the period expires without the party correcting the omissions cited, the application will be rejected and archived.

### CHAPTER III

#### PROCEDURES

**Article 44. Inspection of Area.** In applications for a License of Exploitation, the Directorate will order the inspection of the area in order to verify the parameters of the request; the inspection will be done within the thirty days following of the presentation of the completed request. The processing of the license may not continue without said inspection.

**Article 45. Edicts.** For an application for a License of Exploitation, at the expense of the applicant, the Directorate will order the publication of an edict, one time only, in the Official Daily Gazette and in another of large circulation in the country. Once in receipt of the edicts, the Ministry will emit a resolution within a period of thirty days.

**Article 46. Opposition.** Those considering themselves prejudiced by an application for a mining right may oppose the grant of same, formalizing their opposition before the Directorate at any moment prior to the dictating of the resolution of grant.

The opponent will state the facts which are the basis of its opposition, the legal supports attendant to it, the respective proofs and a formal petition, according to paragraphs a), b), c), k) and l) of the article forty one of the present Law.

If the opponent does not comply with all the requirements, notice will be given to comply within a period of ten days under penalty that no further process will be given to the petition.

**Article 47. Processing of Opposition.** A hearing will be given to the other party in respect to an opposition within a ten days period and with or without their response the opposition will be resolved within a period off thirty days. A hearing will be ordered and the parties must appear in person and not by means of proxy, with their respective evidence. The hearing will be recorded by means of proceedings. The decision issued resolving the opposition will be final in nature in the administrative area.

**Article 48. Final Resolution of Opposition.** Having exhausted the opposition procedure the license will be granted or denied, within a fifteen day period and the decision of the State will not be cause for any indemnization.

**Article 49 Registration of the Mining Rights.** The granted license must be registered within a period of ten working days in the Registry Department of the Ministry.

## CHAPTER IV

### SUBSTANTIATION, SUSPENSION, CANCELLATION AND EXTINCTION OF MINING RIGHTS

**Article 50. Substantiation.** A granted mining right is without substance if does not meet the requirements foreseen in this Law and its Regulation.

**Article 51. Causes for Suspension of Mining Operations.** With prior confirmation and based on the opinion of the Directorate, the Ministry, by means of resolution, will order the titleholder to suspend mining operations in the following cases.

- a) When risk or imminent danger to the life of persons or property exists.
- b) When workplace safety does not conform to the requirement of applicable laws.
- c) When operations contravene environmental regulatory laws.
- d) When surface fees are not paid according to this Law and its Regulation.
- e) When the corresponding royalties are not paid, according to this Law and its Regulation.
- f) By nonfulfillment of the requirements invoked in article eighty two of this Law.
- g) By failing to submit reports as required by this Law.
- h) When an obvious disproportion between the proven mineral reserves and the volume of exploitation exists and this disproportion cannot be duly justified.

Once grounds for suspension of a mining right are established, the Directorate will allow a period of fifteen days so that the party in question to pronounce itself in this regard and contribute evidence it considers relevant. At the end of this period, with or without a response from the party, the issue will be resolved.

**Article 52. Required Suspension.** When the titleholder of the License of Exploitation requests the suspension of exploitation activities for duly justified causes, the Ministry, with prior confirmation of the Directorate, will authorize a permit of suspension for a maximum period of two years; in the event of a refusal, the titleholder of the License of Exploitation shall continue with its operations.

**Article 53. Causes for Cancellation.** The Ministry will declare the caducity of a mining right for the following causes:

- a) In the case of a Reconnaissance License, when field works are not begun in the prescribed term of thirty days from the date of granting.
- b) In the case of the License of Exploration, when field works are not begun in the prescribed term of ninety days from the date of granting.
- c) In the case of License of Exploitation, when minerals may have been disposed of without authorization of the Directorate.
- d) In the case of License of Exploitation, when projects relating to the exploitation of the deposit are not begun in the term of twelve months from the date of its granting as may be determined through visual inspections by the Directorate.
- e) By proven and manifest resistance of the titleholder to permit the inspection, surveillance or supervision on the part of Ministry personnel.
- f) In the case of the License of Exploitation, by discontinuing the activities of exploitation for three years.

**Article 54. Causes for Extinction.** A mining right is extinguished by:

- a) Maturity of the granted term or of its extension, without the necessity of a declaration.
- b) Depletion of the deposit.
- c) Express renouncement by the titleholder, presented with an authenticated signature which will be effective as of the date of its presentation to the Directorate.
- d) Death of the titleholder, unless within a six month term, the legal heirs make use of the right established in article eleven of this Law.

**Article 55. Effects.** Declarations of insubstantiation, caducity and extinction will be made without prejudice of the responsibilities and obligations of law, proceeding as opportunity provides to cancellation of the respective records.

## CHAPTER V

### SANCTIONS

**Article 56. Competent Agency.** The Directorate is the competent agency to supervise, observe and monitor the fulfillment and application of this Law and its Regulation and to impose applicable sanctions according to this article. The procedure to impose sanctions will be the one established in the Tax Code.

**Article 57. Sanctions.** The following sanctions may be applied:

- a) A fine of three Units for the overdue presentation of the reports prescribed in this Law.

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- b) A fine of six Units for the omission of the presentation of the reports prescribed in this Law, without prejudice to presenting said reports, for which a one month term will be granted; with expiry of the above mentioned term, the Directorate will issue a new requirement, warning that it will proceed with suspension of the mining right.
  - c) A fine of three Units for the presentation of incomplete reports, said fine does not absolve the titleholder of presenting the lacking information.
  - d) A fine between one hundred and one thousand Units for the commercialization and purchase of minerals originating from illegal exploitations; if as a result of subsequent audits, it can be proven that commercialization and purchase of minerals originating from illegal exploitations continue, new fines will be levied, duplicating the initial amount until said activity ceases.
  - e) Any other infraction anticipated by this Law and not described in the previous clauses is assessable with a fine of between five and one hundred Units.

**Article 58. Illegal Exploitation.** The exploitation of minerals is considered illegal when undertaken without the possession of a License of Exploitation, except as established in article five of this Law.

In the event of illegal exploitation, the Directorate will order the violating party to immediately suspend operations and they will be additionally sanctioned with the fine established in clause d) of article fifty seven of this Law, under warning to the violating party that failing to respect the order will cause proceeding to be opened against them under the Penal Code.

## CHAPTER VI

### RECOURSE

**Article 59. Administrative Recourse.** Recourse to the Law of Contentious Administrative may be interposed against resolutions issued by the Ministry or the Directorate.

## PART IV EXCLUSIVE FUNDS AND FINANCIAL REGIME

### CHAPTER I EXCLUSIVE FUNDS

**Article 60. Exclusive Funds.** The fees and fines deriving from the application of this Law constitute funds exclusive to the Directorate and will be destined to the fulfillment of its objectives.

The aforementioned funds will be deposited by those obligated to do so in the National Treasury in a special account opened in the General Directorate of Accounting of the State of the Ministry of Public Finance, in the name of the “General Directorate of Mining”, who will be empowered to withdraw said funds, through orders of purchase and payment.

## CHAPTER II

### FINANCIAL REGIME

**Article 61. Royalties.** Royalties will be paid by:

- a) The titleholders of licenses of exploitation to:
  - 1) The State: for the extraction of mining products.
  - 2) The Municipalities: for the extraction of mining products within their jurisdiction. In the case of extraction occurring in more than one municipal jurisdiction, the royalty will be divided among the corresponding municipalities in proportion to the mining products extracted in each jurisdiction.
- b) Those who develop materials pursuant to article five of this Law to:
  - 1) The municipalities for the extraction of superficial clays, sands, rocks and any other materials directly applicable to construction, excluding decorative stone.

**Article 62. Determination of Royalties.** Royalties will be determined by judicial declaration of the volume of the marketed mining product based on the value of sale consigned in the national market or international stock exchange.

**Article 63. Percentage of Royalties.** The percentages of the royalties to be paid for the exploitation of minerals to the State will be of one half percent and to the municipalities of one half percent and, for those who develop materials pursuant to article five of this Law, one percent to the respective municipalities.

**Article 64. Form and Term of Payment.** Royalties will be settled and paid annually within the thirty days following the end of each calendar year, to the State and the respective Municipality. The titleholder will annex simple photocopies of the vouchers that demonstrate payment of the royalties to his annual report. Not paying of the royalties will be subject to an interest equal to the average interest in the banking system.

**Article 65. Executive Process.** The lack of fulfillment of the obligations derived from the present Law, confers to the creditor the right to collection before the competent courts, without prejudice to corresponding criminal responsibilities.

**Article 66. Fees.** Mining rights titleholders will pay, as applicable, the following fees :

- 
- a) Granting fee for a mining right: paid in quetzales, in advance, at the moment of the notification of the grant of a mining right, in the amount of one thousand three hundred quetzales.
  - b) Area Fee for a Reconnaissance License: One hundred twenty quetzales per square kilometer or fraction thereof, paid in advance and one time only, during the first month of the corresponding reconnaissance period.
  - c) Area Fee for a License of Exploration: Paid annually, in advance, during the first month of each exploration year in the following amounts of:
    1. Three Units per square kilometer or fraction thereof, in each of the first three years.
    2. Six Unit per square kilometer or fraction thereof, in each year of the first extension.
    3. Nine Units per square kilometer or fraction thereof, in each year of the second extension.
  - d) Area fee for a License of Exploitation: Paid annually in advance, in the month of January of each calendar year, in the amount of twelve Units per square kilometer or fraction thereof. The payment for the first year will be made at the time of notification of the granting of the license and its amount determined proportionally, taking into consideration the time remaining between the date of the grant and the thirty first off December of the same year.
  - e) Transfer fee for a License of Exploration: Paid in quetzales, in the amount of three Units per square kilometer of fraction thereof, prior to notification of the favorable resolution of such a transfer.
  - f) Transfer fee for a License of Exploitation: Paid in quetzales, in the amount of five Units per square kilometer or fraction thereof, prior to notification of the favorable resolution of such a transfer.

**Article 67. Value of the Units.** The Units referred to in this Law, will have a value of one hundred ( Q 100.00 ) to one thousand ( Q 1,000.00) quetzales. For their application, the Ministry of Energy and Mines will issue in the first month of the year when this Law is in force, the Ministerial Decree defining the value of the Units.

## PART V

### CONTROL OF MINING OPERATIONS

#### INSPECTION AND CONTROL

**Article 68. Inspection and Control.** The Department will inspect the accounting operations of mining rights titleholders for the payment of area fees, royalties and fines; as

well as request any supplier of minerals that he demonstrate the origin of same, practicing for the effect the necessary audits and settlements.

**Article 69. Payment Order.** The Department will issue orders of payment corresponding to royalties, area fees and fines the State and the Municipalities should receive in the form and manner established by this Law and its Regulation.

**Article 70. Delay.** The delay o payment of royalties, area fees, adjustments or any other payment to be made will cause corresponding interest to be charged according to the rate of interest fixed by the Public Finance Ministry for delay in tax payments.

## **PART VI ADDITIONAL AND COMMON DISPOSITIONS**

### **CHAPTER I USE AND UTILIZATION OF WATERS**

**Article 71. Waters in the National Domain and of Common Use.** The titleholder to a mining right may use and rationally utilize water provided that said use does not affect the permanent exercise of the rights of others.

The use and utilization of waters that run within their natural riverbeds or are found in lagoons, that are not of public domain or of common use, will be regulated according to the dispositions of the Civil Code and of laws governing the matter.

Whosoever makes use of water in their mining operations, upon returning it, must effect its adequate treatment to avoid contamination of the environment.

### **CHAPTER II RIGHTS OF WAY**

**Article 72. Rights of Way.** Legal rights of way comprise those of passage, including construction of paths, trails, roads, excavations and bore holes; those of water, aqueduct and all those defined in ordinary legislation and that may be necessary for the undertaking of corresponding technical studies, including the right of inspection and permanent maintenance.

**Article 73. Rights of Way Over Public Property.** In the case that a titleholder to a mining right needs to establish rights of way over public property, agreements should be reached with the corresponding authorities. Dependencies of the state and autonomous entities should cooperate in the establishment of the right of way in question.

**Article 74. Term of Rights of Way.** Rights of way will be granted for the same term for which the mining right and its extension has been granted.



In the event the right of way is extinguished for any motive, the owner or possessor of the property will recover full dominion over the affected area and not be obligated to return the compensation received.

**Article 75. Rights Implied by the Constitution of Legal Rights of Way.** The following will apply to all titleholders for the establishment of rights of way referred to in the present chapter, in addition to the rights established in the Civil Code.

- a) To undertake the works and installations necessary for mining operations in the lands affected by the right of way.
- b) The use of the area of the right of way for the inspection, maintenance, repair and modification of the corresponding facilities.
- c) The delimitation of lands for dams, conducting channels, spillways, classifiers, reservoirs, pressure chambers, pipes, drainage channels, excavations, bore holes, access roads and all other works as may be strictly required.
- d) The discharge of waters via existing riverbeds in the permitted property, as long as conditions permit and environmental protection laws are complied with.

**Article 76. Obligations Implied in the Constitution of Rights of Way.** Establishment of rights of way referred to in the present chapter confer the following obligations on the owners or possessors of the properties on which the rights of way are constituted:

- a) To permit the construction of the facilities that correspond, as well as to permit access to inspectors and workers involved in the transportation of materials and necessary equipment for projects of the mining operation.
- b) To not undertake construction, planting or other projects within area of the right of way; with the exception of cultivation, planting and the use of the land that does not affect said activities and are undertaken at the entire risk and account of the proprietor, without prejudice to the stipulations of the previous clause.

**Article 77. Compensation.** The titleholder of a mining right that intends to constitute a legal right of way shall pay to the proprietor or owner of the property the indemnity for the damages and prejudices that are anticipated could be caused to the property in advance and in cash. The amount of the indemnity shall be fixed by mutual agreement of the titleholder of the mining right and the owner or possessor of the property that will suffer the right of way. In the case that an agreement with respect to the amount of the indemnity cannot be reached, any of the parties may come before a civil court judge who will render a definitive resolution against which no appeal may be made, or before an arbiter according to the Law of Arbitration.

**Article 78. Opposition to the Constitution of the Right of Way.** If the owner or possessor of the real property in question does not agree to the granting of a right of way, the interested titleholder will state, via notarial record said situation, appearing before a civil court judge so as to resolve through process the imposition or not of a right of way. The resolution that is issued will not be subject to appeal.

**Article 79. Declaration of Right of Way.** In the resolution dictated by the judge declaring the constitution of the right of way, the amount of the indemnity to be paid will be established and a term of not greater than five days from the last notice will be fixed so that the owner or possessor of the property can authorize the Public Registry of the constitution of the right of way under order to grant without further process so that the beneficiary of the right of way can make payment of the amount of the indemnity.

**Article 80. Grant of Right of Way by Default.** Should the obligated party default, the judge will order the corresponding registry of the right of way within five days following the expiry of the term fixed; the titleholder will deposit the amount of the indemnity fixed, in advance, in the Treasury of the Judicial Branch in favor of the proprietor or owner of the land. If said requirement is not fulfilled the judge will not authorize the Public Registry constituting the right of way.

### CHAPTER III

#### WASTE, SAFETY CONDITIONS AND PROHIBITIONS

**Article 81. Waste.** Mining operations should be accomplished avoiding, as is possible, waste and destructive practices.

**Article 82. Safety Regulation of Mining Operations.** The Directorate will establish and distribute the general basic safety guidelines to the titleholders of licenses of exploitation, for the creation of safety regulations for each mining operation according to the characteristic of the project. In the event of nonfulfillment of safety conditions, the Directorate may order the suspension of operations.

**Article 83. Presentation and Approval of Safety Regulation.** The titleholder of a license of exploitation will present the safety regulation that will be mandatory observed at the operation for the approval of the Directorate, within twelve months from the beginning of operations.

**Article 84. Prohibitions to Carry on Mining Operations in Given Areas.** The Directorate will forbid the execution of mining operations in areas where technical criteria indicating they could affect persons and goods. The regulation will determine the scope of this prohibition. Notwithstanding, when the interested party can prove with the judgment of the related public institution that the operations will not cause damages to said persons or goods, the Directorate may authorize them.

### CHAPTER IV

#### ADDITIONAL PROVISIONS

**Article 85. Exporting Mining Products.** Mining products destined for export must originate from licenses of exploitation.

Exporters who are not titleholders of licenses of exploitation, will request the credentials of export, complying with the applicable portions of article forty one of this Law and be granted without further process for the term of one year and renewable each year upon request. The following documents will be attached to the request:

- a) Letter from the mineral provider who will be a titleholder of a License of Exploitation which shows the commitment to supply said products.
- b) Quantities to export estimated in volume or weight.
- c) Country to which the mining products will be exported.

**Article 86. Import Tax.** The titleholder of a mining right, may import free from tariff and import duties, machinery, equipment, parts, accessories, materials and explosives, that will be used in its mining operations.

**Article 87. Exoneration Procedure.** The request for an exoneration referred to in the previous article will be presented to the Directorate and, with its opinion be resolved by the Ministry of Finance within a term not to exceed forty five days.

**Article 88. Exonerated Taxes.** The beneficiary of an exoneration will pay the exonerated rates and import duties when using of disposing of the imported goods for ends other than those of its mining operations, except when the acquirer is the State or other person in possession of exoneration benefits.

Five years after the liquidation of the import policy the beneficiary may freely use the exonerated goods.

## PART VII

### FINAL PROVISIONS

**Article 89. Applications in Process.** Applications that are in process will be adjusted at once to the arrangements of this Law and be granted pursuant to same.

**Article 90. Application of the Law.** Those in possession of previous mining right will be administered according to the present Law, and in no case will they lose previously acquired right. Notwithstanding, the arrangements of the new Law concerning exercise and discharge which refer to extinction of rights will prevail.

**Article 91. Transitory.** All declared Areas of National Mineral Reserve, are converted automatically to Special Areas of Mining Interest with the promulgation of the present Law.

**Article 92. Transition.** The value of the Unit referred to in this Law will be of one hundred quetzales (Q 100.00), until the Ministry of Energy and Mines issues the corresponding ministerial decree.

**Article 93. Regulation.** The Executive Branch of the Government, through the Ministry of Energy and Mines will emit the Regulation of this Law in a term of sixty days.

**Article 94. Derogation.** Mining Decree Law Number 41 – 93 of the Congress of the Republic is hereby abolished.

**Article 95. Force.** The present Law will come into force the day following its publication in the Official Daily Gazette.

BE SENT TO THE EXECUTIVE BRANCH FOR ITS SANCTION, PROMULGATION AND PUBLICATION.

GIVEN IN THE NATIONAL PALACE OF THE LEGISLATIVE BRANCH, IN GUATEMALA CITY, THIS ELEVENTH DAY OF THE MONTH OF JUNE NINETEEN HUNDRED AND NINETYSEVEN.

ARABELLA CASTRO QUIÑÓNEZ  
PRESIDENTA

ANGEL MARIO SALAZAR MIRÓN  
SECRETARIO

MAURICIO LEÓN CORADO  
SECRETARIO

**ALVARO ARZÚ IRIGOYEN**  
**PRESIDENTE DE LA REPUBLICA**

Official Publication as published in the Diario de Centro América, July 17, 1997

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***ANNEX***

**MINISTRY OF ENERGY AND MINES**

It has been agreed that the value of each Unit shall be fixed at the sum of Q 100.00; to remain in force until December 31, 1997.

**AGREEMENT NUMBER OM-318-97**

Guatemala, September 8, 1997

**The Ministry of Energy and Mines****WHEREAS**

In agreement with that established in article 125 of the Political Constitution of the Republic of Guatemala, the rational and technical exploitation of hydrocarbons, minerals and other non renewable natural resources, is hereby declared to be of public utility and necessity , thereby requiring that the State bring about the essential conditions for its exploration and subsequent exploitation.

**WHEREAS**

The State should incentive the exploitation of the country's mineral resources and also to bolster the conditions needed to ensure that exploitation; notably with regard to those areas which benefit from a profusion of said resources.

**WHEREAS**

The Mining regulations contained in Legislative Decree Number 48-97 establish a system of units as the norm for the different forms of payments to be made in favor of the State, consequently determining, by means of article 67, that the Ministry of Energy and Mines shall assume the responsibility of issuing, within the first month of said regulation's coming into force, the Ministerial Agreement by means of which the value of these units shall be fixed.

**THEREFORE**

In the fulfillment of the functions as conferred by article number 67 of Decree Number 48-97 of the Congress of the Republic of Guatemala, second article, subsections a), e) and k) of Legislative Decree number 57 – 78 and article 2 of Governmental Decree 73 – 84.

**IT IS RESOLVED THAT:**

**Article 1º.** The value of each Unit as referred to in the Mining Regulation shall be fixed at one hundred Quetzales (Q 100.00) from the date on which this agreement shall come into force until December 31, 1997.

**Article 2º.** It is determined that, from the first day of January, 1998, the value of the units shall be calculation based upon the value of these as of December 31, 1997 a value which shall then be divided by the reference purchasing exchange rate (of U\$ dollars) as settled by the Bank of Guatemala on the same day that this decree shall come into force, and that the result of this division shall thereupon be multiplied by the reference purchasing exchange rate as settled by the Bank of Guatemala on the day of payment; governed by the following formula:

$$U = \frac{100}{T} \times t, \text{ where}$$

U = The value of the Units on the day of payment

T = The reference purchasing exchange rate as set by the Bank of Guatemala on the same day that this agreement shall come into force.

t = The reference purchase rate as set by the Bank of Guatemala on the day of payment.

**Article 3º.** The regulating procedure, as detailed in the previous Article, is both unique and definitive, in accordance with that established in article 67 of the Mining Regulation.

**Article 4º.** The present agreement shall come into force on the day after its publication in the Official Daily Gazette.

**COMMUNICATE ALL:**

LEONEL LÓPEZ RODAS  
Minister

RODOLFO VALENZUELA SARAVIA  
Vice-Minister

# REGULATION



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UNOFFICIAL TRANSLATION: All legal matters must be solved accordingly to document published in the Official Gazette No. 65 on May 22, 2001.

**EXECUTIVE BRANCH**

**MINISTRY OF ENERGY AND MINES**

**REGULATION OF THE MINING LAW**

**GOVERNMENTAL AGREEMENT NUMBER 176-2001.**

Guatemala May 11, 2001.

**The President of the Republic**

**WHEREAS**

By the Law Decree number 48-97 of the Congress of the Republic, the Mining Law was promulgated with the purpose of regulating the development of mining activities.

**WHEREAS**

For the appropriate application of the Mining Law, norms have to be developed in form of regulation, whose purpose is according to law to dictate the needed legal dispositions.

**WHEREAS**

The Regulation of the Mining Law included in the Governmental Agreement number 8-98 is not congruent with the norms included in the Mining Law, being necessary to revoke it, issuing a new one.

**THEREFORE**

In the exercise of the functions conferred by clause e) of article 183 of the Political Constitution of the Republic of Guatemala

**DECREES**

The following

**REGULATION OF THE MINING LAW**

**CHAPTER I**

**GENERAL DISPOSITIONS**

**Article 1. Object.** The present Regulation has the objective to develop the precepts established by the Mining Law, Decree number 48-97 of the Congress of the Republic.

**Article 2. Abbreviations.** In addition to the abbreviations included in the Mining Law, in this Regulation the following will be used:

LAW: Mining Law, Decree 48-97 of the Congress of the Republic.

REGULATION: Regulation of Mining Law.

UNIT: Administrative Unit for Environmental Control of the Ministry of Energy and Mines.

CONAP: National Council of Protected Areas (Consejo Nacional de Areas Protegidas).

**Article 3. Identification of Applications and Licenses of Mining Rights.** For control and identification purposes, the Directorate will correlatively numerate all license applications and also the files of granted licenses, which must be made of interested person knowledge, placing in front the following initials:

1. Reconnaissance License application: SR-
2. Exploration License application: SEXR-
3. Exploitation License application: SEXT-
4. Reconnaissance License: LR-
5. Exploration License: LEXR-
6. Exploitation License: LEXT-

All subsequent application presented by interested person must also be identified in the way established in this article.

**Article 4. Mining Operations.** The definition of Mining Operations included in article 6 of the Law, refers expressly to activities of mining reconnaissance, exploration and exploitation.

**Article 5. Register Inscription.** Titleholder of an exploitation license is obliged to inscribe his/her mining right in the General Register of the Property, being enough as a title the firm ministry resolution duly notified.

**Article 6. Area Computation.** In order to standardize computation of the requested area, the UTM coordinates of the polygon vertices must be presented and computed with four decimals, and the area will be calculated by the Pennsylvanian Method.

## CHAPTER II

### ENVIRONMENTAL DISPOSITIONS

**Article 7. Obligation to Present Environmental Impact Study.** When it is proceeding, mining operations must have, previously to start operations, an environmental impact study duly approved.

**Article 8. Procedure for Environmental Impact Study.** The environmental impact study must be presented by interested person, in original, to the Ministry of Environment and Natural Resources, and a copy to the Unit. Once received the environmental impact study, and after issuing opinion, the Unit will send it to the Directorate for reviewing of strictly technical aspects. After the maximum thirty days term if its presentation, the study will be

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returned to the Ministry of Environment and Natural Resources, with appropriate recommendations.

**Article 9. License Granting.** Once the environmental impact study duly approved by the Ministry of Environment and Natural Resources is presented, the Directorate or the Ministry will issue the corresponding license.

### CHAPTER III

#### EXPLOITATION OF CONSTRUCTION MATERIALS

**Article 10. Exploitation of Construction Materials with Commercial or Industrial Purposes.** For exploitation of construction materials with commercial or industrial purposes, the interested person must request to the Directorate the corresponding license, complying with all requirements foreseen in the Law.

**Article 11. Construction Materials Without Commercial or Industrial Purposes.** Construction materials mentioned in article 5 of the Law will not be considered as commercial or industrial when they are going to be used with social or public purposes, and serve for carrying out works by municipalities, state institutions of any kind, and nongovernmental entities with nonprofit purposes.

**Article 12. Technical Exploitation.** Municipalities in their respective jurisdictions must watch that construction materials exploitation be made in a technical way, with full attendance of current environmental legislation, and that materials whose exploitation has been authorized for noncommercial or industrial purposes are not commercialized.

**Article 13. Technical Ruling.** The Directorate will issue the rulings that tend to favor technical utilization of materials mentioned in this chapter.

### CHAPTER IV

#### SPECIAL AREAS OF MINING INTEREST

**Article 14. Invitation to Tender and Adjudication.** The Ministry, in a six month term starting from the date of issuing of decree declaring an area of mining interest, will convene at national and international level, to those interested in carrying mining operations in the area subject to declaration. The decree for declaration of areas of mining interest must contain:

- a) Official invitation to tender at the national and international contest of the special areas of mining interest declared by the Ministry, according to the Law.
- b) The dates for invitation to tender, receipt of offers and adjudication of designated area or areas subject to contest.
- c) Approval of bases that regulate the contest.
- d) The place where offerers must register and how to carry out the payment for cost of the bases of the contest.

**Article 15. Requirements for Convening.** In addition to requirements stated in previous article, the bases for invitation to tender and adjudication will contain:

- a) Requirements of information and general dispositions applicable to all offerers, and according to the nature of the project subject to contest.
- b) A technical report of the project with a description of area of mining interest subject to contest.
- c) In case of exploitation, a summary of exploration works carried out previously, a report with results of evaluations made of existing deposits, and support from maps, statistical and technical data, and all needed data.

The bases for each particular contest, made and approved by the Ministry within the legal framework and State mining policies concerned, will be the basic rules to which offerers will be subject during the process of contest.

**Article 16. Qualifying Commission.** For receipt and qualification of offers, the Ministry will appoint a Qualifying Commission, which will be composed by three members, one of each of the following divisions of the Ministry: General Directorate of Mining, Department of Law Advisory, and Department of Auditory and Supervision.

**Article 17. Attributes of the Qualifying Commission.** The Qualifying Commission will receive, analyze and qualify offers that are presented and must, depending on the situation, declare that the contest is void or adjudicated. In each case, they must submit a written report to the Superior Office of the Ministry. All acts of the Qualifying Commission must be signed by its members, being those responsible for the truthfulness of the facts contained in these acts.

## CHAPTER V

### APPLICATIONS AND NOTIFICATIONS

**Article 18. Requirements of the Applications.** Every application for mining right presented before the Directorate must comply with the requirements stated in the article 41 of the Law. All further exertions must comply with issues stated in article 42 of the Law.

**Article 19. Adjacency of Applications.** When a application is adjacent to one or more mining rights, whose sides are not oriented North-South, East-West, the limits of the new application must be adjusted to orientation of actual limits, as indicated in articles 21, 24 and 29 of the Law.

**Article 20. Time Extension of Exploration License.** The term of the exploration license will be extended without further proceedings, when the application compies with area reduction established in the Law.

When area reduction is less than 50% established in the Law, the application must be presented two months before expiration of the license or its extension, for approval by the Directorate.

**Article 21. Extension or Partial Resignation of License Area.** The titleholder of a mining right can request to the Directorate the extension or partial resignation of his licence area. For this cause he can request it in any moment when his mining right is standing, enclosing to the application the corresponding technical information. The Directorate will solve authorizing or rejecting the application.

**Article 22. Obligation to Notify.** Every resolution must be informed to the interested person in a legal way and without this, such person is not obliged and cannot be affected in his rights. The resolution must also be notified to the other persons who are referred to or affected by the resolution.

**Article 23. Place for Notification.** Notifications must be made to the interested person on the address stated in his original application, according with letter b) of article 41 of the Law, whilst he does not state in written a different place.

**Article 24. Deliver of Copies.** When practicing a notification, a copy of issued resolution and necessary documents must be delivered to the notified person.

**Article 25. Term for Notification.** All notifications must be delivered in a maximum term of ten days, counting from the next day after issuing the resolution, and the person responsible for its delivery is warned that lack of complying will be sanctioned as indicated in the Civil Service Law.

**Article 26. Form of Practicing Notifications.** For practicing a notification, the notifier will go personally to the place indicated by the interested person. If he does not find the interested person, he will notify in writing to relatives, employees or any appropriate adult person that it is found in this place, or remains usually in it. If he does not find any person to whom to notify, or if the person is there but refuses to receive the notification, the notifier will fix it to the door, and will explain this in writing on the copy of notification.

When the notifier knows, by personal information or other information received in the place, that the person to be notified is dead or is out of the Republic of Guatemala, he will avoid to notify, he will put this information in writing, and will inform to the Directorate in order to solve this as proceeds. In the case of corporate persons, dispositions contained in this paragraph do not apply.

The notifier who practices a notification in a different way as established in this paragraph will be sanctioned in the way stated by Civil Service Law.

**Article 27. Content of Notification.** All notifications must contain:

- a) Precise identification of file, according with matters established in article 3 of this Regulation, and identification and date of resolution.
- b) Complete names and surnames of notified person. In case of a corporate person, its correct denomination, as appears in the file.
- c) Correct address, date and time of notification.
- d) Names and surnames of person to whom the notification is delivered.
- e) Explanation of notification delivery or fixing it to the door.

- f) Testimony that the notification was signed by person who received it or if he refused to sign it.
- g) Signature of notifier.
- h) Stamp from the Directorate.

No figures will be used in the notifications, and the same must be written in letters, but the figures can be written inside parentheses, neither observations or notes can be made in the same, except those made by the notifier related to the way in which notification was carried out.

**Article 28. Notifications by Commission.** When the notifications must be delivered in places where the notifiers of the Directorate can not make them, this will commission to the Municipality or Departmental Government concerned. The notification will be carried out in the way foreseen in this chapter, and the person who practices it must return immediately the notification file to the Directorate.

## CHAPTER VI

### DETERMINATION OF QUOTATION VALUES, CALCULATION OF ROYALTIES, INTERESTS, ADJUSTMENTS AND PAYMENT ORDERS.

**Article 29. Calculation of Royalties.** For calculation and payment of royalties referred to in article 63 of the Law, the Ministry will determine annually the quotation values that must apply for the mineral products commercialized in the domestic market.

**Article 30. Commission for Determining Quotation Values of Mining Products Commercialized in Domestic Market.** Preparation of proposed quotation values of mining products commercialized in the domestic market will be in charge of a Commission, which will be appointed by Ministerial Agreement issued by the Ministry during the first five days of the month of October of each year.

**Article 31. Integration of the Commission.** The commission is composed by six members: three designated by the Ministry and three by the private mining sector. The Commission, by majority of votes, will elect a coordinator among their members.

**Article 32. Procedure for Determination of Quotation Values in Domestic Market.** Titleholders of mining exploitation licenses must present to the General Directorate of Mining, within the first fifteen days of November each year, a sworn declaration containing the following information:

- a) Average selling prices of mining products commercialized during the year.
- b) Specifications of unit of measure used for selling the mining products and their equivalence to measures in the decimal metric system.
- c) Technical description of the mining product sold, indicating the type of mineral and degree of processing.

The General Directorate of Mining will receive the declaration and will send it to the Commission which, after analyzing the sworn declarations presented, will get a weighted average of the selling price of each mining product by unit of measure. If the commission had doubts about the information presented, it could request enhancements or explanations from the deponent. The Commission could request to the titleholder of the license for explanation or enhancement of the information presented.

Once the Commission has the final information of the quotation values in the domestic market, it will present their proposals to the Superior Office of the Ministry, which will determine definitively the values and will publish them in the Official Gazette, during the month of December of the corresponding year. If the Commission has not proposed the quotation values before the fifteenth of December of each year the Ministry, in unilateral way, will determine and publish them. The published values of the Official Gazette must be taken as a basis by each of the titleholders of exploitation licenses for the presentation of sworn declaration as referred to in article 62 of the Law.

**Article 33. Determination of Royalties.** For payment of royalties, the titleholder must present to the General Directorate of Mining a sworn declaration with a public notary legalization of signature, which must contain the following information:

- a) Identification of deponent with all his personal information, quality of appearance and place for receiving notifications.
- b) Clear identification of mining right, with name and localization.
- c) Precise designation of the mining products subject to payment of royalties, and the use that will be given to the same.
- d) Indication of exploited volume.
- e) Quantities destined to exportation, for statistical purposes of the Directorate.
- f) Term corresponding to the payment of royalties.

For complying of the obligation to present the declaration referred to in this article, the Directorate will prepare and make available to the interested person, the corresponding forms.

**Article 34. Proceeding for Payment.** The Directorate will do of the titleholder's knowledge the amount of payments or adjustments issued by the Department, giving a ten days term to present his opposition. The Directorate, with previous opinion from the Department, will issue the resolution approving the amount for payment and will request all pending payments.

**Article 35. Opposition to the Amount of Payment.** If the titleholder does not agree with the amount of payment issued, he must notify this in writing to the Directorate, supporting clearly the reason for his opposition. The Directorate will transfer the opposition to the Department, who will study it and issue opinion, ratifying, rectifying or practicing a new calculation, which will be notified again to the titleholder in the way stated in previous article. Completed this procedure, the Directorate in a ten days term will determine what is proceeding.

**Article 36. Responsibilities of the Department.** Every statement, opinion or providence issued by the Department, related to royalties, fines or adjustments must be legally and

financially supported, explaining in a complete way the technical and financial foundations in which this is supported.

**Article 37. Advanced Payments of Royalties.** The titleholder of a mining right wishing to do advanced payments for this concept, must notify it in writing to the Directorate, with a copy to the Department, which will issue immediately a payment order. Advanced payment does not require presentation of the sworn declaration, but does not excuse the titleholder neither of the obligation to present it, nor of the payment of complements that he must realize, based on the adjustments formulated by the Department at the right moment.

**Article 38. Term of Prescription for Supervision.** The Department can require information or perform audits to the accounting operations of the persons referred to in article 68 of the Law and for that action can formulate adjustments, determine fines and interests up to a five years term .

## CHAPTER VII

### PROHIBITIONS AND SANCTIONS

**Article 39. Prohibition to Realise Mining Operations in Specific Areas.** The Directorate, by decree published in the Official Gazette, must prohibit the execution of mining operations, in areas that can affect persons, properties and the environment. To decree this prohibition, the Directorate can request the opinion of other public entities.

**Article 40. Content of the prohibition decree.** The decree issuing the prohibition of executing mining operations must contain, besides the formal requisites, the following:

- a) Exact identification of the area subject to prohibition.
- b) Statement of mining operations prohibited.
- c) Term of prohibition.
- d) Statement of the facts supporting the prohibition.
- e) Relation of the technical study that supports the prohibition.

**Article 41. Opposition.** Regardless the prohibition of making mining operations, the interested person who is affected can oppose to it, proving with a technical opinion issued by a proper public entity, that the mining operations will not cause damage. If the Directorate verifies that the opposition is correct, it can authorise the operations, excluding from the prohibition the affected area and notifying the corresponding decree.

**Article 42. Imposition of sanctions.** Accordingly with article 57 of the Law the Directorate, in case of infraction, can impose the corresponding sanctions. For the imposition of sanctions, the Directorate must observe the following procedure:

- a) Once the cause for the sanction and the sanction itself are determined, audience will be given to the interested person for a ten days term.
- b) When attending the audience, the interested person can offer proofs, which will be received and attended by the Directorate in a ten days term.
- c) Exhausted the term of proof, the Directorate will solve regarding the sanction to impose.



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**Article 43. Sanctions for Illegal Exploitations.** The person who exploits minerals illegally will be sanctioned with a fine graded conforming letter d) of article 57 of the Law. For establishing the fine, the Directorate must observe the procedure identified in the previous article.

If the Directorate verifies that notwithstanding the infractor has been instructed to stop the illegal exploitation works, he continues with them, the Directorate must present accusation in order to begin a legal process against the infractor.

## CHAPTER VIII

### FINAL DISPOSITIONS

**Article 44. Unforeseen Cases.** Cases unforeseen in this Regulation will be solved by the Ministry or the Directorate, according with norms and principles contained in the Law of Judicial Branch of the Government and common law.

**Article 45. Applications in Process.** Applications that are in process must comply with dispositions of this Regulation and must be solved accordingly with the same.

**Article 46. Derogatory.** The Mining Law Regulation contained in Governmental Agreement number 8-98 of January 12, 1998 is derogated.

**Article 47. In Force.** The present Regulation will come in force the next day of its publication in the Official Gazette (PUBLISHED ON MAY 22, 2001).

COMMUNICATE

ALFONSO PORTILLO CABRERA

RAUL EDMUNDO ARCHILA SERRANO  
MINISTER OF ENERGY AND MINES