



Mining Legal Guide Mexico

COVID-19

Updated to April 30, 2020

Todd.

**“We are working hard to provide the
highest possible standard of legal
service, always delivering opportune
and reliable advice, empowering our
clients to make the right decisions.”**

Fernando Todd
Managing Partner

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INDEX

01	INTRODUCTION
02	MINING
05	CORPORATE LAW
09	LABOR LAW AND SOCIAL SECURITY
12	BANKING AND FINANCE
14	CIVIL AND COMMERCIAL CONTRACTS
16	LITIGATION AND LEGAL PROCEDURES
19	TAX LAW
21	ENVIRONMENTAL LAW
23	CONCLUSIONS

Introduction

The economic impacts of the COVID-19 pandemic are wide-ranging and raise significant legal, regulatory and commercial challenges. The Mining Industry is not far from such impacts, in addition to the dependence on commodity prices.

Globally mining projects have slowed down, production has been suspended and site activities are reduced in some cases.

In Mexico, On March 31, the Mexican government issued, as part of a series of actions aimed at mitigating and controlling the effects of COVID-19, extraordinary measures to meet its immediate and emergency needs. Such measures implied the suspension of non-essential activities in order to reduce the burden of the COVID-19. Mining activities were not considered as essential. Furthermore, on April 21, 2020, the referred measures were amended and such nonessential activities were prohibited until May 30, 2020.

The Mexican government is preparing to restart certain industrial activities, such as mining, since Monday, May 18, 2020.

Companies with mining operations in Mexico, proceeded to ramp down significantly their operations until the point of placing them on care and maintenance and immediately withdrawing their 2020's production and cost guidance.

This Guide reflects our commitment to giving our clients, Mining Industry Leaders, the tools and support necessary to successfully navigate these turbulent times.

We are proud of our Mining Law practice, having participated together with our clients, worldwide and national leaders of the mining industry, in the largest transactions of the recent years constantly advising them in the financing, negotiation, construction, operation and purchase-sale of projects of the mining sector, within our Corporate, M&A, Finance, Regulatory and Conflict Resolutions teams.



Fernando Todd

- Mining Law
- Corporate and M&A Law
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Please note, that the cut date for this Guide is April 30, 2020, therefore new information may come to light from such date and the various legal aspects reviewed hereunder could suffer updates and modifications. This guide is for informative purposes only and does not constitute a formal legal opinion.

Mining

Mining Activity Stoppage

As all nonessential activities in Mexico, as of the Health Emergency declaration dated March 30, 2020 (the “Health Emergency Decree”) and the Additional Extraordinary Measures declaration dated March 31, 2020, as amended on April 21, 2020 (the “Additional Measures Decree”), the Mining Industry had to stop their operations, within the possible and reasonable until May 30, 2020 and until May 18, 2020 in such municipalities in which there is low or none COVID-19 transmission.

That meant that major mining operations began adopting measures for a safe and organized ramping down process in order for them to keep only “essential” activities within their operations.

The Health Emergency Decree and the Additional Measures Decree leaves to the interpretation of the members of the Mining Sector, the determination per their internal evaluation of what qualifies as an “essential” activity within their operations.

Basically, the most common “essential” activities that the mining industry is implementing are (i) the ones needed to ramp down operations to a care and maintenance stage, (ii) all care and maintenance activities, and (iii) and activities in favor of the communities where their mining operations are located related to the attention of the COVID-19 pandemic, such as expansion of capacity of health services.

Mining Companies have to execute such activities considered as “essential” by each one, pursuant to the document issued by the Mexican Federal Mining Under-Secretary in April 2020 named “Guide to the Best Practices for Mining Operations: Health Contingency 2020 SARS-CoV2 (COVID-19)” (the “Best Practices Guide”).

Such Best Practices Guide provides guidelines for the (i) Contingency Management; (ii) Vulnerable Employees Considerations; (iii) Healthy Distance Observations; (iv) Hygiene; (v) Check-ups Measurements in Access Controls; (vi) Education, Communication and Awareness; (vii) Contagion Chains Detection; and (ix) Local Environment. 1

1 https://www.gob.mx/cms/uploads/attachment/file/545863/Protocolo_de_contingencia_COVID-19_REV1.0_07042020.pdf

Mining Authorities Operation

Mining activity in Mexico is governed by the Ministry of Economy, through the Under-Secretary of Mining. Under such Under-Secretary, mining activity is governed by the Mining General Office who has the Public Registry and Mining Rights Office, the Obligations Office, the Mining Concessions and Cartography Office and the Documental Control and Strategic Indicators Office.

Dated March 26, 2020, the Ministry of Economy published a Decree that suspended all legal and administrative procedures before dependencies of said Ministry as of April 19, 2020, (the “Economy Decree”) therefore, the Mining General Office and its Under-Offices are not available for filing of administrative procedures (Public Registry, Administrative Appeals, among others, and for official review of information and files).

Due to Covid-19 breakout, most of the terms of the procedures followed before the Ministry of Economy were suspended until May 30, 2020. It is important that the holders of mining concessions notice that the obligation to submit during the month of May the "Assessment Work Report to verify the execution of exploitation or exploration works", pursuant to articles 27, fraction 1, 28, 29, 30 and 31 of the Mining Law, and 63 to 66 of its Regulations is suspended.

The new deadline to present said report will be from June 1 to 30.

Such Decree also provided that the dependencies of the Ministry of Economy, such as the Mining General Office, shall provide e-mail addresses for certain procedures. The Mining General Office provided the following:

Public Registry and Mining Rights Office	julio.hernandez@economia.gob.mx
Obligations Office	nicolas.diaz@economia.gob.mx
Mining Concessions and Cartography Office	rafael.palma@economia.gob.mx
Documental Control and Strategic Indicators Office	carlabenitez@economia.gob.mx

Information to be reviewed for due diligence purposes for M&A transactions, secured financings, internal status of procedures, can be reviewed through consultations with officers of the Mining General Office.

Another authority with significant importance in major mining operations is the General Office for the Registry of Firearms and Explosives Control which is under the Ministry of National Defense (the “Explosives Authority”).

Mining companies have continuous obligations before the Explosives Authority for Explosives Permits such as applications for Explosives Permits, renewal or amendments to the same, notifications for the unloading of explosives, authorization for transportation of the explosives, due to social matters or disturbances, to the explosives provider, explosives imports, authorization of purchase of explosives book and explosives consumption book, and monthly reports of purchases and use of explosives.

Per the Explosives Authority website, notice is given that due to the measures carried out by the Federal Government due to the COVID-19 pandemic, the general public attention office has been closed until further notice.

Todd recommends:

- i. It is important to carry out a detailed review of the “essential” activities that shall continue within the Health Emergency period, supported with the most detail as possible in documents, financial complications, health reasons, security and safety, hazardous materials or explosives risks among others.
- ii. Such “essential” activities should be carried out in compliance with the Best Practices Guide, enacting governance procedures for carrying out the same and documenting the compliance of the same.
- iii. Comply with the Mining Law and its Ruling obligations in a timely manner, using electronic means, when such procedures allow it, especially, complying with upcoming (July) payment of mining duties.
- iv. Prepare and get ready all documents to be filed before the Mining General Office that does not allow electronic filings, ready for its filing as soon as the Mining General Office opens.
- v. Carry out consultations with officers of the Mining General Office for information to be reviewed for due diligence purposes for M&A transactions, secured financings, and internal status of procedures.
- vi. Due to the closing of the Explosives Authority office for the general public, it is suggested to contact the local representatives of the municipality or state of the Explosives Authority where the Mining Unit (s) are located and touch base with them to the compliance of the corresponding obligation.

Corporate Law

Shareholders Meetings

In Mexico, the General Law of Business Organizations (the “Corporations Law”) and the Mexican Stock Exchange Law (the “Stock Exchange Law”) foresees provisions that include the obligation of companies to hold meetings of shareholders or partners, within the first four months following the close of the fiscal year of the immediately preceding year, that is, before April 30, 2020.

In addition, certain subsidiaries of Mining Groups and/or “formal” Joint Ventures, materialized in a Mexican Corporation governed by the Corporations Law, common in the Mining Industry (“JVs”), require that certain decisions be adopted by such subsidiaries or JVs are adopted in a Shareholders Meeting, in some cases with specific attendance and voting requirements and formal procedures, such as publishing of calls, place of the meeting (within the corporate domicile), minutes notarization and/or registration before the corresponding Public Registry of Commerce, among others.

The Corporations Law provides that Shareholders Meetings need to be in-person meetings, with the only exception of (i) adopting unanimous resolutions by the totality of the voting shares of a Company, (ii) that such unanimous resolutions, although adopted outside a Shareholders Meeting, are in writing, and (iii) that the possibility of adopting unanimous resolutions outside a Shareholders Meeting is strictly provided in the by-laws of the Company.

Arising from the Health Emergency Decree and the Additional Measures Decree, gatherings for private, public or social activities have been limited for essential activities and prohibited for nonessential activities, therefore, from a Health Emergency standpoint holding a Shareholders Meeting would be prohibited in some interpretations. As well, in some States, Local authorities have even enacted stricter rules prohibiting all sort of gatherings notwithstanding the attendance.

Under the Corporations Law and the Stock Exchange Law, all shareholders of a Company have the right to access to a Shareholder Meeting, therefore, a first contradiction would be combining the Health Emergency Decree and the Additional Measures Decree together with the corresponding Local enacted rules with the rights of the shareholders per the referred Laws.

Furthermore, if an in-person Meeting is held, and a shareholder decided not to attend and considers that the resolutions adopted in such in-person Meeting does not satisfy him/her/it, such non-attendee shareholder, subject to complying with the requirements of the Corporations Law and the Stock Exchange Law, as applicable, could try to oppose before a Mexican Court the legality of the in-person Meeting, due to the strict prohibitions set forth in the Health Emergency Decree and the Additional Measures Decree.

The Corporations Law does not provide for the right of shareholders to oppose the holding of a Shareholders Meeting and moreover, it establishes that the resolutions legally adopted by such Meetings are mandatory for all shareholders, even for those who are absent or dissenting. However, the Law grants the right to shareholders representing (i) twenty-five percent of the share capital of Companies governed by the Corporations Law, and (ii) twenty percent of the share capital of Companies governed by the Stock Exchange Law, to judicially oppose the resolutions of the General Meetings.

Board of Directors Meetings

The Corporations Law and the Stock Exchange Law also include that the boards of directors and other collegiate bodies of the companies meet to review, issue their opinion - ie. information that will be submitted for approval by the Annual Shareholders' Meeting, certain approval of Subsidiaries or JVs, among others.

Although it is common that Companies have within their by-laws remote, electronic or telephone assistance in Board of Directors Meetings, it is important to note that similar rules apply for these Meetings than those applicable for Shareholders Meetings, as earlier described.

Corporate Reorganizations

Corporate reorganizations are primarily intra-group transactions. A reorganization may be appropriate to: (i) remove inactive companies; (ii) separate out or combine certain assets; or (iii) introduce a new management team, partner or owners into the business.

Mining Companies, triggered by the uncertainty of the COVID-19 pandemic could analyze the implementation of corporate reorganization in order to generate costs efficiencies or simplify their corporate structure, or in a more catastrophic scenario, prepare legally for an insolvency procedure.

Under Mexican Law and until the Health Emergency Decree and the Additional Measures Decree are valid, the considerations set forth in this section (Corporate Law) in addition with the Tax Law section shall have to be reviewed by Mining Companies in order to determine the timing and process of carrying out the intended process, due to (i) availability of relevant authorities, such as Public Registries, Tax Authorities and Public Notaries, (ii) waivers of relevant third parties, (iii) transfer of employees and assets limitation due to the referred Decrees, and (iv) others.

Foreign Investments Registry

Per the Economy Decree, the Ministry of Economy suspended as a measure to prevent the spread of the COVID-19, most legal procedures before such Ministry and its dependencies. However, the legal procedures before the National Registry of Foreign Investments were not suspended and it was instructed to be filed through electronic means.

For registration or renewal deadlines the filing process shall be online, in time and in form. The Ministry of the Economy has enabled an email through which the documents can be presented in PDF format.

Todd recommends:

- i. As possible, Companies should avoid in-person Shareholders or Board of Directors Meetings for health reasons, therefore, it is recommended, when possible, that unanimous resolutions are adopted by the totality of the Shareholders or Directors, in strictly compliance of the Corporations Law or the Stock Exchange Law.
- ii. In companies governed by the Corporations Law, that for special reasons need to hold an in-person Meeting, it is recommended to (i) limit the individuals attending the same, through the granting of proxies by several shareholders to the same individual, as commercially possible, (ii) comply with the formal requirements of the Corporations Law (Call, material availability, place of the meeting), (iii) maintaining the healthy recommendations for allowed gatherings (healthy distance, use of medical masks), and (iv) comply with the Corporations Law in all corporate acts post-meeting, as applicable (notarization, entries in corporate books, public registries).

Todd recommends:

- iii. When planning a corporate reorganization, bear in mind the different ramifications of the same, when dealing with, authorities, document preparation and third parties, in order to determine the additional or parallel acts needed to be carried out and timing and its possible delays due to the general stoppage arising from the COVID-19.
- iv. The Foreign Investment Registry is, in general terms, operating in normal course of business through electronic means, therefore, it is suggested to comply with obligations provided by the Foreign Investment Law in the same normal course of business.

Labor Law and Social Security

As described in previous sections of this Guide, the Health Emergency Decree published by the General Health Board declared a Health Emergency due to Force Majeure causes and thereafter, the Additional Measures Decree was published and amended on April 21, 2020, suspending all nonessential activities until May 30, 2020. Mining activities were not considered as Essential.

Due that the Health Emergency Decree and the Additional Measures Decree, does not classify the emergency as a Health Contingency companies must continue to pay full wages to their employees and companies shall abstain to terminate labor relations with workers.

The Health Emergency Decree and the Additional Measures Decree leaves to the interpretation of the members of the Mining Sector, the determination per their internal evaluation of what qualifies as an “essential” activity within their operations.

Basically, the most common “essential” activities that the mining industry is implementing are (i) the ones needed to ramp down operations to a care and maintenance stage, (ii) all care and maintenance activities, and (iii) and activities in favor of the communities where their mining operations are located related to the attention of the COVID-19 pandemic, such as expansion of capacity of health services.

Each Mining Company has to execute such activities considered as “essential” by each one, pursuant to the Health Ministry guidelines and the Best Practices Guide described earlier in this Guide.

In connection with the controversial nature or cause of the suspension of nonessential activities, we consider that in strict application of the law, the suspension of labor relations is applicable pursuant to Article 427 section VII of the Federal Labor Law and the payment of compensation of up to one month of minimum wage, according with Section IV of Article 429, in those areas not considered essential. However, the Health Emergency Decree and the Additional Measures Decree is silent, and more over the Secretary of Foreign Relations, Marcelo Ebrard Casaubón in the presentation of the Health Emergency Decree, expressly referred that the assumption of Health Contingency is applicable to the case.

As mentioned above, the Health Emergency Decree and the Additional Measures Decree dates, does not provide expressly the option to suspend temporarily work relationships, so that (i) workers could be exempt from reporting to the workplace and rendering the service retaking their activities as soon as the health contingency concludes, and (ii) employers could pay their workers only compensation equivalent to One minimum wage for each day the work suspension lasts, without exceeding one month. If the suspension of work exceeds one month, the companies will not have any payment obligation.

It is our opinion that such Health Contingency Declaration will not be enacted by the Federal Government.

Mining Companies have mine site contractors to develop mine site works, with hundreds of workers employed by such Contractor and constantly working in a certain Mining Unit. The legal relation between Mining Companies and the referred Contractors are usually governed by a Services Agreement, in which, the labor obligations are responsibility of the Contractor, in most cases, and the continuance and validity of these Services Agreements will be discussed in the Contracts section of this Guide.

Todd recommends:

- i. As possible, Mining Companies shall suspend mining operations and carry out a detailed review of the “essential” activities that shall continue within the Health Emergency period, supported with the most detail as possible in documents, financial complications, health reasons, security and safety, hazardous materials or explosives risks among others.
- ii. Such “essential” activities should be carried out in compliance with the Best Practices Guide, enacting governance procedures for carrying out the same and documenting the compliance of the same.
- iii. Considering that a Health Contingency has not been declared, Mining Companies shall have to (i) pay full wages to its employees; or (ii) enter into negotiations duly documented by both parties agreeing in a reduction of salary and total compensation during the Health Emergency period.

Todd recommends:

- iv. For personnel able to work under a “Home Office” format, it is suggested to prepare a “Home Office Manual” by which the rules, times, responsibilities and obligations of the employees are duly described and accepted in writing by all employees working under a “Home Office” format.

Banking and Finance

Credit Agreements need to be reviewed by Mining Companies in light of the applicable legislation for Commercial Agreements governed by the Commerce Code of Mexico and, in addition by the Federal Civil Code.

These Agreements are ruled by the legal concept of “*pacta sunt servanda*”, meaning that what the parties agreed willingly in a certain Agreement must be complied. This legal concept is provided in the Commerce Code and the Federal Civil Code. With this principle always in mind, two concepts shall be analyzed in addition (i) Force Majeure or Fortuitous Case (Acts of God), and (ii) the Theory of the Unpredictability.

Following the order referred above, parties within a Credit Agreement or similar, may have willingly included clauses of Material Adverse Effects and the option to balance the obligations accordingly; partial compliance of obligations provisions, remedy periods and procedures for non-compliance of obligations; specific procedures for Force Majeure or Acts of God events; therefore, the executed Agreement and its detailed review and application of a case by case analysis becomes the first and foremost important necessity.

Having carried out the mentioned analysis, the general rules of the Mexican Legislation are applicable as well. Without having an exact definition under Mexican Law of Force Majeure or Fortuitous Case, and the difference among them (nor either its detailed legal analysis subject of this Guide), we can summarize that both concepts are events outside the will and control of the parties within an agreement and that could not be foreseen at the execution of such agreement, and whose main consequence is the non-compliance of obligations (either partially or totally ie. an Agreement). The direct link between the Force Majeure or Fortuitous Case event and the non-compliance of certain obligations is a basic requirement for Mexican Courts interpretation of the legal exception of the obligation. The Theory of the Unpredictability, in this particular case (Credit Agreements) with a commercial nature, will not apply.

For Collateral Agreements entered into arising from Credit Transactions, a careful analysis shall have to be carried out to the same, in order to identify additional obligations of the secured asset (shares, real estate assets, intangible assets, mining concession, etc). For example, it is customary that Collateral Agreements (Mortgages, Non-Possessory Pledges, Pledges of Shares, etc.) provide the obligation to the grantor of keeping the secured asset in good standing and up to the date in the compliance of the obligations inherent to the specific secured asset. Due to the Health Emergency, the authorities or entities in charge of the compliance of some of these inherent obligations of the secured assets, have enacted specific procedures or suspension in some cases, to comply with the referred obligations, which could create different interpretations under the eyes of the Collateral Agreements.

Furthermore, most Mexican Banks are currently granting facilities for the fulfillment of their users' obligations, derived from the affectation by COVID-19. In relation to the above, in terms of consumer loans, housing and commercial loans, the National Banking and Securities Commission, in conjunction with the Banks, have established temporary support according to the conditions and restrictions of each Banking order to mitigate the effects associated with the contingency derived from COVID-19; which include among its benefits partial or total deferral of principal/or interests for up to 4 months and frozen of balances in mortgages, revolving and non-revolving credits, automotive, personal payroll and credit card loans.

Todd recommends:

- i. Identification of all Credit Agreements in which the Mining Company and its subsidiaries is a party of, in order to carry out a careful analysis to the same identifying (i) the purpose and objectives of the parties on each Agreement; (ii) Material Adverse Effects clauses; partial compliance of obligations provisions, remedy periods and procedures for non-compliance of obligations; specific procedures for Force Majeure or Acts of God events; and (iii) Force Majeure clauses.
- ii. Identification and analysis of Collateral Agreements in order to identify additional obligations that may be derived from the affectation by COVID-19.
- iii. Review the existing measures granted by Mexican Banks and Banking authorities that may apply, in a case-by-case basis to each Company.

Civil and Commercial Contracts

As mentioned throughout this Guide, the laws in Mexico do not include a specific definition of “fortuitous case” or “force majeure”, however both concepts refer to situations that are beyond the control of the obligated party and that hinder the fulfillment of a contractual obligation. Both the doctrine and the Collegiate Courts have consistently established that “unforeseeable and insurmountable event that makes the fulfillment of an obligation impossible” must be understood by force majeure.

It is clear that the Health Emergency and the Additional Measures Decree, together with additional measures taken or to be taken by Local and Federal authorities, constitute an unforeseeable and insurmountable event which will impact the compliance of contractual obligations or the exercise of the same.

As well, as mentioned earlier in this Guide, under Mexican Law agreements must be complied and executed pursuant to their clauses, meaning that parties under an agreement must comply with their provisions, however, when unforeseeable and insurmountable events apply, some agreements are dark in the applications of these events.

In order to exempt the debtor from the fulfillment of its obligation by force majeure, the following characteristics must be met: (i) it has to be external, that is, having a cause alien to the will of the obligor; (ii) insurmountable or irresistible, that the obstacle is inevitable; (iii) unpredictable before contracting, meaning that it is not an ordinary foreseeable risk, and (iv) it absolutely prevents compliance with the obligation. Likewise, the direct link between the Force Majeure or Fortuitous Case event and the non-compliance of certain obligations is a basic requirement for Mexican Courts interpretation of the legal exception of the obligation.

Notwithstanding the possibility that Mexican Law provides for the exception of compliance of certain obligations arising from Force Majeure or Fortuitous Case Events, its application should be carefully reviewed, taking in consideration the type of obligation, the legal nature of the contract in question, the language used in the agreement, the law that governs the same – Federal or Local and which specific State, therefore, a case-by-case analysis is suggested to confirm the application of these concepts.

The Theory of the Unpredictability refers to an event that is extraordinary, unforeseeable and not in control of any of the parties in an agreement that causes an economic unbalance among the agreed obligations in such agreement, making the compliance of an obligation more expensive for one of the parties, the affected party may request the amendment of the agreement in order to balance the obligations as they were at execution of the same. It is also known as *rebus sic stantibus*.

As mentioned before, this concept it is not provided in the Commercial Code, therefore, does not apply for commercial contracts where the previously described concept of *pacta sunt servanda* applies.

The civil codes of various States of Mexico (Mexico City, Aguascalientes, Jalisco and Quintana Roo) recognize the concept of *rebus sic stantibus*.

Now, as part of the concept *pacta sunt servanda*, parties within a contract, may have willingly included clauses of Material Adverse Effects and the option to balance the obligations accordingly; partial compliance of obligations provisions, remedy periods and procedures for non-compliance of obligations; specific procedures for Force Majeure or Acts of God events; therefore, the executed Agreement and its detailed review and application of a case by case analysis becomes the first and foremost important necessity.

Todd recommends:

- i. Identification of all Contracts or Agreements in which the Mining Company and its subsidiaries are a party of, in order to carry out a careful analysis (due diligence type) to the same identifying (i) the purpose and objectives of the parties on each Agreement; (ii) the legal nature of said Contract or Agreement; (iii) Material Adverse Effects clauses; partial compliance of obligations provisions, remedy periods and procedures for non-compliance of obligations; specific procedures for Force Majeure or Acts of God events; and (iv) Force Majeure clauses and specific procedures.
- ii. In contracts where its legal nature and the local jurisdiction governing the agreement recognize the concept, unbalance obligations that changed upon execution to these Covid-19 dates, a balance of such obligations can be seek at Mexican Courts, therefore, the review of such contracts plus the specific provision provided under the corresponding jurisdiction shall apply.

Litigation and Legal Procedures

As a result of Covid-19 pandemic, the following judicial courts, with the general exception of criminal and family courts and until today, have suspended their work:

I. COURTS SUSPENSION AT A FEDERAL LEVEL:

National Supreme Court of Justice decreed the suspension of work from March 18 to May 31, 2020.

During the period mentioned above, no meetings, hearings or procedural deadlines will be held. There will be only one guard to receive urgent constitutional disputes requesting precautionary measures.

Federal Judicial Authority ordered the suspension of work from March 18 to May 31, 2020.

During the period mentioned above there will be no procedural deadlines and there will only be a guard for matters requiring urgent attention.

Federal Court of Administrative Justice ordered that work be suspended from March 18 to May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

The Supreme Court of Justice of the Nation (SCJN) and the Council of the Federal Judiciary (CJF) issued an Agreement that determined the scope and limits of jurisdictional activity between May 6 to 31, 2020. We can highlight the following:

- Some suspension requests may be resolved as long as they are urgent constitutional controversies.
- Remote sessions will be held and some promotions will be received electronically.
- Activity will be resumed for the resolution of those cases already processed in the case that the only pending procedural act is the judgment or final resolution.
- The ordinary procedure of the matters followed in the "online" modality is resumed, and those of the "printed" modality remain suspended.

During this period, only new cases that are classified as urgent will be processed.

II. COURTS SUSPENSION AT A LOCAL LEVEL:

Mexico City's Judicial Authority decreed the suspension of jurisdictional work on March 18, 2020 until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Administrative Justice Court of Mexico City ordered the suspension of jurisdictional work from March 18 to May 31, 2020.

State of Mexico's Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 20, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Nuevo León State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 17, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Jalisco State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 15, 2020. During the period mentioned above, no procedural deadlines will apply.

Chihuahua State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 17, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Coahuila State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 19, 2020 and will continue until May 15, 2020. During the period mentioned above, no procedural deadlines will apply.

Durango State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 17, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Guanajuato State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 21, 2020 and will continue until May 30, 2020. During the period mentioned above, no procedural deadlines will apply.

Guerrero State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Hidalgo State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 19, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Michoacán State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Puebla State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Querétaro State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 15, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

San Luis Potosí State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 30, 2020. During the period mentioned above, no procedural deadlines will apply.

Sinaloa State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 19, 2020 and will continue until May 30, 2020. During the period mentioned above, no procedural deadlines will apply.

Sonora State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 18, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Zacatecas State Judicial Authority ordered the extension of the suspension of jurisdictional work, which began on March 19, 2020 and will continue until May 31, 2020. During the period mentioned above, no procedural deadlines will apply.

Tax Law

To date, neither the SAT nor the SHCP have issued any resolution on tax incentives or facilities related to COVID 19 applicable for Mining Companies, nor is there any Presidential Decree that provides for them. However, at the State level have been issued various Decrees in which they grant facilities regarding the payment of local contributions.

It is important to stress out that Mining Companies should consider the compliance of the upcoming obligation of the payment of PTU (Employees Profit Sharing), which is due on May 30.

The standard options provided in the Income Tax Law for deferral of payments are available as if we were in a non-Covid-19 scenario, such as provisional payments reductions, deferral of payments or installments payments, VAT and Income Tax returns.

Some concepts more relevant than usual under the COVID-19 pandemic, applicable under tax laws are:

Insurance policies that cover losses related to Covid-19 and its tax treatment, under the Income Tax Law are considered that premium payments for insurance or bonds will be deductible expenses. Therefore, the amounts received for the payments made by the insurers, must be considered as accumulative income, while the expenses made by way of premiums will be considered as deductible.

For Tax losses or deduction for uncollectability it is relevant to point out that the Income Tax Law provides for a deduction assumption regarding losses from uncollectable loans, which could be applicable to the taxpayer-creditor who meets certain requirements.

As a general rule, the event of loss due to an uncollectable loan is updated in the month in which the limitation period of the credit expires. That is, without a doubt, all creditors may take the deduction for the loss of uncollectable debts in the month in which their collection action prescribes.

By exception, the assumption of the deduction of the uncollectable credit loss is updated when there is a notorious practical impossibility of collection for the taxpayer-creditor. Such "notorious practical impossibility of collection", refers to the amount of the principal of the credit.

It is essential that in order to be able to deduct losses for uncollectable debts, the particular circumstances of the specific case, both of the creditor and of the debtor must be taken into account.

Losses of taxpayer's assets due to fortuitous event or force majeure, which are not reflected in the inventory, will be deductible in the year in which they occur. The loss will be equal to the amount pending deduction on the date it is suffered.

In the case of discounts, Taxpayers must continue to observe the requirements set forth in the Income Tax Law for their deduction and must also have the corresponding Digital Tax Receipt (CFDI), in terms of article 29, section VI, third paragraph of the Federal Tax Code. Likewise, whoever receives the discount must determine the way in which it must be registered in accounting; that is, if it is considered it cumulative income or reduction of expense or cost.

The amounts given to employees as support for medical or funeral care in relation to COVID-19 may be deducted for Income Tax purposes, as long as they are considered as social provision supports in respect of which all workers in the company can have access. Likewise, the expenses incurred to protect the health of the company's employees may be deducted, in order to remain operational.

Todd recommends:

- i. Review the tax planning for 2020 and the impacts of the Covid-19 to the same, reassessing such planning together with contingency plans, such as corporate reorganizations, credit transactions, disinvestment, among others.
- ii. Take advantage and execute efficiently any standard options provided in the Tax Laws for deferral of payments as available, such as provisional payments reductions, deferral of payments or installments payments, VAT and Income Tax returns, among others.
- iii. Inasmuch possible, comply with the upcoming Tax Obligations of the Company, due that Todd. considers that the Tax Authorities will continue or increase audits and past-due taxes procedures.

Environmental Law

As a consequence of the Health Emergency to avoid the spreading of the COVID-19, the Ministry of Environment and Natural Resources (“SEMARNAT”), suspended activities considering as non-business days, from March 24, 2020 as of April 30, 2020, meaning that the first business day will be May 29, 2020.

The abovementioned suspension does not include Forestry, Chemical Substances and Hazardous Wastes subject to international treaties and inter-countries movements, Atmosphere Emissions for the Annual Operation Certificate filings (COA), Natural Protected Zones and any related to acquisition, lease and services of public constructions and related services.

It is important to consider that several procedures per the applicable environmental laws are available through electronic means, such as, Annual Operation Certificate (COA), hazardous wastes filings, water discharge payments.

For scenarios in which any authorization has expired or is about to expire during the Health Emergency, the first suggested action is to identify if, the competent authority, either federal or local, allow for the extension or renewal of such authorization by other means (via electronics).

If the environmental authorization has expired or is about to expire during the suspension of activities and deadlines by COVID 19, the suggested approach is to review in detail the scope of the suspension agreements of deadlines of the applicable Environmental authority.

For both cases, our interpretations is that the suspension decrees, have a legal effect to grant the extension of the terms of validity of licenses and authorizations.

It is important to consider that, as soon as the Environmental authorities re-open, the renewal of the environmental authorization or license, as applicable, is initiated as it corresponds.

Todd recommends:

- i. Review the environmental obligations of the Mining company per the Environmental Impact Authorizations, and others, in order to identify (i) validity periods of such authorizations, (ii) compliance of obligations and deadlines, (iii) effects of Hazardous Wastes due to the closure of the non-essential activities in Mining Operations; and (iv) if the Mining company has obligations from the listed as excluded from the SEMARNAT suspension decree.
- ii. Inasmuch possible, comply with the obligations identified in (i) above, through electronic means available.
- iii. Identify and plan in advance the renewal procedures of authorizations and licenses, local or federal, that will need to be initiated upon termination of the Health Emergency closures.

Conclusions

- The Health Emergency has presented important challenges for Mining Companies in Mexico, with several legal implications for their day to day business.
- Mining Companies need to be constantly and efficiently aware in the new daily information that the Mexican Government and Local Governments are producing and the specific legal implications in the very particular way each Mining Company operates.
- It is Todd.'s view that, once the operational challenges and the legal implications arising from the COVID-19 Health Emergency are identified, understood and applied to the particular case of each Mining Company, solid and efficient planning and restructuring can be prepared for the managing of the Emergency in the best possible way, the subsistence and maintenance of the business and, more important, the re-opening of the business in the best financial, operational and legal situation.

Todd.

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