

**ORGANIC LAW THAT RESERVES TO THE STATE THE ACTIVITIES OF EXPLORATION AND EXPLOITATION OF GOLD AND OTHER STRATEGIC MINERALS**

Decree No. 2.165 was published in Official Gazette No. 6.210 Extraordinary of December 30, 2015. Through said Decree, the President of the Republic issued the Decree with the Status, Value, and Force of Organic Law that Reserves to the State the Activities of Exploration and Exploitation of Gold and other Strategic Minerals (the “Decree-Law”). The purpose of the Decree-Law is to regulate the matters relating to the regime of exploration and exploitation of gold and other strategic minerals of the Venezuelan State, for purposes of promotion and development in the exercise of the reserved activities, the royalty regime and special advantages, as well as the penalizing regime.

Following are the most important aspects and changes contained in this Decree-Law, with respect to the former Law that regulated this matter:

- a) The definitions contained in the former Law are modified and the following terms are defined:
  - i. **Primary Activities:** “...the exploration and exploitation of mines and deposits of gold and other strategic minerals...”
  - ii. **Strategic Alliances:** “...the agreement between a private or community company and the National State in order to share productive processes, either in the same activity or in associated linkages. In these alliances, the companies involved keep their separate juridical identity and the association for the purposes described is established...”
  - iii. **Exploration:** “...the stage preceding the extractive phase of the mining activity, which consists in the location, characterization, and quantification of the mineral in order to determine the feasibility of the mining project...”
  - iv. **Exploitation:** “...the group of operations, works, developments, and tasks intended for the extraction and rational utilization of mineral and rock...”
  - v. **Socioproductive Organizations:** “...production units with common purposes and interests oriented towards the satisfaction of collective needs through an economy based on the production, transformation, distribution, exchange, and consumption of goods and services, as well as of learning and knowledge

*.Without prejudice to other forms of organization of a similar nature, the following are admitted as such: companies of direct communal social ownership, companies of indirect communal social ownership, family production units, and groups of cooperative exchange...”*

- vi. **Other Strategic Minerals:** “...those considered of national convenience and public interest, declared as such by a Decree issued by the National Executive...”
  - vii. **Special Advantages:** “...the social, economic, technological, infrastructure or any other type of benefits that the individuals/entities subject to the application of this Decree with the Status, Value, and Force of Law grant tú the Republic with the purpose of contributing to the integral development of the communities surrounding the mining zones...”
  - viii. **Ore Deposit:** “...a mineral deposit that has been examined and diagnosed and has proved to have sufficient size, ore grade, and accessibility to be set to production and be profitable under current economic conditions...”
- b) The activities to which the Decree-Law refers may be exercised only: (i) by the Republic, through the Ministry of the Popular Power with competence over mining; public institutes, corporations or companies exclusively owned by it or their affiliates, with a corporate capital fully belonging to it and which corporations or companies have been created for such purpose; (ii) by Mixed Companies in which the Republic has an interest of not less than 55% of the corporate capital; they must be organized under the Law and registered with the *Registro Único Minero* (Single Mining Registry); (iii) by Strategic Alliances formed between the Republic and production units, socioproductive organizations; corporations, and other forms of associations permitted by the Law, which will be oriented towards small-scale mining activities, duly registered with the *Registro Único Minero*, with the previous authorization of the Ministry of the Popular Power with competence over mining.
- c) The Regulations to this Decree-Law will develop the matters relating to the form, method, and productive processes in which the aforementioned entities will participate, establishing the stage and specific activity that they will develop, from exploration to commercialization of gold and other strategic minerals. The rules, regulations, auditing, and application of the mining activities (including small-scale mining) will be also developed in the relevant Regulations. .
- d) If any of the minerals declared as strategic minerals is formed by precious metals or stones categorized as reserve assets (*activos de reserva*) by the Venezuelan Central

Bank (“VCB”), they must be delivered to the VCB in the terms prescribed in the Decree-Law.

- e) The companies that may perform the activities regulated by the Decree-Law will be understood to be included in the exception from the legislative authorization established in the Public Credit System prescribed in the Organic Law of the Financial Administration of the Public Sector, without prejudice to the authorization of the President of the Republic in Cabinet Council and to the technical opinion referred to in article 102 of said Law.
- f) In order to carry out the primary activities, the Mixed Companies will abide by the Decree-Law and, in each particular case, by the terms and conditions established by the National Executive acting through the Ministry of the Popular Power for mining. (formerly, the terms and conditions were approved through an agreement issued by the National Assembly). The legal persons that associate with State entities or companies in the organization of Mixed Companies for the performance of the primary activities to which the Decree-Law refers may not assign, convey, or transfer their shares without the previous authorization of the Ministry of the Popular Power with competence over mining. The State will have a preemptive right to acquire such shares (the former relevant article also mentioned natural persons).
- g) Socioproductive organizations, other forms of association of the Popular Power, and the cooperatives that are granted permit for performing primary activities will abide by the Decree-Law and other applicable laws. If they are contracted by the Mixed Companies, they will also abide by the terms and conditions approved through an agreement executed by the competent agency, entity or the companies empowered for exploitation, as the case may be, as well as by the provisions issued by the National Executive, acting through the Ministry of the Popular Power with competence over mining.
- h) The legal persons that enter into contracts with State entities or companies for the performance of the activities indicated in the Decree-Law may not assign, convey, or transfer the contract executed, nor may they subcontract services connected with the activity subject matter of the contracting without the previous authorization of the Ministry of the Popular Power with competence over mining.
- i) The Ministry of the Popular Power with competence over mining will determine the total area assigned to each company for the performance of primary activities, as well as the duration of the same, after compliance with the environmental obligations and other rules governing the matter. The time of exploitation assigned for the performance of the primary activities may be extended. Said extensions must

be requested from the Ministry of the Popular Power for mining matters, one year before the end of each period for which the right was granted (formerly, the extensions were to be requested within the last one third before the end of the period for which the right was granted).

- j) The Ministry of the Popular Power with competence over mining will determine the total area assigned to each socioproductive organization or to the strategic alliances, oriented towards small-scale mining for the performance of any of the primary activities, after compliance with the environmental obligations and other rules governing the matter.
- k) The time set for such activity will be established in the relevant authorization of exploitation, and it may not exceed 10 years, extendible for a maximum of 2 periods of 2 years each (formerly, the authorizations had a duration of 10 years as from their publication in the Official Gazette and they could be extended for a maximum of 2 periods of 10 years each). Said extensions must be requested 1 year before the end of each period or extension for which the right was granted in order for the analysis of the same.
- l) The State is entitled to a royalty from the quantities of gold and other strategic minerals extracted from any deposit, which royalty may be demanded by the National Executive from the persons that develop the primary activities in money or in kind (formerly, the royalty could be demanded fully or partially in kind or in money).
- m) The gold and other strategic minerals obtained from any mining activity in the national territory will be subject to mandatory sale and delivery to the the VCB. The VCB may authorize the sale or delivery of each mineral to a different entity in the terms established to that end (formerly, the President of the Republic could designate another entity or entities to which said gold resources were to be sold)..
- n) The commercialization of gold jewelry and precious stones for personal use is excluded from the scope of application of the Decree-Law (formerly, the Law only referred to gold jewelry).

- o) 

The mining activities

established in the Decree-Law are of the competence of the National Executive, acting through the Ministry of the Popular Power for mining, which will exercise the following functions: (i) planning, promotion, and formulation of public policies in the sector of gold and other strategic minerals; (ii) guarantee of the certification, evaluation of the feasibility of the previous study and of the plan of exploitation of the deposits of gold and other strategic minerals for their approval; (iii) identification

of, and instruction to the State agencies and entities about, the zones, spaces, and geographical places capable of being exploited for the preservation of the environment and of the watershed systems; (iv) regulation, auditing, monitoring, supervision, and control of the mining activities; (v) incentive to and development of the integral formation of socioproductive organizations and cooperatives, related to the mining activity; (vi) promotion of technological development and of learning and knowledge, modernization and industrial and non-industrial expansion of the companies, socioproductive organizations and cooperatives engaged in the mining activity, assuring technological sovereignty and guaranteeing to the State the increase in the international reserves represented by gold and other qualified materials; (vii) development, preservation, utilization, and control of gold resources and other minerals; (viii) market study, analysis, price fixing, and regime of national and foreign investments in the mining sector; (ix) granting of the export authorizations for the performance of the small-scale mining activity; and (x) any other one established in the national legislation in force.

- p) The *Registro Único Minero* (Single Mining Registry) (the “Registry”) is created, assigned to the Ministry of the Popular Power with competence over mining. The function of the Registry will be the administration and management of information, monitoring and control of the natural and legal persons of a public or private character that develop the activities reserved by the Decree-Law. .
- q) The acts, businesses, and agreements made for the purposes of the reserve prescribed in the Decree-Law, as well as the assignments, transfers of goods and any other operations that generate income or involve the conveyance, transfer, or sale of goods intended to be part of the patrimony of State-owned companies are no longer exempt from payment of taxes, duties, special contributions, and other tax obligations.
- r) The gold and other minerals declared as reserve assets by the VCB, derived from an unlawful mining activity, will be seized. This will give rise to the commencement of a penalizing administrative proceeding. Once the decision is final, it must be delivered to the VCB and incorporated into the Republic’s International Reserves.

The Temporary Provisions of the Decree-Law include the following: (i) the environmental permits granted to mining projects that are in progress at the time of the entry into force of the Decree-Law will remain in effect and will be deemed to be transferred to the

companies to which the continuity of the execution of the projects is assigned; (ii) those performing the connected or ancillary activities, except for the activity of national or international commercialization, will be authorized to continue to perform said activities until the Ministry of the Popular Power with competence over mining issues the relevant resolution; (iii) in order to guarantee the contribution by the mining sectors to the strengthening of the national economic system and until the strategic alliances are formed, the Ministry of the Popular Power with competence over mining and the entity entrusted by the State with the acquisition of gold, may jointly adopt the necessary measures to buy it when it comes from the primary activities. This provision will be in effect for one (1) year following the publication of the Decree-Law, which period of time may be extended one time for an equal period by the aforesaid Ministry; (iv) a period of 2 years is established, as from the entry into force of the Decree-Law, in order for the other forms of private law associations oriented towards the small-scale mining activity that are not established in the Decree-Law to migrate to strategic alliances of the popular power and cooperatives.

The Decree-Law repeals the Organic Law that Reserves to the State the Activities of Exploration and Exploitation of Gold, as well as the Connected and Ancillary Activities, published in Official Gazette No. 6.150 Extraordinary of November 18, 2014.

The Decree-Law became effective as from December 30, 2015.

In order to access the Decree-Law, please click [here](#).

