MINING TROUBLED BY TAXES, PRICES, AND COMMUNITIES

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Q: How are the Fiscal Reform and the drop in metal prices affecting new or ongoing mining operations?
A: The most important thing is that the legal framework guiding the mining industry has not changed at all so far. However, uncertainty over the tax situation continues to plague the industry in Mexico. The tax and royalty being imposed on projects in the exploitation phase could gravely hurt the mining industry. Many companies erroneously think that the tax will only have impact them once they start producing. Unfortunately, the Fiscal Reform applies to the entire mining industry, and will directly affect whoever holds a mining concession, whether at the exploration, exploitation, or beneficiation phase. So far, uncertainty over the tax has caused some companies to halt their investments. Meanwhile, some law firms have been fighting the tax under the argument that the government is imposing a double tax on mining activity, which affects the constitutional rights of concession holders. Additionally, global metal prices have been dropping, making it very difficult for mining companies to raise money to develop exploration projects. Some projects that may have been very attractive in the past are no longer viable, which has led to mining projects closing or workers being fired in Mexico.

The number of new entities coming to explore in Mexico has decreased, at least from what this firm has seen, but those companies already in Mexico are continuing with their operations to try and survive. In some cases, they are trying to foster better relationships with the communities, since it is probable that the mining tax and royalty will see companies slash the number of social programs that they have had in place for decades. This is not because companies are unwilling to continue their efforts, but because the government has claimed it will be providing economic support to ejidos and municipalities through the funds collected from the tax and royalty.

Q: What process did the legislators follow during the drafting of the Fiscal Reform, and how did it solidify into its current form?
A: The mining royalty has been under discussion for over 12 years. There have been ongoing debate about whether to impose it or not, in which comparisons have been made with the structures in place in other countries. What was originally being considered was the possibility of a 3% tax, which is a reasonable amount, but then the legislators increased it to 7.5%. In fact, the government has stated it still views this as a low tax. It may be low on its own, but one has to take into account all the other costs that mining companies face, such as energy cost, theft, extortion, cost of water, and cost of access.

Q: What has been the main focus for the services that VSG Abogados has offered to its clients over the past year?
A: On a daily basis, companies are facing a variety of situations, and all mining projects have a certain lifespan. When a project reaches its end, companies have to leave their properties in the best possible condition to comply with their environmental obligations. Right now, our services are mainly focused on helping companies that are well-funded, or which have projects at the production stage. We help them to maintain their production and to look for alternative forms of financing. Small companies in Mexico that were not well-funded are going to disappear, but those companies that are in a stronger financial position will find better opportunities. Some of these companies will be able to acquire projects at a very low cost and hold onto them until the situation improves.

Q: How do you view the performance of Mexico’s mining law in terms of securing land access for mining projects?
A: The mining law does not protect concession holders in regards to land access. This is very important to remember. It is very clear that the concessions relate only to the ground beneath the surface, and that it only awards permission to access that part of the land. 80% of the time, companies have to negotiate with rural or agrarian communities to gain access to the land, and less often to gain access to private property. The Agrarian Law protects the interests of the communities and ejidos, and this prevents mining concession holders from receiving support when dealing with these communities. This is why companies are worried about maintaining the good relationships they have managed to develop at that level. In the world we currently live in, community relationships may even be as important as deposits, per se.