

Timor-Leste's New Draft Mining Code

By: Ricardo Silva and Joana Custóias*

Whether or not Timor-Leste is endowed with valuable minerals and, if so, what types, has always been a much asked question, especially when one considers neighboring Indonesia's mining potential. To answer this question the Ministry of Petroleum and Mineral Resources of Timor-Leste, through the Institute of Petroleum and Geology¹³, recently concluded a detailed mineral reserves survey with exciting results.

Marble, limestone, gold, copper and manganese are some of the mineral resources available in Timor-Leste that have remained unexplored to date, and the Government is committed to changing this situation, as mining activities are expected to create opportunities to drive growth and human development by stimulating private sector investment, promoting economic diversification, and allocating revenue to address social inequalities.

The development of the country's mineral wealth has been frozen, not due to lack of industry interest, but instead due to lack of a modern regulatory framework. After the end of the Indonesian occupation of the country in 2002, the Government of Timor-Leste ceased applying the Indonesian mining regulatory framework previously in force, and licensing of new mining activities stopped. In 2008, with a view to allowing certain mining activities in the country, Ministerial Diploma 1/2008, of 30 July 2008 came into force, approving rules on the licensing of extractive activities for construction and industrial purposes. However, the major changes that have occurred in Timor-Leste's social, political and economic landscape over the last decade created a strong drive for an overhaul of the country's mining framework, which the Government acknowledged when it decided to prepare a draft Mining Code aimed at developing an economically viable mining sector, while at the same time promoting responsible risk management and human development.

Bearing in mind the above goals and principles, after almost three years of preparation, in August 2013, the Ministry of Petroleum and Mineral Resources started the public consultation of Timor-Leste's new draft Mining Code¹⁴, which is aligned with the key constitutional principle governing all mining activities in Timor-Leste: all mineral resources on public and private land within the territory of the country are deemed public domain of the State¹⁵. The Constitution of Timor-Leste further states that

¹³ By means of Decree-Law 33/2012, of 18 July 2012, the Government of Timor-Leste created The Institute of Petroleum and Geology ("IPG"), which is the public institute responsible for archiving, producing, managing, storing and disseminating geological data, including that respecting to mineral resources. It is expected that the data collected and managed by IPG will provide the basis for the prospecting, exploration and production of mineral resources in Timor-Leste's onshore and offshore areas.

¹⁴ Pursuant to the information disclosed by the Ministry of Petroleum and Mineral Resources, public consultation sessions of the new draft Mining Code will take place in all thirteen districts of Timor-Leste. The first was in Oecusse, followed by others in Suai, Same and Maliana during the months of August, September and October 2013. The remaining are expected to be completed by the end of the first semester of 2014.

¹⁵ Cfr. Article 139.1 of the Constitution of the Democratic Republic of Timor-Leste, approved by the Constitutional Assembly, on 22 March 2002 ("Constitution").

mineral resources shall be used in a fair and equitable manner in accordance with the national interest, lead to the establishment of financial reserves, and ensure ecological balance avoiding the destruction of ecosystems¹⁶.

The guiding principles included in the new draft Mining Code:

- Comprehensive regulation of all activities pertaining to the carrying out of mining operations, including the prospecting, exploring, evaluating, processing, mining and marketing of minerals.
- Modern regulatory legal framework, providing the Ministry of Petroleum and Mineral Resources with an integrated structure for the effective regulation of mining activities in the country, including administrative procedural rules for the granting of licenses and permits to entities wishing to carry on said operations, the definition of concession areas, the rights and obligations of all parties involved, as well as the rules on access to land and resettlement of local communities, health and safety, labor regime, inspection and supervision, sanctions and penalties applicable in case of non-compliance with the duties set forth therein and specific rules pertaining to the protection of the environment and to payment of taxes and customs related thereto.
- Granting of mineral rights for exploration, prospecting and mining of minerals is made by means of a mining contract, a mineral pass or a mineral permit, following a competitive tender procedure (general rule) or direct award (in exceptional cases), depending on the type of mining operations envisaged. Although the requirement for a competitive tender prior to the granting of mineral rights may slow down the development of new mining projects, it should lead to a higher level of transparency and to the attraction of genuine investors.
- Non-discrimination between foreigners and domestic investors with demonstrated technical and financial capacity. However, the new draft Mining Code specifically sets forth positive discrimination in favor of local contractors (if technically qualified and economically competitive) and local manpower (with thresholds that vary depending on the stage of the activities).

One additional aspect that is expected to attract foreign investors is the Government of Timor-Leste's strong commitment to the Extractive Industries Transparency Initiative ("EITI")¹⁷. In fact, Timor-Leste was the first country in Asia and the third in the world to become EITI compliant, and the Government has dedicated significant resources to ensure transparency across the natural resources sector. After public consultation is concluded, the draft Mining Code will be subject to approval by the Council of Ministers and National Parliament, which may still introduce amendments and improvements to the

¹⁶ Cfr. Article 139.2 and 139.3 of the Constitution.

¹⁷ EITI is a global effort to increase transparency of revenues arising from extractive industries and of decision-making procedures respecting thereto. The Initiative is aimed at improving natural resources' governance and fostering accountability of powerful institutions, such as governments and companies. See <http://eiti.org/TimorLeste>.

* *Ricardo is Miranda Law Firm's partner responsible for the Timor-Leste jurisdiction, and Joana is the attorney responsible for the Firm's Dili, Timor-Leste, office. They may be reached at Ricardo.Silva@mirandalawfirm.com and Joana.Custodias@mirandalawfirm.com*

draft. Although it is unpredictable how long this process will take to conclude, industry players in the region have been showing increasing interest in participating in Timor-Leste's mining sector, which may speed up the approval of the draft Mining Code and its implementing regulations.