

# THE PORTUGUESE MINING REGIME

### I - OVERVIEW OF THE MINING ACTIVITY IN PORTUGAL

In 2010, there were 56 mines in operation across the country. In the same year, a total volume of 4,664,978 tons of mineral resources was produced and the export volume was of € 735 million<sup>1</sup>. These are impressive data from the Government evidencing a growing sector of activity.

The Portuguese State has full ownership rights of all mineral resources located in the soil, subsoil, internal waters, territorial sea seabed, in the Exclusive Economic Zone (EEZ) and continental shelf.

### II - OWNERSHIP OF MINERAL DEPOSITS – LEGAL REGIME

Mining activity comprises prospection, exploration and exploitation of geological resources and is governed by Decree-Law 90/90, of 16 March 1990 (with the exception of petroleum, “DL 90/90”), and Decree-Law 88/90, of the same date, specifically defining provisions regarding ore deposits (“DL 88/90”) including all metallic and radioactive ores, coal, graphite, pyrites, phosphates, asbestos, talcum, kaolin, diatomite, quartz, feldspar, precious and semi-precious stones, potassium salts and rock-salt.

DL 88/90 divides the mining activity in two main subgroups (i) Prospection and Exploration; and (ii) Mining exploitation, allowing the same entity to develop both activities under a sole agreement.

The rights to develop any such activities are subject to public tenders followed by the execution of concession agreements. The Government may also directly grant concession rights to specific private parties under public bid procedures limitations as defined in the applicable law.

Pursuant to the applicable legal provisions:

- **“Mine”** includes the agglomeration of the mineral deposit subject to the concession, the mining annexes, the works and the immovable assets used in the exploration.
- **“Prospection and Research”** includes the activities aiming at the discovery of mineral occurrences and the determination of its characteristics until verification of economic discovery (exploration activities).
- **“Exploitation”** includes the activities following prospection and research, involving the recognition, preparation and extraction of raw ore, as well as its treatment and transformation when it is processed in mining annexes.

Prospection and research concession contracts for mineral deposits are subject to a five-year term, extendable under exceptional circumstances. As regards the Exploitation (appraisal, development and production contract), the term is not legally set forth and is to be agreed between the Parties. It is not unusual to have 50-year term contracts with a 20-year renewal period.

Mining activities are divided in two main subgroups (i) prospection and exploration and (ii) production. The

<sup>1</sup> Source: Directorate General for Energy and Geology (“DGEG”) website

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“Portuguese Law Firm of the Year”  
*Chambers European Excellence Awards, 2009, 2012 / Who’s Who Legal Awards, 2006, 2008, 2009, 2010, 2011 / The Lawyer European Awards-Shortlisted 2010, 2011, 2012*

“5<sup>th</sup> Most Innovative Law Firm in Continental Europe”  
*Financial Times – Innovative Lawyers Awards, 2011 / Shortlisted 2012*

“Best Portuguese Law Firm for Client Service”  
*Clients Choice Award - International Law Office, 2008, 2010*

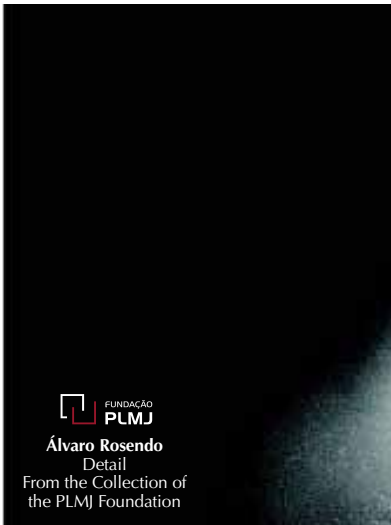
“TOP 100 Firms in Competition”  
*Global Competition Review 2007 - 2012*

“Best Portuguese Tax Firm of the Year”  
*International Tax Review - Tax Awards 2006, 2008, 2009, 2010, 2011*

“Best Portuguese Law Firm”  
*International Financial Law Review Awards 2006 / Shortlisted 2007 - 2012*

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same private entity may develop both activities under a sole concession agreement.

The geological resources industry is not subject to a specific regulator, though it is under the supervision of public and independent authorities with competence over trade, competition and licensing matters, such as the governmental Directorate-General for Energy and Geology and the Competition Authority.

### III - INVESTMENT BY FOREIGN INVESTORS AND TAX INCENTIVES

#### 1. Foreign Investment

There are no restrictions to the entry of foreign capital or investment discrimination. Also, it is not mandatory to have a national partner nor are there specific obligations to the foreign investors.

#### 2. Tax incentives for productive investment

Tax incentives are available for investments of at least € 5.000.000,00, executed until the end of 2020, which are regarded as relevant for the development of business sectors important for the national economy and the reduction of regional asymmetries, creating jobs and enhancing technological innovation and national scientific innovation. The incentives, granted for a maximum period of 10 years, may include a 10% to 20% Corporate Income Tax credit

and an exemption from, or reduction of, Property Tax, Transfer Tax and Stamp Duty. Incentives are available for R&D investment, exemption on capital gains realized by non-investors and on income related to securities.

### IV - TAXATION IN RESPECT OF MINERAL DEPOSITS

#### 1. Dividends

Dividends paid to a non-resident without a permanent establishment in Portugal are subject to a 25% withholding tax. The rate is of 30% if the payee is subject to a more privileged tax regime (according to a list published by the Ministry of Finance that follows closely the OECD list). There are no specific restrictions on the payment of dividends or repayment of shareholders loans to a foreign shareholder.

#### 2. Parent Subsidiary Directive

In accordance with the Parent Subsidiary Directive<sup>2</sup>, dividends paid to an EU shareholder, are exempt from withholding tax, provided that the beneficiary holds, directly, at least 10% of the Portuguese subsidiary for a minimum uninterrupted period of 1 year before the distribution date.

#### 3. Interest and Royalties

Interest payments to non-resident companies without a permanent establishment in Portugal are normally

subject to withholding tax of 25%. The rate is of 30% if the payees are subject to a more privileged tax regime. Royalty payments (including fees for technical assistance, know-how and leasing of equipment) to non-residents without a permanent establishment in Portugal are generally subject to a withholding tax of 15% (30% if paid to entities subject to a more privileged tax regime).

In accordance with the Interest and Royalties Directive<sup>3</sup>, the payment of interest and royalties to EU and Swiss residents, is exempt from withholding tax, provided that: (i) both debtor and beneficiary are incorporated under a legal form foreseen in the Annex to the Directive; (ii) both are subject to income tax, without the possibility of being exempt; and (iii) there is a direct participation of 25% or more between those companies, or they are both owned in 25% or more by a third company, which complies with

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<sup>2</sup> Council Directive 90/435/CEE, of 23rd July, 1990

<sup>3</sup> Council Directive 2003/49/EC, of 3 June.

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the above conditions. Furthermore a minimum 2-year holding period has to be fulfilled.

Currently royalties over production with reference to mine mouth value apply pursuant to the percentage agreed within the concession contracts. Our experience shows that the exploitation charge is usually periodic as a consideration for the extraction of minerals and calculated with reference to the market value of the metals sold in each quarter. Discounts may be available pursuant to investments made by the concessionaire in investigation, local or regional responsibility and/or environmental programmes.

#### **4. Restrictions, fees or taxes relating to the export of minerals**

The export of minerals out of the European Union (EU) must comply with the general procedures set out in the Community Customs Code. The transportation of minerals between EU Member-States is assimilated to intracommunity trade and is thus exempt from customs constraints.

#### **5. Future prospects**

A new Strategy for the Exploitation of Geological Resources was recently approved by the Council of Ministers (Resolution 78/2012 published on September, 11 2012). This strategy aims at boosting E&P mining concessions. As such new rounds for attribution of E&P rights may be expected.

This Resolution refers that, changes to the sectorial legislation are expected, the main guidelines of the policies to be implemented being an organisational and procedural improvement with tighter supervision of prospection activities, a definition of the types of contracts and clarification of pre-contractual rules as well as of the rules to exploit the EEZ, sustainable development through corporate social responsibility projects towards the integration and development of local communities, creation of an *ad valorem* royalty, with a progressive rate considering each ore and of a royalty on the profits with a fixed rate.

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