

MAYER • BROWN
TAUIL & CHEQUER

Mining Industry in Brazil

2012 YEAR IN REVIEW



In this 2012 Year in Review, we summarize some of the mining industry's most noteworthy developments, with a particular focus on the legal environment, the current economic climate, the major M&A transactions and the potential opportunities and challenges for 2013.

► Legal Environment

As has occurred in many other countries during the last decade, there has been debate in Brazil about the current mining legal framework, which dates from 1967. President Rousseff's administration is currently working on a new Mining Code, a draft of which is expected to be sent to the National Congress during the first half of 2013.

Following the model applied in the oil and gas industry, it is expected that the New Mining Code will boost competition among mining companies with the introduction of a bidding process for the acquisition of certain mineral rights. Additionally, the new law should incentivize the exploration and/or production of currently unexploited mines by fixing a term during which a company may hold mineral rights and by implementing stricter rules regarding the performance of the exploitation plan.

It is also expected that the new legal framework will increase the State control over the sector by transforming the National Department of Mineral Production (DNPM) into a regulatory agency and by raising certain taxes. However, it is likely that the government will be careful not to overburden a sector that has been contributing so generously to Brazil's commercial surplus.

During 2012, some legislative bills relating to the industry have been submitted to the National Congress: e.g., one bill sets forth special provisions in connection with the encumbrance of mineral rights and another provides for a bidding process for the concession of production licenses of strategic and high-profit minerals. Two other bills set forth certain rules for the concession of mining licenses in ecological reserves and the increase in the mining royalties.

However, despite the intentions of certain members of Congress, it is unlikely that any of these new law bills submitted last year will be passed, since the new Mining Code should cover all of those same subjects.

► Economic Scenario

At the end of 2012, the DNPM suspended the granting of new mining licenses. The only exception is in respect of aggregates, which are basic raw materials for civil construction. According to Mines and Energy Minister Edison Lobão, this measure will continue until the new Mining Code is passed.

The government's intention was to put an end to speculation in relation to mineral rights and to set aside reserves for the new regime to be implemented under the new Mining Code. However, the Brazilian Mining Association (IBRAM) is currently engaged in discussions with the government in order to reverse this decision.

Notwithstanding the complaints of IBRAM and certain mining companies, IBRAM expects US\$75 billion to be made in new investments in the mining sector between 2012 and 2016. According to a PriceWaterhouseCoopers (PWC) report, Brazil will receive 20 percent of the world's investment in such sector until 2016.

In fact, despite the international economic turmoil and the local regulatory uncertainties, Brazil is home to many of the largest mining-related investments in the world: e.g., Anglo-American's Minas-Rio Project and Vale's Carajás Serra Sul S11D Iron Project.

The Minas-Rio Project (Anglo-American's largest project worldwide) is comprised of four sections: the mine and the processing stations, both in the state of Minas Gerais; a terminal in the Açu Port in the state of Rio de Janeiro; and the mineral pipeline connecting the stations to the terminal. The pipeline, with its 525 km of extension, is the longest of its kind in the world and will allow the production of approximately 90 million tons of iron ore per year at a price of about US\$30 per ton.

The Carajás Serra Sul S11D Iron project is an expansion of the Carajás Mining Complex and is the largest iron ore mine under production in the world. It is a main focus of Murilo Ferreira, Vales CEO, and the company's investments total US\$19.5 billion. Upon its expected completion in 2017, the Carajás S11D Iron Project will produce and supply more than 90 million metric tons of iron ore per year. If successful, it will help to further consolidate Vale's position in the global iron ore market.

► Major M&A Transactions

Despite an international downturn in mining sector M&A deals during 2012, the Brazilian M&A market has remained steady. The major M&A transactions in the mining sector involving assets in Brazil during such period are listed here ►

- The South-African company AngloGold Ashanti has acquired, from the Canadian Kinross, a 50 percent participation in the gold mine of Crixás, the State of Goiás, for US\$220 million.
- Glencore has acquired, from Branford, a 28.5 percent participation in Mineração Caraíba for US\$118.5 million.
- Brazilian company O2iron has merged with the Canadian company Golden Raven Resources with the intention of joining forces on the exploration and production of iron ore in Brazil. The value of the transaction was not publicly disclosed.
- The Brazilian investment bank BTG Pactual and AGN Participações, a company founded by Vale's former CEO, Roger Agnelli, have incorporated B&A Mineração to explore mining opportunities in Africa and Latin America. B&A Mineração plans to spend approximately US\$520 millions on investments.

► Forthcoming Opportunities and Challenges for 2013

Despite the uncertainties created by the prospect of a new legal framework for the mining sector and the possibility of a heavier tax burden, it is likely that the effects of the new Mining Code will be positive.

In fact, it is expected that the new law will address many of the legal issues on which the current law is silent or confusing. It remains to be seen whether the government's intention to encourage competition and incentivize the exploitation of mineral rights will come to fruition.

In short, notwithstanding Brazilian legal issues and the international economic turmoil, the Brazilian mining sector is demonstrating that it will keep its place in the spotlight of the Brazilian economy.

► Contacts

Francisco Rohan

Partner

Rio de Janeiro

+1 55 21 2127 4281

frohan@mayerbrown.com

Guilherme Vieira

Partner

Rio de Janeiro

+1 55 21 2127 4241

gvieira@mayerbrown.com

Carlos Hartveld

Associate

Rio de Janeiro

+1 55 21 2127 4284

chartveld@mayerbrown.com

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe – Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2013. The Mayer Brown Practices. All rights reserved.

Attorney advertising