

Mining 2020

Portugal

Law and Practice

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▼ 1. General Framework

▼ 1.1 Major Features

The mining industry in Portugal represented in 2018 a production value of minerals in the region of EUR970 million, and currently accounts for over 10,000 jobs. While the country has favourable and diverse geological conditions, generally speaking the mining industry has been the subject of ebbs and flows in economic, political, social and even legal terms.

Oversight of the mining industry falls currently within the purview of the Ministry of Environment and Energy Transition (the “Minister”), more specifically the Secretary of State for Energy. Within the public administration, the national authority in charge of policy implementation, development of legislation and regulation, and carrying out inspections in respect of mining activities is the Directorate-General of Energy and Geology (DGEG). Other authorities may be called upon in specific instances, such as (i) the Portuguese Environmental Agency (APA), for matters relating to the environment (eg, environmental impact evaluations); (ii) the Commissions for Regional Co-ordination and Development, within their respective geographic divisions for environment, planning, nature conservation and sustainability matters; (iii) the Institute for Nature Conservation and Forests, in respect of issues pertaining to nature, biodiversity and forest resources; (iv) municipalities, within their respective territories, in relation to specific aspects; and (v) the Directorate-General of Maritime Natural Resources, Safety and Services (DGRM), when offshore resources are involved.

Mineral deposits, in legal terms treated as geological resources that are part of the public domain, may be the subject of different mining rights. Such mining rights include preliminary evaluation, prospecting and exploration, experimental exploitation, and exploitation. Mining rights are granted on an exclusive basis to private parties through administrative law contracts. Incompatible rights on account of their object, content or geographic area may not be granted to other parties for the duration of the contracts.

Over the years, there have been several significant mining projects in Portugal, concerning exploitation of different minerals. Amongst the most known ongoing developments, of which some are world-class metallic deposits, reference can be made to the mines of Aljustrel (copper, zinc), Neves-Corvo (copper, zinc) and Panasqueira (wolfram/tungsten). Various other developments have been considered, but for various reasons have either not moved forward hitherto or have been altogether set aside.

Rehabilitation and environmental remediation of old mining sites has also gained traction in Portugal, notably in relation to old uranium mines. State-owned Empresa de Desenvolvimento Mineiro, S.A. (EDM), which has played various significant roles in the mining sector, has been granted an exclusive concession for carrying out the environmental remediation and monitoring of abandoned mining sites.

A fresh perspective on the potential of the mining industry in Portugal emerged in recent years within the wider context of climate change and energy transition. The surge in the worldwide lithium demand has put Portugal on the map. Holding the sixth-largest reserves of lithium in the world (60,000 metric tonnes), the country has the real prospect of becoming one of the key lithium producers.

Against this background, the Portuguese government has turned prospecting, exploration and exploitation of lithium resources into a policy priority. The Council of Ministers Resolution No 11/2018, of 31 January 2018, approved the strategic guidelines for valorisation of the potential of lithium minerals (“Lithium Strategy”). The goals seem very clear: promoting private initiative, including foreign investment, while at the same time pursuing socially, economically and environmentally sustainable development of mineral lithium resources.

Nine regions in the central and northern parts of the country have been identified as holding significant lithium occurrences. Based on the expressions of interest and requests from potential investors, DGEG has reportedly marked out 11 fields for possible prospecting, exploration and exploitation of lithium.

From the standpoint of potential investors, the practical piece of news is that the Portuguese government announced recently that it intended to launch public tenders for awarding of prospecting and exploration rights in respect of a number of identified lithium deposits. Nine sites are expected to be put on offer, and according to the Minister lithium activities may be initiated by the end of the first quarter of 2020. The awarding of concessions will depend on the enactment of a new statute imposing further environmental requirements.

▼ 1.2 Legal System and Sources of Law

The Portuguese legal system is a civil (continental) law system. At its pinnacle lies the 1976 Constitution of the Portuguese Republic, as amended by the seven constitutional amendment laws (“Constitution”).

The key statute of the mining legal framework is Law No 54/2015, of 22 June 2015 (“Geological Resources Law”), which has set forth the legal regime for the discovery and exploitation of geological resources, including in offshore areas.

Ancillary statutes should have been enacted within three months from the entry into force of the Geological Resources Law. No such statutes have hitherto been approved. Consequently, the former regulations specific for different geological resources remain in force and are applied.

Of such specific pre-existing mining regulations, particular attention should be drawn to Decree-Law No 88/90, of 16 March 1990, which incorporates the “Mineral Deposits Regulations”.

Other pre-existing regulations can be considered, including notably (i) Decree-Law No 84/90, of 16 March 1990 (“Spring Waters Regulations”); (ii) Decree-Law No 85/90, of 16 March 1990 (“Industrial Mineral Waters Regulations”); (iii) Decree-Law No 86/90, of 16 March 1990 (“Mineral Waters Regulations”); (iv) Decree-Law No 87/90, of 16 March 1990 (“Geothermic Resources Regulations”); and (v) Decree-Law No 270/2001, of 6 October 2001, as amended (“Quarries Regulations”).

The sector-specific statutes aside, account must be taken of other statutes that apply to mining activities, including on matters such as the environment (see **2.1 Environmental Protection and Licensing**), labour (eg, Decree-Law No 195/95, of 28 July 1995, on the specific regime for social security of mine workers), health and safety (eg, Decree-Law No 162/90, of 22 May 1990, on safety and hygiene in work in mines and quarries), public procurement (eg, Public Contracts Code, approved by Decree-Law No 18/2008, of 29 January 2008), tax, and territorial planning.

Other than the foregoing sources, mining activities may be subject to European directives and regulations, as Portugal is a member state of the European Union. Specific statutes enacted by the Autonomous Regions of Azores and Madeira may also be relevant for activities within their respective territories. More to the point, for example, the granting of rights concerning geological resources in said regions generally falls within the remits of their respective authorities. At the level of implementation of mining activities in their territorial divisions, the municipalities also have a role to play (eg, mandatory consultations, zoning and planning, public consultations).

▼ 1.3 Ownership of Mineral Resources

The concept of public domain is anchored in the Constitution. With respect to the mining sector, public domain encompasses mineral deposits, as well as natural mineral waters, industrial mineral waters, geothermic resources and other related assets of relevance. These assets may not be owned by private parties, even though mining rights may be granted in relation thereto.

By contrast, rocks, mineral masses (quarries), minerals for construction, spring water and other assets of similar nature do not qualify as public domain assets. They may accordingly be owned by private parties.

▼ 1.4 Role of the State

The key role of the state is that of grantor-regulator, DGEG playing an important part in this respect. Certain grantor-regulator powers nevertheless lie with the Autonomous Regions of Azores and Madeira (eg, granting of rights concerning geological resources within their territorial reach).

Mining rights are typically granted to private entities, through administrative law contracts, the state (represented by DGEG) appearing as grantor. This notwithstanding, the state may (notably via corporate vehicles) participate in prospecting and exploration of mineral resources (eg, as part of a consortium led by private entities). Further, from a theoretical standpoint, there does not seem to be any legal impediment to the state participating as "investor" in the exploitation of mineral resources.

There are no mandatory requirements concerning national, regional or municipal participation or interest in mining undertakings.

From a strictly regulatory standpoint, there are no mandatory requirements on the corporate structure to be adopted. A general requirement of adequate and proven technical, economic and financial capacity must be complied with for the granting of mining rights to be possible.

▼ 1.5 Nature of Mineral Rights

Although mineral resources have an underlying constitutional basis, the regime applicable to corresponding mining rights stems from legal statutes (notably, the Geological Resources Law and Mineral Deposits Regulations). Said rights are granted to private entities by means of administrative law contracts, pursuant to the terms and procedures set forth in the law. In essence, mining rights have both a legal and a contractual basis. Constitutional protection is nevertheless granted to such rights, irrespective of the nationality of the investor.

▼ 1.6 Granting of Mineral Rights

Mining rights over mineral resources part of the public domain are granted through administrative law contracts, entered into with the state (represented usually by DGEG) in its capacity of granting authority.

In the case of mineral resources located in the respective territories of the Autonomous Regions of Azores and Madeira, the granting of mining rights falls generally speaking within the remits of the relevant bodies and services of each region. For offshore geological resources, the central administration must also be involved.

The granting of mining rights in respect of mineral resources located in offshore areas depends upon the granting of a title for private use of the maritime space (known as "TUPEM", the acronym for the Portuguese designation).

For those geological resources not included in the public domain (eg, mineral masses, spring waters), the mining rights may be granted to the landowner or to third parties who have entered into exploitation contracts with the landowner through licences issued by DGEG or the municipalities, as the case may be.

▼ 1.7 Security of Tenure

The Geological Resources Law provides for the following types of mining rights: (i) preliminary evaluation, (ii) prospection and exploration, (iii) experimental exploitation, and (iv) exploitation.

The procedure for the granting of such rights may take place at the initiative of either private interested parties through an application therefor, or of the state through a public tender procedure. Rights may only be granted to entities with adequate and proven technical, economic and financial capacity.

Termination of the mining rights depends upon the type of rights in question. Grounds for termination include expiry; agreement between the contracting parties; termination for cause by the state; redemption by the state, subject to required compensation; termination by private entities in specific circumstances; and extinction of the TUPEM (for rights over offshore areas).

Each of the aforesaid mining rights may succinctly be characterised on the basis of the following outlines.

- Preliminary evaluation:
 - purpose – undertaking of studies aimed at a better knowledge of the existing mineral resources;
 - term – maximum of one year, without extensions;
 - area type – designated for activities of use of metallic mineral deposits;
 - area size – maximum of 15 km²;
 - transferability – non-assignable rights; and
 - subsequent rights – upon expiry of the terms, holders of these rights may either relinquish the area or apply for the granting of other mining rights.
- Prospecting and exploration:
 - purpose – undertaking activities aimed at the discovery of resources and of their characteristics up to the determination of their economic value;
 - term – maximum of five years, including possible extensions (which are subject to relinquishment of areas);
 - area type – "available areas" (areas over which no exclusive rights relating to geological resources integrated in the public domain), or "reserved areas" (only when no incompatibility exists with rights already granted, or rights under consideration in ongoing granting procedure, for such areas);
 - area size – maximum of 500 km² (onshore), or 5,000 km² (offshore);
 - transferability – rights assignable subject to the prior authorisation of the Minister;
 - performance of work – unless otherwise agreed, within six months of the execution of the contract, holders are required to commence the approved prospecting and exploration works;
 - marketing – holders are entitled to export ores or land only for industrial analysis or testing, subject to authorisation of the Minister;
 - ancillary rights – holders may temporarily use the plots necessary for the performance of works; and
 - subsequent rights – subject to compliance with the applicable legal and contractual conditions, holders have the right to obtain a concession for exploitation of the resources discovered.
- Experimental exploitation:
 - purpose – economic exploitation of mineral resources, where the conditions to initiate immediate and effective exploitation are not met;
 - equivalent rights – holders have the same rights as holders of exploitation rights (eg, right to market the products resulting from their activities);
 - term – maximum of five years, including possible extensions;
 - area size – no limit; and
 - transferability – rights assignable subject to the prior authorisation of the Minister.
- Exploitation:
 - purpose – economic exploitation of mineral resources;
 - term – maximum of 90 years, including extensions;
 - area type – areas of previous preliminary evaluation, prospecting and exploration, or experimental exploitation (or, if no such rights exist, in respect of available areas or areas covered with preliminary evaluation, prospecting and exploration, or experimental exploitation, if resources are not included in existing contracts and there is no incompatibility with such activities);
 - area size – no limit;
 - transferability – rights assignable subject to the prior authorisation of the Minister;
 - performance of work – unless otherwise agreed, within one year of the execution of the contract, holders are required to commence the works required for the exploitation;
 - marketing – holders are entitled to market the products resulting from the resource exploitation;

- ancillary rights – use of waters and other public domain assets not being used under another title; contracting with third parties the performance of special works or of technical assistance, provided that such works do not involve the assignment of concessionaire's responsibilities; requesting the urgent expropriation, by reasons of public utility, of plots necessary for resource exploitation; obtaining the necessary administrative easements for the exploitation activities; exercising pre-emption rights in sale or transfer in lieu of urban and non-urban property included in a concession area, provided that such acquisition is essential to the exploitation; and
- specific obligations – compensating third parties for damages caused by the exploitation; maintaining the exploitation in operation save for cases of authorised suspension of activities; complying with workers hygiene, safety and health provisions, as well as with environmental and landscape remediation; exploiting the resources pursuant to appropriate technical standards and in the pursuit of the public interest of best use thereof.

Tenure of mining rights is subject to legal restrictions, amongst others standing out, those relating to the environment. Depending on the area where activities are expected to be undertaken and the land to be occupied, one may come across several environmental, territorial planning and zoning, cultural or other constraints, which need to be dealt with. A number of administrative authorities may become involved in the process. Commencement of mining sector activities is subject to the prior clearance of all such constraints, whether during the process for the granting of rights or at some point thereafter.

▼ 2. Environmental Protection and Community Relations

▼ 2.1 Environmental Protection and Licensing

Before turning to Portuguese laws and regulations, reference should be made to European directives and regulations, which on environmental matters may have particular implications for mining activities.

The key statutes currently in force directly or indirectly dealing with environmental protection and licensing-related matters are as follows:

- General Environmental Law, approved by Law No 19/2014, of 14 April 2014;
- Environmental Impact Assessment Regime, approved by Decree-Law No 151-B/2013, of 31 October 2013;
- Single Environmental Licence Regime, approved by Decree-Law No 75/2015, of 11 May 2015;
- Nature Conservation and Biodiversity Regime, approved by Decree No 142/2008, of 24 July 2008;
- Industrial Emissions Regime, approved by Decree-Law No 127/2013, of 30 August 2013;
- Responsible Industry Regime, approved by Decree-Law No 169/2012, of 1 August 2012;
- Environmental Liability Regime, approved by Decree-Law No 147/2008, of 29 July 2008;
- Regulations on Air Quality Assessment and Management, approved by Decree-Law No 102/2010, of 23 September 2010;
- Waste Management of Mineral Deposits and Mineral Masses Regime, approved by Decree-Law No 10/2010, of 4 February 2010; and
- Waste Management Regulations, approved by Decree-Law No 178/2006, of 5 September 2006.

Other than that, environmental-related provisions may also be found in certain regulatory-related statutes and/or ancillary statutes aimed at regulating some of the above matters. Moreover, some specific statutes expressly aimed at governing environmental-related matters in the Autonomous Regions of Azores and Madeira have also been enacted.

▼ 2.2 Environmentally Protected Area

Portugal has a very significant number of environmentally protected areas, both onshore and offshore.

The Legal Framework on Nature Conservation and Biodiversity provides for the so-called nature conservation fundamental network (RFCN), which encompasses the following types of Protected Areas (APs).

- National System of Classified Areas (SNAC):
 - Protected Areas National Network (RNAP) – including National Parks, Natural Parks, Natural Reserves, Protected Landscapes and Natural Monuments;
 - Natura 2000 Network – including Sites of Community Importance (SCIs) under the Habitats Directive and Special Protection Areas (SPAs) under the Birds Directive; and
 - areas classified under international instruments to which the state is a party; inter alia, Biosphere Reserves listed under UNESCO's MAB Programme, Ramsar Sites under the Ramsar Convention and Geoparks recognised by UNESCO, and the OSPAR Convention.
- Continuity Areas, including:
 - National Ecological Reserves (REN);
 - National Agricultural Reserves (RAN); and
 - Public Hydric Domain (DPH).
- Private Protected Areas (APPs).

The protection regime applicable to APs varies, depending on the importance of the natural resources existing therein and their respective ecological sensitivity. APs may accordingly be classified as (i) Total Protection Areas, (ii) Partial Protection Areas and/or (iii) Complementary Protection Areas.

The specific protection regime applicable is typically set out in the so-called special programme designed for each AP. Depending on the protection regime applicable, mining activities may be prevented and/or subject to limitations or constraints.

Further, the relevant areas available or dedicated for prospecting, exploration and/or exploitation of geological resources are detailed in the relevant local territorial planning instruments, prepared pursuant to the territorial planning legal framework.

In a nutshell, the existence of APs and their respective protection regimes must be assessed on a case-by-case basis. Once the prospective area is identified, it becomes necessary to look into whether the area falls within an AP, and, if so, how mining activities are constrained.

▼ 2.3 Communities

The Geological Resources Law provides for certain general principles with direct or indirect implications for the issue of community relations. These principles include (i) efficient, rational and sustainable use of resources; (ii) public participation rights; (iii) protection of interests of affected or potentially affected people; (iv) environmental protection; (v) prior approval of the landowner for occupancy purposes; and (vi) liability for damages, including environmental damages, caused by mining and/or mining waste management operations.

However, no specific and comprehensive rules expressly aimed at governing and fostering community relations have been included in the mining legal framework. The issue is all the more relevant in that the acceptance and/or approval of mining activities by local communities and stakeholders is currently a hot topic. Several projects have faced (some are still facing) severe opposition from public opinion, and particularly from the directly affected and/or neighbouring communities.

From a practical standpoint, therefore, while not expressly contemplated in law, obtaining a so-called Social Licence to Operate (SLO) – ie, winning popular support for the implementation of the relevant mining project(s) – is increasingly a critical factor for investment in the mining sector, including with a view to ensuring governmental approval and the granting of rights to carry out the envisaged mining activities.

▼ 2.4 Consultation

Pursuant to the Geological Resources Law, the granting of mining exploration and exploitation rights is subject to mandatory prior consultation with (i) the municipalities with jurisdiction over the target area; and (ii) the relevant authorities with jurisdiction over the environmental, territorial planning, cultural heritage and patrimony, nature conservation and water resources sectors.

On the other hand, the Mineral Deposits Regulations (which were enacted prior to the Geological Resources Law) sets forth that the granting of prospecting and exploration rights and/or mining concessions is subject to prior publication of notices in the Official Gazette as well as in various newspapers (including one in the relevant municipality), aimed at allowing interested parties or stakeholders to submit duly grounded objections.

Both aforesaid statutes fail to provide comprehensive rules and requirements for public consultation purposes, merely stating that it is to be triggered and carried out by DGEG.

In addition, reference should be made to the comprehensive rules on public consultation procedures that can be found in the Mining Waste Management Regulations and the Environmental Impact Assessment Regime. Under these statutes, the consultation procedure is triggered and carried out by the relevant licensing authority, not by the investor directly.

▼ 2.5 Specially Protected Communities

There are no specially protected communities in Portugal.

▼ 2.6 Community Development Agreement

In Portugal, at present, negotiating, executing and/or implementing community development agreements is not mandatory under the mining legal framework. The foregoing notwithstanding, community development agreement(s) and/or commitments for the development of industrial or economic activities aimed at causing positive impacts in affected and/or neighbouring areas and communities should to some extent be expected. While they may freely be negotiated and agreed upon in the context of a mining concession on a case-by-case basis, it can be said that such development agreements could have a significant role to play in terms of community relations and acceptance of the project at a local level.

▼ 2.7 Good and Bad Examples

Mining projects often raise significant public reaction, commotion and (at times) opposition by affected and neighbouring communities, essentially because of the potential negative environmental impacts and/or as a result of poor community relations management. The "not-in-my-backyard" (NIMBY) approach (promoted often by some activism), side-by-side with lack of and/or inaccurate information, could also contribute to fierce opposition to, and exacerbate public reaction with respect to, mining projects (as recent examples in Portugal have demonstrated).

The bottom line is that the social impact of mining activities should in no way be underestimated. While a sound legal basis for the project is critical to respond to objections, more than strict legal arguments are required to manage community relations. Full integration of a project within the local context, aspirations and expectations is vital for successfully promoting a mining project at local level.

A comprehensive collection and assessment of environmental and community-related conflicts has been carried out by national and international scholars, activists and strategists. The findings have been reflected in the Environmental Justice Atlas – Portugal (EJ Atlas Portugal). This publication provides a general overview of such environmental and community-related conflicts, as well as of the trends of environmental-related mobilisations. Conflicts triggered by mining-related operations can, inter alia, be found therein.

By way of example, reference should be made to the situation that arose in connection with certain mining contracts for lithium exploration and exploitation. While Portugal seeks to be at the forefront of the climate change and energy transition movement, which in theory should be aligned with the prospect of lithium mining activities, the reality has shown different. The prospect of lithium mines being developed in the vicinity of certain communities has not only raised opposition of such local communities and even local authorities, but also political turmoil at party level. Arguments of lack of transparency and, in particular, poor community consultation processes have been advanced against such mining projects.

By stark contrast, several ongoing and operating mining projects are generally well accepted by local communities. The key point revolves around the positive impacts in the local economy and employment, even though some (if not all) of them have raised several social, labour, health and safety, and environmental-related issues over the years.

▼ 3. Climate Change and Sustainable Development

▼ 3.1 Effects

There are no climate change initiatives specifically directed to mining.

Portugal defined SDG 13 (Climate Action) as a key priority within the scope of the UN 2030 Agenda for Sustainable Development. Innovating on its approach to climate policy, in 2015 Portugal approved the Strategic Framework for Climate Policy (QEPiC). This document governs the main policy instruments on mitigation of the effects of and adaptation to climate change, notably the (i) National Programme for Climate Change (PNAC 2020-30), aimed at ensuring a sustainable path for reduction of greenhouse gas emissions by 18% to 23% by 2020, and 30% to 40% by 2030; (ii) National Strategy for Adaptation to Climate Change (ENAAC 2020); and (iii) European Emissions Trading System, whose full implementation is envisaged. The QEPiC further includes reporting and monitoring obligations via the National System for Policies and Measures (SPeM) and the National System for Inventory of Emissions and Removal of Air Pollutants (SNIERPA), adding to the reporting systems provided under the ENAAC 2020. The climate change policy is further complemented by the National Air Strategy (ENAR 2020) and the Domestic Low-Carbon Roadmap (RNBC).

All the above instruments aim at putting in place policies and actions towards a low-carbon economy. This almost inexorably has an impact on businesses, the industrial sector in particular. Mine development plans could be constrained in their design to the extent they would be susceptible of standing in the way of the intended greenhouse gas emissions reduction.

▼ 3.2 Legislation and Proposals

No specific statutes or provisions on climate change or climate action are expressly provided for the mining sector. The mining legal framework provides nevertheless for some general principles on sustainable development and minimisation and/or mitigation of negative impacts on the environment, which may have implications for mining.

The climate change policies and initiatives referenced in **3.1 Effects** fully apply to the mining industry and may equally become relevant. Specific statutes and/or provisions on climate change-related matters may be enacted in the future, as a result of the implementation of said climate change-related policies. However, at this stage no particulars are known or can be anticipated.

▼ 3.3 Sustainable Development Initiatives

A comprehensive Sustainable Development National Strategy was approved back in 2007. This said, for a number of reasons relating to the monitoring system adopted, the key goals set out therein have not yet been fully implemented.

Following the approval of the Sustainable Development Goals in 2015, the Portuguese government approved the so-called Green Compromise, aimed at promoting the growth of the so-called green economy. The underlying rationale is to encourage green economic activities, as well as to promote the efficient use of resources, thus taking steps towards sustainability.

Within the scope of the UN 2030 Agenda for Sustainable Development more recently considered, Portugal defined as key priorities, amongst others, SDG 9 (Industry, Innovation and Infrastructure) and SDG 13 (Climate Action).

On another level, the National Reform Programme 2018-2022, which encompasses several measures directly or indirectly directed to sustainable development, includes the advancement of (i) efficient use of resources and circular economy, (ii) low-carbon economy and energy transition, and (iii) sustainable mobility. A comprehensive set of initiatives has been developed and/or is being implemented towards meeting the SDGs identified as priorities and implementing the National Reform Programme. Some of said initiatives aim at promoting economic development, and domestic scientific and industrial sectors, by engaging various stakeholders from business, industrial and education areas (eg, Programme Interface, Programme Industry 4.0 and Start-Ups Programme).

Portugal is also committed to fulfilling the Europe 2020 Strategy. The Portugal 2020 programme provides for different measures and instruments that seek to promote the modernisation of infrastructure and rehabilitation of industries, towards sustainability, by adopting clean and environmentally friendly industrial processes. At present, the public debate on the National Strategy Post Portugal 2020 and the key goals re Portugal 2030 is under way. Sustainability, circular economy, energy efficiency and transition, investigation and development on key sectors aimed at promoting industrial modernisation towards a low-carbon economy are some of the main topics that will in principle be included in Portugal's goals under the scope of the 2030 Agenda.

▼ 4. Taxation

▼ 4.1 Duties, Royalties and Taxes

Entities engaging in exploration and mining (exploitation) activities in Portugal, broadly speaking, will be subject to the general tax system, notably Corporate Income Tax (CIT). There is no difference between national and foreign investors with regard to taxation.

Some differences in relation to general taxation should be considered in terms of royalties and bonuses. Holders of exploitation rights may be charged a royalty with reference to the net results of the exploitation or the mine-head value of the extracted products. Adding to this, contracts may also provide for bonuses to be paid by the concessionaire as well as fixed amounts due in connection with the potential of the areas under production. The concession contracts provide in principle for the manner in which such charges are to be updated from time to time.

The general CIT rate applicable in the Portuguese mainland is 21%. A state surtax applies to taxable profits in excess of EUR1.5 million, at a rate between 3% and 9%. A local surtax of up to 1.5%, levied by municipalities, may also apply.

Permanent establishments, applicable to non-resident entities engaging in mining operations in the country, are subject to CIT in similar terms as resident entities, but only in relation to profits attributable to such permanent establishment, and subject to similar reporting and ancillary obligations. The above notwithstanding, the following key differences are noted:

- no tax is due on the allocation of profits by the permanent establishment to its head office (as, technically, it is deemed a transfer of funds within the same legal entity); and
- general administrative expenditures made by the head office in relation to the permanent establishment may be allocated to the latter, under terms or conditions substantially identical to those that would normally be agreed between independent parties.

Concession contracts, renewals thereof, and transfers relating to such contracts, as well as certain amendments thereto, are subject to the payment of a fixed fee, determined by applicable regulations.

Other taxes, non-specific to exploration and exploitation activities, may be due under the law in connection with such activities.

▼ 4.2 Incentives

Two types of tax incentives are available for mining investments and projects, as follows: Contractual Tax Benefits for Productive Investment, applicable for investment projects implemented until 31 December 2020, or RFAI – Investment Incentives.

The Contractual Tax Benefits for Productive Investment may be granted under a contractual regime to investment projects of at least EUR3 million, if considered relevant for (i) the development of the Portuguese economy; (ii) the reduction of regional asymmetries; (iii) the creation of jobs; or (iv) technological innovation and scientific research, improvement of environmental issues, or increase of competitiveness and efficiency. These tax incentives apply to companies carrying out activities in connection with the extractive industry.

The contractual tax benefits available are as follows:

- tax credit for a percentage ranging between 10% and 25% of the eligible investment made, to be deducted from the final amount of CIT due;
- exemption or reduction of IMI and IMT in respect of certain real estate used during the investment period; and
- stamp duty exemption in connection with all contracts or acts necessary to the implementation of the investment project.

The amount of tax benefits is capped with reference to a percentage of the qualifying investments. Subject to certain requirements, the investments deemed eligible are those with (i) tangible assets that are employed in the implementation of the project, and (ii) intangible assets relating to the transfer of technology (eg, purchase of patents, licences, know-how).

Adding to the above, some customs simplifications may be granted in connection with this regime. In particular, the customs bond provided upon importation of non-community goods subject to the customs warehouse, inward-processing and end-use regimes may be waived.

The benefits may be granted for a maximum period up to ten years as from the conclusion of the investment project.

In the event that the contract is terminated (which may only occur in cases set forth under the law and connected to the investor's non-compliance with certain rules and obligations), the tax benefits previously granted will also be revoked. As a result, the taxpayer will be required to pay the taxes that have not been charged in view of the existence of the tax benefits, irrespective of any applicable statute of limitation.

As mentioned above, companies carrying out activities in the extractive industry may opt to benefit from the RFAI – Investment Incentives, which comprises the following tax benefits:

- tax credit for a percentage of the eligible investment made, which may range between 10% and 25% depending on the region where the investment is made and, in certain regions, the amount of the investment made;
- exemption or reduction of IMI for a ten-year period and IMT in respect of certain real estate related to the relevant investment; and
- stamp duty exemption on purchases of real estate related to the relevant investment.

Subject to certain requirements, the investments deemed eligible are those with (i) tangible assets purchased as new directly connected to the company's activity, and (ii) intangible assets relating to the transfer of technology (eg, purchase of patents, licences, know-how).

Should the assets that were the object of the investment be removed from the company and/or from the region (eg, be sold) before the end of the fifth year (third year in relation to micro, small and medium-sized companies), or before their life cycle has run out, the amount of the corresponding tax credit granted in relation to those assets will become due and compensatory interest will accrue, increased by 10 percentage points.

▼ 4.3 Transfer Tax and Capital Gains

The granting of sub-concessions, and the assignment of concessions, will be subject to a 5% Stamp Duty. The duty is a liability of the acquirer and delivered to the state by the assignor.

From a CIT perspective, capital gains deriving from the sale of an interest in an exploitation contract, or from the sale of a company holding an interest in such contract, will be subject to CIT under the general rules, since capital gains are considered taxable profits and taxed at the general CIT rate.

Where the relevant sale occurs through a share disposal in the company that directly holds an interest in an exploitation contract, the gains arising from such share sale, if existent, may be exempt from CIT if certain conditions apply, which are different depending on whether the gain is realised by a Portuguese-resident company or a non-resident company (for example, the minimum holding required is 10% if the gain is realised by a Portuguese-resident company and 25% if by a non-resident entity). Nevertheless, Portuguese law contains a general anti-abuse rule pursuant to which any acts whose main purpose is to obtain tax advantages will be deemed ineffective. This means that the sale of the shares in the company, instead of the assignment of the exploitation contract, must be done for legitimate business and economic reasons.

▼ 5. Mining Investment and Finance

▼ 5.1 Attracting Investment

Portugal's increasing appeal to foreign investment is, generally speaking, based on numerous features, such as the country's strategic location from a worldwide perspective, long-lasting political and civil stability, stable and transparent legal and fiscal framework and regulatory environment, solid telecommunications and transport infrastructure, and skilled workforce.

With respect to investment in mining specifically, the foregoing features add to a geology that is known for its diversity, complexity and exportability, not only onshore but also offshore. Reference can be made to the more traditional mining potential (metallic deposits of wolfram/tungsten, copper, zinc, lead, tin, gold, silver and iron), and to the well-known lithium reserves and the less-known prospects in offshore areas (eg, polymetallic minerals, complex sulphides).

Due to its relevance in the international stage, particular notice should be paid to the lithium potential (spodumene concentrate) in Portugal, which includes one of the largest discoveries in Western Europe. In a context of energy transformation in which ion-lithium batteries will have centre stage, and with the sixth-largest reserves of lithium in the world, Portugal's expectation is that investment in exploration and exploitation of lithium will surge sooner rather than later.

The setting up of a local corporate vehicle in Portugal (a company or a branch) is a swift procedure, which can be completed in one day. Corporate and tax filings, as well as the vast majority of communications and filings with governmental, administrative and judicial entities can be made online. The judicial system has been improving rapidly, and is becoming increasingly more efficient.

Compliance with European Union directives and regulations in all areas, notably anti-money laundering or data protection, can provide foreign investors with increased confidence.

Over the last few years, the Portuguese government has been updating the mining sector legislation, not only to improve the regulatory framework but also to deal with environmental and sustainability concerns. Together with a public administration that has the knowledge of, and decades-long experience of dealing with projects in, the mining sector, the country now offers a sound environment for investments in the mining industry.

▼ 5.2 Foreign Investment Restrictions and Approvals

There are neither special rules for foreign investment approval, nor restrictions to foreign investment in general. Nor are there legal restrictions of any nature to foreign investment in mining exploration and exploitation activities specifically.

The rules applicable to Portuguese investors are the same as those that apply to foreign investors, provided that foreign investors comply, inter alia, with the legislation on mining exploration and exploitation, environmental protection and industrial sustainability.

The foregoing does not detract from the legal requirement, as stated above, for non-residents wishing to carry on activities in the mining sector (or any other business activity, for that matter) in Portugal for more than one year to set up a permanent representation in the country (a company or a branch) and to abide by any other general requirements under Portuguese law.

▼ 5.3 International Treaties

Portugal is not a party to mining sector-specific treaties for the protection of investments. Specific bilateral agreements concerning mineral resources have nevertheless been entered into, as, for example, co-operation agreements. While not including specific provisions on protection of investments proper, these instruments do include some provisions aimed at promoting and supporting the implementation of projects by foreign companies.

Generally speaking, Portugal is a party to several international investment agreements, both in the form of bilateral investment treaties and treaties with investment provisions, aimed at promoting and protecting investments in the country, irrespective of the sector of activity. This network of agreements notably covers several African and South American countries.

In any event, it should be noted that there is no difference between the rights granted to Portuguese investors and those granted to foreign investors, although investors that are not resident in the European Union must first be established in accordance with the law of one of the member states. Also, with regard to the protection of investments, nationalisation and expropriation are only allowed in limited circumstances and in accordance with the law. Compensation would then have to be paid to the affected entities.

It should finally be emphasised that there are also no major restrictions or limitations in Portugal in respect of the importation of funds for mining activities, as well as on the use of proceeds from the sale or exportation of minerals, or in respect of capital repatriation.

▼ 5.4 Sources of Finance

The sources of finance for exploration, development and mining may vary depending on numerous factors, such as the technical and financial standing of the investor, the bankability the project, or the granting of specific incentives that may be legally considered.

Financing obtained with banks, private equity groups, royalty companies, and/or government and European Union agencies, funding from existing shareholders (or other group companies) or new private investors, and even commercial paper programmes could potentially be used to finance prospecting, exploration, development and mining activities in the country.

▼ 5.5 Domestic and International Securities Market

While very acquainted with the mining industry, the domestic and international securities markets still play a less significant role in the financing of prospecting, exploration, development and mining activities in Portugal. Little or no funding has come from the equity capital markets. Investors in the mining sector tend to achieve their capital requirements for projects through the sources mentioned in **5.4 Sources of Finance**.

▼ 5.6 Security

Pursuant to the Geological Resources Law, only mortgages can be lodged over rights resulting from mining concessions or over mining facilities/infrastructures as security for financing obtained for mining operations. DGEG must be notified in advance of the creation of this type of security.

The law does not specifically address the type of security that can be provided over assets other than mining facilities. Guarantees such as mortgages over movable property subject to registration (eg, vehicles), pledge over assets (eg, equipment) or credit rights, pledges over shares held by the debtor's shareholders, or pledges over bank accounts (financial pledge), among others, may therefore also be considered.

▼ 6. Outlook and Trends

▼ 6.1 The Mining Sector

Over the last decade, the Portuguese government renewed its attention to the mining sector. In 2012, it enacted a National Strategy for Geological Resources – Mineral Resources by means of Council of Ministers Resolution No 78/2012, of 11 September 2012. Four key guidelines underlay this strategy: (i) improvement of the sectoral bases and the role of the state; (ii) development of knowledge and valorisation of the mining potential; (iii) promotion of the Portuguese mining sector; and (iv) economic, social, environmental and territorial sustainability.

The enactment of the Geological Resources Law in 2015 was a direct outcome of this sector strategy. The relevant regulations for specific implementation of the legal framework are yet to be put in place, and one would view them as a likely legal development for the very near future.

It was equally within the renewed strategy for the mining sector, and as a result of the worldwide demand for lithium, that at the end of 2016 the Portuguese government set up a Working Group, "Lithium". The report published in 2017, which incorporated the input of a public consultation, led to the approval of the Lithium Strategy (Council of Ministers Resolution No 11/2018, of 31 January 2018). The implementation of this strategy, which is already under way to some extent, will likely form the bedrock of perhaps the most relevant developments that should be expected in the Portuguese mining sector for the coming years.

Simply put, while other minerals available in Portugal can and likely will continue to be within the radar and draw the attention of mining sector investors, what probably will stand out in terms of mining sector investments will be lithium prospecting, exploration and exploitation activities. The strategic guidelines that were approved contemplate the launch of new public tenders with a view to granting "prospecting and exploration" and "exploitation" rights for lithium resources. Potential areas, located mainly in the north and centre of Portugal, include the following: Almendra, Argemela, Barca de Alva-Escalhão, Barroso-Alvão, Guarda, Massueime, Segura, Seixoso-Vieiros and Serra de Arga. Within the areas of interest as expressed by applicants, DGEG has reportedly marked out 11 fields for possible prospecting and exploration and/or exploitation of lithium: Almendra, Amarante Seixoso-Vieiros, Arga, Covas do Barroso-Barroso-Alvão, Gonçalo-Guarda-Mangualde, Massueime, Murça, Penedono, Portalegre, Segura and Sepeda-Barroso-Alvão.

The criteria for the attribution of these mineral rights are not known yet. But according to available information, in addition to the requirement of proof of the adequate technical, economic and financial capacity, potential investors will have to evidence willingness and ability to fulfil all environmental obligations and to demonstrate appropriate work plans considering the nature of the knowledge already available as well as the value of the investments to be made.

It was in this context, in effect, that the Portuguese government announced that ancillary statutes for implementation of the Geological Resources Law are expected to come into force soon; specifically, a new statute imposing further environmental requirements. The purpose is to have the updated statutory framework fully in place by the time of launching of public tenders for granting of mineral rights in relation to lithium-rich areas, which the Portuguese government is targeting for the end of the first quarter of 2020.

A final, rather practical note should be left in terms of the outlook for the mining sector in Portugal. Recent social and political developments involving potential investments in the mining sector (specifically, lithium projects) have shown that the mining industry likely has to face significant challenges, not only at a legal level, but also with regard to compliance with environmental requirements and social implementation. How to navigate these multi-layered challenges in practice, both before administrative authorities and with local communities, could become a critical success factor in any mining sector investment.