

## Brazil's Mining Sector: Administrative Processes Quickened

Recently, Brazil's National Mining Agency ("ANM") published Ordinances No. 22 and No. 24, which aim to speed up the regulatory agency's analysis of mining matters.

### **Tacit Approval**

Ordinance No. 22 regulates Articles 11 and 18 of Federal Decree No. 10,178/2018 in relation to a time limit to be fixed to indicate tacit approval of public acts related to economic activities within ANM's authority, which are outlined in Annex I of this rule.

This rule reflects the change brought by the Federal Law No. 13,874/2019, resulting from the conversion of the "Economic Freedom Provisional Measure," which establishes that the lack of ANM response will indicate that had been submitted for administrative review can proceed

For purposes of calculating the term of the tacit approval, the deadline will be counted from the date of the application was submitted , provided that all required documentation is attached. Therefore, once a deadline provided for in Annex I has arrived, the absence of a response from ANM will imply its tacit approval of the exercise of the economic activity.

Below are economic activities and their respective deadlines established in the Annex I of Ordinance No. 22

| <b>Economic Activity Release Act</b>                                | <b>Deadline for ANM consideration</b> |
|---|---------------------------------------|
| <b>Mining Research Phase</b>  |                                       |
| <b>Request for partial assignment of the mining research permit</b> | 120 days                              |
| <b>Request for total assignment of the mining research permit</b>   | 120 days                              |
| <b>Request for encumbrance of mining rights</b>                     | 120 days                              |
| <b>Final report for negative mining research</b>                    | 120 days                              |
| <b>Request for area partial waiver</b>                              | 120 days                              |
| <b>Request for area total waiver</b>                                | 120 days                              |
| <b>Request for area reduction</b>                                   | 120 days                              |
| <b>Request for area partial resignation</b>                         | 120 days                              |
| <b>Request for area total resignation</b>                           | 120 days                              |

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| <b>Request for geological acknowledgement</b>  | 120 days |
| <b>Request for mining research authorization</b>   | 120 days |
| <b>Request for mining research authorization for those qualified as available</b>                  | 120 days |
| <b>Mining Production Phase</b>   |          |
| <b>Registration for the producer and trader of rough diamonds</b>                                  | 20 days  |
| <b>Application for Kimberley Certificate</b>   | 20 days  |
| <b>Authorization for import mineral water</b>  | 60 days  |
| <b>Request for partial assignment of the mining permit</b>   | 120 days |
| <b>Request for change of mining licensing regime for mining research authorization</b>             | 120 days |
| <b>Request for change of mining permit regime for mining exploration authorization</b>             | 120 days |
| <b>Request for change of mining permit application regime for mining exploration authorization</b> | 120 days |
| <b>Request for change of mining licensing requirement regime for mining research authorization</b> | 120 days |
| <b>Request for partial assignment of mining permit</b>   | 120 days |
| <b>Request for mining rights encumbrance</b>   | 120 days |

### **More Objectivity, Less Judicialization**

Furthermore, on February 3, 2020, ANM published Ordinance No. 24, which deals with the availability procedure in exempt areas, as established by Articles 26, 32 and 65, §1 of Decree-Law No. 227/1967 and Article 2, VII of Federal Law No. 13,575 / 2017.

Under the terms of this rule, the exempted areas are the ones which are declared available, by means of an administrative act, as well as the ones resulting from any form of extinction of mining rights.

The purpose of the rule is to regulate the offer of areas returned, abandoned or lost by operators in the mining sector over the past few years, reestablishing the possibility of mining in these areas.

At ANM's discretion, the areas will be declared available for (i) for research, under the authorization regime, or (ii) for mining, under mining concession or mining permit regimes. They may be declared available individually or in blocks of areas and for a different regime than that for the original use. .

Unlike the procedure determined by Articles 260 to 295 of the Normative Consolidation of the former National Department of Mining Production ("DNPM"), which was approved by DNPM Ordinance No. 155/2016, revoked by ANM Resolution No. 24/2020, and which adopted the criterion of best technical proposal, the current rule adopts the criterion of the highest bid and expression of interest in the area or block of areas is carried out through a public bid, using an electronic platform under ANM's responsibility.

The intention is to adopt a more objective criterion, given that the rules that assigned scores to technical studies were sometimes subjective, which led to a great judicialization of the procedure of assigning mining rights, adding an obstacle to the mining sector.

Only on an exceptional basis, in the event of a tiebreaker, will ANM use the criterion for the best technical, economic and social proposal. However, this criterion can only be used for areas in specific situations such as: (i) the area is located within a contiguous polygonal, (ii) the area is enrolled or circumscribed to research projects, mining concessions or mining groups. The deadline for expression of interest in the available areas will be 60 days from the date of publication of the public notice.

As a transitional rule, under the terms of Article 10 of ANM Resolution No. 24/2020, the availability procedures initiated before the entry into force of Resolution No. 24/2020 and matters that are still pending of judgment will be governed by the rules in force at the time of the application.

For more information about the topics raised in this Legal Update, please contact our [Environmental](#) and [Mining](#) team.