

**The demand for lithium has been steadily increasing due to technological development and in particular due to its use in electric vehicles batteries.** Considering the potential and importance of geological resources as a strategic factor for economic development, the Portuguese government approved [Resolution of the Council of Ministers no. 11/2018, of 31 January](#), setting forth the strategic guidelines regarding the valorisation of the potential of lithium minerals in Portugal, including:

- An initial phase of geological research, through the promotion of public tenders for the award of prospection and research and exploitation licenses in defined areas;
- Evaluation of the opportunity to install an Experimental Mining-Metallurgical Unit, with the purpose of developing knowledge and testing technologies for the entire resource valorisation chain, and a Demonstration Pilot Unit, of industrial character, intended to evaluate production costs within an industrial environment;
- Promotion, within the framework of national, European and international financial instruments, of research projects aimed at recovering the lithium minerals from used batteries.

**Following the adoption of the aforementioned strategic guidelines and considering the increasing interest in the requests for the attribution of prospection and research rights for lithium mineral deposits by national and foreign investors – more than 40 requests having been published in the Official Journal (*Diário da República*) in the last few years –, the government recently announced the launching of public tenders for the award of prospecting and research rights for 8 lithium deposits by the end of 2019.**

#### I. Legal framework

The following legal acts set forth the most relevant statutory provisions regarding natural mineral resources:

- [Decree-Law no. 88/90, of 16 March](#), which sets forth the principles of the activities of prospection and research and exploitation of mineral deposits;
- [Law no. 54/2015, of 22 June](#), setting forth the bases of the legal regime for the disclosure and exploitation of geological resources, including mineral resources, existing in the national territory, namely those located in the national maritime space;



■ [Resolution of the Council of Ministers no. 11/2018, of 31 January](#), which sets forth the strategic guidelines regarding the valorisation of the potential of lithium minerals in Portugal.

## II. The regime of mineral resources in Portugal

Mineral resources are integrated in the State's public domain and may be subject to (i) **prior evaluation rights** for studies aimed at improving knowledge of existing resources, (ii) **prospection and research rights** for the development of activities aimed at revealing resources and determining their characteristics, until the disclosure of the existence of economic value, (iii) **experimental exploitation rights** when the necessary conditions do not exist for the immediate establishment of the exploitation, and (iv) **exploitation rights** aimed at the economic exploitation of resources. The private use of mineral resources is granted on an exclusivity regime and no incompatible rights may be attributed to any third parties during their period of validity due to their scope, content or geographical area.

The following table contains the main features, area and deadline regarding the aforementioned rights:

Contracts	Scope	Area	Deadline
<b>Prior evaluation</b>	The realization of studies aimed at improving knowledge of existing resources	15 km <sup>2</sup>	1 year
<b>Prospection and research</b>	The development of activities aimed at revealing resources and determining their characteristics	500 km <sup>2</sup> , or 5,000 km <sup>2</sup>	5 years
<b>Experimental exploitation</b>	The economic exploitation of resources when the necessary conditions for the immediate establishment of the exploitation do not exist	-	5 years
<b>Exploitation</b>	The economic exploitation of resources	-	90 years

Specific provisions regarding the vicissitudes of the private use titles for mineral resources are stipulated by law, namely (i) the determination that the transmission of the contractual positions in the contracts of allocation of rights of private use must be preceded by authorization of the Minister of Economy, and (ii) that only mortgages can be set up on the rights resulting from concession and on the operation facilities to secure credits for exploitation works, and the Directorate General of Energy and Geology (*Direcção-Geral de Energia e Geologia*, DGEG) must be informed prior to the provision of such security.

### a) In particular, prospection and research rights

Prospection and research rights may only be granted to legal persons that meet certain suitability, technical and financial capacity requirements with respect to the nature of the works to be developed and may only comprise an area not exceeding 500 km<sup>2</sup>, or 5,000 km<sup>2</sup> if the area is located in the national maritime space, for a 5 year maximum deadline, including extensions.

The procedure for awarding such rights may be triggered by private initiative or by the State's initiative, through the launch of a public tender.



The awarding procedure at the request of the interested party includes the requirement of a provisional bond to be provided, which must be returned as soon as the assignment is made. The prospection and research contract requires the delivery of a definitive bond.

Prospection and research contracts must include *inter alia* (i) the area, (ii) the term, (iii) the conditions for the extension of the term, (iv) the work schedule for the initial period of the contract, (v) the investment plan, (vi) the compensation to be attributed to the State, and (vii) the financial guarantees.

Prospecting and research works are contractually established, their specification being subject to work programs and their execution being subject to work reports, both for annual periods. Such annual programs and reports are submitted for approval of the DGEG, which is deemed tacitly given if not expressly refused within 45 days as from the date of their presentation.

Provided that the prospecting and research works are successful, the State guarantees to the promotor, in particular, the right to obtain the concession of the exploitation of the revealed resources, as long as the applicable legal and contractual conditions are fulfilled.

#### **b) In particular, exploitation rights**

Exploitation rights are awarded under a concession regime with a maximum deadline of 90 years, including extensions.

Exploitation rights may be granted (i) to the holder of prior evaluation rights, to the holder of prospection and research rights, or to the holder of experimental exploitation rights, whichever applicable, (ii) in the absence of prior evaluation, prospection and research rights, or experimental exploitation contracts, exploitation rights through direct award at the request of the interested party, or (iii) through direct award following the launch of a public tender.

### **III. Public tender procedures**

Law no. 54/2015, of 22 June, sets forth that the procedure for the award of prospection and research rights, as well as experimental exploitation rights and exploitation rights shall be regulated by a specific legislation, the Portuguese Public Contracts Code (PPCP) being subsidiarily applicable. Decree-Law no. 88/90, of 16 March, also contains few references to the procedural conduct.

The procedure for the award of private use titles shall be regulated by specific legislation, which is expected to be approved in the next months.

### **IV. Final remarks**

Portuguese government is preparing the launching of public tenders for the award of prospecting and research rights for lithium deposits, currently **expected to occur at any time before the end of 2019**.