



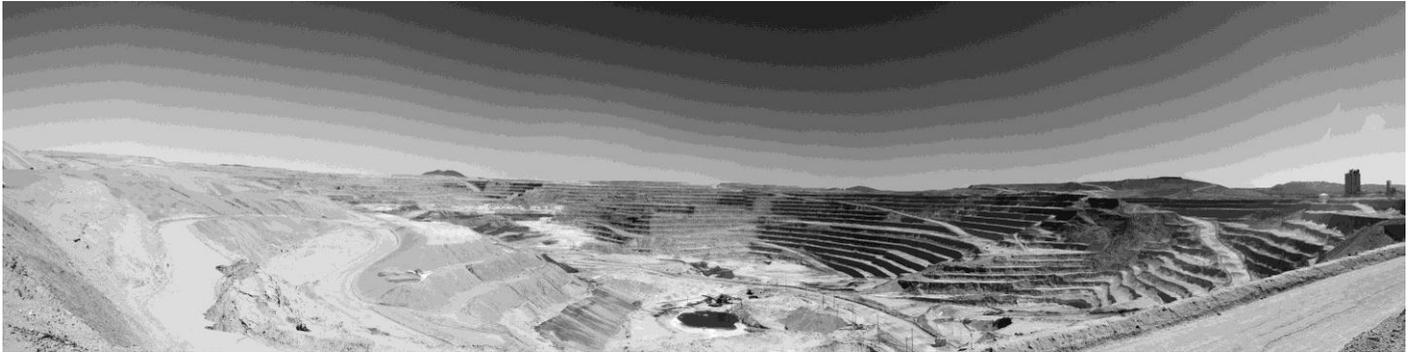
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BASICS OF MINING LAW – SELECTED JURISDICTIONS

By GlobalMine™

The Mining Practice Group of the Globalaw™ Network

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INTRODUCTION & CONTACT



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GlobalMine™, the Mining Practice Group of the Globalaw™ Network, is pleased to provide “Basics of Mining Law – Selected Jurisdictions”. This document outlines the principal legal rules on base and precious metals exploration and mining in many of the important mining jurisdictions. The information in this document is updated as of January, 2015.

“Basics of Mining Law – Selected Jurisdictions” focuses on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements.

This document is offered for informational purposes only and is not intended to constitute legal or professional advice. Experienced local counsel should always be consulted for current legal advice on specific issues.

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GlobalMine™ is the Mining Practice Group of the Globalaw™ Network, Globalaw™ firms acting as co-counsel or in other forms of cooperation for specific mining deals. The firms work together as needed to bring clients the unparalleled ability to manage large, sophisticated mining transactions.

Basics of Mining Law In **Argentina**¹



Contributing Firm:

Nicholson y Cano Abogados

1. What are the main rules of law governing mining activity in your jurisdiction?

The mining activities are regulated by the Argentine Constitution, the Mining Code, federal laws and regulations, as well as local legislation by the provinces in accordance with the federal legislation.

The Mining Code rules that the State (National and Provinces) is the original owner of the minerals but federal and local governments are not allowed to explore and exploit mining areas; mining rights are divided into exploration permits and exploitation concessions.

Exploration permits and exploitation concessions of such minerals must be granted by the State to individuals or companies incorporated under Argentine law.

Through a mining legal concession individuals and companies have the right to exploit and extract the minerals from the soil, subsurface, within the area of the concession as owners. The minerals extracted are privately owned by the concessionaires after payment of royalties to the State. Sales prices are free and established according to international prices, by the rules of supply and demand.

Before beginning mining activities the titleholder must submit an environmental impact report to be approved by the mining authorities, negotiate the access agreements with owners of the surface land and get a permit to use the water for the project.

According to the Mining Investment Law 24.196/93 (promoting mining investments), the exploration stage has the following benefits for registered individuals and companies: (i) fiscal stability for 30 years from the date of filing of the feasibility study, and covers every federal, provincial and municipal tax except VAT – any increase in the tax rates or new taxes will not apply, and the stability applies to the foreign exchange controls and custom duties -; (ii) 100% income tax double deduction on investments in exploration and feasibility studies' expenses, - to calculate its income tax all investments in prospecting, exploration and any other expenses to determine a feasibility of the project will get the benefit of double deduction -; (iii) no revenue tax from mining rights contributed in kind as corporate capital, (this asset as contribution cannot be sold by the

¹ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2015. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

shareholders and the company for 5 (five) years except if authorized by the mining authorities)-; (iv) no import duties – capital goods, equipment and spare parts to be used in mining activities can be imported into Argentina without having to pay any import tax (0-35%) statistics duty (0,5%) or any other import tax -; (v) VAT may be recovered – it is applicable for purchase and import of capital goods related to mining projects and capital investments in mining infrastructure -; (vi) appraisal of exploitable mineral reserves may be capitalized up to 50% and the rest may be registered as a reserve, both free of income tax, and the shares issued by this capitalization are free of any national taxes; (vii) maximum 3% of provincial royalties over “mine value”, which means the net value received by the miners with deduction of the production cost -; (viii) accelerated regime of depreciation for capital investments in mining projects.

2. How are mining rights acquired from the State?

Only individuals and private companies may obtain the exploration and exploitation of mineral resources through a mining legal concession granted by the Mining Authority.

The mining legal concession grants to the holders the property right of the mine they have discovered under certain conditions (annual fee and minimum investments).

Usually, first a Permit is obtained from the Government for purposes of the exploration of mineral substances for a limited area and period of time. During the exploration and before the expiry of the permit, mineral substance deposits may be discovered. In this case, and for the purposes of its concession, such finding shall be reported to the Mining Authority and the concession of the mine shall be requested.

According to the Mining Code (section 45) individuals and private companies can find a mine by an accidental discovery –without previous exploration- and if they inform it to the mining authorities they can also get a mining concession.

The extent of the areas by an exploitation concession are divided in units and each unit comprises 100 has. The amount of units approved depends if it is claimed by a company or an individual; the type of mineral and deposit (disseminated or vein)

To obtain an exploitation concession it is necessary to file a declaration of discovery submitting a sample of minerals found and the location, with the report of the property registry the mining authorities will inform if the areas are free and then the declaration of discovery must be published in the Official Gazette for 15 days for oppositions. Within 100 days of registration of the declaration of discovery the works must be executed to determine the minerals discovered and within 10 days of legal labor the applicant must request the mining units he needs and the measurement. The copy of the measurement is the definite property title of the mine or an exploitation concession.

For requesting an exploration permit it is necessary to determine the limits of the requested area; the name and position of the land; the works and investments to be done, and to pay an exploration fee.

The mining authority will register the permit; notify the owner of the land and publish a notice in the Official Gazette of the place where the area requested is located. There are 20 (twenty) days to oppose the request of the permit. If there is no opposition the authority will grant the permit and since the filing date all discoveries shall belong to the permit holder.

The extent of the areas by an exploration permit are divided in units, each unit comprises 500 has and one exploration permit may include up to 20 units. Companies and individuals can be allowed to obtain up to 20 exploration permits per province directly or through their shareholders.

3. How are mining rights acquired from individuals or companies?

Exploration permits and mining legal concessions may be transferred to third parties freely by any legal transfer of rights (assignment, option agreement, etc). The transfer of mining rights shall produce effects to third parties upon registration with the Mining Registry. A public deed is necessary only to transfer mining concession. Other transfers of rights (prospection, exploration, permits, etc.) may be done through private documents.

Mines can be sold, leased and otherwise transferred in the same way of real estate properties.

Transfer or mining rights may also be done through an Option Agreement (it grants a right to acquire a part or 100% of the mining right and/or a legal concession); Purchase Agreement (for sale of a mine as a real estate property) and Assignment Right Agreement (to transfer mining rights).

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

The legal mining concession gives the titleholder the right to explore and exploit the area. Exploration means activities to provide the size, position, mineral characteristics, reserves and values of mineral deposits. Exploitation means to extract minerals in a mining deposit site.

The legal mining concession is a property right on the subsurface rather than on the land or area where the concession is located.

The mining concession is granted to individuals for an unlimited period of time, as long as the concessionaire performs the works and investments required by law.

Permits (only for exploration) are granted for a limited period of time.

The mining rights may be lost when the titleholder fails to pay the annual fee obligations, does not work, fails to make the investments required by the Mining Code, does not file the Annual Affidavit and/or it is false or with the declaration of abandon of the mining rights by the titleholder to the mining authorities. In all these cases the mining rights revert to the State when lost by the titleholder.

5. What are the restrictions for one operator to hold mining rights?

Any person with the capacity to acquire and have the possession of a property can acquire a mine.

It is prohibited for mining judges within their jurisdiction, for engineers employed by the State in their jurisdiction, as well as for their spouses and children to acquire a mine or part of a mine.

There is a prohibition to acquire property rights near the Argentine limits by a foreign individual or corporation, but there are exceptions for mining activities in nearly all of this border zone of exclusion.

Another restrictions are the lack of experience in mining concessions, risks of mining works over the life of persons and goods and when the mining works may cause damages on public services or private property. Foreign companies must be incorporated in accordance with the local laws to carry out mining activities. Mines cannot be divided and shared by several parties in condominium and in this case the parties have to organize a commercial company according to Argentina Corporate Law 19.550.

Mining companies and individuals have to be registered in the Mining Investment Law 24.196 to obtain its benefits.

6. What are the main working/operating obligations?

Payment of an annual fee to maintain the concession;

Filing of an estimated working and investment plan for a period of five years;

Filing of an Annual Affidavit regarding compliance with the plan of works and investments for each of the five years;

Payment of Mining Royalties (3%) for the right to exploit mineral resources; based on the operating profits after deducting the sales costs and operating expenses;

Compliance with federal laws and/or Provincial laws;

Compliance with administrative obligations, such as environmental regulations, security, and health provisions;

To obtain the permits and concessions holders must negotiate access agreements with the land owner or, in case of opposition the holder may apply for easements;

Obtaining the permit to use water from the mining authorities;

According with the Mining Code any mining company must be liable for the environmental damage and will be obliged to restore and mitigate any damage produced;

Before performing any mining activity the concessionaire must obtain the approval of the environmental impact report. If the environmental impact report is observed, there are 30 days to correct it.

7. How are joint venture agreements or joint operating agreements regulated?

The terms and conditions of joint venture agreements or joint operating agreements must be in accordance with Argentine Corporate Law 19.550.

Joint venture companies may be domestic or foreign companies.

Foreign companies must be incorporated under the Argentine corporate law to carry out mining activities.

8. What are the main features of mining taxation and corporate taxation in mining?

Income tax (35% rate) on profits based on the accounting profit recorded during the fiscal year (January 1 to December 31). An additional rate of 10% will apply on dividends (resident and non-resident shareholders).

Value Added Tax: 21% rate applies (rendering services, construction contracts, import of goods, etc.)

Tax on Personal Assets: 0,5% on personal assets of the shareholders.

Withholding Tax for export: 5% on concentrates and 10% on refined minerals.

Turnover tax (Provinces): average of 3%.

Royalties (Provinces): maximum 3% of “mine value” based on the operating profits after deducting the sales costs and operating expenses.

9. What are the main features of environmental obligations?

Environmental Law 24.585/95 was incorporated to the Mining Code, regulates all the stages of the mining process and requires a previous environmental study of the project on each one of the prospection, exploration and exploitation stages, including the mine closing process.

Before beginning mining activities the concessionaire must submit an environmental report to be approved by the authorities within 60 days of its presentation. If it is observed, the applicant will have 30 days to correct it.

Contents of the environmental study: a) Description of the area; b) Description of the project; c) Modification of soil, water, vegetation, atmosphere, etc.; d) Mitigation and compensation plans; e) Surveillance plan.

This environmental study must be approved by the mining authorities and must be updated every two years and/or when any new issue appears that must be evaluated by the mining authorities.

The Mining Code establishes that any company performing mining activities will be liable for any environmental damage and will be obliged to restore and mitigate them.

There is also an Argentine Glacier Protection law 26.639/010 that provides glacier protection. A National Glacier Inventory is still pending to comply according with this law.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

According to the Environmental Policy Law 25.675 and local Argentine jurisdictions there is a consultation procedure prior to the approval of the Environmental Impact Report by the local Mining Authority.

The result of the consultation is not mandatory for the Mining Authority but the final resolution must be justified by the authorities.

As people have the right to be informed about mining activities and their environmental impact, once the local Mining Authority receives an Environmental Report it must be published for consultation purposes of the population.

In the event of damages, they must be repaired by the damaging party and the contraventions will be imposed fines. Criminal liability may apply.

It is mandatory for any mining company to have an environmental insurance according to the Environmental Policy Law 25.675

11. What kinds of compensations to said groups or benefits in their favor can be expected?

The result of the consultation is not mandatory for the Mining Authorities but if the resolution of the authorities is against the people consultation, the authorities must give a very well founded resolution. The law does not refer to compensation but usually an agreement with the communities is reached with economic issues involved.

If as a result of the consultation an agreement is reached, it will be enforceable by the authorities. If no agreement is reached by the parties involved then the local government will decide if the project can proceed or must be cancelled.

12. Briefly explain how can easements be agreed or imposed.

According to the Argentine Mining Code easements (once verified the concession) can be agreed between the titleholder and the surface land owner, or granted by the Mining Authorities through a process. If the titleholder and the surface land owner don't agree the compensation, they can go to the court.

When there are some urgent mining activities to perform and there are oppositions by the surface land owner with no agreement about the compensation, the titleholder may require to the mining authorities to constitute a previous easement against a bond (bail) given by the titleholder and fixed by the Mining Authorities as a guarantee of compensation (section 153 of the Mining Code).

There are easements for occupation, communication, use of water and grass.

13. Briefly explain how expropriation of third parties' right can be obtained.

The mining concessions grant the rights to expropriate the surface land necessary to carry out the exploration and exploitation activities. The agreement for indemnity will be reached between the parties or at the courts.

The right to expropriate is over one unit of exploration (300 mts. x 200 mts.); if it is necessary the expropriation of more than one unit it must be demonstrated and proved to the mining authorities (sections 156 and 157 of the Mining Code).

14. How are water rights for mining treated?

According to the Mining Code, the mining concessions confer the rights to use the water for exploration and exploitation activities granting an easement for water or authorizations by local authorities to use the water.

This right includes the right to use the natural waters for mining activities and the necessary works to provide and conduct the waters.

The conditions required to obtain a water permit are determined by each province.

15. Is internal and/or external trading regulated? How?

The mining trading activity in Argentina is federal and free from regulations, except for nuclear minerals.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

There are not such rules to offer production for sale to local foundries or refineries, except for nuclear minerals.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

There are no state entities holding monopolies relating to major activities carried out in mining. Some provincial jurisdictions grant mining rights for exploration and exploitation under the condition of doing a joint venture with a Province owned company.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

The National Secretary of Mining through the General Director of Mining is the federal authority that supervises compliance with the Mining Code, Mining Investment Law and other federal laws.

The Minister of Mining and/or the Minister of Environment of the provinces are local authorities in charge of controlling local rules of mining activities and environmental matters.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Claims between private producers and the state may be settled at local or federal courts depending on where the parties are located. Claims between private producers may be settled at courts or resolved by conciliation, mediation and/or arbitration.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Yes, Argentina is a member-party to the Washington (ICSID) Convention.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

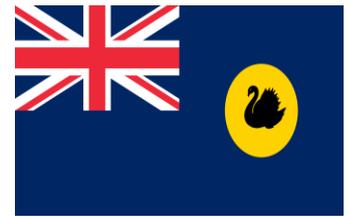
Argentina has entered into treaties and conventions to provide foreign investors with guarantees for the protection of their activities. Argentina has executed bilateral treaties for protection of investments and free trade agreements with countries of Asia, Europe, North America and Latin America.

For example Treaty with USA ratified by law 24.124/92; treaty with Chile ratified by law 24.242/94; treaty with Spain ratified by law 24.118; treaty with Perú in 1994; treaty with Mercosur in 1994 (Argentina, Brasil, Paraguay y Uruguay), etc.

22. Other relevant issues you wish to briefly address?

Argentina has a big geological potential and a favorable mining investment law for development. Over the last years, the country has received mining investments for more than U\$D10. B and exported U\$D 4. B per year.

Basics of Mining Law In **Western Australia**²



Contributing Firm:

Jackson McDonald Lawyers (Perth)

1. What are the main rules of law governing mining activity in your jurisdiction?

Australia comprises six states and nine territories and it operates on a federated system of government. The power to legislate is divided between the central (Commonwealth or Federal) government and the various State governments, depending on each of their defined jurisdictions as set out in the Australian constitution (**Constitution**) and the constitutions of the States.

By virtue of the *Constitution Act 1867 (Imp)* and the *Western Australia Constitution Act 1890 (Imp)*, control over Crown land in Western Australia (**WA**) is vested with the WA State Government. Consequently, the WA State Government has control of legislating for the ownership of minerals to be retained by the Crown in future grants of freehold title.

Onshore mining activity in WA falls under the State Government's jurisdiction and is largely governed by the *Mining Act 1978 (WA)* (**Act**) and the *Mining Regulations 1981 (WA)* (**Regulations**). Major mining projects may also be governed by a 'State Agreement' or a 'ratified agreement', being a contractual written agreement between the State of WA and the project proponent(s), as ratified by a statute of the WA Parliament.

Some mining activities also continue to be governed by the *Mining Act 1904 (WA)*, which was repealed by the new Mining Act with effect on 1 January 1982.

2. How are mining rights acquired from the State?

Exploration and mining rights are acquired from the State by way of a tenement application. A tenement application must be in the prescribed form and is essentially a lease or licence, of which mining title can be taken in the form of:

- (a) an Exploration Licence;
- (b) Prospecting Licence;
- (c) Mining Lease;
- (d) General Purpose Lease;

² This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2015. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

- (e) Miscellaneous Licence;
- (f) Retention Licence; or
- (g) Special Prospecting Licence for Gold.

Any person may lodge an objection to the granting of an application for a mining tenement within 35 days of the application, or within a period specified by the Mining Warden (essentially being the judicial officer presiding in the Warden's Court – see question 19).

If the tenement application in question is for a mining lease and an objection is lodged against the application, the Warden will hear the objection in open court and will then make a recommendation to the WA Minister for Mines and Petroleum (**Minister**), who will determine the application.

The process of acquiring mining rights from the State of WA will not only depend on the type of tenement being acquired, but will also depend on the category of land in respect of which the mining rights are being acquired. The three categories of land are Crown land, public reserves (Commonwealth land) and private land. Pursuant to sections 24 and 25 of the Mining Act, mining cannot be carried out on various types of reserved land without the prior written consent of the Minister.

3. How are mining rights acquired from private persons or companies?

Acquiring mining rights from private persons or companies, in the context of an assignment or transfer of tenements between a current tenement holder and an interested person, usually involves a two step process.

The first step is for the miner and 'assignee' to enter into a private agreement such as a tenement acquisition agreement, a deed of assignment and assumption, a joint venture agreement, a farm-in or farm-out or an access agreement.

If the transaction entered into is in relation to the transfer (or mortgage) of a legal interest in a mining lease, a general purpose lease or a miscellaneous licence, then the written consent to the transfer of the Minister, or the relevant department officer acting with the authority of the Minister, must be obtained prior to the transfer of that interest, as a condition precedent.

An interest in an exploration licence during the first year of its term must not be transferred or otherwise dealt with, directly or indirectly, unless the dealing or other transaction affecting the interest has received Ministerial consent. After the first year, an interest in an exploration licence may be freely transferred without Ministerial consent.

Tenement interests in WA are capable of being divided up either by type of mineral or by dividing up the total interest in all minerals. Consequently, two or more persons may hold interests in a single tenement at the same time.

4. What types of rights and for how long are they acquired? How can they be terminated or lost?

Tenements granted under the Mining Act are given an identification number with a prefix letter identifying the type of tenement. The table below sets out the types of tenements, the tenement type prefix letter, the tenement term and the rights attaching to the different tenements and their lifespans.

Type of tenement	Term of tenement	Rights attaching to tenement
Prospecting Licence (P)	4 years with the provision to extend for one further four year period.	<p>The holder of a Prospecting Licence may enter onto land for the purpose of prospecting for minerals on a comparatively small scale.</p> <p>The holder of a Prospecting Licence may, in accordance with the licence conditions, extract or disturb up to 500 tonnes of material from the ground, including overburden, and the Minister may approve extraction of larger tonnages.</p>
Exploration Licence (E)	For licences applied for after 10 February 2006, the term is 5 years plus a possible extension of five years and further periods of two years thereafter. 40% of ground to be surrendered at the end of year 6.	<p>An Exploration Licence authorises the holder to explore for minerals within the area of the tenement.</p> <p>The holder of an Exploration Licence may, in accordance with the licence conditions, extract or disturb up to 1000 tonnes of material from the ground, including overburden, and the Minister may approve extraction of larger tonnages.</p>
Mining Lease (M)	21 years and may be renewed for further terms.	The lessee in respect of a Mining Lease may work and mine the land, take and move minerals and do all things necessary to effectually carry out mining operations in, on or under the land, subject to conditions of title.
General Purpose	21 years and may be renewed for	A General Purpose Lease is granted for purposes including erecting and

Lease (GPL)	further terms.	operating machinery, depositing or treating tailings and other purposes in connection with mining operations.
Miscellaneous Licence (L)	21 years and may be renewed for further terms.	A Miscellaneous Licence is granted in respect of any of the purposes prescribed in the Mining Regulations including roads, pipelines, power lines, water and other activities.
Retention Licence (R)	The term of a retention licence cannot exceed 5 years and is renewable for further periods not exceeding 5 years.	A Retention Licence is a 'holding' title for a mineral resource that has been identified but is not able to be further explored or mined.
Special Prospecting Licence for Gold (SPL)	May be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.	After 12 months from the grant of a prospecting licence, any natural person may mark out any part of the prospecting licence (being the "primary tenement"), as a Special Prospecting Licence for Gold.

Generally speaking, a person’s right in a mining tenement can be terminated or lost if the conditions attaching to the tenement are not complied with by the tenement holder. For example, if a holder of a mining lease, exploration licence, prospecting licence or retention licence fails to meet the tenement’s annual expenditure commitments, and fails to make, or is not successful in making an application for exemption from expenditure conditions (as required by the Mining Act), then the tenement may be liable to forfeiture.

5. What are the restrictions for one operator to hold mining rights?

A mining operator will generally be confronted with restrictions in terms of the maximum size or area (and minimum size, in the case of an exploration licence) allowed for a mining tenement. Tenement size restrictions will depend on the type of tenement held. There are generally no restrictions on the number of tenements allowed to be held by one operator at any one time (except in the case of a SPL), although security is required for each exploration or prospecting licence held.

Type of tenement	Restrictions (under the Mining Act 1978)
Exploration Licence (E)	<p>For the purpose of Exploration Licences the land of Western Australia is divided into 'blocks', being land with an area of one minute of longitude by one minute of latitude.</p> <p>The minimum size of an Exploration Licence is one block, and the maximum size is 70 blocks equivalent to an area of between approximately 196 square kilometres and approximately 231 square kilometres, except in areas that are not designated as mineralised areas, where the maximum size is 200 blocks.</p> <p>There is no limit to the number of Exploration Licences a person or company may hold, but security (\$5,000) is required in respect of each licence.</p>
Prospecting Licence (P)	<p>The maximum area for a prospecting licence is 200 hectares.</p> <p>There is no limit to the number of Prospecting Licences a person or company may hold, but security (\$5,000) is required in respect of each licence.</p>
Mining Lease (M)	<p>The maximum area for a Mining Lease applied for before 10 February 2006 is 1000 hectares. Thereafter, the area applied for is to relate to an identified orebody as well as an area for infrastructure requirements.</p> <p>There is no limit to the number of Mining Leases a person or company may hold.</p>
General Purpose Lease (GPL)	<p>The maximum area allowed is 10 hectares, unless the Minister approved a greater area.</p> <p>There is no limit to the number of GPL's that a person or company may hold.</p>
Miscellaneous Licence (L)	<p>There is no limit to the maximum area for a Miscellaneous Licence.</p> <p>There is no limit to the number of Miscellaneous Licences a person or company may hold.</p>
Retention	There is no maximum area but the area will be naturally

Licence (R)	limited to the area of the exploration licence or mining lease that the retention licence is wholly or partially replacing.
Special Prospecting for Gold (SPL)	An SPL is limited in area to 10 hectares. A person must not have an interest in more than 10 SPL's at one time.

6. What are the main working / operating obligations?

Operating obligations will generally depend on the type of tenement held. Expenditure reporting requirements apply to mining leases, exploration licences, prospecting licences and retention licences. Holders of mining tenements are also responsible for submitting various other reports such as production reports and royalty return submissions.

According to a publication produced by the Department of Mines and Petroleum (DMP), the main conditions or endorsements placed on all tenements include (but are not limited to):

- (a) an endorsement drawing the lessee's attention to the provisions of the *Aboriginal Heritage Act 1972* (WA);
- (b) a requirement that all surface holes drilled for the purpose of exploration are to be capped, filled or otherwise made safe after completion;
- (c) a condition that all costeans and other disturbances to the surface of the land made as a result of exploration, including drill pads, grid lines and access tracks, be backfilled and rehabilitated to the satisfaction of an environmental officer of DMP;
- (d) backfilling and rehabilitation is required no later than six months after excavation unless otherwise approved in writing;
- (e) a condition that all waste materials, rubbish, plastic sample bags, abandoned equipment and temporary buildings be removed from the mining tenement prior to or at the terminations of the exploration program;
- (f) a condition prohibiting the use of scrapers, graders, bulldozer, backhoes or other mechanised equipment for surface disturbance or the excavation of costeans unless the written approval of the environmental officers of DMP is first obtained; and
- (g) adherence to mine rehabilitation requirements once mining on the land is concluded.

An additional condition is imposed on mining leases that the lessee must not commence development, construction activities or productive mining until it has submitted a plan of the proposed operations and measures to safeguard the environment to the Director, Environment of the DMP for its assessment and the Director has approved the plan.

7. How are joint venture agreements or joint operating agreements regulated?

Joint venture agreements and joint operating agreements are private contracts which may be negotiated and structured as the parties agree, subject to general principles of contract law in Australia. These agreements do not normally establish legal partnerships or employment relationships in Western Australia unless the contract documents state otherwise.

Since it is possible for two or more persons to hold interests in a tenement at the same time, joint venture interests can be either unincorporated contractual interests or incorporated interests where the joint venture parties each hold shares in the joint venture company that holds all of the joint venture assets.

There is no specific legislation or other regulatory processes in Western Australia that govern the formation of joint venture agreements and joint operating agreements.

If the joint venture is an unincorporated joint venture then the legal relationship between the parties will be principally governed by the terms of the contract between the parties and the common law pertaining to contracts. Typically, participants in an unincorporated joint venture will each hold registered interests in the tenement(s) the subject of the joint venture commensurate with their respective interests.

On the other hand, if the joint venture is an incorporated joint venture then the legal relationship between the parties will be governed by contract law and corporate law, which in Australia is principally regulated by the *Corporations Act 2001* (Cth).

Taxation considerations particular to the joint venture participant will often be very relevant to the choice of joint venture structure. In some instances an unincorporated joint venture may be preferred to enable the profits of mining operations to be taxed as against each joint venture participant separately.

8. What are the main features of mining taxation and corporate taxation in mining?

Mining entities in Australia are subject to both Commonwealth and state tax regimes.

At a Commonwealth level, a mining company's net taxable income will get taxed at the relevant company tax rate (currently 30%) pursuant to the *Income Tax Assessment Act 1936* (Cth). Operators who are individuals are subject to marginal tax rates depending on the level of income they earn.

In addition to Commonwealth taxes, each state and territory of Australia also has its own taxes that apply to mining entities. In Western Australia, royalties are charged by the state on all minerals which are extracted from land in Western Australia and sold. These royalties are paid quarterly and vary based on the type of minerals being extracted and whether or not they are beneficiated before being sold. The range of royalties is generally between 2.5% and 7.5% of the gross invoice values of the minerals less certain allowable deductions.

The Australian states and territories also charge duties tax on transfers of property, including mining tenements. Duty is paid at the time that a party enters into a contract (including joint venture agreements) to acquire all or part of the mining tenement.

9. What are the main features of environmental obligations?

Each of the states in Australia has general jurisdiction to govern environmental matters related to land within that state. However, pursuant to an agreement between the Commonwealth Government and each of the states, the Commonwealth is granted jurisdiction under the *Environment Protection and Biodiversity Conservation Act 1999* for matters which are of national environmental significance including threatened species, migratory species, Commonwealth marine parks, nuclear activities and world and national heritage sites. Consequently, the environmental regulations relating to mining projects in Australia are potentially governed by both state and federal law.

In WA, the regulation of environmental matters in mining is largely addressed in the Mining Act and the *Environmental Protection Act 1986 (WA)* (**Environmental Protection Act**). The Mining Act regulates the application and grant process for all mining authorities, including conditions relating to environmental issues. However, the Mining Act must be construed in conjunction with the Environmental Protection Act and all mining proposals that are likely to have a significant effect on the environment must be referred to the Environmental Protection Authority (**EPA**). The EPA is responsible for assessing proposals which will have a 'significant effect' on the environment and will make recommendations which may result in the proposed activity being approved, rejected or approved subject to conditions.

The Mining Rehabilitation Fund Act 2012 (WA) establishes a compulsory scheme whereby WA mining operators (other than those whose tenements are covered by State Agreements not listed in the regulations) report disturbance data and pay a regular levy into a common fund which covers their security for compliance with tenement conditions. Signatories to the scheme are not required to take out further security for their environmental obligations. Money in the fund is available to fund rehabilitation of abandoned mines in the State. Interest earned on fund contributions is able to be spent on the rehabilitation of legacy abandoned mines.

10. Is there a compulsory consultation procedure with indigenous people, peasant communities and/or with populations that may be affected by mining activities? How does it work?

The *Native Title Act 1993 (Cth)* (**NTA**) is federal legislation which provides that indigenous peoples with long-standing native title rights and interests can register a "Native Title Claim" within the boundaries of their traditional country. Pursuant to the NTA, certain types of activities, called "future acts", that take place after 1 January 1994 and which affect native title rights and interests within the boundaries of a Native Title Claim, including most mining activities, cannot proceed unless the proponent first undertakes a consultation process with the native title claimants.

The grant of a mining lease attracts the “right to negotiate”, which is the highest level of consultation provided in the NTA, as the grant of a mining lease generally has a higher impact on native title rights and interests than the grant of an exploration or prospecting licence.

The right to negotiate provides a mandatory period of 6 months from the date a mining company applies for a mining tenement, during which time the company must negotiate in good faith with the native title claimants regarding the grant of the mining tenement. If an agreement cannot be reached within the 6 month period, the mining company can apply to the Courts for an order that the mining tenement be granted, which will usually be determined in favour of the mining company provided the Courts are satisfied the parties did negotiate “in good faith” for the relevant period. There have only been a very small number of cases in Australia where the Courts have refused to grant a mining tenement on native title grounds.

Other types of tenure, such as exploration tenements, can be fast-tracked through a different procedure under the NTA, whereas tenure with a very low impact on native title rights and interests, such as licences to lay electricity cabling, generally provide a low level of consultation with Native Title Claimants, such as a right to be notified or a right to be consulted. In the latter case, the mining company will only be granted the tenure where it can prove it has satisfied the relevant consultation process.

Further, each State in Australia generally has its own indigenous heritage legislation which provides for the protection of indigenous sites (e.g. burial/ceremony grounds) and indigenous cultural material (e.g. artefacts etc.). Some States’ legislation is more prohibitive than others, but generally most indigenous heritage legislation provides that a mining company cannot undertake any mining activity without “clearing” the relevant land by conducting a heritage survey. A heritage survey will usually involve a handful of indigenous participants surveying the land with an expert such as an anthropologist or archaeologist.

11. What kinds of compensations to said groups or benefits in their favour can be expected?

It is commonplace in Australia for mining companies and Native Title Claimants to negotiate an agreement in respect of a mining project which provides compensation to the Native Title Claimants in the form of:

- (a) upfront payments, usually at the occurrence of an event (such as signing the agreement, or the grant of the tenements);
- (b) ongoing royalty payments during the life of the mine;
- (c) funding community facilities; and
- (d) employment and contracting preferences.

There is no set formula for determining the extent of the compensation package, as this is a matter for the mining company and the claimants to determine in their negotiations. Generally, the compensation package will be determined by factors such as the:

- (a) size of the project;
- (b) type of project (e.g. iron ore, gold etc.);
- (c) economic position of the mining company;
- (d) bargaining position of the Native Title Claimants (e.g. some Claimants have a recognised right to “exclude” others from the area of the Native Title Claim);
- (e) location of the project (e.g. is it on a sacred site? Do the Claimants still access the area? etc.);
- (f) involvement of the State Government; and
- (g) willingness of the parties to negotiate a deal.

Most agreements contain confidentiality provisions, making it very difficult to access reliable information about native title compensation payments.

12. How can easements be agreed or imposed?

Access to land the subject of a mining tenement is granted pursuant to the provisions of the Mining Act. The access regime differs depending on the type of ownership of the land within which the mining tenement is located but generally provides that access to both private land and Crown land may be granted by the grant of a mining tenement.

However there are restrictions on the granting of a tenement or access to the land for certain types of land. In respect of Crown land, the grant of a mining tenement does not entitle the holder to explore, fossick or mine certain land including land which is under, or within 100 metres of, land under crop, yards, orchards, vineyards, an airstrip, an occupied house, a cemetery, or a dam, bore or spring or within 400 metres of water works, dams or bores on a pastoral lease without the occupier’s written consent, a direction from the warden of the Warden’s Court or where the mining activities will only be carried out is at least 30 metres below of the lowest part of the natural surface of the land.

In respect of private land, the holder of the mining tenement is prohibited from entering onto the private land unless it has obtained a permit under the Mining Act authorising it to do so. In addition, a mining tenement may not be granted over certain areas of private land including land which is under, or within 100 metres of, a substantial improvement (house or other structure), dam, bore, yard, garden, vineyard, orchard or over any parcel of land that has an area of 2,000m² or less without the written consent of the owner and occupier of the land or if the tenement is only granted over land which is at least 30 metres below of the lowest part of the natural surface of the land.

13. How can third parties' rights be expropriated?

The holder of a mining tenement cannot forcibly acquire any land the subject of the tenement. However, pursuant to the Mining Act the holder can enforce its right to enter onto the land and commence mining operations subject to its compliance with the Mining Act and it having obtained all necessary permits and authorities to enter on to the land.

The holder of the tenement must compensate the owner or occupier of the land for the loss and/or damage that the owner or occupier suffers as a result of the mining activities. This can include compensation for being deprived of possession of the land, damage to the natural surface, loss of a right of way or damage to improvements and, in the case of private land under cultivation, may include loss of earnings, time, and disruption to activities.

Further, the Mining Act grants that any land may be resumed on behalf of the Crown if the Governor of Western Australia recommends that it should be taken for the purposes of the Mining Act.

14. How are water rights for mining treated?

Water rights in Western Australia are regulated by the Department of Water. Any mining activities that have the potential to impact on water resources, including rivers, estuaries and groundwater requires consultation with the Department of Water and the miner will need to apply for appropriate water licences.

Extraction and use of water in mining operations will also form a critical component of the environmental planning in a mining permit and/or environmental impact statement for mining operations.

15. Is internal and/or external trading regulated? If so, how?

Internal trading of mineral resources within Australia is not regulated and trading of mineral resources with external markets is generally not regulated subject to compliance with relevant export regulations and taxation laws.

However, special regulations apply to the export and sale of nuclear materials.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

No.

17. Do state entities hold monopolies relating to mining/ environmental activities? What is the scope of their jurisdiction?

No.

18. Which are the state authorities of control over mining/ environmental activities? What is the scope of their jurisdiction?

The DMP is primarily responsible for management of mineral exploration and development in WA. The WA Department of State Development also plays an important role in promoting and facilitating the development of major mining projects.

Further, in assessing certain types of tenement applications and approvals of proposed mining activities, the DMP may also liaise with the following WA government departments:

- (a) EPA;
- (b) Department of Environment and Conservation;
- (c) Department of Water;
- (d) Department of Planning;
- (e) Department of Regional Lands and Development; and
- (f) Department of Aboriginal Affairs.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/ or arbitration viable? In which cases?

The Warden's Court of Western Australia has jurisdiction to hear and make orders in relation to both administrative and judicial matters involving mining tenements in Western Australia. Disputes in respect of objections lodged against tenement applications, enforcement of contracts, awarding of damages or compensation, or disputes arising between competing applications are all matters which may be dealt with in the WA Warden's Court.

The courts of Western Australia have general jurisdiction in relation to any contracting disputes and other proceedings which are not specific to the mining tenements. Some proceedings involving breaches of Commonwealth laws may be heard by Federal Courts.

Parties may resolve disputes through conciliation, mediation and arbitration and it is common for parties to contractually agree to pursue a resolution in these ways before being permitted to commence proceedings in a court.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Australia is a member party of the Washington (ICSID) Convention.

21. Has your country executed and ratified bilateral investment treaties for the reciprocal protection of investment? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Australia has executed approximately 23 bilateral treaties for the reciprocal encouragement and protection of investments. These treaties facilitate equal treatment between foreign investors and domestic investors, provide compensation measures for foreign investors exploited by

expropriation and nationalisation and in the event of conflict, offer dispute resolution mechanisms between the foreign contracting party and the domestic contracting party.

Australia has executed and ratified one multilateral treaty for the encouragement and protection of investments, namely the Washington (ICSID) Convention.

22. Other relevant issues you wish to briefly address?

Australia is one of the world's major mining jurisdictions. It is endowed with an abundant supply of mineral resources, including:

- (a) the world's largest reserves of gold, iron ore, lead, rutile, zircon, nickel, uranium and zinc;
- (b) significant resources of bauxite, black coal, recoverable brown coal, cobalt, copper, ilmenite, lithium, magnesite, manganese ore, niobium, silver, tantalum, tungsten and vanadium.

Western Australia is Australia's major resources and energy jurisdiction. It is responsible for the majority of Australia's iron ore, gold, nickel, alumina and crude oil and concentrates production, as well as significant proportions of heavy minerals sands, copper and many other minerals.

In 2013–14 the value of Western Australia's mineral and petroleum industry was A\$122 billion, with iron ore and gold together accounting for A\$82.6 billion (87%) of all mineral sales.

Further information regarding the mining and petroleum industries in Western Australia can be found at www.dmp.wa.gov.au and www.cmewa.com.

Basics of Mining Law In **Bolivia**³



Contributing Firm:

Bufete Aguirre Soc. Civ.

1. What are the main rules of law governing mining activity in your jurisdiction?

In 1997 a complete new Mining Code, governing most matters relating to mining activities was enacted. A substitute law No. 535 was passed on May 28, 2014. Following the 1997 Code additional regulations governed and most of them continue to govern certain mining taxation matters and mining environmental, obligations, in the latter case based on a separate general Environmental Law of 1992.

The 1997 Code followed the concessions system considering mining concessions as real estate property which as such could be transferred, contributed to capital of companies, mortgaged, bartered, sold and the like and subject to inheritance laws under the Civil Code.

By a Constitutional Judgment of 2006 the characterization of concessions as real estate property was declared contrary to the Constitution and the Constitutional Court granted a two year waiting period for Congress to enact substitute rules. Since Congress did not so enact them, the judgment came into effect after expiration of the two years term and consequently all those articles in the Code treating concessions as real estate property were voided. Concessionaires retained their rights of development and exploitation and a number of others, such as the right to execute leases and joint venture agreements.

On February 7, 2009 a new Political Constitution was approved after a long process at a Constitutional Assembly. The Constitution inserted new rules on mining activities and mandated that all concessions be transformed into contracts with the State. Such transformation, requiring a new mining law, had to occur by December of 2010. But no substitute law was approved so the Executive Branch passed a Decree that month declaring all mining concessions as temporary licenses, respecting all acquired rights, until the enactment of a new law.

As from march of 2011 a multiparty commission, with the participation of the Mining Ministry, the State Mining Company COMIBOL, the National Union of Mining Workers, the Mining Cooperatives, the National Chamber of Mining (small private miners) and the Association of Medium Miners (large private mining companies) negotiated and agreed on a complete draft of a proposed the new law. On July 12, 2013 the draft was officially delivered to the Minister of Mines.

³ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2015. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

Internal consultations at the level of the Executive Branch derived in the introduction of a number of changes, the Ministry of Mines having delivered the revised draft law to the participants in the commission by the end of 2013. The mining cooperatives and the private objected the revisions. After further consultations and negotiations a final draft consisting of a multiparty commission version was finally sent to the Bolivian Congress, where discrepancies derived in conflicts particularly with the mining cooperatives due to changes introduced to the draft law during the debates at the Chamber of Representatives. Following political negotiations which resulted in controversial and rather imprecise rules on some important articles of the law, Congress approved the law which was enacted by the President of the State on May 28, 2014 (Law No. 535), substituting the 1997 Code. Under the Law practically all rules governing environmental mining matters and the royalty regime remained unchanged, with some minor adjustments.

2. How are mining rights acquired from the State?

Under Law 535, current mining concessionaires have to file applications for conversion of concessions into Mining Administrative Contracts to be executed with a new Jurisdictional Administrative Mining Authority, in order to retain and continue exercising their mining rights, following new rules and requirements under the law. The Authority is yet to pass an express resolution fixing a date as from which and for a period of six months, applications for conversion are to be filed. Failure to do so will result in the cancellation of the mining rights. Those concessions will form part of free mining areas. This process is expected to take place during 2015.

A first regulatory decree of the law has also determined that applications for other current free areas can be filed as from February 1st, 2015 ending in new Mining Administrative Contracts each of which requires congressional approval for effectiveness when the application is for development and exploitation. Simple authorizations for exploration can be obtained from the Mining Authority. So currently existing free areas and in due time cancelled or reverted areas are and will become available for exploration and/or exploitation. Any interested mining company, state or private or mining cooperative will be entitled to apply for an Exploration License or a Mining Administrative Contract. If it were only a license to conduct exploration, this generates a preferential right to apply for a development and exploitation contract, Contracts can be for a part of for or all phases of mining development.

Operators with Exploration Licenses will also be entitled to have a third party mining company joining through an association agreement for purposes of exercising the preferential right to sign a contract.

The main state mining company, COMIBOL, which holds large and important mining areas (additional new ones have been reserved for it under the law) will either directly continue mining activities under certain conditions, including continuation of current joint venture agreements and leases with private entities COMIBOL has signed in the past, to be revised and updated under special terms, or sign new association agreements with private parties, in which case COMIBOL must hold a participation of at least fifty five per cent of profits.

Mining cooperatives having received in the past mining rights through contracts, particularly leases, signed with the main state mining company, will be entitled to continue their exploitations by means of administrative contracts directly to be signed with the Jurisdictional Authority, which will substitute those old contracts. Sub-contracts signed by the cooperatives there under with private parties will essentially be respected under certain conditions

Lease agreements by the state mining company with cooperatives (and exceptionally with some private companies) executed in Fiscal Reserve areas declared in the past by the Executive Branch, are in process of being changed or have been changed to interim administrative mining contracts, to be adapted to definitive mining contracts under law 535.

So those and other mining rights recognized or in process of recognition under two interim laws passed prior to law 535, especially for the benefit of mining cooperatives, will follow a process of adjustment to the new law.

As a result of one of the controversies during the congressional deliberations, law 535 forbids that mining cooperatives sign association agreements with private mining companies an alternative which was proposed by the commission draft law sent to Congress.

Under Law 535, current mining concessionaires have to file applications for conversion of concessions into Mining Administrative Contracts to be executed with a new Jurisdictional Administrative Mining Authority, in order to retain and continue exercising their mining rights, following new rules and requirements under the law. The Authority is yet to pass an express resolution fixing a date as from which and for a period of six months, applications for conversion are to be filed. Failure to do so will result in the cancellation of the mining rights. Those concessions will form part of free mining areas. This process is expected to take place during 2015.

3. How are mining rights acquired from private persons or companies?

All private companies in process of adjustment to the law or having received new rights by contract are only entitled to execute a certain commercial form of association agreement with other private parties. No direct acquisition of mining areas from other private parties is permitted. Acquisition of equity in an existing private mining company holding mining rights is allowed.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

Administrative Contracts by conversion from current concessions will recognize existing full rights of exploration and/or exploitation and development, which include treatment, foundry refining and/or trading. Such contracts as well as new contracts when with private companies will have a maximum term of thirty years (which could extend for an additional thirty years). Each contract will require continuity and/or working and investment plans which the applicant must submit to the Authority.

Contracts by the jurisdictional authority with mining cooperatives or state mining companies will be without term, but will be subject to termination if certain conditions are not met.

Breach by private parties of conditions constitutes cause for contract anticipated resolution/termination. Those conditions mainly include the obligation to make payment of annual patents (as is currently the case) and the obligation to initiate works within a certain period of time and/or the obligation not to suspend works also for a certain period of time, unless force majeure can be demonstrated. Sanctions for breach of other non mining obligations properly are subject to applicable separate laws and regulations (environment, social security, labor, industrial security, taxation, etc.) and breach thereof do not constitute cause for contract resolution.

Termination of association agreements is subject to contract, though the holder of the mining right through administrative contract must abide by the terms of the latter, as above mentioned, to ensure continuity of the association.

New exploration licenses will have a maximum term of five years. It can be extended, when justified, for an additional three years' period. Force majeure suspends computation of the term.

Aerial prospection is allowable subject to a license valid for a period of six months. It also creates a preferential right to apply for an administrative contract provided it is exercised within the six months period.

The law provides for causes of termination of Exploration Licenses. These include failure to start activities within a year, breach of the obligations to deliver reports to the authority and of not conducting exploitation activities. The holder of the license can renounce to it at any time.

At end of 2013 the Bolivian Congress approved a legally questionable law by which all current private mining concessionaires (temporary licensees) may have their rights cancelled in case they do not demonstrate having conducted mining activities, all as defined in the law and its regulatory decree enacted by the Executive Branch. A number of concessions have been revoked under this law which continues to apply despite the enactment of law 535. It will become inapplicable on a case by case basis when conditions for executing substitute administrative agreements are met, after filing of individual application within the six months period referred to above.

5. What are the restrictions for one operator to hold mining rights?

As was essentially the case under previous legislation, operators are not able to conduct mining activities in restricted areas, such as towns and cities or within a certain distance of cemeteries, military compounds, historical or archeological monuments, roads or public energy or telecommunications installations, or in or close to public or private installations.

In respect of surface rights (which are separate from mining rights) unless there is agreement with landowners for the use of land, rights of use, way, surface or similar are and will be obtainable from the competent jurisdictional mining authority through administrative process. This is independent from the prior consultation obligation as will be mentioned further below.

Foreign individuals and foreign companies generally cannot hold property rights or rights of possession within fifty kilometers of the international borders, a rule which applies to mining administrative contracts. However In case of public need Congress can pass an authorization law (this rule has been in place for a long time under various Constitutions). Participation of a foreign mining entity or company in an association agreement with a Bolivian mining producer (other than with cooperatives because of the prohibition) direct holder of rights in such “security zone” is also to be authorized by the Bolivian Congress.

Contracts resulting from substitution of old concessions will respect the original extension of the mining rights. For new contracts the maximum extension of an area is 250 “*cuadriculas*” (hectares). Exploration licenses can extend to 500 “*cuadriculas*”, to be reduced to the maximum 250 should the operator exercise the preferential right to enter into contract.

As was essentially the case under previous legislation, operators are not able to conduct mining activities in restricted areas, such as towns and cities or within a certain distance of cemeteries, military compounds, historical or archeological monuments, roads or public energy or telecommunications installations, or in or close to public or private installations.

6. What are the main working/operating obligations?

Under converted administrative mining contracts, the contracting party will not be able to abandon or stop mining operations for more than one year, unless for reasons of force majeure. The scope of force majeure is determined in the law. It covers very broad circumstances including unfavorable or negative market conditions rendering a venture temporarily non profitable. The same rule will apply to new contracts with the additional obligation that companies should start operations within a period of time of one year.

Other operating obligations include compliance of labor, social security, industrial security and environmental rules. Such set of rules are identified as the economic and social function required for mining activities under the new Constitution. There are also reporting obligations of different nature and those relating to taxation as explained further below.

7. How are joint venture agreements or joint operating agreements regulated?

Association agreements can be entered into between state mining companies and private mining companies or mining cooperatives. These resemble joint venture agreements previously recognized under the old Mining Code. As between private companies, a different kind of association agreement governed by the Commercial Code is possible. As above mentioned, no association agreements between private operators and cooperatives are allowed.

The mining association agreement does not generate a new legal entity. Relationship between the parties is governed by contractual terms. One important feature is that all associates must be involved in management and operations. Contributions by the parties are to be determined as well as their participations in profits and losses. If holder of mining rights is a state mining company, its

participation is to be the minimum 55% on profits. As between private parties freedom of agreement on participations applies.

A legal representative will represent the parties and the association for all legal purposes. The association is to carry internal independent accounting and generate financial statements of its own. The tax on company profits with the additional tax for mining companies is to apply on head of each participant and not on the association results. Each participant would account for the amounts received as income from investments net of taxes. Its own and separate consolidated financial statements will determine payment of profits tax. The applicability of income profits tax for cooperatives is to be revised. The preexisting mining tax regime has been essentially maintained, despite proposals from the negotiating commission to generate a new system to include special incentives. A general tax reform is expected for the coming years.

8. What are the main features of mining taxation and corporate taxation in mining?

Current regulations provide for payment of an annual patent as a fixed amount depending on the extension of the concession/mining area. This is to continue under the new law with some adjustments. It does not represent a very substantial charge. For exploration the value per *cuadrícula* is equivalent to aprox US\$ 45, 00. Aerial license costs a fixed amount of aprox. 7.200 US\$. In case of exploitation value varies depending on the extension of the grant of rights. Cost runs aprox. between US\$ 60,00 to US\$ 90,00 per “*cuadrícula*”.

The mining royalty system applies and will continue to apply. Royalties are mainly calculated on the gross value of sale of the respective mineral or product which results from multiplying the weight of the net fine content by the official quotation. This is fixed by reference to the daily quotes of cash transactions in the London Metals Exchange. The quotas vary from one mineral, concentrate, bar or refined product to another. A percentage on so calculated value is given to the various products: gold, zinc, lead, tin, antimony, wolfram, copper, bismuth, iron, borax, precious stones, etc. Final liquidation of royalties for payment occurs at the time of exports, with a system of prior retentions during the internal trading process when followed.

85% of royalties is distributed to the department where the producer is located and 15% to municipalities of said department. The 2009 Constitution mandates participation by indigenous people and peasant communities on the benefits of mining exploitation. This will be attained by recognition of participation in royalties. The Mining Law provides that departmental budgets must guarantee such participation.

In addition to mining patents and royalties, companies are subject to the general taxation system on company annual profits (25%). In the case of mining companies there is an additional 12,5% profit tax, thus totaling 37,50%. An existing additional surtax of 10%, applicable in a scenario of high international prices, is yet to apply. Remittance of profits abroad is subject to a withholding tax of 12,5%, though there are Bilateral Double Taxation Treaties with some countries which reduce the tax to 10% or create an exemption for companies covered by those treaties. An additional 3% so called Transactions Tax applies on certain local gross income, which can be credited against taxes on profits. Local sales of concentrates and minerals generally trigger the

obligation to issue official invoices which generate a 13% added value tax debit for the issuer and tax credit for the recipient. Debits can be offset against credits. A zero debit tax system might apply in the case of certain producers for initial internal sales.

9. What are the main features of environmental obligations?

Every specific project has first to be categorized for environmental control purposes. Projects having environmental impacts have to obtain an environmental license based on an environmental impact study. Rules and regulations are very complete. A specific Decree governs on mining, based on the general Environmental Law.

Companies acquiring new rights normally conduct a base line audit in order to identify environmental impacts of the past, for which, based on such audit, they are not responsible. Not conducting it makes the holder of rights responsible for impacts of the past. Changes to impact studies need official filing and authorization, as is also the case with changes affecting the license.

Filings and periodical reporting with the corresponding environmental authorities are applicable. Authorities can and do conduct audits and inspections. Third parties can file denunciations for breach. Regulations fix allowable impact limits for air, water, etc. Impacts above authorized limits generate civil liability and even criminal responsibility. Under the 2009 Constitution environmental felonies do not disappear by passing of time (no statute of limitations).

These past in effect legal rules will continue under the new mining law without major change. There is however the fact that a so called “Mother Earth” law and a regulatory law have been passed, which generate uncertainty on their effects on environmental regulations. An obligation of “restitution” upon conclusion of a mining project has been introduced.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

A controversial and very important current debate around exploitation of natural resources relates to the obligation of producers to consult with indigenous people, peasant communities and other population, which may be impacted or affected by a project. This has become a complex issue not only for mining but also for other activities. Some projects have stopped because of the impossibility to reach agreement with local communities.

There are a number of legislative initiatives to deal with the matter; the most important one is contained in a draft law of Prior Consultation, a general framework for all activities which trigger the consultation obligation. The new mining law contains a specific chapter on prior consultation, proposing specific rules and procedures including, the effects and legal nature of the consultation process and its results. The law follows Resolution 169 of the International Labor Organization and takes into account the U.N. General Assembly Resolution on indigenous peoples’ rights

A controversial situation has developed as a result of recognition under the Constitution and regulations of certain indigenous collective people’s rights on their ancestral territories (territorial

rights) which however are to respect third party acquired rights. Under the new Mining Law mining activities can be conducted generally on any part of the territory, but controversies with local communities are not uncommon.

Restrictions exist in the case of mining areas located in national preservation areas and parks. Mining activities can be carried out provided that the purpose of the area or park is preserved.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

In cases where agreements have been reached, the solutions are variable and multiple. This naturally depends on the scope and size of the project. Direct agreements have so far been the method. These may have included from simple compensations (build a road, a school, water works, medical infrastructure, perhaps occasionally cash payments) to more complex arrangements (relocation of towns and changes in infrastructure; creation of local social entities or companies as service providers to the mining producer; social relocation of historical/religious sites; obligations to hire personnel from communities; modernization of sites; independent commercial ventures with support of producers; land acquisition, etc.).

The new Mining Law provides a more defined working framework, which includes restrictions on how compensation is to operate.

12. Briefly explain how can easements be agreed or imposed.

Direct negotiations and agreements is the rule. Absent agreement the producer is entitled to file and obtain from the competent authority, through administrative proceedings, forced and compulsory easements or authorizations of different nature depending on the scope. In all cases compensations are payable.

13. Briefly explain how expropriation of third parties' rights can be obtained.

Like with easements, absent agreement, an actual procedure similar though not exactly as an expropriation one can be filed when justified. This depends on the producer's needs. Easements generally and rights on surface obtained through process are reduced and can be extended when the need and purpose thereof changes. In case of reduction, owners of surface recover title.

14. How are water rights for mining treated?

Enactment of a more complete Law of Hydro Resources is expected for the near future. In the mean time the Mining Law provides rules similar to previously existing ones. These include the right of use of internal waters (waters in the mining area) and water of public domain. In most cases authorizations are to be obtained from the Water Authority or from recognized concessionaires when still in place. In all cases environmental rules also apply. For most cases water rules compel users of waters to pay users' rights to the State or concessionaires.

15. Is internal and/or external trading regulated? How?

Internal trade and export is free but controlled by a specialized registration entity, the SENARECOM and the Customs Office. All traders, including producers, have to obtain a registration or license. One of the purposes of SENARECOM is to exercise control over payment of royalties. Given the many deficiencies of internal trading control the new mining law gives extended controlling powers to SENARECOM.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

The new mining law however creates the obligation on producers of concentrates to compulsory offer their production for sale to local foundries, whether of the state or private, with as first right for the former. If agreements are not reached on market conditions terms (price, payment terms, etc.) the producer will have freedom of sale or for export.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

Following current policies the new mining law confirms that the state – through state public companies –has the exclusive right of mining certain ores. Lithium and related components, potassium for example at the salt lakes, can only be mined until the phase of production of basic commodities by the state mining companies. Subsequent semi-industrialization and industrialization processes can be performed through association agreements with private companies, national or foreign. A similar approach applies to uranium and similar ores for nuclear energy production.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

Authority is distributed between municipal, departmental and national environmental state entities, depending on the scope of control to be exercised. The national/central head is the Ministry of Environment and Water. Governors' offices intervene in departments.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

The Mining Administrative Authority exercises administrative jurisdiction to resolve, amongst others, on administrative proceedings for claims or oppositions against the granting of mining rights through administrative contracts, licenses or authorizations. Pending controversies on title between mining actors would continue to be resolved through ordinary judicial proceedings.

Administrative contracts, licenses or authorizations by the Mining Jurisdictional Authority cannot be subject to arbitration. Laws of Administrative Procedure for claiming against its decisions apply (revocation, administrative appeal and appeal before the competent District Court of Justice).

Association agreements between state mining entities and private parties may contain clauses for national arbitration. Agreements between private parties can contain any proper arbitration clause they negotiate and agree to, either national or international depending on the parties, though some light is still to be shed on a certain interpretation of the Constitution that even in case of private controversies involving a foreign investment only national arbitration is possible.

Conciliation is available where parties choose national arbitration administered by specialized private arbitral institutions (mostly established by national or local chambers of commerce and/or industry). Conciliation is also possible based on the Law of Arbitration & Conciliation itself. Mediation is yet to be developed institutionally.

A new general substitute law of Conciliation and Arbitration will be enacted during the first quarter of 2015 based on a draft law sent by the Executive branch to Congress. This is to be taken into account for mining activities when enacted.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Bolivia was a party to the Washington Convention but filed a denunciation thereof on May 2, 2007 which became effective six months later under the Convention. It continues to be a party to the Panama Convention (Inter American Treaty on International Commercial Arbitration (1975), the Inter American Treaty on Extraterritorial Effects of Foreign Judgments and Arbitration Awards (1979 – subject to ratification) and the New York Convention of 1958.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

During the 80s and 90s Bolivia signed twenty two Bilateral Investments Treaties twenty one of which based on a mandate of the 2009 Constitution have been denounced. A twenty second had not received congressional ratification. A chapter on investment protection under a bilateral Free Trade Agreement with Mexico has also been denounced as part of the denunciation of the agreement by Bolivia, substituted by a new economic agreement under the rules of ALADI (Latin America Integration Association).

Under the treaties, protection continues to apply for investments made prior to denunciation. Most of the BITs provided for ICSID arbitration in case of investment disputes, no longer available. All of them, except the one with Chile, have alternative mechanisms for arbitration, whether under ICC, Stockholm Chamber of Commerce or UNCITRAL rules.

22. Other relevant issues you wish to briefly address?

As a consequence of the 2009 nationalist and indigenous people rights oriented Constitution, numerous legislative changes have taken and are taking place and will continue in the future, i.e. new laws on economic activity: mining, hydrocarbons, electricity, transport, telecommunications, forestry, water and others; new banking law (Financial Services Law); consumers' protection law;

on political organization with respect to all branches of government, including the judiciary; new substantive Codes: Civil, Commercial, Taxation and others; new investment law; laws governing the now autonomous departments, regions and indigenous people; departmental and municipal laws; new laws of procedure: constitutional, criminal, civil; new complete Labor Code, and more. This process will continue and is likely to take a few additional years until fully accomplished. It represents the “process of change” which Bolivia is undergoing under the administration of Mr. Evo Morales A., reelected for a third presidential mandate of five years to begin in January of 2015.

Basics of Mining Law In Brazil⁴



Contributing Firm:
Almeida Advogados

1. What are the main rules of law governing mining activity in your jurisdiction?

The fundamental principles regarding to mining activity is the Federal Constitution, which provides the main rules and authorities for mineral exploitation in Brazil. There are also important statutes that provide significant regulations about mining: Brazilian Mining Code (Decree-Law n. 227 of 1967, currently under review), National Environmental Policy Law, Law 7,805 of 1989, Law 9,314 of 1996, Water Code and certain resolutions from the National Environmental Council.

The main rule on the subject is that mineral resources are sole property of the Federation, hence, their exploration and further exploitation require special authorization from the Federal Government. In addition, ownership of mineral resources is considered apart from the ownership of the land.

2. How are mining rights acquired from the State?

The Federal Government controls the exploration and exploitation of the soil by means the National Department of Mineral Production (DNPM), a federal agency subject to the Ministry of Mines and Energy.

The Research Permit is granted to a period of three years and generally may be renewed only once. The request must be presented to DNPM along with, among other requirements, payment of applicable fees, indication of the substance to be researched, description of the area to be explored and its current situation, and an exploration plan with budget and schedule.

During this period the explorer is expected to perform all technical works aiming to define the extension of the deposit, resource evaluation and study the technical/economical feasibility of its exploitation. After the exploration, the researcher must present to DNPM a final report addressing these major points.

When the report concludes upon the existence of a deposit with technical/economical exploitation feasibility the report is approved by the DNPM. The explorer is then entitled to apply for a mining concession that is ultimately analyzed by the Ministry of Mines and Energy, who will hear DNPM's opinion before issuing a final decision.

⁴ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2015. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

When granted, Mining Concessions have no limitation of its duration; it shall be valid until the resources are exhausted. The concessionaire is allowed to exploit the mine in accordance with the mining plan and will have ownership over the mine production. Different from Research Permits, Mining Concessions cannot be granted to individuals, the concessionaire must be a company incorporated according to Brazilian laws whose corporate object must be mining, with headquarters and management based in Brazil. There is no restriction on the concessionaire's shareholders nationality or capital.

There are other regimes for mineral licensing applied for restrict purposes, such as small scale mining and mining of substances for immediate use in civil construction.

3. How are mining rights acquired from private persons or companies?

The Research Permit, the right to apply for a Mining Concession, the request for a Mining Concession and the granted Mining Concession itself may be freely sold or otherwise transferred, as long as the receiver matches the legal requirements to hold that mining right. Ownership transference of mining rights is only valid after informed and approved by DNPM.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

The Research Permit is valid for one to three years, depending on the area and other characteristics of the intended research. It can be extended for another three years. The Mining Concession on the other hand shall be valid until exhaustion of the mine.

Both the Research Permit and the Mining Concession can be lost in restrict circumstances that demand a proper administrative procedure in which the explorer is granted full defending rights preceded by advertence and fine imposed by DNPM: abandoning the research or the mine; non-compliance with the deadlines to start the research or the mining; performing the research or extraction in disregard with the research plan or mining plan; exploit the reserve as to jeopardize its future economic exploitation; and non-compliance with DNPM's orientations, which is considered after third fine applied in a one year term.

5. What are the restrictions for one operator to hold mining rights?

All companies incorporated in accordance to Brazilian laws regardless of the nationality of its shareholders or origin of their capital are entitled to own mining rights, explore and exploit mineral resources in Brazil, since the Federal Constitution grants equal treatment to Brazilian companies.

There will be no restrictions on the number of concessions granted to one company or person, but it is important to mention that mining activities performed within 150 Km from Brazilian national borders shall be subject to certain special regulations related to national security.

6. What are the main working/operating obligations?

The main obligations for the holders of Mining Concessions are: (i) start the mining plan within six months from the date the Mining Concession was granted; (ii) exploit the reserves in accordance with the mining plan approved by DNPM; (iii) extract only the minerals object of the concession; (iv) inform DNPM in case of finding other substances not expected as per the original mining plan; (v) remain liable before third parties for any harms caused by the mining activities; (vi) inform DNPM in case of suspension of the mining activities; (vii) present an yearly report to DNPM on the mining activities every March 15 of the next year; (viii) request from DNPM the possession of the mine within ninety days counted from the granting of the Mining Concession; (ix) pay the applicable mining taxes; (x) pay the land owner a monthly compensation equal to a minimum of 50% of the mining tax due.

One of the other main obligations is that the mining company interested in exploring a given area must present an environmental impact report and a recovery plan of the area impacted by the mining. The report and the plan are subject to review and approval prior to the installation of the mine. The mining company shall remain liable for any environmental damages.

Moreover, companies operating in Brazil need to comply with the Consolidated Labor Laws and the Labor Union Agreements in order to have employees in Brazil. Specifically in the case of the mining workers, the employer must comply with some specific security and health rules from the Ministry of Labor and Employment (MTE).

7. How are joint venture agreements or joint operating agreements regulated?

There is no specific regulation for joint ventures or joint operating agreements for mining activities, so that ordinary Brazilian corporate law is also applicable for mining enterprises. One point to bear in mind is that only companies incorporated in accordance to Brazilian law, with headquarters and management based in Brazil are able to hold mining rights. Therefore, foreign groups must incorporate a daughter company in Brazil, although it is not necessary to have a domestic partner.

8. What are the main features of mining taxation and corporate taxation in mining?

The direct mining tax is the Financial Compensation for the Exploitation of Mineral Resources (CFEM). The value of CFEM varies from 0.2 to 3% of the net sales of mineral products, depending on the mineral. For most mineral products, the rate is 2%. Out of the amount collected, 65% are earmarked for the municipalities where production takes place, 23% for the States or the Federal District, and 12% to Federal Government. The latter, in turn, must allocate 2% to environmental protection, through Brazilian Institute of Environment and Renewable Natural Resources (IBAMA).

In addition, the holder of a Research Permit must pay a tax (annual tax per hectare) per hectare of the area covered by the permit. The value per hectare is R\$ 2,02 which increases to R\$ 3,03 when the license is extended.

There are other taxes related to the sale, transportation, importing and other activities related to the exploitation of mineral resources in Brazil, but not directly levied over mining. Two recent studies show that Brazil is in a favorable position concerning to taxation of mining activities,

besides that the Federal Government has an ongoing policy based on incentives aimed at fostering development of specific areas, such as exports, infra-structure, the modernization of industry and regional development. The States also have tax incentives in force at state level such as: exemption, deferral, assumed credit, suspension or reduction of the assessment basis.

9. What are the main features of environmental obligations?

The Brazilian Environmental Law enforces the general principle of accountability of causing environmental damages, which requires environmental remediation by the person or company who caused the damage.

Moreover, mineral extraction requires a previous environmental license. The licensing procedure is an important instrument whereby society participates in protecting and improving the environment quality. State agencies are entitled to issue environmental licenses, in exceptional cases where the activity takes place in a Federal Park or causes impacts in more than one State, the Federal Environmental Agency (IBAMA) will be the licensing entity.

The licensing is a three step procedure encompassing: (i) Previous License (LP – Licença Prévia) (first phase when planning the implementation, modification or expansion of the enterprise, aiming to verify its environmental viability); (ii) Installation License (LI – Licença de Instalação) (authorizes the start of construction) and (iii) Operating License (LO – Licença de Operação) that allows mining operations to start.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

Public consultation is part of the approving process of the Environmental Impact Studies for a specific project in any part of the country. According to the Federal Constitution, mining on indigenous reserves is not prohibited in Brazil, however, Congress must authorize the activity and the indigenous community should be consulted, ensuring the same perception of royalties. The environmental agencies should participate in these processes, ensuring the protection of these communities' interests. Public hearings are mandatory during the licensing procedures, granting voice to the affected communities.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

It is secured to the landowner participation in the mining results in the manner and amount provided by law, therefore, these populations and/or communities are entitled to benefit from the exploitation of mineral resources in their lands.

12. Briefly explain how can easements be agreed or imposed.

Easement actions are applicable since mining activities are considered of "public interest" in Brazil. Easements can be voluntarily agreed between the concessionaire and the land owner or, if

no agreement is reached, the party can apply for a simplified court procedure that will decide on the compensation due to the land owner, followed by the relevant warrant seizure of the land if necessary.

13. Briefly explain how expropriation of third parties' rights can be obtained.

The Brazilian law does not contemplate the "expropriation" instrument but only the "easement" figure as explained above, for the cases mentioned therein.

14. How are water rights for mining treated?

Water resources are property of the Federal Government and the States and are regulated by the Federal Constitution and certain Federal Statutes (especially the Water Code). Hence, any intervention or use of water resources demands a grant from the public authorities, for pre-determined conditions and period (subject to renewal). Water consumption will be addressed during the Environmental Licensing and in certain areas may be subject to a water use fee.

The Brazilian Civil Code also regulates conflicts arising out of the passage of water between owners of neighboring private lands.

15. Is internal and/or external trading regulated? How?

Brazil has a free market policy for minerals, both in domestic and international transactions.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

No.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

The Federal Constitution provides a restrict list of monopoly natural resources related activities: oil, gas and nuclear minerals, as ruled in its article 177. Those provisions combined with the well-known Petrobras' dominance over oil exploitation often lead to an impression that there is no space for private businesses or foreign investments in this area. However, it must be pointed out that the monopoly concerns to these activities but not their execution. This new regulation was introduced to the Federal Constitution in Amendment n. 9 from 1995 that expressly authorizes the delegation of those activities' execution in its first paragraph:

"Paragraph 1. The Union may contract with state-owned or with private enterprises for the execution of the activities provided for in items I through IV of this article, with due regard for the conditions set forth by law."

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

The Federal Constitution and the Mining Code determine that is incumbent to the Federal Government to manage the mineral resources, mineral industry production and distribution, trade

and consumption of mineral products. These activities are delegated to DNPM, an agency subject to the Ministry of Mines and Energy. All mining related affairs are handled by DNPM or the Ministry of Mines and Energy.

Jurisdiction on environmental matters is shared between Federal Agency (Institute of Environment and Renewable Natural Resources - IBAMA), State and municipal environmental agencies (where they exist). These entities are entitled for licensing, compliance and regulation of environmental affairs.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Controversies between private parties can be settled by conciliation, mediation, arbitration or ultimately judicial litigation. Jurisdiction and governing law can be freely stipulated by private parties in their agreements. In case of disputes with the State the Brazilian courts have exclusive jurisdiction.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Brazil is not a signatory of the Washington Convention that established the International Centre for Settlement of Investment Disputes (ICSID), although it is part of many relevant similar international treaties (see item 21).

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Brazil is party to bilateral and multilateral international investment treaties generally applicable to mining projects. As regards the Bilateral Investment Treaties (BITs), although Brazil has signed several BITs with different countries, the great majority of them are not in effect because they have not been enacted by the Legislative branch, the only one active is with Paraguay.

Regarding to multilateral treaties, Brazil is part of: the Agreement on Trade-Related Investment Measures (TRIMs) and of the General Agreement on Trade in Services (GATS), both of which deal with investment-related issues; the treaty that creates the Multilateral Investment Guarantee Agency (MIGA), an organization that provides guarantees against political risks; and the Agreement Establishing the Inter-American Investment Corporation (IIC), that provide funding to private companies, mainly small and medium-sized enterprises.

22. Other relevant issues you wish to briefly address?

The concession of mining rights grants the concessionaire the right to have the easements implemented to allow all the infrastructure work installed, such as transport roads, lines of communication and transmission of electric energy.

Recently the Secretariat of Geology, Mining and Mineral Transformation (SGM) of Ministry of Mines and Energy concluded legislative bills for a new regulatory framework of the Brazilian mining activity, to update the current Mining Code, in force since 1967. Among the proposals are the modifications of the proceedings for the granting of the mineral title. The proposal is to regulate mining concession in a similar form as the one practiced today for oil and gas, which must be preceded by bidding procedure and should involve a single title for the Research Permit and Mining, as well as the adoption of contracts with variable terms, around 40 years, limitation of extensions of the term for research, change in the form of collection of mineral taxes, the creation of rules specific to large-sized mining projects and tax incentives to certain ores and its beneficiation, including export oriented.

Basics of Mining Law In Canada⁵



Contributing Firm:

Edwards, Kenny & Bray LLP

1. What are the main rules of law governing mining activity in your jurisdiction?

Canada is a federation of ten provinces and three territories. Some legislative powers are within the jurisdiction of the federal government of Canada. Other legislative powers are within the jurisdiction of the provincial governments. While the federal government has the authority to make all laws applicable to the territories, it has delegated to the territories a limited authority to make laws relating to certain local matters.

The *Constitution Act* (Canada) sets out the legislative powers of the federal government of Canada and the provincial governments. Under the *Constitution Act*, the provincial governments each have the exclusive power to regulate exploration and development of mining and other non-renewable natural resources. In the three territories, these matters are regulated by the federal government.

While the mining laws applicable in each province and territory deal with similar issues, there are differences in how the same issues may be treated in different jurisdictions. It isn't possible in this summary document to describe how the laws of each jurisdiction differ from the laws of the others. Accordingly, this summary focuses on the mining laws applicable in British Columbia. While the mining laws applicable in the other provinces and the territories are in many respects similar to those in effect in British Columbia, reference must always be had to the laws of the province or territory in which the mining activity takes place.

The principal statutes regulating mining in British Columbia are the *Mineral Tenure Act* (British Columbia) and the *Mines Act* (British Columbia). Mining in each of the other provinces is governed by statutes adopted by each provincial government. In the territories, mining is governed by legislation adopted by the federal government.

2. How are mining rights acquired from the State?

There are various ways in which mineral rights have historically been acquired in British Columbia. In some cases, mineral rights were granted by the government as part of the original grant of title to the surface of the land. These are known as "freehold" tenures and very few of these still exist. In other cases, a staked mineral claim was surveyed and the mineral rights were granted to the

⁵ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2015. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

owner. These are known as “Crown granted mineral claims”. The last Crown granted mineral claim was issued in 1957.

Currently, the *Mineral Tenure Act* governs who may acquire title to minerals from the Province of British Columbia. It also governs how those titles are acquired and the rights and obligations of the persons who acquire those titles. The *Mineral Tenure Act* applies to metallic ores including gold, silver, copper and zinc, as well as to certain other natural substances that can be mined. It does not apply to coal, petroleum or natural gas or certain other prescribed materials that are subject to other British Columbia legislation.

The *Mineral Tenure Act* provides for the acquisition of mineral and placer claims and for the acquisition of mineral and placer leases. Mineral claims and mineral leases are by far the most common form of mineral tenure acquired under the *Mineral Tenure Act*.

In order to be registered as the owner of a mineral claim in British Columbia under the *Mineral Tenure Act*, a person must hold a free miner certificate issued by the Province of British Columbia. Upon application and payment of the prescribed fee, a free miner certificate must be issued to (a) any person age 18 or over and ordinarily a resident of Canada for at least 183 days in each calendar year or authorized to work in Canada; (b) a Canadian corporation (including a company incorporated in British Columbia or incorporated elsewhere but registered in British Columbia); or (c) a partnership consisting of partners that each would individually qualify for a free miner certificate. The annual cost of a free miner certificate is \$25 for individuals under 65 years of age and partnerships whose partners are all individuals, and \$500 for corporations and partnerships any of whose partners are corporations.

Until 2005, free miners acquired mineral claims under the *Mineral Tenure Act* by affixing mineral claim tags to claim posts marking boundaries of mineral claims. Since 2005, new mineral claims are acquired by means of an electronic map - based online mineral title system. The new system is known as “Mineral Titles Online”. Public information concerning the ownership and status of mineral tenures may be accessed free of charge by anyone on the B.C. government’s Mineral Titles Online website at <https://www.mtonline.gov.bc.ca>.

There are restrictions in British Columbia as to the lands on which a mineral tenure may be located. Restrictions apply to designated park lands, provincial heritage properties and mineral reserves designated by the Chief Gold Commissioner. Restrictions also apply to lands that are designated as reserves for First Nations peoples and to lands over which First Nations peoples hold aboriginal title.

3. How are mining rights acquired from private persons or companies?

Mineral tenures issued under the *Mineral Tenure Act* as well as freehold tenures and Crown granted mineral claims may be acquired from the owners by way of private purchase and sale transactions. Such transactions often take the form of option agreements which entitle the optionees to acquire all or part ownership of the specified tenures by satisfying the conditions set out in the option agreements. Mineral tenures may also be acquired by outright purchases of the tenures under purchase and sale agreements or may be acquired indirectly by way of the acquisition of corporations that hold mineral tenures.

Transfers of mineral tenures acquired under the *Mineral Tenure Act* are carried out by registering a bill of sale with the Gold Commissioner's office using the Mineral Titles Online computer system. In order for the transfer to be registered, the transferee must be the holder of a free miner certificate.

The terms and conditions of option and other purchase and sale agreements, including the consideration payable for mineral tenures, are negotiated by the parties and are typically set out in formal contracts. These contracts are subject to general contract laws applicable in British Columbia covering such matters as offer, acceptance, consideration, certainty of terms and other legal requirements for valid and enforceable contracts.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

The recorded holder of a mineral claim issued under the *Mineral Tenure Act* is entitled to those minerals that are situated vertically downward from and inside the boundaries of the claim. The holder may use, enter and occupy the surface of the claim for the exploration, development and production of minerals and all related activities, subject to the applicable requirements under the *Mineral Tenure Act*, the *Mines Act* and other legislation.

In order to maintain a mineral claim, the recorded holder must carry out annual exploration and development work on the claim and must register a statement as to such work, or must make payments in specified amounts in lieu of carrying out such exploration and development work. If the holder doesn't perform the work or make the payments in lieu thereof, the claim will be forfeited. The current minimum annual exploration requirement for a mineral claim or payment in lieu thereof ranges from \$5.00 (Cdn) per hectare in the first and second anniversary years up to \$20.00 (Cdn) per hectare for the seventh and subsequent anniversary years.

The recorded holder of a mineral claim may replace the mineral claim with a mining lease. The holder must publish notice of the application for the lease and may be required to have the mineral claim surveyed. If the holder complies with these and all other requirements for the granting of the lease, the Chief Gold Commissioner will issue a mining lease for an initial term not longer than 30 years on such conditions as the Chief Gold Commissioner considers appropriate. If the holder of the lease meets all of its obligations under the lease, including the payment of annual rentals, the holder is entitled to periodic renewals of the lease for terms not exceeding 30 years each. If the holder fails to comply with its obligations under the lease, the lease may be terminated.

A mining lease is an interest in land and conveys to the lessee the minerals within and under the leasehold, together with the same rights that the lessee held as the recorded holder of the claims prior to the date the lease was issued.

The *Mineral Tenure Act* also provides for placer claims and placer leases. The recorded holder of a placer claim or a placer lease has rights and obligations similar to those that apply to the holder of a mineral claim or mining lease.

5. What are the restrictions for one operator to hold mining rights

There is no limit under the *Mineral Tenure Act* on the number of mineral tenures that may be held by a single free miner. As a practical matter, economic considerations arising from the obligation to conduct annual assessment work or make payments in lieu thereof in the case of mineral claims, and the obligation to pay annual rent in the case of mining leases, will operate to limit the number of mineral tenures a holder will wish to maintain.

6. What are the main working/operating obligations?

Although recorded holders of mineral tenures are entitled to carry out the exploration, development and production activities permitted with respect to such tenures, the holders must first receive all required permits under the *Mines Act* and other applicable British Columbia legislation.

The *Mines Act* provides that before starting any work in, on or about a mine, the owner, agent, manager or other person must hold a permit issued by the Chief Inspector authorizing such work. The application for such permit must include a plan of the proposed work and a program for the protection and reclamation of land, watercourses and cultural heritage resources that may be affected by the mine.

If the application is satisfactory, the Chief Inspector may issue a permit on such conditions the Chief Inspector considers necessary, including providing reclamation security. All work must be carried out in accordance with such permit.

The *Mines Act* and the regulations thereto set out detailed operating requirements, including requirements relating to mine inspections, occupational health and safety, use of hazardous materials and the supervision of employees and contractors.

7. How are joint venture agreements or joint operating agreements regulated?

Conducting mining activities requires substantial financial investment and technical expertise and involves substantial risk. Mining companies often enter into joint venture or joint operating agreements as a means to share the financial and technical burdens and risks inherent in mining activities. While these agreements typically address similar issues, there is no standard form for such agreements.

There is no specific regulatory process applicable to mining joint venture and joint operating agreements in British Columbia. The parties are free to structure their agreements as they wish, subject to general principles of contract law relating to such matters as offer, acceptance, consideration, certainty of terms and other requirements for valid and enforceable contracts.

8. What are the main features of mining taxation and corporate taxation in mining?

Mining companies operating in British Columbia are subject to different forms of taxation, including federal income tax based on net income, provincial income tax based on net income, and provincial mining taxes and royalties based on other criteria.

These taxes are levied under different statutory regimes. Federal income taxes are imposed under the *Income Tax Act* (Canada) while British Columbia income taxes are imposed under the *Income*

Tax Act (British Columbia). Taxes are also imposed under the *Mineral Tax Act* (British Columbia) and the *Mineral Land Tax Act* (British Columbia).

In the case of income taxes under the *Income Tax Act* (Canada) and the *Income Tax Act* (British Columbia), net income is determined by subtracting from gross revenue the deductions permitted under the applicable legislation. The permitted deductions may include operating expenses, development costs and depreciation on capital assets, subject to the provisions of the applicable legislation.

The tax payable under the *Mineral Tax Act* is an annual charge assessed against each operator of a mine in British Columbia based on the operator's net revenue from the operation of such mine in each fiscal year. The tax payable under the *Mineral Land Tax Act* is an annual charge assessed against the owner of mineral land in British Columbia based on the area of the mineral land.

9. What are the main features of environmental obligations?

The *Constitution Act* gives the provinces jurisdiction over property within each province, and environmental matters relating to property is an area of provincial responsibility. The federal government has jurisdiction over fisheries, navigation, oceans, criminal law and matters extending beyond provincial boundaries, and environmental matters relating to those areas of jurisdiction are federal responsibilities. As a result, mining operations within a province may be subject to both federal and provincial environmental laws.

For the proponent of a mining project in British Columbia, the *Environmental Assessment Act* (British Columbia) is particularly important. This statute and its regulations set out the basis for determining when a mining project in British Columbia will be subject to an environmental assessment process. If an environmental assessment process is required, the proponent will require an environmental assessment certificate before it will be permitted to proceed. A review process under the *Canadian Environmental Assessment Act* (Canada) may also be required where a mining project within a province may have environment impacts on areas of federal responsibility, such as fisheries.

The *Environmental Management Act* (British Columbia) regulates hazardous wastes, pollution and the remediation of contaminated sites. Current and past owners and operators of contaminated mine sites and other persons who have contributed to the contamination of a site may be held responsible for the cost of cleaning up the contamination.

A person who contravenes the *Environmental Management Act* also commits an offence and is liable on conviction to a fine, imprisonment or both. If a corporation commits an offence, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits an offence. A similar approach to enforcement is taken in the *Environmental Protection Act* (Canada) and other federal and provincial environmental legislation.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

There are historic treaties with First Nations people in British Columbia, for the most part on Vancouver Island and in the north-eastern part of British Columbia. There are also some modern treaties, including the 1998 Nisga'a Final Agreement relating to the Nass area in north-western British Columbia. While most of British Columbia is subject to aboriginal title claims, there are relatively few treaties.

Canadian Courts have recognized that where mining or other projects are undertaken in areas that may impact on First Nations peoples, there is a duty to consult with the First Nations peoples who may be affected by such activities. This duty to consult does not depend on the existence of any treaty. The duty is owed by the Crown, but the Crown's duty may be fulfilled by way of consultation processes initiated by a project's proponents.

A consultation process may be carried out in various ways. Typically, technical information is made available for review, consultation meetings are held to explain and discuss proposed projects and to address potential issues, and funding is provided to cover costs incurred by First Nations peoples to engage technical experts.

In June 2014, the Supreme Court of Canada held in the ground-breaking decision in *Tsilhqot'in Nation v. British Columbia* that six First Nations bands comprising the Tsilhqot'in Nation hold aboriginal title to approximately 1,700 square kilometres of lands in the interior of British Columbia that have been occupied by those bands since before the colonization of British Columbia. The Court also held that such aboriginal title confers ownership rights similar to those associated with fee simple, including the right to decide how the lands are to be used, the right of enjoyment and occupancy of the lands, the right to the economic benefit of the lands and the right to pro-actively use and manage the lands, subject to the restriction that the use of the lands must be consistent with the group nature of the interest and must be consistent with the enjoyment of the lands by future generations.

The principles expressed in the *Tsilhqot'in* decision have potential application in other parts of British Columbia to First Nations groups who have not entered into treaties under which such rights have been surrendered. The ramifications of this decision for the *Tsilhqot'in* and other First Nations in British Columbia will be a developing area of the law for many years to come.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

Compensation and benefits to First Nations peoples who may be affected by mining activities can take many forms. Compensation and benefits may include preferential employment opportunities, skill training, supply and service contracts, the funding of community facilities, the support of community organizations and ongoing financial assistance.

Compensation and benefits are typically documented in an impact and benefit agreement between the mine proponent and the First Nations peoples. These agreements may cover many other topics in addition to compensation and benefits, including measures to protect water, forest, fisheries and wildlife resources and to protect and promote First Nations heritage and culture.

In 2010, the Province of British Columbia established a policy of sharing with First Nations peoples some of the provincial mineral tax revenues generated from new mines and the expansion of existing mines in British Columbia. By 2014, over a dozen such tax revenue sharing agreements have been put in place.

12. Briefly explain how easements may be agreed or imposed.

The *Mineral Tenure Act* contains various provisions to enable the recorded holder of a mineral tenure to obtain access to such mineral tenure and to use and occupy the surface for mining activities. These include a provision for the recorded holder to obtain a government issued permit to use, enter and occupy the surface lands for exploration, development or production of minerals.

In the case of the holder of a mining lease, the *Mineral Tenure Act* also provides a means for the lessor to acquire title to the surface lands where the land is owned by the Crown, is not occupied for a non-mining purpose and is not protected heritage property.

13. Briefly explain how expropriation of third parties' rights can be obtained.

Where the holder of a mineral tenure issued under the *Mineral Tenure Act* requires the right to use surface land owned by someone other than the government for purposes of a mining activity, the holder is entitled under the *Mineral Tenure Act* to acquire the right to use the surface land, subject to paying compensation to the owner of the surface area. Upon receipt of an application from the holder, the Chief Gold Commissioner is required to use best efforts to settle the amount of compensation payable and other matters in dispute. If the Chief Gold Commissioner is unable to settle the dispute, the matter may be submitted to arbitration by either party.

14. How are water rights for mining treated?

The use of water for mining purposes in British Columbia is regulated by the British Columbia government under the *Water Act* (British Columbia). A licence may be obtained by a mine owner upon application and by complying with the requirements under the regulations under the *Water Act*. The quantity of water which may be obtained by the mine owner will be as specified in the licence. A water licence issued in respect of a mine and any rights and obligations relating to that licence will pass with a conveyance or other disposition of the mine.

The British Columbia government has recently passed new legislation intended to replace the *Water Act*. The *Water Sustainability Act*, SBC, 2014, c.15 has received royal assent and is expected to be proclaimed effective in the Spring of 2014, once the supporting regulations have been finalized. The new statute amends legislation dating back to 1909 and is aimed at a rebalancing of environmental, economic and social aspects of water use and regulation.

15. Is internal and/or external trading regulated? How?

The sale of base and precious metal products from mines in British Columbia to purchasers in Canada is not regulated. Sales of such products to purchasers outside Canada are subject to export requirements under the federal laws of Canada. Special requirements apply to the sale and export of nuclear substances, including uranium.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

There is no requirement that production from mines situated in British Columbia be offered for sale to foundries or refineries in British Columbia or elsewhere in Canada.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

No state entities in British Columbia or elsewhere in Canada hold monopolies relating to mining activities in Canada.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

The principal regulator in British Columbia for mining activities is the Ministry of Energy and Mines, a ministry of the British Columbia provincial government. The Ministry of Energy and Mines administers the *Mineral Tenure Act*, the *Mines Act* and the *Mining Right of Way Act*, among other relevant statutes. It also maintains Mineral Titles Online, the online mineral tenure registration system, and issues work permits for mining activities.

There are two principal regulators for environmental matters relating to lands in British Columbia. With respect to environmental matters within the jurisdiction of the Province of British Columbia, the principal regulator is the Ministry of Environment, a ministry of the British Columbia provincial government.

With respect to environmental matters within the jurisdiction of the Canadian federal government, the principal regulator is Environment Canada, a ministry of the federal government of Canada. Environment Canada is the agency responsible for reviewing the environmental affects of a proposed mine development on inland and offshore fisheries and other areas of federal responsibility.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Disputes between the holder of a mineral tenure and the state may be resolved in proceedings before an administrative tribunal if the legislation applicable to the matter in dispute so provides. In the absence of a legislated dispute resolution process, disputes between a tenure holder and the state will be resolved through Court proceedings.

Disputes between private parties may be resolved in the Courts. Private parties may also choose to resolve their disputes through arbitration outside the Court system. Provincial legislation in British Columbia provides for British Columbia Courts to uphold and enforce orders made by arbitrators.

The use of conciliation, mediation and other alternate forms of dispute resolution is not only viable in Canada but is common practice.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Canada is a signatory to the Washington (ICSID) Convention. Canada ratified the ICSID Convention on November 1, 2013 and the ICSID Convention became law in Canada on December 1, 2013.

Canada has enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration and is considered to be an UNCITRAL Model Law State.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Canada has executed and ratified over two dozen bilateral investment treaties for the reciprocal protection of investments. Another twenty-five are at various stages in the treaty process. The status and text of these treaties is available online from the Government of Canada website at <http://www.international.gc.ca/>.

These treaties are known as foreign investment promotion and protection agreements (“FIPA”) and seek to ensure that the treatment of foreign investors is equivalent to the treatment of domestic investors. They also seek to provide compensation in the event of expropriation and a mechanism for dispute resolution between the foreign investor and the host state.

As mentioned above, Canada is a signatory to the Washington (ICSID) Convention, a multilateral treaty for the reciprocal protection of investments.

22. Other relevant issues you wish to briefly address?

The Canadian legal system is characterized by the rule of law and the observance of fundamental principles of natural justice. Property rights are respected. While mineral exploration and mining operations are regulated, economic development is encouraged.

Canada has been and remains one of the world’s major mining countries, with extensive exploration and mining activities in almost all of the provinces and territories of Canada. Canada is also an important source of investment capital for exploration, development and mining operations, both in Canada and throughout the world.

Basics of Mining Law In Chile⁶



Contributing Firm:

Guerrero, Olivos, Novoa Y Errazuriz Abogados

1. What are the main rules of law governing mining activity in your jurisdiction?

Article 19 number 24 of the Chilean Constitution (1980) provides for the absolute and exclusive ownership by the State of Chile (the “State”) of all mines and mineral substances notwithstanding any ownership rights by third parties over the surface land, which surface land is subject to the obligations and limitations that the law establishes to facilitate mining exploration, exploitation and related facilities. Notwithstanding such ownership of the State, the Constitution provides that an Organic Constitutional Law will establish which minerals, other than oil and gas deposits, may be subject to mining concessions granted to private individuals or companies for them to explore or exploit. The Mining Organic Constitutional Law on Mining Concessions, Law No. 18.097 of January 21, 1982 regulates the mining concession concept and contemplates the characters and requirements of the two mining concessions under the Chilean Law: the exploration and exploitation mining concessions. Among its provisions, this law establishes, in general, that all metal and non-metal mineral substances, in whatever shape or form they appear naturally, may be subject to mining concessions, except for: liquid or gaseous hydrocarbons, lithium, deposits of any kind located in the sea under Chilean jurisdiction or located in areas deemed by law to be important for national security. These non-claimable mineral substances may be mined by the State or under administrative concessions or special operation contracts, all of them governed by their own legal statute. Finally, Mining Code, (dated December 14, 1983), elaborates on the provisions of the Constitution and of the Mining Organic Constitutional Law. It establishes the characteristics of the mining rights, stipulate the procedures for establishment of the mining concessions and makes provision for the contracts that could arise from the mining activity.

2. How are mining rights acquired from the State?

They are granted by judicial resolution from an ordinary court of justice in a non-contentious judicial proceeding without the intervention of any other authority or person.

3. How are mining rights acquired from private persons or companies?

The Mining Concession may be freely sold or otherwise transferred, to any person by mean of a public deed which has to be registered in the Property Registry of the relevant Mining Registrar.

⁶ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2014. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

According to the Chilean Law, there are two main types of concessions:

Exploration Mining Concessions

The exploration mining concession is for (a) two years unless prior to its lapse the owner requests an (b) extension for a maximum of two additional years upon waiver of, at least, the half of the area allocated. The holder of such concession is entitled to carry out all exploration activities. While the exploration concession is in force only its titular can file exploitation claims.

Sides of the concession for exploration: Horizontally, must have a minimum measure of 1000 meters or any multiple thereof (the relationship between the sides must not exceed 1:15),

Surface of an exploration concession: May not comprise more than 5,000 hectares (only one can be requested per exploration claim).

Exploitation Mining Concessions

These are indefinite and give the holder the right to explore and to exploit all the minerals found within their boundaries.

Sides of the concession for exploitation: Horizontally, must have a minimum measure of 100 meters or any multiple thereof (the relationship between the sides must not exceed 1:10).

Surface of the exploitation concession: Cannot have more than 10 hectares (although it is possible to request until 1000 hectares per exploitation claim).

For both types of concessions, Holders of mining concessions have to pay a yearly license or patent. Lack of payment of any annual patent may cause the loss of title to the concession through its auction.

5. What are the restrictions for one operator to hold mining rights?

There are no restrictions for an operator to hold mining rights.

6. What are the main working/operating obligations?

The owner of an exploration or exploitation concession is not obligated to make mining works or expend worth or money in such activities. The only obligation in order to do not lose the concession is to pay the annual mining license.

7. How are joint venture agreements or joint operating agreements regulated?

In Chile there are no specific legal, tax or accounting provisions that govern joint venture agreements. Therefore, joint ventures are governed by the stipulations of the applicable joint venture agreement, which is subject to the general legislation.

Due to the fact that joint ventures themselves are not separate legal entities under Chilean legislation, joint venture partners often operate in Chile through a jointly and specially formed Chilean legal entity because generally only juridical or natural persons may be considered income and VAT taxpayers in Chile. Since a joint venture agreement does not have a juridical personality, for Chilean purposes it is not considered a taxpayer. Consequently, as a general rule, joint ventures cannot be taxpayers unless the parties organize a joint venture through an entity of a juridical nature. It is important to note that Chilean law does not allow tax partnerships.

Largely due to the disadvantages described above, joint venture partners often operate in Chile through a jointly formed Chilean entity. The most use entities used as joint venture vehicles are the Limited Liability Company (Sociedad de Responsabilidad Limitada), Stock Corporation (Sociedad Anónima) and Contractual Mining Companies (Sociedad Contractual Minera). It is also possible to do it through a Legal Mining Company (Sociedad Legal Minera) or Sociedad Por Acciones (SPA).

8. What are the main features of mining taxation and corporate taxation in mining?

(a) General Provisions

The tax provisions impact mining operations differently depending on the scale and volume of the particular mining industry:

Small scale mining industry: it is not subject to the general rules, but to an overall income tax at a rate fixed according to a formula that considers the price of the ore and the sales thereof during the last year;

Middle-sized scale mining industry: the tax is assessed on a presumptive basis which is fixed taking into account the annual net sales and the price of the ore; and

Big scale mining industry: the taxes are assessed according to the normal rates of the Income Tax Law.

(b) Exceptions to the general rule

Foreign investors are entitled, under the abovementioned Decree Law 600, to agree in their respective foreign investment contracts to a fixed overall income tax rate of 42% for a term of 10 years beginning with the commencement of activities, instead of the normal tax rates of the Income Tax Law. This rate can be extended up to 20 years for those extractive projects over US\$ 50 millions.

9. What are the main features of environmental obligations?

Environmental Assessment System.

In 1994, Law 19,300 General Environmental Bases (GEB) was issued, which established the Environmental Impact Assessment System (SEIA) through which all projects or activities

described in article 10 of that law must pass. The environmental assessment process is managed by the Environmental Assessment Service (SEA), but all public services with any interest in the particular project participate.

As set forth in the GEB, those projects or activities that must be submitted to the SEIA must be awarded an Environmental Qualification Resolution (RCA) before being executed.

Environmental Assessment Instruments.

Our system contemplates two pathways for project developers that must pass through the SEIA, namely, the Environmental Impact Statement (DIA) and the more rigorous Environmental Impact Study (EIA). These instruments differ primarily in the level of detail required, their processing deadlines and the opportunities for citizenship participation. The grounds on which a project must submit an EIA to the SEIA are established in GEB article 11 and are related to the specific effects or impacts that the project or activity can have on the environment.

Environmental Sector Permits (PAS).

In addition to the environmental permit or RCA, most projects must apply for and obtain other sector permits in order to be developed, such as, for example, construction permits for tailings dams, permits for final disposal of industrial waste, etc. Those permits involving environmental matters are known as “Environmental Sector Permits” (PAS) and the debate surrounding environmental matters is conducted within the framework of the project’s assessment in the SEIA. The RCA that approves the project indicates the PAS that the project developer must obtain, which may not be denied for environmental reasons. Sector permits that do not involve environmental matters should be processed directly at the respective public service.

Grounds for Mining Projects to Enter SEIA.

GEB article 10, letters i) and p) establishes specific grounds for mining projects to enter the SEIA:

“i) Mining development projects, including coal, oil and gas projects, involving prospecting, mining, production plants and disposal of waste and barren ore, as well as industrial extraction of aggregates, peat or clay”;

p) Oil pipelines, gas pipelines, mining pipelines and other analogous structures”

Likewise, the same article 10 establishes other general grounds for entering the SEIA that apply to mining projects, such as, for example, letter p):

p) Execution of works, programs or activities in national parks, national reserves, national monuments, wilderness reserves, nature sanctuaries, marine parks, marine reserves and any other area placed under official protection, in cases where allowed by applicable legislation”.

The SEIA Regulations are the body of rules that define how to interpret the grounds for entering the SEIA in GEB article 10. Thus, for example, SEIA Regulations article 3 letter i) establishes that

“Mining development projects shall be defined as those actions or works whose purpose is to extract or profit from one or more mineral deposits and whose mineral extraction capacity is greater than five thousand tons (5,000 t) per month.”

Environmental Oversight.

During 2010, Law 20,417 was passed, which amended the GEB, making especially relevant modifications to the system for overseeing compliance with environmental standards and increasing applicable fines. Among other modifications, Law 20,417 created the Environmental Courts and the Superintendency of the Environment, which is charged with overseeing compliance with environmental standards, especially that projects meet the operating conditions established in the respective RCA. Due to implementation issues, neither the Superintendency of the Environment nor the Environmental Courts is currently operating but they are expected to begin their functions in 2012.

The above does not impact the oversight authority that other public services have in their jurisdictions.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

GEB contemplates a procedure where people affected by a project (not only mining project) have the opportunity to point out their observations regarding the project and how it may affect the community. The procedure also applies for indigenous peoples. Generally, this procedure consists in meetings organized by the project owner and with the participation of the community and authorities. In these meetings, the project is explained and both community and authorities express their observations.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

This compensations or benefits shall traduce in some modifications of the project (for a minor impact) or some benefits for the community (scholarships, creation of NGO in order to protect some specific resource), schools, and parks among others.

12. Briefly explain how can easements be agreed or imposed.

The mining concession is a property distinct from that of surface land and its owner may occupy as much of the surface as is necessary to the exploration and/or exploitation works, upon payment of proper indemnity for damages to the surface owner. The easements and surface rights to explore or to exploit, in the corresponding cases, can be obtained by direct negotiation with the surface land owner or, if the latter opposes the exploration and/or the exploitation, as the case may be, by a simple and summary procedure before the corresponding judge, in both cases subject only to compensation of damages caused by the works and in relation thereto.

13. Briefly explain how expropriation of third parties' rights can be obtained.

The system has as a general principle the idea that prospecting and exploration should be encouraged and also that it should be protected the stability of mining rights.

The holder's right of ownership regarding his mining concession is protected by the constitutional guarantee of the right to property. Specifically, the ownership of property rights over mining concessions is granted to every person which meets the qualifying factors established in the Mining Code and which requests to become a mining concessionaire.

The Constitution safeguards this right by guarantying that nobody can be dispossessed of his property nor of any of the goods to which the ownership applies, nor of any of the essential qualities of ownership unless a general or specific law authorizes the expropriation on favor of a cause of public utility or of national interest duly rated by the legislator. In case an act of expropriation takes place, the injured party is entitled to submit a claim before the courts of justice in order to be duly compensated. Any mining concession given in conformity with the standing legislation obliges the owner to take every necessary step that may satisfy the public interest, which justified the grant of the concession.

14. How are water rights for mining treated?

The Mining Code provides that the owner of a mining concession is entitled to use waters found in the works within the limits of the concession, to the degree said waters are required for exploratory work, exploitation and processing, according to the type of concession said owner might engage in.

15. Is internal and/or external trading regulated? How?

Chile doesn't regulate internal and/or external trading.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

No.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

No.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

There are several authorities that interact in the mining activities. First, we have the Mining Ministry, which mission is design and implement mining policies. There is also the Natural Service of Geology and Mining (SERNAGEOMIN) a technical consultant for the Mining Ministry. Likewise, COCHILCO advise the State of Chile in matters related to cooper and its sub-products.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Controversies are settled by general rules of jurisdictions. Thus, Chilean courts are mandated to do so. During the process, judges must call for conciliation. In case of private agreements, parties may stipulate an arbitration clause and an arbitrator may solve claims and controversies.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Yes.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Chile is party to bilateral international investment treaties with several countries.

22. Other relevant issues you wish to briefly address?

No further comments.

Basics of Mining Law In Ecuador⁷



Contributing Firm:

Perez Bustamante & Ponce, Abogados

1. What are the main rules of law governing mining activity in your jurisdiction?

The fundamental norm is the Political Constitution that comprises certain provisions with reference to ownership of natural resources, their extraction or exploitation, and related issues such as the environment and the use of water.

The main instruments that also regulate mining activities are: (1) Mining Law, (2) General Regulations to the Mining Law, (3) Regulations for Small-scale Mining, (4) Environmental Regulations for Mining Activities, (5) Law on water (there is currently a bill being studied by the National Assembly on this subject, however its approval has been delayed indefinitely as the government seems to have other priorities as of now).

There are other laws that ought to be taken into consideration, such as those relating to taxation or labor matters.

The authority responsible for planning and developing mining issues (Mining Law, General Regulations to the Mining Law, and Regulations for Small-Scale Mining) is the Ministry of Non-Renewable Natural Resources.

The Ministry of the Environment is the authority responsible for environmental issues.

Both authorities act directly or through their provincial delegations.

Regarding water use, as stated above, a new law is being discussed by the National Congress, but no significant changes seem imminent at the moment. At present, the National Water Secretariat is responsible for water management.

2. How are mining rights acquired from the State?

Mining rights are acquired through the granting of concession contracts by the Government, through the Ministry of Non Renewable Natural Resources. The contracts are granted initially for the exploration phase and then for the exploitation period.

⁷ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2014. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

Exploration concessions are granted for 4 years, Advance Exploration, additional 4 years, Economic Evaluation of deposit, 2 years, and, Exploitation concessions for 15 years, that can be renewed depending on the characteristics of the concession.⁸

The Mining Law determines that the President of the Republic may declare the areas with a potential for mining development - and that are not a part of an existing mining concession - as Special Mining Areas according to Article 407 of the Constitution of the Republic, so that the respective Ministry, through its divisions, may create land registries, The carry out geological-mining research or other kinds of activities of scientific interest in the respective jurisdictions. When a Special Mining Area is declared, its term of validity will be expressly established and may not be longer than four years; when that period expires, the special status will be removed without any necessary provision or declaration. In any case, the declaration will respect all legally established rights or those derived therefrom. Mining concessions cannot be granted in those areas during their valid term.⁹

Mining Law expressly states that foreign concessionaires will have the same rights and obligations as Ecuadorian concessionaires. However, foreign companies must have legal domicile in Ecuador in order to exercise those rights¹⁰.

According to the Mining Law, all contracts relating to mining rights must be executed by means of a public deed and registered with the mining registry in order to be valid.¹¹

The time required for registration of the contracts is approximately five days.

If the contracts are not contained in public deeds or not registered as required by the law, they will not be valid.

Another legal figure for the acquisition of mining rights is the “Auction” process.

A mining auction is the procedure whereby persons interested in obtaining mining rights who have been qualified as suitable are invited by the sectorial Ministry (Minister of Non-Renewable Natural Resources) to submit tenders for obtaining titles on concessions of metallic minerals allowing them to look for evidence of mineralization, determination of size and shape of the deposit, its economic evaluation, technical feasibility, design for exploitation and subsequent performance of the exploitation, processing, smelting, refining, commercialization phases and closure of mines.

Public auctions for purposes of granting mining concessions take place only on areas defined in the National Mining Development Plan.

Once the auction is completed, the Minister of Non-Renewable Natural Resources prepares and signs the award document.

⁸ Arts. 36, 37, 39 Mining Law

⁹ Art. 24 Mining Law

¹⁰ Art. 19 Mining Law

¹¹ Art. 124 Mining Law

In the award document the Minister will order the identification of the area in the official mining record, the issuance of the relevant mining title within no more than five days, its formal registration by a notary public, and its registration with the Mining Registry within a thirty-day period following issuance of the mining title.

The area will be awarded to the best bidder in terms of technical, environmental and economic considerations.

The process for obtaining mining rights by auction is a new legal concept applicable since the enactment of the current Mining Law (2009). In consequence, no precedents are available to find out alternatives in the event of problems arising from the auction sale. Recently, via legal reform enacted in July 2013, the auction process was partially modified, allowing the State to directly adjudicate areas at its disposal to foreign public companies or its subsidiaries¹²

3. How are mining rights acquired from private persons or companies?

Through assignment of rights contracts previously approved by the Government Authority.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

Mining rights are acquired independent of land ownership rights.

There is no obstacle for concessionaires (natural or juridical persons) to acquire ownership (to buy) the land on which the concession is located. This is common practice in Ecuador. The only restrictions are contemplated in article 405 of our Constitution. Foreign individuals or juridical persons are not allowed to buy lands located in environmentally protected areas or national security areas.

The Mining Law also contemplates the possibility of establishing easements on surface areas.

Concession contracts may be terminated by the concessionaire once it has completed its committed work program. It can also be terminated by the government in case of violation by concessionaire of applicable law or default of its contractual obligations, through the declaration of “caducity” of the contract deriving in the termination of all concessionaire’s rights over the concession.¹³

The termination process on default may be initiated ex officio by the Ministry of Non-Renewable Natural Resources, or upon request from one of the ministries that have to do with mining activities, or upon prior denunciation by a third party. The termination process on default is subject to the provisions, requirements and procedures established in this connection by the general regulations to the law.¹⁴

¹² Art. 29 Mining Law

¹³ Art. 108 Mining Law

¹⁴ Art. 108 Mining Law

The technical and legal qualification of the events that will serve as grounds for a declaration of cancellation of a concession is carried out by the Mining Regulation and Control Agency.¹⁵

Following service of notice of cancellation upon the mining concessionaire, he is allowed a 45-day period in which to disprove the grounds for cancellation of the concession.¹⁶

5. What are the restrictions for one operator to hold mining rights?

In general terms, There are no restrictions for one operator to hold mining rights, nevertheless, during the exploitation period, the maximum area that a concessionaire is allowed to hold is 5,000 hectares.¹⁷

This unit of measurement is a pyramidal form of volume with its vertex being the center of the earth; its outer limit is the earth's surface, and it corresponds planimetrically to a square having 100 meters on each side, measured and oriented according to the grid system of the Mercator Transverse Projection used for the National Topographic Map.

6. What are the main working/operating obligations?

Together with an application for a mining concession during the exploration phase on which the petitioner's name, coordinates of the relevant area, jurisdiction where it is located and the exploration phase when it will be performed, it is necessary to attach the plan of activities and investments for the year after the mining title is granted, as well as the environmental authorizations allowing to commence the work (environmental impact studies and environmental license).¹⁸

During the economic evaluation phase, and in order to go on to the next phase which is for exploitation and subsequent execution of the mining exploitation contract or service contract, as the case may be, allowing to exercise the rights inherent to preparation and development of the deposit as well as extraction, transportation, processing, and commercialization of minerals, a petition must be submitted to the mining authority.¹⁹

An audited report on compliance with the plan of activities and investments during the exploration phase as well as compliance with environmental obligations committed during that phase must also be attached to the petition.²⁰

The mining authority (Minister of Non-Renewable Natural Resources) will issue a resolution accepting the information submitted and will order that the corresponding exploitation contract may be signed.²¹

¹⁵ *Ibidem*

¹⁶ *Ibidem*

¹⁷ Art. 32 Mining Law

¹⁸ Arts. 38, 26 Mining Law

¹⁹ Art. 39 Mining Law

²⁰ *Ibidem*

²¹ *Ibidem*

For renewal, the concessionaire must file a written request to this effect to the Minister of Non-Renewable Natural Resources before the expiration date and must have previously obtained a favorable report from the Mining Regulation and Control Agency and the Ministry of the Environment.²²

7. How are joint venture agreements or joint operating agreements regulated?

There is no regulation for joint venture agreements. In principle, those are allowed, since they do involve private parties and as long as they do not include assignment of contractual rights and obligations, in which case, the government approval is needed.

8. What are the main features of mining taxation and corporate taxation in mining?

Mining concessionaires are required to pay the so-called “conservation patent” for each mining hectare. For the initial exploration period, the conservation patent is equivalent to 2.5 percent of a basic unified salary (“RBU”:US\$ 340). For the advanced exploration and economic evaluation periods, the conservation patent is equivalent to 5 percent of RBU. For the exploitation period, the conservation patent is 10 per cent of RBU.²³

The law provides that royalties paid to the Government must be equivalent to a minimum 5 per cent and maximum 8 per cent of the minerals sales.²⁴

Fifteen per cent of the labor profits sharing must be distributed among the municipalities located in the contract areas (12%) and the remaining 3% among company workers.²⁵

Concessionaires are additionally required to pay Ecuadorian Income tax (Tariff: 22%), and Value Added Tax (Tariff: 12%).

Finally, a legal provision currently in force establishes a tax on windfall profits obtained by companies that have entered into contracts with the State for exploration and exploitation of non-renewable natural resources. For the purposes of such tax, windfall profits are deemed to be those earned by the contracting companies from sales of minerals at higher prices than agreed upon or provided for in the respective contracts. Windfall tax rate is 70 percent. Since the legal reform of the Mining Law (2013), companies are obliged to pay Windfall tax after they have covered all costs regarding their investments in the pre operational, preparation and development phases. This reform set more convenient conditions for companies which previously had to pay the Windfall tax as soon as they started selling their production.²⁶

9. What are the main features of environmental obligations?

²² Art. 36 Mining Law

²³ Art. 34 Mining Law

²⁴ Art. 93 Mining Law

²⁵ Art. 67 Mining Law

²⁶ Art. 165 Tax Equity Law

Concessionaries must comply with the Constitution provisions regarding environmental principles, those contemplated in the Law on the Environment, in the Mining Law and in the Environmental Regulations for Mining Operations.

The Environment Ministry is the environmental authority.

This Ministry is responsible for approving Environmental Impact Studies and Management Plans and for granting Environmental Licenses, required before starting and mining activities. It is also in charge of approving the relevant environmental audits to ensure that the plans contained in the Environmental Impact Studies are observed. Aside from the Mining Law, the Environmental Regulations of Mining Activities contain the specific provisions that have to be met in order to develop mining activities.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

Yes, such compulsory consultation is mandatory, according to the Constitution, if the government wants to promote mining activities in areas located in areas where indigenous people or other communities live, it needs a previous consultation process.²⁷ It is very important to mention that the result of the consultation process, if negative, does not necessarily prevent the exploitation. The Sectorial Ministry can approve the project in spite of the opposition of certain community.

Article 57(7) of the Constitution establishes the obligation of previously consulting the community regarding any activity that may affect the environment: “To be consulted previously, freely and well informed within a reasonable timeframe about any plans and programs involving prospecting, exploitation and marketing of non-renewable resources in their territories that could affect them environmentally or culturally (...)”.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

According to same article 57(7) mentioned in number 10 above, these groups are entitled to benefit for the exploitation of non-renewable natural resources. The Mining Law provides that 60% of the royalty is destined to projects for local production and sustainable development through municipal governments, parish boards and, when applicable, 50% of that percentage is destined to the indigenous governments and/or territorial administrations. Those resources are distributed prioritizing the requirements of communities settled in the areas of influence and directly affected by mining activities.²⁸

12. Briefly explain how can easements be agreed or imposed.

²⁷ Arts. 87-90 Mining Law

²⁸ Art. 93 Mining Law

Mining activities are considered of “public interest” which means that easement actions are applicable.

Easements can be voluntarily agreed between the concessionaire and the owner of the land or, if no agreement is reached, by an administrative order of the mining competent authority.²⁹

13. Briefly explain how expropriation of third parties’ rights can be obtained.

The law does not contemplate the “expropriation” figure but only the “easement” figure as explained above,³⁰

14. How are water rights for mining treated?

Mining concessionaires must obtain a permit issued by the Water Authority, and present a technical study that justifies the use of water. They may also use groundwater generated by mining activity³¹. Used water treatment is mandatory³².

15. Is internal and/or external trading regulated? How?

If the commercialization process is carried by a third party, such party must obtain a “commercialization license” that enables free trade. This license is given by the Sectorial Ministry and lasts for three years.³³ Concessionaires don’t need such license to sell the minerals obtained.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

There are no legal provisions that force concessionaires to sell their product to local foundries. Actually, concessionaires have the right to establish their own foundries without authorization, if they process their obtained products exclusively, and abide to environmental regulations.³⁴

17. Do state entities hold monopolies relating to mining activities? If so, explain.

No, the Constitution does state that mineral resources are exclusive state property, but it also enables the participation of other public or private entities in order to develop mining activities.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

Three main authorities must be considered:

Non Renewable Natural Resources Ministry (Sectorial Ministry)

Mining Regulation and Control Agency

²⁹ Art. 15 Mining Law

³⁰ Art. 15 Mining Law

³¹ Art. 61 Mining Law

³² Art. 79 Mining Law

³³ Art. 50, 51 Mining Law

³⁴ Art. 46 Mining Law

Environment Ministry

These entities have national jurisdiction.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Conciliation and mediation are valid methods of conflict resolution, and are often included in mining contracts, between the state and private parties.

Arbitration is viable if stated in the contracts, but Mining Law only recognizes the validity of arbitration proceedings carried out in Latin America, e.g. in Chile under UNCITRAL rules.³⁵

Administrative controversies are resolved through the Administrative Tribunals. Arbitration processes between private parties are allowed.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Ecuador was, until 2007, part of the ICSID convention, nevertheless, the current government denounced such Convention and in addition, our Constitution of 2008 included an express prohibition for the state to sign treaties of this nature. Currently arbitration is recognized under UNCITRAL rules and carried out generally in Santiago de Chile.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Ecuador executed and ratified BITs with several countries, regrettably, due to the policies of the current administration; most such BITs are currently being denounced by Congress.

BITs which are still in force have been signed with the following countries:

- Germany
- Argentina
- Bolivia
- Canada
- Chile
- Spain
- United States
- France
- Italy
- Peru
- United Kingdom
- Sweden

³⁵ Art. 41 Mining Law

- Switzerland
- Venezuela

22. Other relevant issues you wish to briefly address?

Via a legal reform in 2009, direct or indirect transfer of shares belonging to concessionaire companies, that previously required authorization from the Sectorial Ministry, now doesn't. The concessionaire companies now just need to inform the Sectorial Ministry of such transfer.

As previously stated "Windfall tax" conditions have also varied recently. This tax would be paid by the concessionaires only after they have covered all the investment costs in which they incurred in order to start production.

Basics of Mining Law In Mexico³⁶



Contributing Firm:

Ramírez, Gutiérrez-Azpe, Rodríguez-Rivero y Hurtado, S.C.

1. What are the main rules of law governing mining activity in your jurisdiction?

In first place the Mexican constitution whose article 27 provides that the Mexican Government has direct dominion over all the minerals; however, the use and exploitation of such minerals may be granted by the Mexican government to private individuals or companies incorporated under Mexican laws, through a federal concession.

Secondly, we have the Mining Law, which was published on June 26, 1992; the Regulations of the Mining Law, published on October 12, 2012; and the Handbook for Public Mining Services.

2. How are mining rights acquired from the State?

The exploration and exploitation of minerals (mining concessions) may only be carried out through a concession granted to Mexican individuals or companies and rural (ejido) and indigenous communities by the Mexican federal government through the Ministry of Economy.

Mining concessions may also be granted to foreign individuals or foreign companies, provided that: (i) mining concessions are not located within an area of 100 kilometers along Mexico's international borders or within 50 kilometers of the coast-line. This restricted foreign investment area is known as the "restrictive area" (ii) Foreigners must agree in writing with the Mexican government to consider themselves nationals with respect to such concessions and to waive the protection of their governments with respect to such concessions under penalty of losing their concession rights in favor of the Mexican government.

Mexican companies having 100% foreign investment may acquire concessions within the Restrictive Area.

Mining concessions may be granted in two scenarios: (i) to the first petitioner over such land considered "free land" or (ii) by means of a public bid for such mining reserve zones that have been dissolved by the government.

The land located in Mexico will be considered "free" unless: (i) it is subject to a mining reserve zone; (ii) it is subject to a mining concession or allotment or a pending application for such effects;

³⁶ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2014. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

(iii) it is subject to mining concessions granted through a bid and those derived from them that have been cancelled; and (iv) no mining concession were granted to lots due to the cancellation of a bid.

The mining reserve zones are those determined by the Mexican government through a government decree for public interest purposes or in order to satisfy the future needs of the country, and shall not be subject to a concession. The public bid process for such shall meet the following requisites:

The Ministry of Economy must publish the call in the Official Gazette of the Federation.

The bidding conditions must include: a) the description of and studies on the land, as well as sampling, geological and location plans; b) the economic, legal and technical capacity requirements that the participants must satisfy; c) the way in which the participants will submit payment as consideration for the concession and discovery premium; and d) contract clauses that guarantee payment of the consideration and the discovery premium offered by the participant.

The concession must be granted to the participant with the best economic proposal.

There are some minerals and substances excluded by the application of the mining law such as radioactive minerals, solid, liquid and gas hydrocarbons, rocks or products derived from their decomposition that can only be used in the manufacture of construction materials, except gypsum, and products derived from the decomposition of the rocks when exploited at open air.

3. How are mining rights acquired from private persons or companies?

Mining concessions, as well as the rights derived from such mining concessions, may be freely transferred to any third party in different manners, including promise, assignment of rights, exchange, payment, contribution and donation agreements, spin-off or company merge, inheritance, judicial attachment or otherwise, provided that the acquirer of the rights has sufficient legal capacity.

The agreements and instrument, through which mining rights are encumbered or transferred, shall produce effects for third parties upon their registration with the Mining Registry. In order to proceed with such registration, it is necessary to file the corresponding application with the mining authority (Dirección General de Minas) attach the notarized agreement or instrument through which mining rights are transferred and pay the corresponding governmental duties. The following information must be provided to the mining authority:

- 1) Type of action or agreement;
- 2) Name and general data of the assignor;
- 3) Name and data of the lots subject to the mining concession, and mining concession number;

- 4) Name and general data of the assignee;
- 5) Term of the agreement;
- 6) Payments, contributions, royalties, agreed indemnities or the amount of the credit to be guaranteed.
- 7) Data identifying the agreement or instrument through which mining rights are transferred.

The mining authority must resolve the request for registration within approximately 21 business days.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

Mexican mining concessions include both exploration and exploitation activities.

Exploration activities comprises works carried out for the purpose of identifying mineral or substance deposits, as well as those to detach and extracting the mineral products or substances located in there.

Exploitation activities comprises works carried out in order to prepare and develop the area that contains the mineral deposit, as well as those works for detaching and extracting the mineral products or substances located in there.

The term for the mining concessions are 50 years counted as of the date of their registration with the Mining Registry and may be extended for an equal term, provided that the titleholders do not incur a cause for cancellation established in the Mining Law and request the extension within five years prior to the expiration date.

Mining concessions may be terminated in the following scenarios:

- 1) Elapsing of the mining concession term;
- 2) Relinquishment of the mining concession requested by the titleholder;
- 3) Substitution derived from the issuance of new mining titles derived from reduction, division, identification or unification of surface covered by mining concessions.
- 4) If the titleholder of the mining concession: (i) exploits minerals or substances not authorized by the mining law; (ii) fails to execute and verify the works foreseen in the mining law; (iii) fails to pay the corresponding governmental mining duties; (iv) fails to pay the discovery premium or economic consideration, and fails to render the six-monthly reports to the Mexican Geological Service with regard such mining concessions granted by public bid; (v) does not met the technical conditions for exploration and exploitation works of coal in oil grounds; (vi) carries out exploration or exploitation activities without having the

corresponding authorizations from other governmental authorities; (v) gathers mining concessions that includes non-adjacent mining lots for verification purposes that do not constitute a mining unity from a technical perspective; (vi) recovers, stores, transports and delivers gas associated with the recovery and exploitation of coal deposits without having the corresponding authorization from the Ministry of Energy; (v) recovers, stores, transports and delivers gas associated with the recovery and exploitation of coal deposits, simulating not carrying out the activities authorized by the concession; (vi) transfers the gas associated with the recovery and exploitation of coal deposits; (vii) omits information with respect gas associated with coal deposits, discovered in the exploration and exploitation phases; and (viii) loses capacity for being titleholder of a mining concession.

5) By means of judicial resolution.

5. What are the restrictions for one operator to hold mining rights?

- 1) If the titleholder of a mining concession obtains minerals or substances not included in the mining law, such as radioactive minerals, for example.
- 2) Not having sufficient capacity in order to be titleholder of a mining concession.
- 3) If a mining lot subject to a mining concession covers, totally or partially, a non “free” land at the time the request is submitted.
- 4) If the mining works put in risk the life or physical integrity of the workers or members of a community.
- 5) If the mining works cause or may cause damages to public interest goods, public services or private property.
- 6) In order for foreign companies be able to carry out mining activities, they must be duly incorporated in accordance with the laws of the place of their incorporation, have a legal representative domiciled in Mexico, mines must be located outside the restrictive area (an area of 100 kilometers along Mexico’s international borders and within 50 kilometers of the coast line) and must waive the protection of their governments with respect such concessions under penalty of losing their concession rights in favor of the Mexican government.
- 7) Mexico has the Economic Competition Law which forbids such commercial practices that could give in the market substantial power in the relevant market to any participant. Furthermore the following concentrations must be notified to the Economic Competition Commission prior to be carried out: (i) any transaction which value is equal to or greater than 18 million times the general minimum daily wage in effect in the Federal District; (ii) implies a transfer of 35% or more of the assets of an economic agent whose annual assets or sales in Mexico are greater than 18 million times the general minimum daily wage in

effect in the Federal District; or (iii) the transaction implies an accumulation of assets or equity greater than 8.4 million times the general minimum daily wage in effect in the Federal District and that in such concentration participates two or more economic agents whose annual assets or sales are greater than 48 million times the general minimum daily wage in effect in the Federal District;

6. What are the main working/operating obligations?

The main obligations for the holders of mining concessions are: (i) to execute and verify the mining works established by the mining law and its rulings 90 days after the concession is recorded in the Mining Registry and submit the corresponding reports on May of each year; (ii) to pay the respective governmental mining duties; (iii) to fulfill the mining industry official rules related with mining security, environmental compliance; (iv) not to retire the permanent works of reinforcement, mining struts and other necessary structures for the stability and security of the mines; (v) To keep in the same place and well preserved the landmarks or signals which indicate the location of the starting point; (vi) to render the statistical, technical and accounting reports to the ministry, in the terms and conditions established in the Rulings of the Mining Law; (vii) to allow inspections carried out by governmental functionaries authorized by the Ministry; (viii) to render a geological mining report to the Ministry of Economy when the mining concession is cancelled; (ix) to render a six-monthly report to the Mexican Geological Service with regards the works carried out and production over such mining concessions granted by public bid in order to control the payment of the discovery premium or any other economic consideration, (x) to notify the Ministry the beginning and suspension of activities related with the recovery and exploitation of gas associated with coal deposits; (xi) accumulate, register and deliver periodical information to the Ministry of Energy regarding the recovery and exploitation of gas associated with coal deposits; (x) to notify the Ministry the discovery of gas associated with coal deposits; and (xi) to deliver the gas associated with coal deposits at the connection point indicated by the Mexican Oil Company (Pemex) in case not used for self-consumption.

7. How are joint venture agreements or joint operating agreements regulated?

Joint ventures in Mexico are regulated by the terms and conditions imposed by the parties in accordance with the provisions of the corporate law in Mexico as long as they do not violate public policy provisions or third parties rights.

Joint venture companies incorporated to carry out mining activities may be hold by 100% foreign investors as long as the joint ventures are incorporated in accordance with Mexican laws.

8. What are the main features of mining taxation and corporate taxation in mining?

Taxation is submitted to the Income Tax Law at a rate of 30% including the mining industry. Regarding the value added tax, all the minerals covered by the Mining Law are subject to a 16%. There is a new tax of 7.5% on the income from sales on mining products and a tax of 0.5% of income from the sale of gold, silver and platinum.

9. What are the main features of environmental obligations?

The Mining Law establishes the obligation to the titleholders of the mining concessions, as well as to the beneficiaries of minerals or substances covered by the mining law, to fulfill the respective environmental standards. The main applicable law in environmental issues is the General Law of Ecological Equilibrium and Environmental Protection (Environmental Law), which requires that certain dangerous activities should be subject to a previous environmental authorization in order to start operations such as the mining activities. In order to obtain such authorization, the mining companies must submit an environmental impact statement authorization which must contain a description of the possible effects and affectations to the ecosystem derived from the mining activities, as well as the preventive and mitigation measures to be applied in order to reduce the negative consequences over the environment.

In order to avoid filing an environmental impact statement authorization when carrying out exploration activities, the concessionaires of a mining concession may choose to fulfill the provisions of the Mexican Official Standard NOM-120-ECOL-1997 Specifications of Environmental Protection for Mining Exploration Activities.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

The Mining Law provides that if the land where a mine is located is in an inhabited area by an Indian community and such land is requested simultaneously by other person or entity to obtain a mining concession, the indigenous community shall be preferred for the granting of the concession.

Furthermore, according with the Environmental Law, the indigenous and peasant communities and other possessors or proprietors of lands located in Protected Natural Areas where environmental risky activities may be carried out, such as mining, shall have preference rights for the granting of authorizations or concessions to carry out such activities.

Once the Environmental Ministry receives an environmental impact statement, shall make it public for consultation purposes. The Environmental Ministry shall carry out a public consultation if requested by any person or community.

11. What kinds of compensations to said groups or benefits in their favor can be expected?

In case an environmental pollution or damage is determined by the environmental authorities, the party responsible shall repair the damages in accordance with the civil law provisions, that is, the restoration of the situation that existed before the harm whenever possible or in the payment of compensatory damages and loss of future earnings at the election of the affected party. The penalties for environmental crimes are prison from 1 to 9 years plus fines equivalent to up to 3000 times the daily salary of the infractor. The administrative sanctions for violating environmental

provisions may be fines up to fifty thousand times the minimum wage in Mexico City, temporary or definite closing down of the business, detention up to 36 hours, seizure of assets, and revocation of the concession.

12. Briefly explain how can easements be agreed or imposed.

Mining concessions confer the right to have surface and underground easements in the mining lots, in order to carry out the exploration, exploitation and benefit mining works. The indemnity amount of the expropriation shall be determined by the National Appraisal Commission, having the affected party previously heard.

The easements shall be registered before the Mining Registry and the applicant shall indicate the term of the easement which shall not exceed the concession term, the surface of the land and data of the concession subject to the easement, coordinates of the easement and general data of the titleholder of the concession or the proprietor of the land as the case may be, the type of works to be carried out, the destination of the land, and the reasons to have the easements. The application shall be annexed the corresponding appraisal for surface easements and the consent of the affected party.

13. Briefly explain how expropriation of third parties' rights can be obtained.

The mining concessions confer the right to obtain the expropriation of the lands necessary to carry out exploration, exploitation and benefit mining works. The indemnity amount of the expropriation shall be determined by the National Appraisal Commission, having the affected party previously heard.

The expropriation shall be registered before the Mining Registry and the applicant must indicate the surface of the land subject to expropriation, coordinates of the expropriated land, general data of the proprietor of the land, type of works to be carried out, destination of the land, and the reasons for having the land expropriated.

14. How are water rights for mining treated?

The mining concessions confer the right to use such waters derived from working activities in the mines for domestic use and to be preferred for the granting of water concessions for any other use other than domestic use.

The verification works reports to be submitted yearly to the Ministry shall include such works and equipments related with the extraction, conduction and transportation of water.

15. Is internal and/or external trading regulated? How?

Mining is a federal activity and the minerals derived from it may be freely traded internally or internationally except for radioactive minerals.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

The mining law establishes that the persons that prepares, treats, smelts primary in first hand and refines minerals shall process such mineral to small and medium miners and the social sector up to 15% of the capacity when such capacity is superior than 100 tons in twenty-four hours.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

In accordance with the Mexican Constitution, the Mexican Government has the monopoly of radioactive minerals as well as on oil, solid, liquid and gas carbides of hydrocarbons, except for the gas associated with deposits of mineral coal.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

The Ministry of Economy through the General Direction of Mining is the federal authority that oversees the compliance of the Mining Law. The Ministry of Energy is the federal authority that controls everything relating with the gas associated with deposits of mineral coal. The Ministry of Environment and Natural and Fishers Resources (Semarnat) is the authority that controls and oversees the application of the environmental dispositions.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Controversies between private producers and the government may be settled at the Mexican federal courts. Controversies among private persons may be resolved by conciliation, mediation or arbitration; however, to enforce an arbitral resolution, it must be homologated before the Mexican civil courts.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Mexico is not part of the Washington (ICSID) Convention; however it is part of the United Nations Commission on International Trade Law (UNCITRAL). However, Mexico is signatory of the North American Free Trade Agreement (NAFTA), under, which provides the settlement of disputes for investments matters. Under these rules, a national of the USA or of Canada will be able to submit an investment dispute to arbitration under the Additional Facility Rules of ICSID or the UNCITRAL Arbitration Rules.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Mexico is member of several bilateral and multilateral free trade treaties where the investment is protected. The first agreement of this type was the NAFTA, where the following general principles apply for the protection of the investment:

National Treatment: To grant to the investors of the other country, a treatment no less favorable than that it is granted, in similar circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Most-Favored-Nation Treatment: To grant to the investors of the other country a treatment no less favorable than that it is granted, in similar circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Minimum Standard of Treatment: Each Party shall grant to the investments of the other country a treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Performance Requirements: Not to impose certain performance requirements in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment or of a non-Party in its territory.

Transfers: Each Party shall permit all transfers relating to an investment of another Party in the territory of the Party to be made freely and without delay.

Expropriation and Compensation: It is granted guaranties regarding expropriation and compensation procedures.

Furthermore Mexico is signatory of a Free Trade Agreement with Europe where the National Treatment and Most-Favored-Nation Treatment principles applies only for the trade of services. With respect investment applies the Transfers principle.

Also Mexico is signatory of a Free Trade Agreement with Salvador, Guatemala and Honduras where the same principles for protection of investment of NAFTA applies.

Mexico has the following bilateral free trade agreements with the following nations: Costa Rica, Colombia, Nicaragua, Chile, Israel, Uruguay,

22. Other relevant issues you wish to briefly address?

No further comments.

Basics of Mining Law In Perú³⁷

Contributing Firm:

Estudio Delmar Ugarte Abogados

1. What are the main rules of law governing mining activity in your jurisdiction?

Under Peruvian law, all natural resources including metal and non-metal minerals are property of the Nation and the State is sovereign over the exploitation of natural resources. The State sets the conditions for its use and for granting concessions to individuals, and shall promote their sustainable use. Through the mining concession, individuals have the right to explore and exploit the mineral resources of soil, subsurface and sea located within the area granted by the concession. Once extracted, minerals are privately owned by the concessionaires, who in exchange must pay Royalties to the State. Marketing, sales prices as well as treatment and refining charges of the extracted mineral products are free and established according to international prices, by supply and demand.

2. How are mining rights acquired from the State?

Prospecting and trading are free activities not subject to a concession system. Nevertheless, exploration, exploitation, general labor, processing and transport are mining activities that require a concession granted by the State in order to be developed.

3. How are mining rights acquired from private persons or companies?

The mining concession grants the titleholder an *in rem* right that gives primarily the right for exploration and exploitation of the mineral resources located within a defined area. Exploration is defined as a mining activity carried out for the purpose of proving the size, position, mineralogical characteristics, reserves and values of minerals deposits. Exploitation is defined as a mining activity carried out for the purpose of extracting minerals contained in a deposit mining site.

A mining concession is a property right different from dominion of the land or the surface area where the concession is located. A mining concession does not grant property rights over the surface land where the mining activity will be developed.

Additionally, under Peruvian law, a concession (separate license) is required to carry out the following mining activities: a) general labor (grants the right to carry out auxiliary mining services, such as ventilation, sewerage, hoisting or extraction services to two or more concessions of

³⁷ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2014. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

different concessionaires; b) processing, whereby it grants the right to carry out all physical, chemical and physical-chemical processes to extract or to concentrate the valuable ore from an aggregate of mineral and to purify, smelt or refine metals, including the stages of mechanical preparation, metallurgy, and refining); c) transport (grants the right to install and operate a mass and continuous system of transportation of mineral products between one or more mining centers and a port or processing plant or a refinery or within one or more sections of these routes. It includes non-conventional methods, such as conveyor belts, pipes and cableways).

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

Individuals and companies, domestic or foreign, public or private, may obtain the right to explore and exploit mineral resources by means of a mining concession. The Geological Mining and Metallurgical Institute (INGEMMET for its acronym in Spanish), a branch of the Ministry of Energy and Mines (MEM for its acronym in Spanish), is responsible for granting mining concessions. In applying for a mining concession individuals must comply with a series of requirements established by the applicable law and pay the Mining License Fee equivalent to payments for the first year of the concession, as well as application fee equal to 10% of one Peruvian Tax Unit - UIT (approximately 130 US\$). Once the title of the mining concession is issued, the concessionaire shall register its concession in the Public Mining Register that forms part of the National Superintendency of Public Registries (SUNARP for its acronym in Spanish).

5. What are the restrictions for one operator to hold mining rights?

The rights acquired by mining concessions shall remain in force as long as the titleholder complies with each of the obligations set forth in the applicable law.

Mining petitions and concessions may terminate by lapsing, abandonment, annulment, cancellation and renunciation. A mining concession expires automatically when the titleholder fails to pay the License Fee or the corresponding penalty during 2 (two) consecutive years. There are grounds for abandonment when in the process of applying for the mining concession the interested party does not fulfill all the application requirements. There are grounds for annulment when the concession has been granted to individuals not qualified to be titleholders. Petitions or concessions can be cancelled when a priority right already exists or when the corresponding right cannot be located. Finally, the titleholder can resign to a part or in fully of the mining concession by a communication to the INGEMMET.

6. What are the main working/operating obligations?

The applicable legal regime allows the acquisition of mining rights previously granted by the State to a private party. In this regard, there are standard contracts for mining activities that require to be entered in Public Registries in order to be enforceable against the State and third parties. These contracts are the following:

- Mining Option Agreement. – It is a preparatory contract which grants a third party, not related to the concession, the possibility to acquire the concession, a share of the concession or some right over it through a later definitive agreement. The maximum term of the option agreement is five (5) years from the date of execution of the private document. It shall regulate all material aspects of the definitive contract.
- Transfer Agreement. - A concessionaire may transfer its rights over all or part of the mining concession including its accessory assets when so expressly agreed in the contract. If partial transfer of ownership results in co-ownership of the concession, titleholders of the mining concession must first form a legal entity for this purpose.
- Mining Assignment Agreement. - The concessionaire can transfer the rights and obligations of the mining concession to a third party in exchange for a fee. The assignee assumes all of the rights and obligations of the assignor.

7. How are joint venture agreements or joint operating agreements regulated?

Some high-ranking government officials, members of the Judiciary and Legislature, officers that have competence over matters relating to the mining industry, as well as political authorities and members of the Armed and Police Forces in the territory of their jurisdiction and their spouses and relatives who are economically dependent on them are prohibited from engaging in mining activities. Also, according to the Peruvian Constitution, foreigners may not acquire or own by any title directly or indirectly, individually or in partnership, land or businesses within fifty (50) kilometers from the border under penalty of losing, in favor of the State, the right so acquired. An exception to the latter can be granted if the activity is expressly declared of public need by Supreme Decree, approved by the Council of Ministers.

Moreover, it is important to mention that certain areas named Natural Protected Areas (ANP for its acronym in Spanish) exist. These are established and legally protected by the State and mining activities could be restricted in these areas.

8. What are the main features of mining taxation and corporate taxation in mining?

Mining titleholder must comply with the following main obligations:

- “Payment of a License Fee”. - Mining concession title-holders are required to pay certain mining annual fees in order to maintain their concessions. The first payment is made when the concession is formally requested, and subsequent payments are due annually thereafter. The mining annual fees are US\$3.00, or its equivalent in local currency per year and per hectare requested or granted. If the title-holder fails to make the payment for two consecutive years, the respective concession will expire.
- For processing concessions, the annual fee is calculated according to the installed plant capacity, as follows: (i) up to 350 MT/day, 0.0014 of a Unit Tax (UIT) for each MT/day, (ii) more than 350 up to 1,000 MT/day, 1.00 Unit Tax, (iii) more than 1,000 up to 5,000 MT/day, 1.5 Unit Tax, and (iv) for each 5,000 MT/day in excess, 2.00 Unit Tax. For general labor or

transport concessions, 0.0003% of a Unit Tax per lineal meter of estimated work is applicable.

- “Minimum Production”. - The mining titleholder has the obligation to invest in the production of mineral substances (metal and non-metal). Production may not be lower than: (i) One Peruvian Tax Unit (Approximately US\$ 1350) per year and per granted hectare for metal substances; and (ii) the equivalent of 10% of a Peruvian Tax Unit per year and per hectare for non-metal substances. Production minimums shall be met on or before the end of the tenth (10) year starting from the year after in which the concession was granted. Failure to comply with the minimum production generates a penalty to be paid by the concessionaire equivalent to 10% of the minimum annual production per year and per hectare until the year in which this production is met. However, if the minimum production is not met until the fifteenth year, INGEMMET declares the expiration of the concession.
- Annual Consolidated Affidavit. - The titleholders of the mining activity are obliged to submit an Annual Consolidated Affidavit (hereinafter “DAC”) containing general information of the company and its operations to the Ministry of Energy and Mines. The information is confidential.
- Payment of Mining Royalties. - Royalties are due as a compensation for the right to exploit mineral resources (non-renewable resources). The Mining Royalty is to be paid quarterly based on the operating profits after deducting the sales costs and operating expenses, including sales and administrative expenses, from the income. Unjustified costs are not subject to deduction.

Other administrative Obligations. - Titleholders of the mining activity are obliged to comply with all other applicable provisions such as environmental regulations, and to submit environmental assessments and Annual Reports of Environmental Compliance as well as a contingency plan and a closure plan, among others.

9. What are the main features of environmental obligations?

According to the applicable law, any individual or legal entity, either national or foreign, domiciled or not in the country, may associate with each other through joint ventures for carrying out mining activities. They may also perform works or provide services that are complementary or accessory to the main purpose of the joint venture. These agreements must be registered as separate items in the Contract Register of the Public Mining Registry. Likewise, at the request of the contracting parties, the contract can also be registered in the entry corresponding to the mining concession subject matter of the respective joint venture.

10. Which are the main features of environmental liabilities associated with mining activity?

The titleholder is responsible for the harm caused to the environment resulting from its mining activities, either in the form of the emissions, discharges or waste disposal.

Applicants for a mining concession have the obligation to obtain the approval of the appropriate environmental certification, which varies according to the level of impact of the activity to be performed. Consequently, there are three categories of environmental certification for mining activities: i) category I, category II and category III.

The Environmental Regulations for Mining Exploration have divided exploration into two different categories (Category I and Category II), according to the magnitude and impact that the activities to be carried out could have on the environment.

CATEGORY I	CATEGORY II
Includes projects that imply any of the following aspects:	Includes projects that imply any of the following aspects:
a) A maximum of 20 drilling platforms.	a) More than 20 drilling platforms.
b) An actually disturbed area of less than 10 hectares, considering all platforms, ditches, ancillary facilities and access ways.	b) An actually disturbed area of over 10 hectares, considering all platforms, ditches, ancillary facilities and access ways.
c) Construction of tunnels of up to 50 meters long.	c) Construction of tunnels of over 50 meters long.

No environmental assessment needs to be approved prior to carrying out exploration and prospecting activities that do not impact or slightly impact the surface (for example geological, geophysical and geochemical studies, topographic surveys, gathering of small rocks and surface ore samples).

This is not the case of Category I activities, which require the filing of an Environmental Impact Statement (DIA for its Acronym in Spanish), which is automatically approved upon its filing with the competent authority, except for some exceptional cases which will be subject to evaluation prior approval of the DIA. This exception will apply to those cases where exploration activities are carried out in environmentally sensitive or vulnerable areas (a short distance away from water sources, glaciers, forests located within protected territories or primary forests and areas containing environmental liabilities).

The DIA contains, among other things, information related to the mining activities to be performed, a description of the environmental and social aspects of the area where mining activities will be carried out and the mitigation and recovery plans designed to address the environmental impacts caused. The information to be included in the DIA is defined in the Ministerial Resolution that approved the Common Terms of Reference for mining exploration activities.

The concession holder may request, in the DIA form itself, the issuance of a DIA Automatic Approval Certificate on its favor.

Concerning Category II activities, a Semi-Detailed Environmental Impact Assessment (sdEIA) must be filed. It must be approved prior to the start of activities. The sdEIA contains detailed environmental and social information on the area where exploration activities will be carried out, information on the project and the work to be performed, as well as the measures to be taken to control and mitigate the environmental impacts caused, among other information, as established in the Ministerial Resolution that approved the Common Terms of Reference for mining exploration activities.

For large-scale mining producers and for activities of general labor and transport an environmental certification category II or category III is required. On the other hand, mining exploitation and processing activities require necessarily an environmental certification category III - Environmental Impact Assessment (EIA). The EIA contains the following: (i) Description of the activity, project or work, (ii) Description of the area to be affected, (iii) Identification, prediction, analysis and prioritization of environmental impacts, (iv) Environmental Management Plan, (v) Plans for mitigation, compensation and monitoring and (vi) Surveillance plan. The EIA approval process provides for public participation in order to offer information and promote dialogue with individuals, social organizations and communities which are likely to be affected by the mining project. The modalities of participation are: i) workshops, ii) publication of notice of public participation in print and / or radial, iii) conduct of surveys, interviews or focus groups, iv) distribution of informative materials, v) guided tours to the area or project facilities, dissemination of information through a facilitation team and vi) public hearings.

This approval may also include community or social relations plans, certification that there are no archaeological remains in the area, and a mine closure plan draft. In addition, the mining company has to obtain water rights from the National Water Authority and surface lands rights from individual landowners.

Once the environmental certification is approved and the mining concession granted, the following requirements must be fulfilled during the exploitation of the concession: (i) submission of reports on the generation of emissions and/or discharge of waste from mining industry; (ii) internal auditing for environmental control of the company and (iii) implementation of a closure plan to be executed at the termination of operations. At this point it is important to emphasize that in our country there is a System of Incentives which aims to create a culture of prevention and environmental remediation. In this regard, mining concessionaires can obtain honorific or economic incentives if they prevent or reduce environmental pollution further than required by the regulation and environmental obligations.

11. Is there any mandatory consultation process with native people, peasant communities and / or populations who may be affected by mining activities? If so, how does it work?

Yes. At this point we need to state the difference between two closely related concepts: citizen participation and prior consultation.

Relating to citizen participation the titleholder of mining projects must implement mechanisms and processes of citizen participation that involve populations in the area of influence of the project. The most common mechanisms are the public hearings and the participatory workshops. These mechanisms have the aim of explaining the implications of the development of the project to the population and to include their suggestions into the respective environmental certification.

On the other hand, mandatory consultation processes are recognized by the Law of the Right to Prior Consultation for Native, Indigenous and Tribal Peoples passed on September 7, 2011. Developing the framework for the application of the ILO 169 Convention, Indigenous and Tribal Peoples Convention, this law regulates the right of indigenous or tribal peoples to express their opinion on measures that could potentially affect their collective rights by establishing a prior mandatory consultation process. According to the law, consultation will be mandatory before adoption or implementation of the following measures, provided that these could affect the collective rights of indigenous or native peoples, specifically those related to their physical existence, cultural identity, quality of life or development: (i) laws and other legislative measures, (ii) Regulations and administrative actions in general, and (iii) Programs, plans and projects of regional and national development.

To date, the process of consultation in the mining sector has not been applied in Peru. However, it is possible that the first prior consultation in the mining sector will take place in 2015. Critical issues for the application of the law, among them, competence of the relevant authorities, need to be defined or detailed in the regulations to guarantee an efficient consultation process, one which does not hinder investment projects and contributes to ease dissatisfaction of the affected communities.

12. What kind of compensation or benefits is granted for these groups?

The law does not specifically establish the kind of compensation or benefits that shall be provided to the affected population.

Agreements reached as a result of the consultation process are enforceable before court and administrative agencies. Nevertheless, it is important to specify that the prior consultation does not imply a right of veto for the indigenous and tribal population. In this regard, if an agreement is not reached, the Government will make a decision over the possibility of continuing with the project or not. In such case, the Government has the authority to guarantee the rights of the population involved.

13. Explain briefly how an easement can be imposed or agreed in favor of a mining titleholder.

Easements in favor of a mining titleholder can be established either by consensus between the mining titleholder and the surface land owner, or by the so called “mandatory easement”, declared by the Ministry of Energy and Mines in the absence of agreement between the titleholder and the owner.

The procedure for the granting of easements begins with the application filed by the titleholder. The application shall include a Project Narrative briefly describing the works to be performed. The General Director of Mines will summon the parties to a joint meeting. If the owner of the land subject matter of the application is unknown, summons will be published three times, with a difference of eight days between each publication, in the official gazette “El Peruano” and in a local newspaper. A notice will also be placed in the property.

In the event of disagreement, the General Director will appoint an expert to determine the possibility of granting the easement without seriously affecting dominion of the landowner and the corresponding compensation for the use of the land, where appropriate. The expert will make its own inspection to the property for this purpose. With the expert opinion, the General Director will issue a decision. Mandatory easements are rarely used. Especially because of social conflicts and criticism to mining activities and the use of community lands for this purpose, mining concessionaires divert all their efforts to reach private agreements with owners or communities. In practice, projects where an agreement has not been reached with landowners or affected communities have been significantly delayed.

If the surface landowner is the Peruvian State, it can grant easements with the corresponding compensation for the use of the land, through the National Superintendency of State Assets – SBN for its acronym in Spanish.

14. Explain briefly third parties rights expropriation in favor of mining concession titleholder

The Peruvian Constitution sets forth the right to private property and the principles for its respect. Expropriation, being a case of deprivation of property, proceeds only under very limited circumstances. According to Article 70 of the Political Constitution of Peru, no individual shall be deprived from its property except on grounds of national security or public need, determined by law and upon cash payment of compensation. National security or public need must be declared by a Law passed by the Congress of the Republic on a case by case basis.

Initially, provisions included in the General Mining Law contemplated the right of mining titleholders to request the expropriation of property for its mining activities, by paying the corresponding compensation. The proceedings were similar to those provided for the easement imposition. Those provisions were unconstitutional and were never applied. To date, the provisions on expropriation contained in the General Mining Law were implicitly repealed by subsequent laws. The General Expropriation Law, Law 27117 sets forth that only the State may be the beneficiary of an expropriation. Likewise, according to Law 26505 that regulates the use of rural land for economic activities, the use of rural land for mining activities requires a previous agreement with the owner or the completion of the easement procedure and expropriation will only be available on the grounds of public need determined by law and for the execution of infrastructure works or public utilities.

15. How are water rights related to mining activities regulated?

In order to use water, mining concessionaires shall obtain water rights from the competent authority, the National Water Authority (ANA for its acronym in Spanish). Water rights are classified in i) license, ii) permission; and iii) authorization. A license grants its titleholder the right to use permanently this natural resource for productive activities, with a specific purpose and in a certain location. Permissions enable its titleholder the use of surplus water during certain times of the year. Finally authorizations are related to the implementation of studies, execution of works and soil washing. These are limited to a 2 (two) year term.

Specific terms and conditions are set forth in the administrative decision that grants the right of use.

It is also necessary to obtain the corresponding authorization for the discharge of sewage.

16. Is foreign trade regulated? If so, how?

Peruvian legislation guarantees free trade, which means freedom in the acquisition, transformation and trade of goods, currency convertibility and the right to engage in unrestricted non-tariff transactions. Peru has a trade liberalization policy which means reduction of tariffs, elimination of quotas and of other barriers to foreign trade. Peru has entered into the Vienna Convention, among others, regarding international purchase and sale of goods, as well as a series of treaties of bilateral, regional and multilateral nature (FTAs, BTI's, etc.) with other countries which provide minimum guarantees and conditions to foreign investors. It is also a part of various trade agreements such as the World Trade Organization, the Andean Community, Mercosur and the Forum of Asia Pacific Economic Cooperation. Peru is also a member of the Multilateral Investment Guarantee Agency (MIGA).

17. Is there any mandatory rule governing the sale of production from local smelters or refineries?

No. As stated above, the trading of mineral products extracted in Peru is free. The sales prices of minerals and the processing and refining charges are established according to free trade, influenced by international prices.

18. Is there any State agency maintaining a monopoly on mining? If so, please explain.

There is no state agency maintaining a monopoly with respect to the major activities carried out in this sector.

19. Which are the State authorities that control mining and environmental activities? What is the scope of their jurisdiction?

The Ministry of Energy and Mines (MEM) has the authority to grant, regulate and promote the development of mining activities. It has several branch agencies in charge of mining activities such as the (i) General Mining Bureau, (ii) General Bureau of Mining Environmental Affairs (DGAAM) and (iii) the Geological, Mining and Metallurgical Institute (INGEMMET).

The approval of environmental certifications is under the responsibility of the DGAAM. However, the National Service of Environmental Certification for Sustainable Investments (SENACE for its acronym in Spanish) has been created, being the competent authority to review and approve the environmental certification classified as category III. Nevertheless, to date the SENACE continues in a process of implementation.

The competence to supervise mining activities was given to OSINERGMIN, the energy and mining sector regulator since January 2007. However, recent legislative initiatives have determined that this authority is now divided as follows:

- Environmental Supervision: The Environmental Assessment and Supervision Agency (OEFA for its acronym in Spanish), a branch of the Ministry of Environment is responsible for assessing, monitoring, supervising, controlling, sanctioning and implementing incentives on environmental matters. These responsibilities were transferred by OSINERGMIN on July 22, 2010. It is worth noting that Regional Governments are also authorised to approve both environmental management plans and closure mine plans and to supervise compliance of environmental regulations with respect to small-scale mining producers and artisan miners.
- Labor supervision: The Ministry of Labor has the authority to supervise and monitor compliance with occupational health and safety standards on mining matters. Competence was transferred by the new Law on Safety and Health at Work No. 29783, approved in July 2011.
- Supervision of technical requirements: OSINERGMIN Board of Directors has interpreted that, despite the transfer of competences to supervise labor health and safety regulations on mining matters, the entity continues to have the authority to supervise and monitor compliance with technical requirements on mining matters.

The responsibilities of these three entities are not clearly defined and it is likely, that in practice, a duplication of efforts and concurrency proceedings stemming from the same events will occur. It is yet to be seen how the Government will handle this situation.

20. How do you resolve claims or disputes with the State and between individuals in respect of mining activities? Are the mechanisms for conciliation, mediation and / or arbitration used? In which cases?

Disputes arising out of mining activities can be settled either before Peruvian courts or through alternative dispute resolution mechanisms. Domestic and international arbitration are frequently used. It can be said that Peru has a pro-arbitration policy. In contrast, Peru has no specific legislation on mediation and conciliation.

Based on the most recent UNCITRAL model law and on previous experience, Legislative Decree 1071 reflects a modern and liberal trend towards the development of arbitration, which aims at differentiating arbitration rules from civil procedure rules and provides significant weight to the

parties' freedom in the arbitration proceedings. It also includes provisions aimed at strengthening the institution of arbitration against intervention of the judiciary.

It is relevant to note that the Peruvian Arbitration Law expressly recognizes the possibility of submitting to arbitration disputes arising out with the Peruvian Government. There are multiple examples of laws providing for mandatory arbitration with the state or with state-owned companies in subject matters not specifically related to mining activities. It is also common for arbitration agreements to be included in concession and privatization agreements or in agreements that grant investors with a stabilized legal or tax regime, including those relating to the mining industry. In this kind of contracts, the distinction between domestic or international arbitration is usually based on the amount at stake.

As to subject matter of the dispute, the Peruvian Arbitration law states that only subject-matters which are of "free disposition" can be settled by arbitration. Contractual disputes, even if one of the parties is the Peruvian Government, are considered of "free disposition" and therefore can be subjected to arbitration. However, Governmental acts cannot be directly challenged in arbitration and must be subjected to judicial review.

Investor-state arbitration based on breaches of international treaties has also seen a strong development in recent years with the execution of multiple treaties by the Peruvian Government, which we will refer to in answers to the next questions.

21. Is your country a member of the Washington Convention?

Yes, Peru is a signatory and has ratified the Washington Convention on September 4, 1991, which entered into force on September 8, 1993. The Peruvian Government has settled disputes in arbitrations administered by ICSID both arising out of in international treaties and arbitration agreements which submit disputes to arbitrations administered by the Centre. As of December 2011, 10 claims have been filed before ICSID tribunals against the Peruvian government, 4 of which have concluded. Only one of these involves mining activities (Compagnie Minière Internationale Or S.A. v. Republic of Peru , ICSID Case No. ARB/98/6).

22. Has your country signed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common characteristics and the most relevant differences? Multilateral treaties?

Peru has entered into a variety of bilateral and multilateral treaties and conventions, with the purpose to provide foreign investors with guarantees for the protection of their activities. Other than the multilateral instruments mentioned in Question 15, Peru has executed more than thirty (30) bilateral international treaties and for the protection of investments (BIT) and free trade agreements (which include a specific chapter referred to investments protection) with countries of the Pacific, Europe, North America and Latin America.

23. Anything to add or comment on?

The mining industry has developed significantly in Peru in the last years because of the richness of its mineral resources (metal and non-metal minerals) and its positive approach towards private investment. Peru is one of the leading worldwide producers of silver and the second in copper and zinc. In Latin America Peru leads the ranking in the production of silver, zinc, tin, lead and gold. Its main buyers are U.S., China, Switzerland, Japan, Canada and the EU.

Notwithstanding the existence of a legal framework that promotes private investment in mining activities, the Peruvian government has yet to face the challenge that social conflicts are imposing on investment in the mining industry and other extractive industries. The effects of the Law of the Right to Prior Consultation for Native, Indigenous and Tribal Peoples recently enacted remains to be seen, as well as the current political management of the government towards the pressures of local communities against large investment projects in their respective areas of influence. The way in which the Peruvian government manages these issues will certainly have an impact on either strengthening or weakening the existing regime of private investment in mining activities.

Finally, it is worth noting that it is publicly known that this government will look at ways to restructure the mining concessions framework, having hired consultation experts for this purpose. Objectives to the reform are link to the political management of social conflicts before mentioned and of illegal mining, which is making strong environmental havoc in our country.

Basics of Mining Law In Spain³⁸



Contributing Firm: MAIO LEGAL SLP

1. What are the main rules of law governing mining activity in your jurisdiction?

Spanish Constitution regulates the exclusive jurisdiction of the State regarding the mining legislation basis, and the jurisdiction of the Autonomous Communities regarding the development and execution of the mining legislation.

The basic legislation includes Act 22/1973 of July 21st of Mines, as amended, and Royal Decree 2857/1978, of August 25th which approves the General Regulation for the Mining Regime, as amended.

2. How are mining rights acquired from the State?

Mining rights can be acquired from the Autonomous Communities by:

- a) By an application, in case of a piece of land free and not-registered with the Mining Registry.
- b) By a public auction, in case of a mining right free and already registered with the Mining Registry.

3. How are mining rights acquired from private persons or companies?

Mining rights can be transferred by a private person or company to other by any legal title. Typically, mining rights are transferred by heritage, purchase agreement, or lease agreement.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

What types of rights and for how long they are acquired?

- a) Exploration Permit granted for a period of one year, which may be extended for a maximum of one more year, and for an area of 300 squares minimum and 3.000 squares maximum.
- b) Research Permit granted for a period of three years, which may be extended for an additional three years, and for an area of 300 squares maximum.

³⁸ This document outlines the principal legal rules on base and precious metals exploration and mining activities in force as at January, 2014. The focus is on the operational side of exploration and mining operations and on rules of general application. Specific circumstances may dictate different or additional requirements. **This document is offered for informational purposes only and is not intended to constitute legal or professional advice.**

- c) Exploitation Concession granted for a 30 year period, which may be extended for two additional 30 year periods, and for an area of 100 squares maximum.

(A mining square is the volume, of non limited depth, which surface base is comprised between two parallels and two meridians, which separation is of 20 sexagesimal seconds, which shall have to match up in entire grades and minutes and, with a figure of seconds that necessary must be cero, twenty or forty).

How can they be terminated or lost?:

- a) Titleholder refusal.
- b) Titleholder failure to pay mining taxes.
- c) Titleholder failure to start operations within six months from the award of the mining rights or the extension.
- d) Titleholder interruption of operations for six months, without the previous authorisation from the Administration.
- e) Nonexistence or exhaustion of the mineral resources.
- f) Titleholder default of the main conditions of the conditions of the mining rights.

5. What are the restrictions for one operator to hold mining rights?

The company shall request the authorization from the Spanish Competition National Commission in any of the following cases:

- a) When the result of the concentration is to acquire or increase a participation of not less than 30 percent of the relevant local or Spanish market (this will not apply in case that the annual aggregate turnover in Spain of the acquired company or assets does not exceed the amount of Euro 10 million, provided the participants do not have individually or jointly a participation of 50 percent in the relevant local or Spanish market).
- b) The total turnover in Spain of all participants exceeded in the last financial year Euro 240 million, provided that at least two of the participants obtained individually in Spain a turnover of more than Euro 60 million.

The company shall request the authorization from the European Commission in any of the following cases:

- a) When the combined aggregate worldwide turnover of all the undertakings concerned is more than Euro 5000 million; and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than Euro 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
- b) When the combined aggregate worldwide turnover of all the undertakings concerned is more than Euro 2500 million; in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than Euro 100 million; in each of at least three Member States included for such purpose, the aggregate turnover of

each of at least two of the undertakings concerned is more than Euro 25 million; and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than Euro 100 million; unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

6. What are the main working/operating obligations?

The titleholder shall file a technical project (exploration, investigation, or production project as the case may be) for the whole term of the mining right; in addition, it shall file every year the working plan for the relevant year; the main obligation of the titleholder is to fulfill such annual working plan.

7. How are joint venture agreements or joint operating agreements regulated?

There is no specific legal regulation.

8. What are the main features of mining taxation and corporate taxation in mining?

Spanish Corporate Income Tax. Companies domiciled in Spain are taxable on their world-wide income and the general tax rate of the Spanish Corporate Tax in 2015 is 28%. Companies that earned net turnover of less than €10 million in the immediately preceding tax year are taxed at a rate of 25% on profits up to €300,000, and a rate of 28% on profits exceeding this amount. Taxable years starting from 2016 the Spanish Corporate Tax will be 25%. Newly created entities that engage in economic activities will be taxed in the first two tax periods in which the tax base is positive at a rate of 15%.

Dividends paid by a Spanish company to a non-resident could be taxed in Spain by Non-Residents Income Tax. Spain has entered into treaties to avoid double taxation with many countries, which limit the tax rate up to 15%.

The Spanish Corporate Tax indicates certain expenses which may be deducted from the income tax, applicable to companies conducting mining activities. Additionally, establishes certain expenses related to such activities that may be deducted from income tax as well.

There are currently no significant restrictions on repatriation from Spain of earnings to foreign entities other than the income tax and the dividends tax.

9. What are the main features of environmental obligations?

The titleholder in case of an Exploitation Concession shall file with the Autonomous Community an Environmental Impact Study for approval (the decision approving the study is called Environmental Unitary Authorization, AAU).

In addition, the titleholder shall file with the Economy Counsel a Restoration Plan (to restate the mine area after the finalization of the mining operations) for approval.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

The Technical Project, the Restoration Plan and the Environmental Impact Study shall be published in the official gazette for a period between 15 days to one month; all interested parties, including environmental, social and industrial associations, can file allegations which shall be considered by the Administration for the approval. In addition, these associations will be entitled to appeal against the decisions approving the Technical Project, the Restoration Plan and the Environmental Impact Study

11. What kinds of compensations to said groups or benefits in their favor can be expected?

They can just ask for amendments to the project or the rejection of the project, to avoid damages to their interests.

12. Briefly explain how can easements be agreed or imposed.

It is possible to reach an agreement in private basis, so that the relevant associations do not oppose the project.

13. Briefly explain how expropriation of third parties' rights can be obtained.

The title holder of mining rights is entitled to request the expropriation of the access rights, use rights or property rights required to develop its mining rights. The expropriation shall be enforced by the Administration at the request of the titleholder. The price of the right or property shall be paid by the beneficiary. The assessment the price is determined by the Administration by means of an Administrative Court of Expropriations; such price shall be settled based on the capitalization of the turnover; its decisions can be appealed before Court; the appeal does not delay or prevent the takeover of the rights or properties.

14. How are water rights for mining treated?

The river basin is administrated by the so called Basin Hydrologic Confederation. These are public bodies ascribed to the Environmental Ministry of the state Government, or to the Environmental Counsel of the Autonomous Community. The right to use the water of the river is granted by means of a concession. The preference for the water use is as follows: population; agriculture; electric energy; other industrial uses (mining); aquiculture; amusement; navigation; other uses. This order can be changed by the river Basin Hydrologic Confederation.

15. Is internal and/or external trading regulated? How?

No.

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

No.

17. Do state entities hold monopolies relating to mining activities? If so, explain.

No.

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

Mining activities depend in general of the Autonomous Communities (Regional Government). The mining activity depends of the Economy Counsel (the Ministry of Economy the Regional Government). The environmental issues depend of the Environmental Counsel (the Ministry of Environmental of the Regional Government). There is a Delegation of such Counsels in the Province that exercises most of the competences with regards to the local projects.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Controversies with the administration are settled in principle before Court. Controversies with private persons and companies can be settled before Court or in arbitration (there is usually an arbitration Court at the local BAR of most Provinces, and at the local Chamber of Commerce of the main cities, in addition to other arbitration Courts).

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Spain is part of the Washington (ICSID) Convention and of the United Nations Commission on International Trade Law (UNCITRAL)

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Spain has BITs with Algeria, Argentina, Armenia, Azerbaijan, Belarus, Bolivia, Bosnia-Herzegovina, Bulgaria, Colombia, South Korea, Costa Rica, Croatia, Cuba, Czech Republic, Chile, China, Ecuador, Egypt, El Salvador, Slovakia, Slovenia, Estonia, Gabon, Georgia, Guatemala, Equatorial Guinea, Honduras, Hungary, India, Indonesia, Iran, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Latvia, Lebanon, Libya, Lithuania, Macedonia, Malaysia, Morocco, Mexico, Moldova, Montenegro, Namibia, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Poland, Dominican Republic, Romania, Russia, Serbia, Syria, South Africa, Tajikistan, Trinidad and Tobago, Tunisia, Turkmenistan, Turkey, Ukraine, Uruguay, Uzbekistan, Venezuela, Vietnam.

22. Other relevant issues you wish to briefly address?

The current economic crisis the country has had as a result the release of many of the environmental considerations that used to prevent the development of mining projects in the past.

Basics of Mining Law In **United States of America**³⁹



Contributing Firm:

Jackson Walker L.L.P.

1. What are the main rules of law governing mining activity in your jurisdiction?

Surface Mining Control and Reclamation Act (SMCRA)

General Mining Act of 1872

Mineral Leasing Act of 1920

National Environmental Policy Act (NEPA)

Clean Water Act (CWA)

Resource Conservation and Recovery Act (RCRA)

2. How are mining rights acquired from the State?

Under SMCRA, no person may engage in surface mining operations without obtaining a permit from the appropriate state authority or the U.S. Department of the Interior's (DOI) Office of Surface Mining (OSM).

3. How are mining rights acquired from private persons or companies?

Mining rights are usually obtained by contract between the prospective mine owner/operator and owner of the mineral rights, often referred to as a mineral lease. However, regulations regarding the ownership of minerals and the surface estate vary from state to state; therefore, the proper procedure for obtain mining rights must be evaluated on a state-by-state basis.

4. What types of rights and for how long they are acquired? How can they be terminated or lost?

The types of rights and the length of time for which they can be acquired are quite variable depending on the law under which the rights are being obtained and the type of mineral right being obtained. For instance, under the General Mining Act of 1872, a prospective mine operator can acquire absolute title to public land belonging to the U.S. government for mining claims if the

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claimant meets certain statutory requirements. Under the Mineral Leasing Act of 1920 (MLA), the Bureau of Land Management (BLM) may grant leases of public land for the development of coal, petroleum, natural gas, phosphate, potash, sodium, sulfur and other minerals deposits. The terms of a lease under the Mineral Leasing Act may depend on the mineral being developed. Phosphate and potassium leases do not have defined terms, but readjusted every 20 years. Sodium and sulfur leases, on the other hand, do have an initial term of 20 years, and an option to renew at the end of the initial term. The terms of a federal coal lease are subject to adjustment after the first 20-year period and, every 10-years after that.

5. What are the restrictions for one operator to hold mining rights?

The MLA establishes limits on maximum acreage that can be held by any one person.

Product - Coal

Limit - 75,000 acres in any one State and an aggregate of 150,000 acres in the United States\

Product - Sodium

Limit - 5,120 acres in any one State. However, the Secretary may allow one person to take or hold sodium leases or permits on up to 30,720 acres in any one State.

Product - Phosphate

Limit – 20,480 acres in the United States

Product - Oil and Gas

Limit – 246,080 acres in any one State other than Alaska. In Alaska, the limit is 300,000 acres in the northern district and 300,000 acres in the southern district.

6. What are the main working/operating obligations?

A typical SMCRA mining permit application must include, at least, the following:

- description of the type and method of mining, engineering techniques, and equipment;
- anticipated starting and termination dates of each phase of mining
- number of acres affected in each phase, including maps, plans and cross-sections showing the areas to be affected, containing all features normally found on United States Geological Survey maps; aquifer location and estimated depth; proposed location of spoil or refuse disposal areas and topsoil preservation area; constructed and natural drainways, the location of all discharges to any surface water body on the permit and adjacent areas, and all sediment control and/or water treatment facilities; and final surface profile after reclamation.
- probable hydrologic consequences of mining and reclamation operations;
- chemical analyses of the coal seam to be mined; and

- Reclamation Plan, addressing pre-mining conditions; proposed post mining contours, vegetation, and land uses, and a plan addressing restoration of the hydrologic balance.

7. How are joint venture agreements or joint operating agreements regulated?

The regulation of business entities, including joint ventures, differs from state to state. Under Texas law, a joint venture is merely a general partnership for a single, special purpose. A general partnership leaves its partners jointly and severally liable for any obligation or debt of the partnership. However, this joint responsibility is only relevant to the partner's liability on the merits; the partnership's contacts with Texas are not imputed onto the partner. Thus, the courts will look at a joint venture member's Texas contacts separate from the contacts of the joint venture itself.

8. What are the main features of mining taxation and corporate taxation in mining?

Corporate Income Tax - 35% plus state income tax¹

Remittance Tax - 30% on dividends, interest royalties, technical assistance rendered in the US unless reduced by tax treaties in force.

Mining Tax - Varies by state

9. What are the main features of environmental obligations?

SMCRA requires operators to restore the land affected by the mining operations to the pre-mining use or a "higher or better use," as well as restore the approximate original contour of the land. The operator must also

- restore the topsoil or the best available subsoil to support vegetation;
- ensure that reclamation efforts proceed in an environmentally sound manner and as soon as practical after mining activities;
- minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practical.

Permits for underground coal mining must contain a variety of requirements, including that the operator use the best available technology to minimize disturbance and adverse impacts on fish, wildlife and the environment.

10. Is there a compulsory consultation procedure with indigenous peoples, peasant communities and/or with populations that may be affected by mining activities? How does it work?

N/A

11. What kinds of compensations to said groups or benefits in their favor can be expected?

N/A

12. Briefly explain how can easements be agreed or imposed.

There are three primary types of easements used to gain access, express easements, easements by necessity, and implied easements.

Express easements are created by specific language in an agreement allowing for or granting the right to use the surface of the lands.

There are three basic requirements to create an easement by necessity:

- 1) 1. The property must have been owned in its entirety by the grantor as a single unit prior to a division in the property.
- 2) Access to the property must be a necessity and not a mere convenience. In other words, there is no other way to enter on the property.
- 3) The necessity must have existed at the time of the severance of the mineral and surface estates.

An implied easement is similar to an easement by necessity, but refers to a situation where the easement is only “reasonably necessary.” The easement must be reasonably necessary to have the enjoyment of the property. The property must be severed, and the basis of the implied easement must have existed before the severance or the sale of the property.

13. Briefly explain how expropriation of third parties’ rights can be obtained.

In the U.S., expropriation of third parties’ rights or is both granted and limited by the Fifth Amendment to the U.S. Constitution, which states, “private property [shall not] be taken for public use, without just compensation.” The government's right to take private property for public use is also called “eminent domain.”

Under Texas law, the Texas Constitution mandates that “[n]o person’s property shall be taken, damaged or destroyed for or applied to public use without adequate compensation . . .” Furthermore, no private property may be obtained by the government through eminent domain without a specific grant of authority from the Legislature.

What constitutes a public use, however, is a question of law for the courts to answer. In 2005, the U.S. Supreme Court held that a city taking private property under its power of eminent domain was an appropriate “public use” under the Fifth Amendment.

14. How are water rights for mining treated?

Water rights for mining purposes are regulated by each individual state. Generally speaking, states in the eastern portion of the U.S. have adopted a riparian water rights system, states in the western portion of the U.S. have adopted a prior appropriation system, and other states have employed a combination of the two systems.

15. Is internal and/or external trading regulated? How?

N/A

16. Are there compulsory rules to offer production for sale to local foundries or refineries? If so, explain.

N/A

17. Do state entities hold monopolies relating to mining activities? If so, explain.

N/A

18. Which are the state authorities of control over mining/environmental activities? What is the scope of their jurisdiction?

While many statutes regarding the regulation of mining operations grant federal agencies authority to implement the regulations, they also allow states to assume primary authority for regulating mining operations within their jurisdiction. For instance, the Surface Mining Control and Reclamation Act, which applies to coal mining, allows states to assume primary authority if they develop their own regulatory programs, which are then subject to approval from the Department of the Interior. A regulatory structure is also found in some of the major environmental protection laws, including the Clean Water Act and the Clean Air Act.

Due to the discretion that may be granted to individual states, the implementation of these federal statutes may differ widely throughout the U.S.

19. How are claims or controversies settled? With the state? Between private producers? Are conciliation, mediation and/or arbitration viable? In which cases?

Mine operators must keep records at or near the site so that they may be made available upon request. SMCRA requires one on-site inspection per month and one partial inspection without prior notice per month. Where violations threaten public or environmental health, inspectors have the authority to shut down mining operation. Even where states have a federally approved regulatory program, OSM will also conduct inspections to ensure that the states are properly enforcing applicable regulations. If OSM observes a violation, it must notify the state and if no action is taken by the state within 10 days, OSM will reinspect and take enforcement action.

20. Is your country a member party to the Washington (ICSID) Convention? To other similar international treaties?

Yes.

21. Has your country executed and ratified Bilateral Investment Treaties (BITs) for the reciprocal protection of investments? With which countries? What are the general common features and most relevant differences? Multilateral treaties?

Yes. The U.S. has executed and ratified BITs with several countries.

22. Other relevant issues you wish to briefly address?

No further comments.

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About Globalaw™



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