

# Mining in Latin America

An Overview of Mining Law  
in Argentina, Brazil, Chile, and Peru

## Trends and Main Challenges

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## TRENDS AND MAIN CHALLENGES

# Mining in Latin America

### Introduction

The global mining industry is continuously evolving and each day faces new challenges. With the end of the commodities super cycle (2002-2012) in which the mining industry took advantage of high commodity prices and easy access to capital, countries are now fighting to attract investment into this important sector of their economy, while companies are redrafting their strategic plans, together reshaping the industry as “there is no end in sight to the commodities downturn”.<sup>1</sup> Volatility and continued pressure on the price of commodities during the past few years has put mineral exploration projects on hold and compelled several mining companies to cut investments and, in certain cases, completely shut down operations. A report prepared by PricewaterhouseCoopers, “*Mine 2016, Slower, lower, weaker... but not defeated – Review of Global Trends in the mining industry*”, shows that the top 40 mining companies experienced their first ever collective net loss, their lowest return on capital employed, unprecedented capex containment, and the tag team effect of prevailing debt levels plus impairments, sending leverage to new heights.<sup>2</sup> That being said, since the beginning of 2016, precious metal prices and capital markets have been reacting positively and companies engaged in precious metal projects, such as gold and silver, are experiencing an incredible appreciation of their market capitalization as the mining investors’ confidence in the industry increases.<sup>3</sup> A recent information

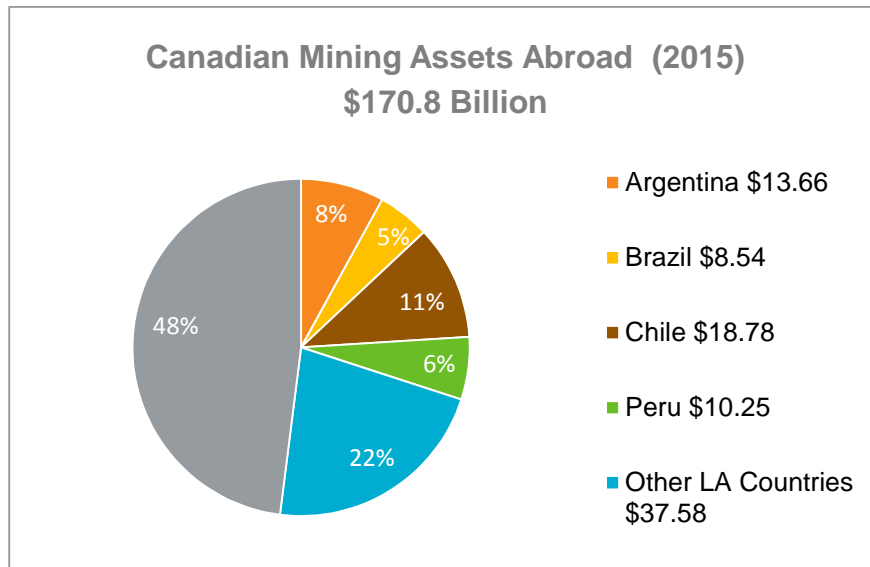
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<sup>1</sup> In an interview with the Financial Times, Rio Tinto’s CEO Jean-Sébastien Jacques noted that supply is still outstripping demand for most major raw materials that Rio mines. “Oversupply is there in all commodities, let’s be clear,” said Mr Jacques. “The first one that may come out of the oversupply is copper. If you look at the others - iron ore, coal and so on - there is a long way to go. Our view is that prices will remain under pressure with lots of volatility.” Neil Hume and James Wilson, “Rio Tinto says Commodities Rout Far from Over”, *Financial Times* (3 July 2016), online: <<https://www.ft.com/content/45019de0-3f8c-11e6-8716-a4a71e8140b0>>.

<sup>2</sup> In 2015, the top 40 mining companies had impairments of \$53 billion and \$27 billion in accounting loss. Their market cap dropped 37% in 2015. Early 2016 saw growth among the top 40 in terms of market capitalisation, which increased by 30% to the end of April. We attribute these movements to the upswing in commodity prices witnessed since the beginning of the year, along with the execution of debt market. PwC, “*Mine 2016, Slower, lower, weaker... but not defeated – Review of Global Trends in the mining industry*”, *PwC’s Mine 2016* (June 2016), 320, online: <<https://www.pwc.com/gx/en/mining/pdf/mine-2016.pdf>>.

<sup>3</sup> “During the first quarter of 2016, the gold complex finally shook off four years of consolidating price action. By way of review, from an intraday high of \$1,921 on 9/6/11, spot gold had declined some 46% to an intraday low of \$1,046 on 12/3/15. Incredibly, the GDM Index of gold miners had declined 81% from its 9/9/11 intraday high (1,855.09) to its 1/19/16 intraday low (347.41). Then, during the first quarter of 2016, spot gold posted its strongest quarterly performance since 1986, rising over 16%. Gold stocks responded with enthusiasm, as the GDM Index posted a quarterly gain of 45.82%. During the second quarter of 2016, spot gold has twice breached the 1,300 level to the upside, rising to an intraday high of \$1,303.82 on 5/2/16 (on lack of expected BOJ policy action and surging yen) and to an intraday high of \$1,315.71 on 6/16/16 (in the aftermath of May’s surprisingly weak employment report and subsequent Fed commentary). Through 6/21/15, spot gold rested at \$1,268.11, up 19.5% year-to-date, and the GDM Index held at 697.51, up 82.77% year-to-date.” Sprott Asset Management, “*Sprott Precious Metals Watch June 2016*”, *Sprott Asset Management* (June 2016), 1, online: <<http://www.sprott.com/media/383303/sprott-precious-metals-watch-6-2016.pdf>>; Generally speaking, it seems that commodity prices are now getting closer to pre-supercycle levels. Goldman Sachs Group Inc. said, at the end of November 2016, that investors should be on higher

bulletin about Canadian Mining Assets, published by the Canadian Government in January 2017, shows that Canadian Mining Assets (CMA) totaled \$259.1 billion in 2015, a 3.5% increase from the 2014 value of \$250.03 billion. Canadian Mining Assets Abroad (CMAA) totaled \$170.8 billion, up 2.6% from the 2014 value of \$166.4 billion. The same report also shows that Canadian mining and exploration companies were present in 102 foreign countries in 2015, down from a peak of 110 in 2011. The majority of CMAA (66.3%) were in the Western Hemisphere (the Americas) where values remained consistent with the previous year. In Latin America, which accounted for 52% of CMAA, increases in Brazil, Panama and Peru were offset by declines in Chile, the Dominican Republic, and Guatemala. This resulted in a consistent overall value for the region compared to the previous year, at \$88.5 billion in 2015. The graphic below illustrates the percentage of CMAA in Argentina, Brazil, Chile and Peru in 2015:<sup>4</sup>



The changes in the mining industry happen so fast that countries around the world struggle to keep pace with current industry trends, and often debate how to better turn the national endowment of mineral resources into sustainable wealth and improve their respective mining regulation to attract more investment, a discussion that often includes changes on local taxation.<sup>5</sup> The mining industry is

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commodities prices in 2017 as manufacturing picks up around world, the first time the bank has recommended an overweight position for the asset class in more than four years. See Jesse Riseborough and Javier Blas, "Goldman Overweights Commodities for First Time in Four Years", *Bloomberg* (21 November 2016), online: <<https://www.bloomberg.com/news/articles/2016-11-21/goldman-recommends-buying-commodities-as-manufacturing-improves>>.

<sup>4</sup> Government of Canada, Natural Resources Canada, "Canadian Mining Assets, Information Bulletin, December 2016", online: <<https://www.nrcan.gc.ca/mining-materials/publications/19323>>.

<sup>5</sup> As examples of countries in Latin America considering changes in their mining regulation we would like to highlight Brazil and Chile. Since 2006, Brazil is discussing changes to their mining regulation and the establishment of an independent regulatory agency. The Brazilian Federal Government submitted to the Brazilian Congress in June 2013 a bill to regulate the mining industry; since then, this bill has received several amendments and is still being analyzed by a special commission. Please see our overview of the Brazilian mining regulation included in this paper for more information about the Brazilian mining regulation framework (Section Mineral Exploration and Mining Rights in Brazil). See Frederico Barbosa, "Is an Overhaul of Brazil's Mining Framework, Royalties on its way?" *BNamericas* (19 October 2016), online: <<http://www.bnamericas.com/en/news/mining/is-an-overhaul-of-brazils-mining-framework-royalties-on-its->

extremely sensitive to changes in its regulation, especially to changes on applicable taxes and royalties given its cost structure, global demand and commodity price swings. When considering changes to the mining regulation, local policy makers need to carefully evaluate the impact such change can have on mine economics and on the country's ability to attract foreign investments.

One of the main characteristics of the mining industry is that it is a truly globalized industry, with mineral exploration and mining companies, independent of their size, doing business in several different jurisdictions, buying, financing, selling or partnering with companies located in different countries; and as such, from a legal perspective, relationships among the different stakeholders often touch two or more legal systems. The legal framework regulating the mining industry is complex and presents elements of domestic and international law, as well as soft law<sup>6</sup> (the "Global Mining Regulation").

Companies operating globally have to deal with and understand how such complex legal frameworks impact their activities in different jurisdictions in order to minimize risk, improve efficiency and better conduct business. While countries seek to improve their social and economic benefits from the mining industry, companies aim to reduce operating costs, increase profitability and maximize shareholder return.<sup>7</sup> The Global Mining Regulation needs to offer balance among such legitimate, and sometimes contradictory, objectives, striving to ensure that all stakeholders (companies, governments, local communities, etc.) benefit from the outcomes of mining operations, transforming minerals into sustainable development. Ultimately, it is this balanced Global Mining Regulation that, together with the competence, efficiency and independence of local regulatory institutions, will attract and support investments in the mining industry and enhance economic growth, creating a favorable environment for mining companies to conduct business. As the mining exploration and exploitation industries are heavily dependent on massive capital investments and sensitive to changes in regulations, it is extremely important to have an efficient and stable regulation that attracts investment, is competitive (in relation to other countries), reflects stakeholder needs in each phase of the value chain (from mineral exploration, to development and sales), and gives investors legal certainty.

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way>; Chile announced in April 2014 that the government was looking into introducing changes to their mining law regulation, in particular in respect to their current mineral rights granting system, but the head of Chile's geology and mining service has recently informed that the country is no longer considering changing the current system of mining concessions. See Juan Andres Abarca, "Chile: Changing Concessions System no Longer on Agenda", *BNamericas*, (12 July 2016), online: <http://www.bnamericas.com/en/news/mining/chile-changing-concessions-system-no-longer-on-agenda>.

<sup>6</sup> "When governments have been unwilling to agree on treaties, they have nonetheless prepared important instruments that are meant to, and in fact do, influence governmental behavior. These instruments, sometimes referred to as "soft law", cover areas ranging from foreign investments to telecommunications to human rights." Jeffrey L. Dunoff, Steven R. Ratner & David Wippman, *International Law – Norms, Actors, Process: A Problem-Oriented Approach* (New York: Aspen Law & Business, 2002) at 24.

<sup>7</sup> "On the one hand, public pressure may be brought on mines that are perceived to be enriching themselves with no public benefit, but if the operations are viewed by the public as essential or important to the public good, such as where they are a major employer, the public may be receptive to forgoing a royalty. For example, should an operation be forced to close during an economic downturn, the cost of society of the mine closing may be greater than the benefit provided by a royalty. Many nations for this reason allow royalty to be deferred in certain circumstances. One of the most difficult messages to convey to the public is that, although forgoing a royalty may result in reduced tax revenues in unprofitable years, imposing a royalty may in fact reduce the overall tax revenues if mines leave resources in the ground. Minerals left in the ground when investors choose to invest elsewhere because of royalty tax make no direct contribution to the public good." James Otto et al., *Mining Royalties – A Global Study of Their Impact on Investors, Government and Civil Society* (Washington, DC: The World Bank, 2006) at 18.

A mining country that relies on private capital to discover and exploit its mineral resources must compete with other countries for investment. Its investment climate, which reflects how attractive the country is to domestic and foreign investors, depends ultimately on two considerations: first, the expected rate of return the country offers investors on their investments in domestic projects, and second, the level of risk associated with those projects. These two critical determinants in turn vary with a host of factors, including the country's geologic potential, political stability, level of corruption, tax regime, and government regulations.<sup>8</sup>

Latin America has a long history and track record of mineral exploration and mining companies operating in the region, and an immense potential to attract new investments. In most Latin American countries,<sup>9</sup> the minerals and the subsoil are considered assets belonging to the nation (in other words, to the people of a given country). In some countries,<sup>10</sup> this ownership structure translates into a right that is constitutionally embedded and protected,<sup>11</sup> which has resulted in large and strong state-owned<sup>12</sup> mining companies and a highly regulated industry. Indeed, governments play an important role as safe keepers of minerals before a mineral right is granted to a third party to conduct mineral exploration activities and, if economically feasible, develop and operate a mine within the area covered by such mineral rights. Once granted, the government's role continues as a regulator responsible for ensuring company compliance with its various obligations.

In Latin American countries, being civil law jurisdictions<sup>13</sup>, ownership of the land (surface rights) is generally separated from the right to explore and exploit minerals in a certain area (mineral rights) and title to the mineral rights are granted by local mining regulatory authorities on a *first-come, first-served basis*<sup>14</sup> while the acquisition of surface rights will follow general local real estate law.

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<sup>8</sup> *Otto et al.*, *supra* note 7 at 183.

<sup>9</sup> Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Bolivia, Venezuela, Uruguay, Paraguay, Guyana, Suriname, Trinidad and Tobago.

<sup>10</sup> Brazil, Chile, Peru, Ecuador, Colombia, Bolivia, Venezuela, Paraguay and Suriname.

<sup>11</sup> e.g. article 176 of the Constitution of Brazil: Mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or use, a property separate from that of the soil and that belong to the Union, the concessionaire being guaranteed the ownership of the mined product (*Constituição da República Federativa do Brasil de 1988*, Brasil 5 October 1988, Palácio do Planalto, art 176, online: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)) [*Constitution of Brazil*].

<sup>12</sup> e.g. Brazilian state-owned mining company VALE (privatized in 1998, in which the Brazilian government still holds a Golden Share) and Chilean state-owned company CODELCO.

<sup>13</sup> "In Latin America, the French Code was introduced into Haiti in 1825, while the codes of Bolivia (1830) and Chile (1855) follow the arrangement and copy much of the substance of the Code Napoléon. Chile's code served in turn as a model for those of Ecuador (1857), Uruguay (1868), Argentina (1869) and Colombia (1873), while Puerto Rico and the Philippines largely copied the Spanish Code of 1889. The movement towards codification which the French Civil Code set in motion also gave birth to the German Civil Code of 1896 (in force in 1900), although its terminology is more academic and technical and its rules more precise than those of the French Code. The Swiss Civil Code of 1912, by comparison, is simple and nontechnical, relying heavily on general principles. The combined French, German and Swiss influence influenced the codifications of Brazil (1916), Mexico (1928) and Peru (1936)." William Tetley, "*Mixed Jurisdictions: Common Law vs Civil Law (Codified and Uncodified) (Part I)*" (1999) 4:3 Uniform L Rev 591 at 600 (UNIDROIT).

<sup>14</sup> The *first-come, first-served* principle is one of the pillars of mining regulation and was created to foster exploration activities and secure the rights of the holders of a mineral exploration and mining concession to explore and exploit a certain area for minerals. During the commodities boom, some countries started to evaluate (Brazil, Colombia and South Africa included) the possibility of scrapping this principle from their

The term that is commonly used in Latin America to characterize (i) the rights to conduct mineral exploration works varies from *permit or authorization to concession*, depending on the country; and (ii) the rights to conduct mining activities, are commonly referred to as a concession<sup>15</sup>. Mineral exploration and mining rights are unique titles that provide rights and obligations with respect to mineral exploration and/or mine development activities within a specific area; unlike regular concessions, a *mineral exploration right* is generally granted to individuals or companies on a *first-come, first-served basis*, as noted above, and a *mining concession* is granted exclusively to the holder of a mining exploration right that demonstrates the economic feasibility to develop mining operations within the area covered by such mineral exploration right and not generally “awarded” to the highest bidder, as it happens with telecommunications, airports, railways, ports, highways and other type of regular concessions that grant rights to a private entity to render public services. Mineral rights (permits, authorizations or concessions) are therefore regulated by their own regime, which is spearheaded in Latin American countries by a mining code or law (equivalent to an “Act” in Canada or the United States) and should not be misunderstood with a regular concession regulated by general administrative law.

This article will discuss mining regulation in Latin America, identifying common grounds, trends and recent challenges, with a focus on the mining regulations in Argentina, Brazil, Chile, and Peru. For each of those countries, we will pay special attention to their respective mineral rights granting process, foreign investment regulation, taxes, royalties and government incentives, and environmental law.

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respective mining regulation and replace it with a bid auction mechanism, similar to those used in the oil & gas industry. In our view, a major mistake that only served to promote uncertainty, since the exploration of an area for mining projects is completely different from the exploration of an area for oil and gas projects with different level of risks and costs involved. With the mining industry’s downturn, we do not see initiatives like these being implemented by any country.

<sup>15</sup> Argentina and Chile use the term mineral exploration concession and mining concession, while in Brazil these are called mineral exploration authorization and mining concession. In contrast, in Peru exploration and exploitation rights are granted through a single concession, a “mining exploration and exploitation concession”. Peru also has mining industry concessions that provide rights of processing, general labor, and transportation, which will be referred to as “mining processing concession”, “mining general labor concession” and “mining transportation concession”.



# Argentina

Argentina's 2014 default on bond-related payments caused the country's credit rating to suffer greatly, only to recover in May 2016 to B- and to B in 2017 as per S&P ratings.<sup>16</sup> Argentina's sharp turn away from the Kirchner-era policies following the ascension of President Mauricio Macri has quickly improved the country's attractiveness as an important destination for foreign investments in Latin America. Indeed, President Macri's administration is putting considerable effort in rebuilding Argentina's image as a friendly jurisdiction to do business, positioning this important Latin American country, once again, as a key jurisdiction for foreign investments in the region.<sup>17</sup> This is particularly interesting for mining investors, since Argentina is richly endowed with gold, silver, lead, aluminum and copper, amongst others. Current yearly production of the main minerals produced surpassed 600,000 tons in 2009.<sup>18</sup>

Argentina has a federal constitution, dividing legislative and executive power amongst the federal, provincial and municipal governments to different extents. Consequently, jurisdiction over mining is also divided amongst those three executive levels.<sup>19</sup> Even though minerals are property of the jurisdiction where they are found, making most deposits provincial, most aspects of mining are regulated throughout Argentina by their federal mining code,<sup>20</sup> coupled with applicable provincial regulations, such as provincial mining laws, establishing the procedures for applying for mining industry concessions. Foreign investment laws and most taxation are regulated at the federal level (see sections Foreign Investments in Argentina and Mineral Exploration and Mining Rights in Argentina). Chile, Brazil, and Peru, Argentina is a civil law jurisdiction, emphasizing codified laws over jurisprudence.

## Foreign Investments in Argentina

Since 2015, the new administration has launched various initiatives to attract foreign investment, seeking to fight the downward trend in Argentina's appeal as an investment destination.<sup>21</sup> Echoing Chile, Argentina established a National Agency (hereon referred to in this chapter as the "Agency") to

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<sup>16</sup> Carolina Millan, "Argentina Rating Lifted to B- by S&PGR After Ending Bond Default", *Bloomberg* (6 May 2016), online: <<http://www.bloomberg.com/news/articles/2016-05-06/argentina-rating-lifted-to-b-by-s-pgr-after-ending-bond-default>>. Trading Economics, "Argentina Credit Rating", online: <<http://www.tradingeconomics.com/argentina/rating>>.

<sup>17</sup> The new Argentinean Government started in 2015 a process to ease controls over the economy and return to an open economy and free market.

<sup>18</sup> KPMG, "Mining in Argentina: Current Situation, Potential and Opportunities, 2016", *KPMG* (2016) at 2, 13, online: <<https://www.kpmg.com/AR/es/foro-energia/enfoques/encuestas-vision-futuro/Documents/KPMG-Mining-in-Argentina-English-April-2016.pdf>>.

<sup>19</sup> International Comparative Legal Guide, "Argentina Mining Law", *International Comparative Legal Guide (2016)* at s. 1.1., online: <<http://www.iclg.co.uk/practice-areas/mining-law/mining-law-2016/argentina>> [ICLGA]

<sup>20</sup> *Código de Minería*, Ley 1919, Argentina 1 May 1887, InfoLEG, arts 1, 7, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/43797/texact.htm>> [*Argentinean Mining Code*].

<sup>21</sup> Taylor Jackson and Kenneth Green, "Fraser Institute Annual Survey of Mining Companies 2015", *Fraser Institute* (2015) at 50 online: <<https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2015.pdf>>.



promote foreign investment and international trade early in 2016 (“*Agencia Nacional de Promoción de Inversiones y Comercio Internacional*”).<sup>22</sup> The Agency’s mandate includes coordinating public effort to attract and facilitate the arrival of foreign investors to Argentina, as well as to promote reinvestments by existing foreign investors<sup>23</sup>.

Argentina’s foreign investment regulations allow foreign investors<sup>24</sup> with a registered company in Argentina to invest under the same conditions as local investors without requiring any sort of governmental approval.<sup>25</sup> Foreign investment includes, amongst others, mining, financing, and commerce, and may be made in foreign or local currency, goods, intellectual property, or other forms.<sup>26</sup>

Even though Argentinean foreign investment regulations allow foreign investors to freely withdraw investments and income from Argentina, any income generated from mining exports must be repatriated to Argentina and converted into Argentinean Pesos (ARS). Until July 2016, exporters had 30 days to complete repatriation.<sup>27</sup> However, in line with the Macri government’s liberalization of the economy, as of September 2016, the time frame to repatriate is one thousand eight hundred and twenty-five days from shipment.<sup>28</sup>

The Argentinean Mining Code requires that, within five years of submitting the mine’s investment plan, the total amount estimated in the plan in relation to mining works, building construction and infrastructure, and acquisition of mining equipment is fully spent as per the plan.<sup>29</sup> Furthermore, investors should have spent at least 20% of their planned investment by years two and four following the submission of their investment plan. Thus, by year four, at least 40% of the investment plan’s amount must have been spent as established in the investment plan.<sup>30</sup>

<sup>22</sup> Ministerio de Relaciones Exteriores y Culto, News Release, 033/16, “*El gobierno formaliza la creación de la nueva Agencia Nacional de Promoción de Inversiones y Comercio Internacional*” (11 February 2016), online: <<https://www.mrecic.gov.ar/el-gobierno-formaliza-la-creacion-de-la-nueva-agencia-nacional-de-promocion-de-inversiones-y>>.

<sup>23</sup> *Ibid.*

<sup>24</sup> Foreign investors include any person domiciled outside of Argentina that have a foreign investment in Argentina, as well as local businesses where more than 49% of their shares are owned, or the majority of voting power is controlled by a foreigner (*Ley de Inversiones Extranjeras, Decreto 1853/93*, Argentina 2 September 1993, Subsecretaría de Promoción Comercial y Desarrollo de Inversiones, arts 3, Anexo I 2.2., online: <<http://inversiones.gob.ar/userfiles/leydeinversionesextranjer.pdf>> [ARFIL])

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, arts 4, Anexo I 2.1, 3.

<sup>27</sup> *Ibid.*, art 5, Anexo I 5; *Resolución 142/2012*, Argentina 24 April 2012, InfoLEG, art 1, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/196638/texact.htm>>; *Decreto 1722/2011*, Argentina 25 October 2011, InfoLEG, art 1, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/185000-189999/188703/norma.htm>>.

<sup>28</sup> *Resolución 242 – E/2016*, Argentina 29 August 2016, InfoLEG, art 1, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/264928/norma.htm>>; Banco Central de la República Argentina, News Release, 50804, “*Síntesis de las Regulaciones Vigentes al Cierre de Septiembre del 2016 en Materia de Comercio Exterior y Cambios*” (3 October 2016), online: <<http://web2.bcra.gob.ar/Pdfs/SistemasFinancierosYdePagos/ultimocomunicado2016.pdf>>.

<sup>29</sup> *Argentinean Mining Code*, *supra* note 20 at art 217 paras 1-2.

<sup>30</sup> *Ibid* at paras 2-3.

Argentina has a bilateral investment treaty with Canada since 1993, whereby investments are protected by clauses including national treatment and most-favored-nation.<sup>31</sup> Argentina also has a bilateral mining treaty with Chile, which allows mining operations to take place seamlessly across the border of both nations (please refer to our discussion in section Mineral Exploration and Mining Rights in Chile).

## Mineral Exploration and Mining Rights in Argentina

As previously mentioned, mineral deposits are property of the jurisdiction where they are found and the Argentinean Mining Code, together with the Federal Mining agreement and the Mining Investments Law provide common regulations amongst the provinces, applying to different extents, to operations in each province depending on whether the local government has chosen to adhere fully or partly to each law within the limits of their own jurisdiction to legislate.<sup>32</sup> Therefore, any reference made in this paper to the effects of said laws will be with reservations regarding the extent of their application in specific provinces.

The Argentinean Mining Code regulates mining activities in the country and divides mineral deposits in three categories, whereby most industrially exploited substances fall under the first category.<sup>33</sup> These include gold, silver, platinum, mercury, copper, iron, zinc, aluminum, manganese, nickel, molybdenum, lithium, and solid hydrocarbons, amongst others.<sup>34</sup> First category deposits belong exclusively to the state, constituting a distinct right from surface rights, and may only be explored or exploited by private entities through concessions and, when specifically allowed, by the government.<sup>35</sup> Concessions can also be granted for uranium<sup>36</sup> and thorium, subject to specific requirements outlined in Title XI of the Argentinean Mining Code, including a first purchase option for the Argentinean government at market price and form.<sup>37</sup>

Mineral exploration permits (“*permiso de exploración*”) and mining concessions (“*concesión de explotación*”) are granted by mining courts or mining directions, depending on the jurisdiction where the objective area is located, and cover the minerals that are found during exploration and declared to the mining authority.<sup>38</sup> Mineral exploration permits give the holder the right to freely and exclusively explore the designated area and the right to any discoveries, including those made by a third party within the exploration area covered by the mineral exploration permit.<sup>39</sup> Mineral exploration permits have a defined term and are subject to payment of a one-time fee and the obligation to conduct a

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<sup>31</sup> Agreement Between the Government of Canada and the Government of the Republic of Argentina for the Promotion and Protection of Investments, Republic of Argentina and Canada, 5 November 1991, arts 3-4, (entered into force 29 April 1993), online: <<http://www.treaty-accord.gc.ca/text-texte.aspx?id=101514>>.

<sup>32</sup> See generally *Acuerdo Federal Minero, Ley 24.228*, Argentina 7 July 1993, InfoLEG, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/624/norma.htm>>; *Inversiones Mineras, Ley 24.196*, Argentina 28 April 1993, InfoLEG, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/594/texact.htm>> [*Argentinean Mining Investments Law*].

<sup>33</sup> *Argentinean Mining Code*, *supra* note 20 at arts 2-3.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid* at arts 2.1, 8, 10, 11, 44.

<sup>36</sup> A special regime exists for hydrocarbons and nuclear minerals.

<sup>37</sup> *Argentinean Mining Code*, *supra* note 20 at arts 205, 206, 209; See generally *ibid* at Title XI.

<sup>38</sup> *Ibid*, arts 2, 45-46; ICLGA, *supra* note 19 at s 1.1.

<sup>39</sup> *Argentinean Mining Code*, *supra* note 20 at arts 25, 40, 99, 233.

minimum mineral exploration program in order to keep the mineral right in place. For the duration of mineral exploration permits, the owner has the exclusive right to obtain mining concessions within are covered by the exploration permit. Mining concessions give the holder the right to freely and exclusively develop, explore and mine the area covered by the mining concession during the life of mine.<sup>40</sup>

Unlike other jurisdictions, in Argentina, only mining concessions constitute immovable rights, in contrast to mineral exploration permits.<sup>41</sup> Consequently, only mining concessions are susceptible to contractual arrangements that are generally applicable to real estate, such as a pledge. Mineral exploration and/or mining works cannot commence where the owner of the surface right does not consent, but the holder of a mineral exploration permit or a mining concession, as the case may be, has the capacity to impose certain easements (access, road, water) and to forcefully purchase the surface right in question.<sup>42</sup> Water rights do not accompany each concession; instead, water is procured through easements established on surface rights.<sup>43</sup>

Regardless of mineral exploration permits and mining concessions being essentially different rights, they are both protected under Argentinean mining regulation as being of “public utility” and may therefore be expropriated only due to public interest reasons and accompanied by compensation.<sup>44</sup> Furthermore, mineral and mining concessions are protected by the constitutional guarantee under section 17 of the National Constitution. Any legal issues arising in relation to concessions are solved by the governing Provincial authority, with a higher appeal process available at the Federal level.<sup>45</sup>

The Argentinean Mining Code also provides for a peculiar exception to the system of mining rights: the owner of a surface right may explore his land without the need for a mineral exploration permit, and register any mineral discoveries with views of establishing a mining concession.<sup>46</sup> However, a surface right owner’s exploratory title has an inferior nature if compared with a mineral exploration permit over the same land, and a surface owner may not explore or exploit any minerals located within an area covered by a mineral exploration permit or mining concession that is not his own.<sup>47</sup> Nevertheless, this intrinsic authorization to conduct a certain level of mineral exploration activities could allow one to expedite mineral exploration activities by acquiring the surface rights of a certain target area, albeit at risk of losing the explored territory to the holder of a mineral exploration permit and at a potentially high cost arising out of the land purchase.

Mining concessions have an unlimited duration, and their extension depends on the type and size of the mineral deposit.<sup>48</sup> Generally, concessions for type one minerals (mentioned above) are of 100 = hectares.<sup>49</sup>

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<sup>40</sup> *Argentinean Mining Code, supra note 20 at art 25, 44, 99.*

<sup>41</sup> *Ibid, art 12.*

<sup>42</sup> *Ibid, arts 33, 146, 156 para 1.*

<sup>43</sup> *Ibid, art 146.3.*

<sup>44</sup> *Ibid, at art 13; ICLGA, supra note 19 at s 12.1.*

<sup>45</sup> *ICLGA, supra note 19 at s 12.1.*

<sup>46</sup> *Argentinean Mining Code, supra note 20 at arts 42 para 1, 45-46, 60.*

<sup>47</sup> *Ibid, arts 42 para 2, 43.*

<sup>48</sup> *Ibid, arts 18, 72-73.*

<sup>49</sup> *Argentinean Mining Code, supra note 20 at art 76 para 3. See also ibid, arts 72-76 on exploitation concession extensions.*

In contrast, mineral exploration permits have a limited duration and each exploration unit extends to 500 hectares.<sup>50</sup> Ground exploration concessions consisting of one exploration unit last 150 days, adding 50 days per additional exploration unit, with a maximum of 20 exploration units.<sup>51</sup> Concessions reaching 300 days get reduced in varying proportions, depending on the number of concession units; a process that is repeated for concessions lasting 700 days.<sup>52</sup> For concessions granted for aerial exploration, permits last 120 days and can extend to 20.000 square kilometres per province or up to 40.000 square kilometres in provinces with a surface of more than 200.000 kilometres.<sup>53</sup>

Recent changes to indigenous land rights under the Argentinean civil and commercial national codes, recognize indigenous community ownership of natural resources located on indigenous lands, but no regulations affecting mining concessions have been instituted to date. However, future regulatory changes are likely to require that mining ventures inform and consult with local indigenous communities, and allow their participation and consent in projects.<sup>54</sup>

## Taxes, Royalties and Incentives in Argentina

Argentina's tax structure is mainly federal and what a given company will pay in different provinces of the country will vary. The main mining taxes are the following:

- ↪ Corporate income tax ("*Impuesto a las Ganancias*"): a tax of 35% on net taxable income.<sup>55</sup> Companies protected by the tax stability regime of the Mining Investment Law may deduct 100% of the amounts used in exploration, special and mineralogical studies, pilot plants and applied research, and other feasibility-related works.<sup>56</sup> All utilities from stock originating from mines and mining rights capitalized in mining companies that are protected by the Law on Mining Investments are free from corporate income tax, on condition that all invested capital is kept in place for at least five consecutive years.<sup>57</sup> In provinces that have adhered to the Law on Mining Investments, an equivalent amount of up to 5% of operational extraction and benefit costs that is spent on site rehabilitation measures may be deducted for income tax calculation purposes.<sup>58</sup>
- ↪ Corporate Asset Tax, or Minimum Presumed Income Tax ("*Impuesto a la Ganancia Mínima Presunta*"): a tax of 1% on the value of all corporate

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<sup>50</sup> *Ibid*, arts 25 para 1, 73 para 2.

<sup>51</sup> *Ibid*, arts 29, 30 para 1.

<sup>52</sup> *Ibid*, art 30 para 2.

<sup>53</sup> *Ibid*, art 31 paras 1-2.

<sup>54</sup> ICLGA, *supra* note 19 at s 2.4.

<sup>55</sup> *Ley de Impuesto a las Ganancias, Decreto 649/97*, Argentina 6 August 1997, InfoLEG, art 69, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/44911/texact.htm>> [LIGA].

<sup>56</sup> *Argentinean Mining Investments Law*, *supra* note 32 at art 12.

<sup>57</sup> *Ibid*, art 14.

<sup>58</sup> *Argentinean Mining Investments Law*, *supra* note 32, art 23.



assets in Argentina and abroad, applied to all Argentine companies.<sup>59</sup> However, companies are required to pay either the Corporate Income Tax or the Minimum Presumed Income Tax – whichever is larger – and all companies protected by the tax stability regime of the Law on Mining Investments are exempted from this tax.<sup>60</sup> This tax will cease to operate as of 1 January 2019.<sup>61</sup>

- Capital gains tax (“*Impuesto a las Ganancias de Capital*”): a 15% tax applicable to the capital gains of foreign residents arising out of sales of shares or quotas or other kinds of participation in Argentine entities.<sup>62</sup>
- Royalties (“*valor boca mina*”): for provinces adhering to the Law on Mining Investments, royalties can reach a maximum rate of 3% on all extracted, transported or accumulated minerals prior to processing minus direct and indirect extraction costs.<sup>63</sup>
- Debits and credits (“*Ley de Competitividad*”): a maximum of 0.6% tax on debits and also on credits in bank accounts, starting on 31 December 2017.<sup>64</sup>
- Personal assets tax (“*Impuesto sobre los Bienes Personales*”): a tax of 0.5% on personal assets valued at and over AR \$950,000 in 2017, and of 0.25% on personal assets over AR \$1,050,000 as of 2018 and thereafter. The same rate applies to individuals domiciled in Argentina and abroad.<sup>65</sup> Regarding shares held by foreigners, a tax of 0.25% on the value of shares issued in Argentina must be paid by foreign mining companies on behalf of shareholders. Companies can require reimbursement from shareholders.<sup>66</sup>
- General Sales Tax or Value Added Tax (VAT) (“*Impuesto al Valor Agregado*”): a tax of 21% on all sales, which is increased to 27% for sales of gas, electricity, and water measured through water meters. VAT does not apply to the sale of shares nor to exports.<sup>67</sup> Companies benefiting from tax

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<sup>59</sup> *Impuesto a la Ganancia Mínima Presunta*, Ley N° 25.063, Título V, Argentina 30 December 1998, InfoLEG, arts 1, 13, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/55000-59999/55190/texact25063tituloV.htm>>.

<sup>60</sup> *Ibid*, art 3.

<sup>61</sup> *Programa Nacional de Reparación Histórica para Jubilados y Pensionados*, Ley N° 27.260, InfoLEG, art 76, online: <<https://www.boletinoficial.gob.ar/#!DetalleNorma/148428/20160722>>.

<sup>62</sup> LIGA, *supra* note 55 at art 90.

<sup>63</sup> *Argentinean Mining Investments Law*, *supra* note 32 at arts 22, 22. BIS paras 1-2.

<sup>64</sup> *Ley de Competitividad*, Ley N° 25.413, Argentina 24 March 2001, InfoLEG, art 1, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/66533/texact.htm>>.

<sup>65</sup> Ley N° 23.966, Argentina 15 August 1991, InfoLeg, arts 24-26, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/365/texact.htm>>; *Supra* note 64 at arts 69-72.

<sup>66</sup> *Supra* note 61 at art 71.

<sup>67</sup> *Ley del Impuesto al Valor Agregado*, *Texto Ordenado en 1997*, Argentina 26 March 1997, InfoLEG, arts 1, 7 b), 8, 28 paras 1-2, 43, online: <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/42701/texact.htm>>.

stability regimes are not protected from the fluctuations of the General Sales Tax.<sup>68</sup>

- Stamp Tax (“*Impuesto de Sellos*”): this tax is levied on notarized instruments, such as contracts, and other transactions, and varies from province to province, but usually ranges around 1%, and 2.5% to 4% for real estate sales.<sup>69</sup>

Argentina also has annual fees on mineral exploration and mining concessions. The main fees that are applicable throughout the country are the following:

- *Annual fee on mineral exploitation concessions (“canon anual por pertenencia”)*: this tax varies depending on the concession’s extension and type of mineral.<sup>70</sup> For minerals in the first category (such as copper or gold, as noted above), the tax is of ARS \$320 per concession unit per year.<sup>71</sup> In case of failure to pay within two months of the established payment deadline, the exploitation concession will lapse.<sup>72</sup>
- *Three year tax exemption on exploitation concessions for discoverers*: explorers that discover and are granted a mineral exploitation concession are exempted from paying the annual tax on exploitation concessions.<sup>73</sup>
- *Five year tax exemption for exploitation concessions*: Except for the annual exploitation tax, local governmental service fees and stamp tax (varying per jurisdiction), exploitation concessions are exempt from paying any federal, provincial or municipal tax for the first five years following registration.<sup>74</sup> This exemption covers all mining property, including mining products, establishments, machinery, workshops and vehicles used for mining purposes.<sup>75</sup>
- *Annual tax on exploration concessions (“canon anual por exploración”)*: for minerals in the first category (such as copper or gold, noted above), exploration concession tax is of ARS \$1,600 per concession unit per year.<sup>76</sup> In case of failure to pay within two months of the established payment deadline, the exploitation concession will lapse.<sup>77</sup>

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<sup>68</sup> *Argentinean Mining Investments Law*, *supra* note 32 at art 9.

<sup>69</sup> Deloitte, “Taxation and Investment in Argentina 2016: Reach, Relevance and Reliability”, Deloitte (2016), at 10, online: <<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-argentinaguide-2016.pdf>>.

<sup>70</sup> *Argentinean Mining Code*, *supra* note 20 at art 213.

<sup>71</sup> *Ibid*, art 215.1.

<sup>72</sup> *Ibid*, art 216.

<sup>73</sup> *Ibid*, art 224.

<sup>74</sup> *Ibid*, art 214 paras 1, 3.

<sup>75</sup> *Ibid*, art 214 para 2.

<sup>76</sup> *Ibid*, art 215.3.

<sup>77</sup> *Argentinean Mining Code*, *supra* note 20 at art 216.

In Provinces adhering to the Mining Investments Law, mining exploration, exploitation and processing operations, as well as some mining service companies, are protected by tax stability for 30 years.<sup>78</sup> Protection extends to all kinds of taxes, interest payments to foreign entities, exchange rates and tariffs, subject to some exceptions, including the tax on added value.<sup>79</sup> Furthermore, all expenses related to exploration and project feasibility operations are deductible from corporate income tax.<sup>80</sup>

Finally, we note that since February 2016, the 5% tax imposed during the previous Kirchner administration on mining exports is no longer in force.<sup>81</sup> This represents a reduction of approximately 8% on production costs, increasing the competitiveness of mining companies in Argentina.<sup>82</sup>

## Environmental Law in Argentina

Argentina's federal system creates a dual environmental regulatory system, whereby the Argentinean Mining Code provides a framework that is complemented by Provincial laws and verified by Provincial regulators. Common to all mining ventures is the need to submit an environmental impact assessment to the relevant Provincial regulator, receive approval (within 60 days of submission), and comply with any conditions established by such regulator prior to initiating any mineral exploration, exploitation or processing work.<sup>83</sup> Environmental impact assessments must be updated a maximum of two times per year.<sup>84</sup>

Liability for environmental damage is regulated by the Argentinean Mining Code and executed by provincial authorities, and applies to all companies in activities related to mineral exploration, exploitation and processing.<sup>85</sup> Liability may be extended to any breaches of environmental law under the Argentinean Mining Code by the company or its workers, contractors and subcontractors.<sup>86</sup> Sanctions may include criminal charges, administrative fees and fines established by Provincial authorities, injunctions and withdrawal of the environmental license (thus halting all mining indefinitely).<sup>87</sup> Additionally, the breaching party will be required to repair the damage caused to the environment.<sup>88</sup>

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<sup>78</sup> *Argentinean Mining Investments Law*, *supra* note 32 at arts 2, 4-5, 8.

<sup>79</sup> *Ibid*, arts 8, 8.3, 8.4, 8.6, 9.

<sup>80</sup> *Ibid*, art 12.

<sup>81</sup> Cecilia Jamasmie, "Argentina's New Government Scraps Mining Taxes", *Mining* (12 February 2016), online: <<http://www.mining.com/argentinas-new-government-scraps-mining-taxes/>>.

<sup>82</sup> Maria Myka, "Macri Eliminates Tax for Mining Corps", *Latin One* (15 February 2016), online: <<http://www.latinone.com/articles/32719/20160215/macri-eliminates-tax-mining-corps.htm>>.

<sup>83</sup> *Argentinean Mining Code*, *supra* note 20 at art 251-254.

<sup>84</sup> *Ibid*, art 256.

<sup>85</sup> *Ibid*, art 246-250.

<sup>86</sup> *Ibid*, art 248.

<sup>87</sup> *Ibid*, art 263-264.

<sup>88</sup> *Ibid*, art 263.

## Brazil

World renowned for its incredible natural resources and having the largest economy in Latin America,<sup>89</sup> Brazil has extremely rich mineral deposits<sup>90</sup> and offers an excellent environment for foreign investment, particularly in the mining industry. According to the Brazilian National Department for Mineral Prospecting (“*Departamento Nacional de Produção Mineral*”, the “DNPM”), an autonomous department within the Ministry of Mines and Energy structure, the interest of transnational corporations in the Brazilian mineral sector is closely associated with the country’s geo-diversity, the domestic and global demand for mineral commodities, and finally, the increasing comparative advantage of Brazil as an export platform for Latin America and Africa. The appeal of Brazil’s world-class deposits, deriving from the combination of quality (volume and content), operational cost, and availability of energy, account for the country’s competitiveness in foreign markets. This is particularly true in relation to aluminum, kaolin, copper, tin, iron, niobium, nickel and tantalum.<sup>91</sup>

Brazil is a Federal Republic, formed by the indissoluble union of 26 states, the Federal District (Brasília, founded in 1960) and 5,564 municipalities. Every State has the power to adopt its own constitution and laws (mainly local tax and administrative law), although their legislative autonomy is limited by the principles and rules established by the Federal Constitution. Municipalities are also subject to restricted autonomy and their legislation must follow the dictates of the State and Federal Constitution. The laws governing mining activities are found in Federal legislation, which include the Brazilian Mining Code and, from a foreign investment perspective, the Foreign Investment Rules and Regulations. Other Federal, State and Municipal legislation also applies with respect to taxation, environmental and administrative matters.

As a civil law jurisdiction, Brazil has its judiciary organized into Federal and State branches. Court decisions are based on the application of the laws in force in Brazil, most of which are Federal; where there are no specific legal provisions relating to a situation, the courts decides the case based on analogy, usage and custom, and general principles of law (judicial precedent has an important role in courts decisions, but does not have the same status as in common law jurisdictions).

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<sup>89</sup> Brazil is considered to be the single nation hosting the greatest degree of biodiversity. Marco Lambertini, *A Naturalist’s Guide to the Tropics*, (Chicago: University of Chicago Press, May 2000), online: <http://www.press.uchicago.edu/Misc/Chicago/468283.html>.

<sup>90</sup> Brazil is the world’s largest producer of Niobium, having produced 80,000 metr. t. in 2014; the third largest producer of iron ore, graphite, bauxite, tantalum, having produced 200,567,480 metr. t. of iron ore, 78,462 metr. t. of graphite, 35,409,900 metr. t. of bauxite and 190 metr. t. of tantalum in 2014; the fourth largest producer of chromium and vanadium, having produced 202,850 metr. t. of chromium and 1,032 metr. t. of vanadium in 2014; the fifth largest producer of manganese, having produced 1,039,260 metr. t. of manganese in 2014; the sixth largest producer of tin, having produced 17,000 of tin in 2014; the seventh largest producer of phosphate, cobalt, kaolin and lithium, having produced 2,124,900 metr. t. of phosphate, 3,139 metr. t. of cobalt, 1,706,023 metr. t. of kaolin and 420 metr. t. of lithium in 2014; the eight largest producer of magnesite, having produced 560,000 metr. t. of magnesite in 2014; the ninth largest producer of nickel and aluminium, having produced 85,600 metr. t. of nickel and 962,000 metr. t. of aluminium in 2014; the 10<sup>th</sup> largest producer of tungsten, having produced 600 metr. t. of tungsten in 2014; the 11<sup>th</sup>, largest producer of gold, having produced 80,000 metr. t. of gold in 2014. (International Organizing Committee for the World Mining Congresses, *World-Mining-Data*, (Vienna: 2016), at 91-134, online: <http://www.wmc.org.pl/sites/default/files/WMD2017.pdf>).

<sup>91</sup> Brazil, Departamento Nacional de Produção Mineral, *Mineral Business Investor’s Guide in Brazil*, (Brasília: Departamento Nacional de Produção Mineral, 2006) at 24, online: <http://www.dnpm.gov.br/dnpm/publicacoes-economia-mineral/arquivos/mineral-negocios.pdf>.



The legal structure of a mining project in Brazil, like in many other countries, can take a variety of forms to achieve the needs of a particular project or investment. Except for the prospecting, mining, and reprocessing of nuclear mineral ores, which remain a monopoly under the control of the Brazilian Government, the exploitation of other mineral resources can only be carried out by private parties provided that they are Brazilian nationals or entities incorporated in Brazil (which are allowed to be foreign-controlled).<sup>92</sup>

## Foreign Investments in Brazil

Brazilian business law, which is similar to corresponding law in other major civil law jurisdictions, provides a complete and efficient legal framework for foreign investment. For instance, Brazil's Federal Constitution treats local and foreign investors equally.<sup>93</sup> However, there are some restrictions on foreign investment in certain sectors, e.g., the mining sector, as shown in this paper.

Foreign investment in Brazil is governed by the law 4.131 (known as the "*Foreign Capital Law*")<sup>94</sup> which requires that foreign investments in Brazil be registered with the Central Bank<sup>95</sup> to ensure foreign remittance of profits and/or interest on equity, repatriation of foreign capital invested in Brazil and reinvestment. In addition, within 30 days of the closing of the exchange contract, capital remittances must be registered with the online Brazilian Central Bank electronic system RDE-IED ("*Registro Declaratório Eletrônico de Investimentos Estrangeiros Diretos*").<sup>96</sup> Foreign capital may take the form of cash, goods, services or intangibles, with investments in cash being the simplest and most common form of initial investment.<sup>97</sup>

According to the Foreign Capital Law, foreign capital includes any goods, machines or equipment that enter Brazil without an initial disbursement of foreign exchange, and are intended for the production of goods or services. Foreign capital also includes any funds brought into Brazil to be used in economic activities or owned by individuals or companies that reside or are headquartered abroad.

The remittance of profits to non-resident foreign investors must comply with the following requirements: (i) the foreign investment must have been duly registered with the Central Bank (as explained above); and (ii) the Brazilian company must yield a profit. Capital repatriation cannot exceed

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<sup>92</sup> *Constitution of Brasil*, *supra* note 11 at art 177. Please also see our comments on note 103.

<sup>93</sup> *Constitution of Brasil*, *supra* note 11 at art 5.

<sup>94</sup> Law n. 4.131/1962, which was regulated and amended by Law n. 4.390/1964, Decree 55.762/1965, Decree-Law n. 37/1966, Decree-Law n. 94/1966, Law n. 8.383/1991, Law n. 8.685/1993, Law n. 9.069/1995 and Decree-Law n. 2.073/1983 (*Lei N° 4.131*, Brasil 3 September 1962, Palácio do Planalto, online: <[http://www.planalto.gov.br/ccivil\\_03/leis/L4131.htm](http://www.planalto.gov.br/ccivil_03/leis/L4131.htm)> [*Lei N° 4.131*]).

<sup>95</sup> The registration of foreign capital with the Central Bank of Brazil (*Banco Central do Brasil* or *BACEN*) is provided for by Law 4.131/1962 and Law 4.390/1964, which guarantees equal treatment of foreign and national capital (*Ibid*; *Lei N° 4.390*, Brasil 29 August 1964, Palácio do Planalto, online: <[https://www.planalto.gov.br/cCivil\\_03/LEIS/L4390.htm](https://www.planalto.gov.br/cCivil_03/LEIS/L4390.htm)>).

<sup>96</sup> The Brazilian Central Bank is responsible for the registration and monitoring of foreign investments in Brazil. The Ministry of Finance is responsible for monitoring tax issues relating to foreign investments in Brazil.

<sup>97</sup> A foreign creditor can convert into foreign investment the amounts due by Brazilian companies which can then be remitted abroad according to Brazilian laws. The profits and/or interest on equity payable to the foreign investor may also be reinvested in the same Brazilian company or in a third Brazilian company.

the amount of the foreign currency registered, and the par value of the Brazilian company's shares/quotas and proportionality rules must be observed, where applicable.<sup>98</sup>

Investments in the capital market by individuals or legal entities that are non-residents of Brazil are subject to registration with the Brazilian Central Bank as well as with the Brazilian Securities Commission (CVM).<sup>99</sup>

## Mineral Exploration and Mining Rights in Brazil

The Brazilian Federal government owns and has jurisdiction to control, regulate and grant rights to explore Brazil's mineral resources.<sup>100</sup> The subsoil and soil are subject to distinct legal treatment and the holder of a mineral exploration authorization or a mining concession has the right to conduct mineral exploration activities or mining activities even where there is a dispute with the landowner. The constitutional regime governing mineral deposits and the regulations respecting exploration establish a special legal framework that protects the mining company (which invested to discover the mineral deposit), the state, the citizens and the landowner.

Before conducting mineral exploration or mining activities in Brazil, it is necessary to first obtain a mineral exploration authorization, followed by a mining concession from the Brazilian government. To this end, a mineral exploration authorization request or a mining concession request must be filed at the DNPM, which will evaluate if the request fulfills the necessary legal and technical requirements.

A mineral exploration authorization ("*alvará de autorização de pesquisa*") regulates the stage of mineral exploration activities. Normally, mineral exploration rights are granted for a period of one to three years, and may be extended by the DNPM, at its sole discretion, if requested by the holder. The extension of the original term of the mineral exploration authorization must be requested by the holder at least 60 days prior to its expiration. By the end of the term of the mineral exploration authorization, a report must be filed and accepted by the DNPM (the "*Report*"), either proving the technical and economic feasibility of exploiting a mineral deposit, the submission of which results in the granting of a mining concession, or demonstrating that no mineable deposit exists, which results in the termination of the claim. There is a penalty of R\$ 1,55 (C\$ 0.65) per hectare if the holder of mineral exploration authorization does not file the Report. The holder of a mineral exploration authorization must carry out all exploration activities necessary to determine the existence and extent of a mineral deposit and define the technical and economic feasibility to explore such deposit. The mineral exploration authorization can be assigned to a third party if the assignee fulfills the legal requirements of the original authorization and is approved by the DNPM.

The mining concession ("*concessão de lavra*") is applicable to and regulates the exploitation stage. Following approval of the Report, the holder of the mineral exploration authorization has the exclusive right to request the mining concession, which must be exercised or negotiated within a period of one

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<sup>98</sup> The amount that exceeds the registered foreign investment is characterized as a capital gain.

<sup>99</sup> Non-resident investors (individuals or legal entities) may invest their funds in the same financial and capital market instruments and operational modalities available to resident investors. See CVM Resolution 560/15, CMN Resolutions 4.373/14 and 2.687. For additional information please see generally ANBIMA, "Non-Resident Investors Guide" ANBIMA (July 2016), online: <http://www.anbima.com.br/data/files/4B/65/20/1C/F29D851093995C8569A80AC2/Non-resident-Investors-Guide.pdf>

<sup>100</sup> *Constitution of Brasil*, *supra* note 11 at arts 20, IX, 176.

year and may be extended for a further year at the DNPM's sole discretion. The mining concession itself is granted for an indeterminate period of time. The grant of a mining concession is subject to the fulfillment of certain conditions, namely exploring the area, obtaining an approved Report and undertaking that the area will be adapted to the technical and economic conditions necessary to carry out the mining operations and related works according to what was established under the economic exploitation plan (the "PAE") related to the concession.<sup>101</sup> The PAE must be submitted by the holder together with its application requesting the mining concession.<sup>102</sup>

An application for the grant of a mining concession right shall include a mining plan and an economic feasibility analysis, which may be prepared by the applicant. While the DNPM may request additional information, the main information required is as follows: (i) certificate of incorporation of the company; (ii) description of the minerals (quality, reserve calculation, volume, density, etc.) and an indication of the mining authorization and the approved technical report; (iii) description and information relating to the area and the main aspects of the deposit (maps, plants, roads, railways, rivers, topography, vicinity areas, surface landowners, etc.); (iv) graphic definition of the area; (v) mining easement (servitude); (vi) PAE; and (vii) proof of financial capacity to conduct the mining works.

After the mining concession is published in the official gazette, the mining company has 90 days to request possession of its respective mineral lode or deposit and six months to start the preparatory work as contemplated in the PAE. Once mining has commenced, it cannot be interrupted for a period of six consecutive months. The company must file annually with the DNPM detailed statistical mining reports. To explore the mine, it is also necessary to obtain an operating permit.

Throughout this process, the surface rights remain in the hands of landowners who are typically farmers, ranchers or companies.<sup>103</sup> The surface rights must be individually negotiated to allow the holder of a mineral exploration authorization or a mining concession to access the land and conduct the exploration and mining works. The surface right owners are obliged by law to provide access to the mineral license holders to conduct exploration. If the parties cannot reach an agreement by mutual negotiations, there are legal mechanisms to enforce such rights.

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<sup>101</sup> Essentially, the two reports may be seen as a feasibility study.

<sup>102</sup> The PAE must contain a detailed description of the project and all technical and economic information defined by article 39 of the Mineral Code (*Decreto-lei n° 227/67*, Brasil 28 February 1967, Planalto, online: <[http://www.planalto.gov.br/ccivil\\_03/decreto-lei/De10227.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/De10227.htm)>).

<sup>103</sup> Please note that there are some restrictions regarding the acquisition of a rural estate property in Brazil; for example, a foreign non-resident in Brazil or a foreign company authorized to operate in Brazil cannot acquire a rural property or a property that borders other countries, on a coastline or in areas considered to be national security areas. According to a 2010 binding legal opinion issued by the Federal Attorney General's Office ("Advogado Geral da União – AGU") interpreting the applicable regulation, the direct or indirect transfer of rural properties to a Brazilian company of foreign capital must be previously authorized by Brazil's National Institute of Rural Settlement and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária*, "INCRA") and is subject to certain restrictions/limitations (although one can argue the constitutionality of such restriction). See *Constitution of Brasil*, *supra* note 11 at art 190, 20 para II as revised by *Emenda Constitucional 46/05*, Brasil 5 May 2005, JusBrasil, online: <<http://presrepublica.jusbrasil.com.br/legislacao/96718/emenda-constitucional-46-05>>; *Lei n° 5.709*, Brasil 7 October 1971, Palácio do Planalto, online: <[http://www.planalto.gov.br/ccivil\\_03/leis/L5709.htm](http://www.planalto.gov.br/ccivil_03/leis/L5709.htm)> and its regulatory decree *Decreto No 74.965/74*, Brasil 26 November 1974, JusBrasil, online: <<http://presrepublica.jusbrasil.com.br/legislacao/114840/decreto-74965-74>>; *Lei n° 6.634*, Brasil 2 May 1979, Palácio do Planalto, online: <[http://www.planalto.gov.br/ccivil\\_03/leis/L6634.htm](http://www.planalto.gov.br/ccivil_03/leis/L6634.htm)>.

## Taxes, Royalties and Incentives in Brazil

Brazilian tax legislation is complex. There are three jurisdictions and tax collection levels in Brazil (as defined by tax legislation): the Federal, State and Municipal levels. The main taxes levied are:

- *Corporate Income Tax (“IRPJ - Imposto de Renda Pessoa Jurídica”)*: This federal tax is imposed on net profits calculated at a base rate of 15%. If the net profits exceed R \$240,000.00 (approximately C \$95,000) per year, they are subject to a surtax of 10% on the annual income exceeding that amount.<sup>104</sup>
- *Social Contribution on the Net Profit (“CSLL - Contribuição Social sobre o Lucro Líquido”)*: This is a federal tax with a rate of 9%. However, there is a 1% bonus for tax regularity if the company fulfills certain conditions.<sup>105</sup> This is not deductible from corporate income tax.<sup>106</sup>
- *Social Contribution on Revenues (“PIS - Contribuição para o Programa de Integração Social” and “COFINS - Contribuição para o Financiamento da Seguridade Social”)*: This federal tax is charged monthly on revenue. The current rate for PIS is 1.65% and 7.6% for COFINS.<sup>107</sup> There are some deductions and there is a credit system in place. In general, revenue related to export transactions is exempt from these taxes, as are proceeds of the sale of permanent assets.
- *Tax on Goods and (some) Services (“ICMS - Imposto sobre Circulação de Mercadorias e Serviços”)*: This is a tax levied by the State, on both interstate and domestic transactions. In interstate transactions, the rates are 7% (for purchasers located in the states of the north, northeast and centre-west regions or in the State of Espírito Santo) and 12% (for purchasers located in the southeast and south regions);<sup>108</sup> for transactions within the same state and in the case of imports, the rates may vary from 17% to 19%. There is also a tax credit system in which an amount paid in a previous transaction on the same asset may be offset against future ICMS payable.
- *Tax on Financial Operations (“IOF - Imposto sobre Operações Financeiras”)*: This is a federal tax levied on credit, exchange, insurance and securities transactions executed through financial institutions at a rate varying from 0% to 25%. Currently, the IOF rate is 6% on loans extended to Brazilian

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<sup>104</sup> No IRPJ tax is imposed on cash dividends distributions or profits paid or credited to corporations or individual shareholders. Interest payments made to non-residents are generally subject to withholding tax at a rate of 15% (unless reduced by a tax treaty).

<sup>105</sup> For example, if the company in the last five years was not requested to pay such taxes by the tax authority or enrolled as a tax debtor.

<sup>106</sup> Financial and insurance institutions are taxed at the rate of 15%.

<sup>107</sup> In January 2015 (effective May 2015), Brazil increased the rates of PIS and COFINS applicable to imports, increasing PIS rate from 1.65% to 2.1% and COFINS rate from 7.6% to 9.65%. On April 2015 (effective July 2015), Brazil increased the rates of PIS and COFINS applicable to certain financial revenues from 0% to 4.65%.

<sup>108</sup> International Tax Review, “Brazilian Incentives for Infrastructure Investment” (2008) online: <<http://www.internationaltaxreview.com/Article/2605087/Brazilian-incentives-for-infrastructure-investment.html>>.



companies (whether or not intercompany) or bonds in the market, with a maturity period of less than 180 days, and the IOF rate is 0% on loans extended to Brazilian companies with a maturity period of more than 180 days. In the case of foreign exchange operations, most transactions are charged from 0% (income from exports) to 1.10% (e.g. acquisition of foreign currency).

- *Services Tax* (“ISS - Imposto Sobre Serviços”): This is a municipal tax levied on revenue derived from the rendering of services. The rates vary from 2% to 5% depending on the city and the type of service.
- *Tax on Industrialized Products* (“IPI - Imposto sobre Produtos Industrializados”): This federal tax, with rates from 2% to 6%, does not apply to mining activities.
- *Import Tax* (“II - Imposto de Importação”): In the case of imports of mineral products, the rates of this tax vary from 3% to 9%, set at 5% for ores and their concentrates, and at 7% for most other products, although there are several exceptions that are subject to higher or lower rates.

In addition to these taxes and any other taxes generally paid by Brazilian companies such as for environmental licenses, labour and social security expenses (average of 20% on the wages and other earnings paid) and FGTS (“Fundo de Garantia por Tempo de Serviço”), there are other taxes and fees payable by a mining company. The material tax and fees relating to the mining sector are:

- *Financial Compensation for Exploiting Mineral Resources* (“CFEM - Compensação Financeira pela Exploração de Recursos Minerais”): The rate, which varies according to the mineral, ranges from 0.2% up to 3% and is calculated on the mineral net revenue.<sup>109</sup>
- *Land Owner Royalty*: During the exploitation phase, under the concession regime, if the land does not belong to the concessionaire, a royalty must be paid until the last business day of the month subsequent to the taxable event. The value of this royalty is normally 50% of the accrued value of the CFEM.<sup>110</sup>
- *Annual fee per hectare* (“TAH - Taxa Anual por Hectar”): R\$ 3.06 (C\$ 1.32) per hectare during the term of the mining exploration license and R\$ 4.63 (C\$ 1.99) per hectare during any extended term.<sup>111</sup>
- *Environmental Control and Supervising Fee*: (“TCFA - Taxa de Controle e Fiscalização Ambiental”): Medium-sized enterprises must pay R\$ 450 (C\$ 264.87). This amount, payable as a supervising fee to the state, municipality and the federal district, can be offset against future TCFA up to 60% of the value of the TCFA.

<sup>109</sup> For example, the CFEM for: Gold is 1%; Iron-ore, Phosphate and Coal is 2%; Manganese, Aluminum and Potash is 3%.

<sup>110</sup> Property tax (IPTU) is levied annually abased on the fair market value and it varies by Municipality (range from 0.3% to 1.5%).

<sup>111</sup> For updated value of TAH, see: Departamento Nacional de Produção Mineral, “Valores e Taxas”, (February 26 2016), online: <<http://www.dnpm.gov.br/dnpm/paginas/perguntas-frequentes/valores-e-taxas>>.

There are several government incentives for start-up projects in Brazil, such as subsidized loan financing and tax exemptions or reductions. International investors have the same access to these incentives as local investors.

The Amazon Development Agency (“Agência de Desenvolvimento da Amazônia”), a federal agency, formerly known as SUDAM (“*Superintendência de Desenvolvimento da Amazônia*”), oversees the development of the Amazon Region and is responsible for the concession of incentives within this region, which includes the Pará State. Accordingly, ADA evaluates the technical and economic feasibility of a project and verifies that the project will benefit the overall economic development of the region.

The main benefit of a project located in the Amazon Region is a reduction in income tax due on tax-benefit income (*lucro da exploração*) at a rate of 25% until December 31, 2008, and a rate of 12.5% from January 1, 2009 through December 31, 2013. Also, companies that have projects recognized as a priority for the regional development that have been approved may benefit from a 75% reduction of income tax during a ten-year period (the company must have submitted the project and obtained its approval before 2013). It is also possible to obtain other types of benefits, such as an IOF exemption on the importation of goods. An application for these benefits must be submitted to the ADA and will normally be evaluated in the same fiscal year; however, the application process can take a significant amount of time.

Projects considered relevant for the Amazon Region, including the Pará State, can also be eligible to receive financial assistance (*Fundo de Desenvolvimento da Amazonia*, “*FDA*”). The FDA is granted as a risk capital investment through a primary subscription of debentures convertible into stock and is only available for publicly held corporations. The corporation must participate with a minimum contribution of 20% of the total investment (TJLP, 3% interest per year and an agent risk fee of up to 1.15%).

Brazil is a party to a tax treaty with Canada, whose rules prevent double taxation on international transactions;<sup>112</sup> however, no bilateral investment treaty is currently in force.<sup>113</sup>

## Environmental Law

Federal and State governments in Brazil have concurrent jurisdiction over: (i) the protection of the natural environment, including forests, fauna, conservation of nature, protection of the soil and the natural resources as well as pollution control; (ii) protection of the cultural environment, including the protection of historic, artistic and landscape environments; and (iii) liabilities for environmental damages. This jurisdiction is also shared by the Municipalities regarding specific matters of local interest.

Liability for environmental damage is divided among the civil, administrative and criminal branches depending on the nature, extent and conduct of an agent, and can occur cumulatively or severally.

<sup>112</sup> *Canada-Brazil Income Tax Convention Act*, 1984, SC 1985, c 23 Part IV.

<sup>113</sup> Although Brazil has signed more than 14 bilateral investment treaties, none have been ratified so far. See Canada, Canadian Counsel for International Cooperation, “Bilateral Investment Treaties: A Canadian Primer” (2010) at 3, online: <[http://www.ccic.ca/\\_files/en/what\\_we\\_do/trade\\_2010-04\\_investmt\\_treaties\\_primer\\_e.pdf](http://www.ccic.ca/_files/en/what_we_do/trade_2010-04_investmt_treaties_primer_e.pdf)>.

Mineral exploration activities and mining in Brazil are subject to environmental licensing. This consists of an administrative procedure, where the relevant environmental authority evaluates the project and authorizes the company to conduct exploration or exploitation works.

There are three types of environmental licenses in Brazil:

- *Advance (also called provisional) Licenses (LP)*: Certify the viability of the project (including approval of the site and conception) and establish the basic requirements and conditions that must be fulfilled in subsequent phases.
- *Installation Licenses (LI)*: Authorize commencement of construction (installation of the enterprise or activity) according to the specifications set out in the approved plans and programs, and define the environmental control measures, etc.
- *Operating licenses (LO)*: Conceded when the project is ready and able to function following an assessment of compliance with the terms of the preceding licenses. The licensing of projects that could potentially or effectively cause degradation is subject to submission to and approval by the environmental authorities of the environmental impact study.

Any and all types of environmental licenses have a defined term and cannot be transferred. The holder of an environmental license must apply for its renewal no more than 120 days before its term is due to end. In the case of a change in control of a company holding mineral rights and assets, or in the event of a sale of assets and mineral rights, a company is required to file a request to issue a new license with the state environmental authority. Under the existing regulations, the cost of a new license may range from C \$2,000 to 20,000. This is in addition to expenses relating to visits and a 5% administrative fee.

According to Brazilian law, a company that acquires a business with environmental liabilities is deemed to be its successor and therefore assumes such environmental liabilities, although the parties in an acquisition transaction are free to negotiate and limit their respective liabilities.

## New Regulatory Legal Framework

During the past nine years,<sup>114</sup> the Brazilian government has been considering adopting a new regulatory framework for its exploration and mining industries. In a nutshell, since 2008, the Ministry of Mines and Energy has been studying the needs of these important industries with the objective of updating the *Brazilian Mining Code* of 1967 to: (i) adapt it (and its regulation) to the Brazilian Constitution of 1988; (ii) better reflect the current reality of the mineral exploration and mining industries in Brazil; and (iii) encourage increased investment in such important industries for the Brazilian economy. The Ministry of Mines and Energy announced in 2010 that the new regulatory framework for the Brazilian mineral exploration and mining industries will have three major pillars, a new Brazilian Mining Code, a National Mining Agency and a National Council for Mineral Policy.

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<sup>114</sup> Until the end of Dilma Rousseff's government (June 2016), Brazil was considering, and putting a lot of effort into, changing the mining regulatory framework. The "non-official" position of Brazil's current interim government (Michel Temer) is to pause the review process of the Brazilian mining regulation and better adjust the current proposals to international practice.

Although the Brazilian government has been considering the adoption of a new regulatory framework for the mineral exploration and mining industries since 2008, it was only in 2013, under Former President Dilma Rousseff's administration, that a bill was tabled and submitted to the Brazilian Congress (the "2013 Mining Code Bill"). The 2013 Mining Code Bill had several problems, including a new mineral rights granting system based on public bid and not priority as in the vast majority of the so-called major mining jurisdiction.<sup>115</sup> The proposed regulation received severe criticism.

In 2013, after receiving the 2013 Mining Bill, the Brazilian Congress created a special commission to review the bill and eventually submit it to the Brazilian Congress for voting and approval. The special commission released a substitutive project for the 2013 Mining Code Bill (the "Revised Draft Mining Code Bill"). The Revised Draft Mining Code Bill had significant improvements (if compared with the bill originally tabled by the Brazilian Government), but still needs some adjustments. After approval by the special commission, the Revised Draft Mining Code Bill will need to be voted on by the Brazilian Congress and Senate and ratified by the Brazilian President.

In addition to the 2013 Mining Code Bill, there are several other bills currently under consideration in the Brazilian Congress (Chamber of Deputies and Senate) that, if enacted, will directly or indirectly regulate matters related to the mineral exploration and mining industries. These bills address issues such as mining activity on aboriginal lands; the economic aspects of mining, including the annual rental fee per hectare and CFEM (Financial Compensation for the Exploitation of Mineral Resources – Brazilian mining royalties); mining activity in Brazilian border zones; and the creation of an independent mining regulatory agency.<sup>116</sup>

During 2015-2016, the discussions around the Revised Draft Mining Code Bill did not make any significant progress, as Brazil had to deal with a major political crisis that culminated with the impeachment of Former President Dilma Rousseff. It was only after her impeachment and establishment of a new cabinet that the newly appointed Minister of Mines and Energy, Fernando Coelho Filho, started revisiting the discussions of a new regulatory framework for the Brazilian mineral exploration and mining industries.

More recently, Mr. Coelho Filho informed during a presentation at the 11<sup>th</sup> Edition of the Brazil Canada at PDAC 2017 event, an event organized by the Brazil-Canada Chamber of Commerce and held in

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<sup>115</sup> It is well known that mineral exploration activity is a high-risk business, in which a significant amount of capital is required to confirm the eventual geological potential of a certain area. It is almost impossible to attribute any economic value to unexplored areas. This is why the current granting system, as well as the system adopted in most of the major mining countries, like Canada and Australia, that attract large investments for the exploration and mining industries, are based on priority. They do not impose any significant upfront cost on applications for mineral rights, apart from the mineral rights' maintenance fees payable during the exploration phase of the project, as well as royalties and taxes, payable only during the exploitation phase of the project.

<sup>116</sup> Examples of such bills in the Chamber of Deputies include: Bills numbered PL 3910/2012, PL 3882/2012, PL 3363/2012, PL 2403/2011, PL 2103/2011, PL 1651/2011, PL 1383/2011, PL 1108/2011, PL 990/2011, PL 841/2011 which regulate the financial compensation for the exploitation of natural resources; PL 3682/2012 which regulates environmental protection areas and authorizes mining activities in 10% of such environmental protection areas; PL 3403 which regulates the encumbrance of mineral rights, as currently being considered by the Mines and Energy Commission; PL 1610/1996, which regulates the exploitation of natural resources in aboriginal lands, currently being considered by a Special Commission; as well as some Bills in the Senate: Bill number PLS 283/2011, which also address the financial compensation for the exploitation of iron ore and is being considered together with PLS 1/2011; and PLS 306/2012, which proposes the creation of a National Mining Agency.

Toronto, Canada, during the PDAC 2017 International Convention, that the new Brazilian Federal Government will withdraw the 2013 Mining Code Bill and update the current legal framework of the mining industry by, (i) submitting to the Brazilian Congress a provisional measure to create a national mining agency (a fast-track process to be able to replace the DNPM by an independent agency with greater autonomy and less political influence), (ii) table a couple of bills to address changes to the current mining code, government royalties, mining in the Brazilian border zone and industry subsidies (those changes will be separated into two or more bills); and (iii) a presidential decree to update the current mining code regulations and to extinguish the Brazilian national copper reserve (RENCA)<sup>117</sup>. The Brazilian government is also planning to conduct online bidding process for over 20,000 areas that already have some level of exploration done. The first bidding round should take place in the second half of 2017. Considering the current political Brazilian landscape and other priorities the country has, it is difficult to predict when the 2013 Mining Code Bill will be withdrawn and the updated new regulation submitted to approval of the Brazilian Congress. Hopefully, Brazil will move fast on the implementation of the new regulation in order to minimize its impact on Brazil's competitiveness, and will create conditions to attract more foreign investments into this industry.

We must also mention that Brazil has joined CRIRSCO – Committee for Mineral Reserves International Reporting Standards in December 2015, an important step to bring the Brazilian mining industry closer to international investors and countries like Canada.<sup>118</sup> Although still not required by law in Brazil, we believe this initiative will facilitate the adoption of these international standards for projects in Brazil.

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<sup>117</sup> The National Copper Zone was established by Decree 89.404/84 and covers an area of 46,000 km in the States of Para and Amapa known for its geology and potential as one of world's last undeveloped high grade areas. On April 7<sup>th</sup>, 2017, the Government issued Ordinance 128/2017, assuring the good standing and validity of application for mineral exploration authorizations filed within the DNPM before Decree 89.404/84 entered into force. Applications filed after such Decree will be denied.

<sup>118</sup> Committee for Mineral Reserves International Reporting Standards, "CRIRSCO Members", online: <<http://www.criusco.com/members.asp>>.



## Chile<sup>119</sup>

For decades, Chile has been renowned for being the undisputed major copper producer, accounting for approximately 30% of world production, and an important destination for mining investments. In fact, the *Chuquicamata* copper and gold mine, owned and exploited by the State-owned Chilean Copper Corporation (CODELCO), is the largest open-pit mine in the world.<sup>120</sup> Chile also holds approximately 54% of the world's lithium reserves<sup>121</sup> and accounts for over 50% of world production, a mineral substance that is essential for manufacturing ion batteries, such as the ones used in electric cars.<sup>122</sup> We will further discuss Chile's policy regarding lithium exploitation in section Taxes, Royalties and Incentives in Chile. Besides the two above-mentioned minerals, Chile is also one of the leading producers of gold, silver, lead, iron, and manganese, resources that are concentrated in Chile's northern Atacama region.<sup>123</sup>

The Chilean legal system is, as in other Latin American countries, based on a civil law system. In contrast to Argentina, and in line with Brazil and Peru, Chile has a centralized approach to legislation, and therefore mineral deposits country-wide are regulated by the same laws. Of course, certain procedures and fees are processed by the Municipal or regional authorities, but taxation and environmental law and mineral industry concessions are completely regulated by the country's legislature.

Chile's economic system, welcoming posture towards foreign investment, and free trade agreements, were inherited and maintained following the return to democracy with the referendum that ousted President (and General) Augusto Pinochet in 1990. Consequently, Chile's liberal economic approach has been in place (with some adjustments) for over 30 years, providing one of the least risky environments for investment worldwide.<sup>124</sup> Bearing witness to Chile's economic openness, the country has signed 15 free trade agreements currently in force, including with Canada and the United States, and is part of the Pacific Alliance to promote commerce and the Asia Pacific Economic Cooperation forum to promote the integration between the economies of countries on the Pacific Ocean.<sup>125</sup>

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<sup>119</sup> The authors would like to thank Rafael Vergara, Partner of the Chilean law firm Carey and co-head of the firm's Natural Resources and Environment Group for his valuable lessons and comments about Chilean mining law and contributions to this chapter; nonetheless, any mistakes or omissions are entirely the fault of the authors (whom would be grateful if the readers could bring them to their attention).

<sup>120</sup> CODELCO, "Chuquicamata", online:  
<[https://www.codelco.com/prontus\\_codelco/site/edic/base/port/chuquicamata.html](https://www.codelco.com/prontus_codelco/site/edic/base/port/chuquicamata.html)>.

<sup>121</sup> United States Geological Service, "Mineral Commodity Summaries 2017", at 100, online:  
<<https://minerals.usgs.gov/minerals/pubs/mcs/2017/mcs2017.pdf>>.

<sup>122</sup> Comisión Nacional del Litio, Ministerio de Minería, "Presidenta Bachelet recibe propuesta de Política Pública para el Futuro del Litio", (27 January 2015), online:  
<<http://www.minmineria.gob.cl/comunicados/presidenta-bachelet-recibe-propuesta-de-politica-publica-para-el-futuro-del-litio/>>.

<sup>123</sup> KPMG Global Mining Institute, "Chile Country Mining Guide", *KPMG* (2014) at 13, online:  
<<https://assets.kpmg.com/content/dam/kpmg/pdf/2014/03/chile-mining-guide.pdf>> [KPMG Chile].

<sup>124</sup> *Ibid*, at 9.

<sup>125</sup> Dirección General de Relaciones Económicas Internacionales, "Acuerdos Comerciales", online:  
<<https://www.direcon.gob.cl/acuerdos-comerciales/>>; Alianza Pacífico, "Que es la Alianza", online:  
<<https://alianzapacifico.net/que-es-la-alianza/>>; Asia-Pacific Economic Cooperation, "Member Economies", online: <<http://www.apec.org/About-Us/About-APEC/Member-Economies.aspx>>.

Chile is often leading important initiatives in the Latin American mineral exploration and mining industries. Two examples worth mentioning are (i) the establishment in 2008 of the *Comisión Calificadora de Competencias en Recursos y Reservas Mineras (Comisión Minera)* affiliated to CRISCO – Committee for Mineral Reserves International Reporting Standards, harmonizing the concept of resources and reserves to those internationally adopted and in Latin America followed by Brazil only in 2015; and (ii) the establishment in 2015 of a new venture exchange division of the Santiago Stock Exchange, called the Santiago Stock Exchange – Venture, based on an agreement with the TSX Venture Exchange (TSXV) that will leverage the experience of TSXV, which specializes in facilitating capital formation for early-stage mineral exploration companies, creating a strong connection between Chilean and Canadian capital markets.<sup>126</sup>

## Foreign Investment in Chile

Chile's laws on foreign investment are welcoming and non-discriminatory. The current foreign investment regulations came into force on January 1 2016 by means of Law No. 20,848 (*Ley Marco para la Inversión Extranjera Directa en Chile, "IED"*),<sup>127</sup> which as of January 2016, replaced the former regime in force since 1974 under Decree Law No 600 ("DL 600").<sup>128</sup>

Under DL 600, foreign investment was formalized by means of foreign investment contracts entered into between the foreign investor and the Foreign Investment Committee.<sup>129</sup> Even though DL 600 was repealed by Law No 20,780, which introduced a major tax reform to the Chilean system, foreign investment contracts executed before the entry into force of Law No 20,848 remain in force and subject to the provisions of DL 600.<sup>130</sup> Among other benefits, DL 600 granted tax invariability for up to twenty years upon particular circumstances, as well as special and exclusive benefits for foreign investments in mining projects.<sup>131</sup>

The IED defines foreign investors as any foreign person without residence and domicile in Chile that enters capital into the country in the form of foreign currency, goods, reinvestment of profits, debt-to-equity swap, technology or credits, in amounts equal or greater than USD \$5 million.<sup>132</sup> Transfers used to gain at least 10% of equity or participation in a business that are equal to or over USD \$5 million are also considered to be direct foreign investment.<sup>133</sup> If the legal requirements are

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<sup>126</sup> TMX, News Release, "*Santiago Stock Exchange and TSX Venture Exchange Celebrate the Launch of a New Venture Market in Chile*" (5 May 2015), online: <<https://www.tmx.com/newsroom/press-releases?id=312>>.

<sup>127</sup> *Ley Marco para la Inversión Extranjera, No 20.848*, Chile 16 June 2015, Biblioteca del Congreso Nacional de Chile, online: <<https://www.leychile.cl/Navegar?idNorma=1078789>>. [IED].

<sup>128</sup> *Estatuto de la Inversión Extranjera, Decreto-Ley 600*, Chile 11 July 1974, Biblioteca del Congreso Nacional de Chile, online: <<http://www.leychile.cl/Navegar?idNorma=74454>> [DL 600].

<sup>129</sup> *Ibid*, art 1 para 5; Chile Atiende, "*Comité de Inversiones Extranjeras*", online: <<https://www.chileatiende.gob.cl/servicios/ver/AH003>>.

<sup>130</sup> *Reforma Tributaria que Modifica el Sistema de Tributación de la Renta e Introduce Diversos Ajustes en el Sistema Tributario, Ley 20.780*, Chile 29 September 2014, Biblioteca del Congreso Nacional de Chile, art 9 para 1, 3, online: <<https://www.leychile.cl/Navegar?idNorma=1067194&idParte=9509244&idVersion=2014-09-29>>; IED, *supra* note 127 at art 21, artículo primero.

<sup>131</sup> *DL 600*, *supra* note 128 at art 3 para 3.

<sup>132</sup> IED, *supra* note 127 at arts 2-3.

<sup>133</sup> IED, *supra* note 127 at art 2 para 2.

met, the foreign investor is entitled to obtain a certificate from the Agency for the Promotion of Foreign Investment and then be subject to the IED provisions, which include certain tax exemptions and rights on the expatriation of funds, which will be discussed in section Taxes, Royalties and Incentives in Chile.<sup>134</sup> Investors may freely transfer abroad any utilities generated by investments, and the IED forbids non-arbitrary discrimination against foreign investors in relation to local investors.<sup>135</sup>

While DL 600 contained a special regime applicable to foreign investments into the mining industry, the IED introduced a uniform regime applicable to all industries without benefits to particular industries.<sup>136</sup> However, according to Transitory Provisions of the IED until January 1 2020 foreign investors are entitled to choose to enter into the foreign investment contracts set forth in DL 600, though with limited benefits that refer to the form in which the investment can be made and tax invariability.<sup>137</sup>

## Mineral Exploration and Mining Rights in Chile

Under Chilean law, all mineral deposits belong exclusively to the State of Chile.<sup>138</sup> Mineral exploration and mining operations can take place through exploration mining concessions (“*concesiones de exploración*”) and all mineral exploration and exploitation activities can be carried out through exploitation mining concessions (“*concesiones de explotación*”),<sup>139</sup> both of which are independent of third party surface rights covering the same area as a given concession.<sup>140</sup> In other words, as in Argentina and Brazil, exploration or mining concessions covering a land area may coexist with any surface real rights located within the concessions area. Coexisting land owners are subject to certain obligations limiting their rights in favor of the operations undertaken by holder of a mining concession.<sup>141</sup>

The Chilean government, through the National Services of Geology and Mining (“*Sernageomin*”), regulates and oversees mining activities in Chile. Exploration and exploitation mining concessions are granted by judicial resolutions issued in non-contentious, non-discriminatory and very formal proceedings in which a judge is the sole decision-maker.<sup>142</sup> The Mining Code sets forth a swift judicial proceeding for mining concession applications, in which all additional issues related to an application

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<sup>134</sup> *Ibid*, art 4 para 1.

<sup>135</sup> *Ibid*, arts 5, 9.

<sup>136</sup> *Ibid*, at art 1.

<sup>137</sup> *Ibid*, art 21, artículo segundo.

<sup>138</sup> *Código de Minería, Ley 18.248*, Chile 26 Septiembre 1983, Biblioteca del Congreso Nacional de Chile, art 1 para 1, online: <<https://www.leychile.cl/Navegar?idNorma=29668>> [*Chilean Mining Code*].

<sup>139</sup> *Ibid*, art 35; *Ley Orgánica Constitucional sobre Concesiones Mineras, Ley N° 18.097*, Chile 07 January 1982, Biblioteca del Congreso Nacional de Chile, art 1, online: <<https://www.leychile.cl/Navegar?idNorma=29522>> [*LOC*].

<sup>140</sup> *Chilean Mining Code*, *supra* note 138 at art 1, 2 para 1.

<sup>141</sup> For example, the holder of a mineral exploration or mining concession has the right to impose easements over the surface right to conduct their activities if an agreement is not reached with the surface right owner.

<sup>142</sup> The National Service of Geology and Mining participates in this process by issuing a report on the technical reviewing of the requested mining concessions.

must be dealt with in a separate proceeding without suspending the mining concession's application proceeding.<sup>143</sup>

Mining concessions can be granted to Chilean or foreign companies and individuals, as well as to state-owned companies, although restrictions apply with regards to certain public employees.<sup>144</sup> All duly registered mining concessions constitute real immovable rights that may be subject to contractual arrangements, such as mortgages, the exclusive right to explore and/or exploit the designated area, and to appropriate and market any minerals extracted thereby.<sup>145</sup> Mining concessions cannot be embargoed, nor any accessory real estate (buildings, facilities) or supplies located within the concession, unless the debtor is a corporation (“*sociedad anónima*”) or unless the debtor consents to the embargo in the relevant judicial proceeding.<sup>146</sup>

Exploration mining concessions last for two years and may be renewed once for up to two more years, but at least half of the originally conceded territory must be given up without prejudice to any mining rights asserted on that territory during the concession period.<sup>147</sup> In contrast, exploitation mining concessions have an unlimited duration.<sup>148</sup>

Mining concessions also grant their holder water rights over waters found during the works within the mining concessions, to the extent that they are necessary for mining operations. These water rights cannot be sold or transferred separately from the mining concession and expire at the same time.<sup>149</sup>

The Chilean government has established a swift mechanism for concession applications: exploration applications must be answered within 90 days,<sup>150</sup> and mining concessions within between 200 to 220 days.<sup>151</sup> Any issues with an application will be dealt at the same time as the concession's application and will not suspend the application's proceeding.<sup>152</sup>

Mining concessions provide the right to explore and exploit all mineral substances, except for lithium and hydrocarbons in liquid or gas form,<sup>153</sup> and any private exploitation of excluded substances may be carried out through administrative concessions or special operation contracts, under the terms and

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<sup>143</sup> *Chilean Mining Code*, *supra* note 138 at art 34 para 2.

<sup>144</sup> *Ibid*, arts 1 para 2, 34 para 1; *LOC*, *supra* note 139 at art 5 para 1. Note that the process of application for a mining exploration concession is denominated *pedimento*, and for a mining exploitation concession, *manifestación* (see *Chilean Mining Code*, *supra* note 138 at art 35), and that, once a mining concession for exploitation is granted, it is called *pertenencia* (see *Chilean Mining Code*, *supra* note 138 at art 59 para 1).

<sup>145</sup> A “real immovable right” grants ownership over the mining concession: the concessionary's rights to explore and/or exploit, appropriate any extracted substances, lease, mortgage, or sell the concession or the minerals extracted thereof, is protected by the Constitution's art. 19 para 24's property guarantee (See *Fija el Texto Refundido, Coordinado y Sistematizado de la Constitución Política de la República de Chile, Decreto 100*, Chile 17 September 2005, Biblioteca del Congreso Nacional de Chile, art 19 para 24, online: <<https://www.leychile.cl/Navegar?idNorma=242302>>); *Chilean Mining Code*, *supra* note 138 at arts 2 para 1, 54, 113 para 1, 116 para 1, 217; *LOC*, *supra* note 139 at art 7.

<sup>146</sup> *Chilean Mining Code*, *supra* note 138 at art 226.

<sup>147</sup> *Ibid*, art 112 paras 1, 2, 7; *LOC*, *supra* note 139 at art 17.

<sup>148</sup> *LOC*, *supra* note 139 at art 17.

<sup>149</sup> *Chilean Mining Code*, *supra* note 138 at art 110.

<sup>150</sup> *Ibid*, art 55 para 1.

<sup>151</sup> *Ibid*, art 59 para 1.

<sup>152</sup> *Ibid*, art 34 para 2.

<sup>153</sup> *Ibid*, arts 26, 7; *LOC*, *supra* note 139 at art 3 para 4.

conditions set forth on each particular case by Presidential Supreme Decree.<sup>154</sup> In addition, the State has a first purchase option right at market prices of any uranium or thorium that a mine produces in significant quantities.<sup>155</sup>

Finally, in contrast to jurisdictions like Brazil and Peru, Chile does not have any restrictions regarding mining operations on or close to its borders, except for certain actions of nationals of border countries. In fact, Chile has a unique bilateral mining treaty with Argentina, in force since 2000, which allows for the exploitation of shared mineral resources through trans-border operations free of tariffs and double taxation.<sup>156</sup> The first company to benefit from this agreement was Barrick, a Canadian mining corporation, which owns the gold and silver Pascua Lama mining project located on both sides of the Chilean-Argentinean frontier.<sup>157</sup>

## Taxes, Royalties and Incentives in Chile

Foreign investors, as defined by the IED can benefit from an exemption of the sales and services tax on the importation of goods, and all capital transferred and net income generated by the direct foreign investment may be expatriated following the payment of any applicable tax.<sup>158</sup> Furthermore, foreign investors have access to Chile's exchange market and may freely undertake currency exchanges.<sup>159</sup>

In addition, the IED established an official governmental strategy to promote foreign investment (*Estrategia de Fomento y Promoción de la Inversión Extranjera*) in charge of which is the recently created governmental agency, Invest Chile. Its mandate includes courting foreign investors and supporting their landing and swift integration into the Chilean market, as well as promoting the reinvestment of existing foreign investments in Chile.<sup>160</sup>

### TAXES

The taxation framework for Chile's mining sector is threefold: the first stage tax on declared profits (FCIT), the second stage corporate income tax on profit distributed to individuals outside of Chile, and the specific income tax applicable to major copper-producing companies.<sup>161</sup>

- First Stage Corporate Income Tax ("*Impuesto a la Renta de Primera Categoría*", "*FCIT*"): the FCIT in 2016 is of 24%, levied on income. This tax is set to increase to 25% in 2017, and to stabilize at 27% as of 2018.<sup>162</sup>

<sup>154</sup> *Chilean Mining Code*, *supra* note 138 at art 8.

<sup>155</sup> *Ibid*, arts 12, 10 para 1; *LOC*, *supra* note 139 at art 15.

<sup>156</sup> See generally *Promulga el Tratado con Argentina sobre Integración y Complementación Minera y sus Anexos I y II, su Protocolo Complementario y el Acuerdo que Corrige dicho Protocolo*, Decreto 2275, Chile 20 December 2000, Biblioteca del Congreso Nacional de Chile, online: <<https://www.leychile.cl/Navegar?idNorma=181438>>.

<sup>157</sup> Barrick, "Bienvenidos a Pascua-Lama", *Barrick Chile*, online: <<http://barricklatam.com/pascua-lama/>>.

<sup>158</sup> *IED*, *supra* note 127 at art 5, 8.

<sup>159</sup> *Ibid*, art 6 para 1.

<sup>160</sup> *Ibid*, art. 10; Invest Chile, "About Us", online: <<https://investchile.gob.cl/aboutus/>>.

<sup>161</sup> Jan Cademartori, Carlos Paez and Juan Daniel Soto, "Tasas Optimas para el Impuesto a la Minería del Cobre en Chile", (2014) 37 *Polis*, 1 at 3, online: <<https://polis.revues.org/9862>>.



- Second Stage Corporate Income Tax (“*Impuesto Adicional*”, “*SCIT*”): a 35% rate levied on profits distributed to individuals outside of Chile, translating into an effective rate of 16%.<sup>163</sup>
- Specific Income Tax (“*Impuesto Específico*”): this tax is only levied amongst companies that sell more than 12,000 tons of fine copper, varies depending on the amount sold, and is applied on mining operational income, which consists of mineral sales income minus production costs and equipment depreciation.<sup>164</sup> For companies selling between 12,000 and 49,999 tons, the tax ranges between 0,5% and 4,5%, resulting in an effective tax rate of between 0,1% and 1,93%. For companies surpassing the 50,000 ton threshold, taxation varies between 5% to 34.5%, with an effective tax rate of 5% to 14%.<sup>165</sup>

## FEES

- Annual Exploitation Mining Concession Fee (“*Patente Anual de Explotación*”): one tenth of a Monthly Tributary Unit (*Unidad Tributaria Mensual*, “UTM”) per hectare. This is approximately equivalent to USD \$7.1/ha as of February 2017.<sup>166</sup>
- Annual Exploration Mining Concession Fee (“*Patente Anual de Exploración*”): one fiftieth of a UTM per hectare. This is approximately equivalent to USD \$1.4/ha as of February 2017.<sup>167</sup>

<sup>162</sup> *Aprueba Texto que Indica de la Ley Sobre Impuesto a la Renta, Decreto Ley 824*, Chile 27 December 1974, Biblioteca del Congreso Nacional de Chile, art 20, online: <<http://www.leychile.cl/Navegar?idNorma=6368>> [DL 824]; Servicio de Impuestos Internos, “Impuesto a la Renta de Primera Categoría (Artículo 20 Ley de Impuesto a la Renta)”, (18 December 2015), *Impuestos Directos*, online: <[http://www.sii.cl/aprenda\\_sobre\\_impuestos/impuestos/imp\\_directos.htm](http://www.sii.cl/aprenda_sobre_impuestos/impuestos/imp_directos.htm)>. The Tax Reform enacted in year 2014 introduced two new tax regimes, which replaced the former tax regime in force in the country as of January 1 2017. The regimes are: “Regime A”: an attribution regime that levies with a 25% tax rate on income obtained by companies in each tax year, which will be immediately allocated to their shareholders. “Regime B”: a partial integrated regime that levies 27% tax rate on income obtained by companies (25,5% for income generated in year 2017). Under this regime, shareholders are allowed to defer personal taxes and to withhold them until such profits are effectively distributed, but it only allows using a 65% credit of the taxes paid by the company, unless the shareholder resides in a tax-treaty country. See Carey, “New Tax Regimes”, online: <<http://reformatributaria2014.carey.cl/en/new-tax-regimes/>>.

<sup>163</sup> *DL 824*, *supra* note 162 at arts 58, 60 para 1; Servicio de Impuestos Internos, “Impuesto Adicional (Artículos 58 y 60 inc. 1° Ley de Impuesto a la Renta)”, (18 December 2015), *Impuestos Directos*, online: <[http://www.sii.cl/aprenda\\_sobre\\_impuestos/impuestos/imp\\_directos.htm](http://www.sii.cl/aprenda_sobre_impuestos/impuestos/imp_directos.htm)>; Cademartori, *supra* note 161 at 3. The total tax burden for Regime A is 35%, while the total tax burden for Regime B from year 2018 onwards is 44.5%, unless a tax-treaty is in force, in which case the total burden will be 35% (Carey, *supra* note 162).

<sup>164</sup> *Establece un Impuesto Específico a la Actividad Minera, Ley 20.026*, Chile 27 May 2005, Biblioteca del Congreso Nacional de Chile, at 3)-4), online: <<https://www.leychile.cl/Navegar?idNorma=239219>> [Ley 20.026]; Cademartori, *supra* note 161 at 3.

<sup>165</sup> *Ley 20.026*, *supra* note 164 at art 3; See generally COCHILCO, “Impuesto Específico”, online: <<http://www.cochilco.cl/estadisticas/impuesto.asp>>; KPMG Chile, *supra* note 123 at 10.

<sup>166</sup> *Chilean Mining Code*, *supra* note 138 at art 142.

<sup>167</sup> *Chilean Mining Code*, *supra* note 138 at art 142.

- Annual Exploitation Mining Concession Fee applicable to Non-Metal Substances or Substances located in Salt Flats (“*Patente Anual de Explotación de Sustancias No Metálicas*”): one thirtieth of a UTM per hectare. This is approximately equivalent to USD \$2.15/ha as of February 2017.<sup>168</sup>

We should underscore several relevant points. First, most large mining companies are currently protected by tax stability agreements entered into under the DL 600’s framework for foreign investment, and therefore pay flat tax rates of 4% to 5%. Consequently, the above-mentioned tax rates only apply upon expiry of the term of said contracts.<sup>169</sup> Second, consumption and fuel taxes are deductible, water used and commercialized to third parties is not taxed, and Chile’s vast network of free trade agreements guarantees that tariffs on mineral exports and imported goods remain low.<sup>170</sup> Third, mining license fee amounts are quasi nominal.<sup>171</sup> Finally, tax losses carry forward indefinitely.<sup>172</sup>

With respect to direct monetary incentives, since the peak of copper prices in 2011 Chile’s Economic Development Agency (“CORFO”) launched the USD \$150 million Phoenix Fund for Mineral Exploration.<sup>173</sup> The fund assists small and medium exploration ventures by providing lines of credits covering up to two thirds of exploration costs to a maximum of UF 400.000 (approximately \$USD 15.8 million).<sup>174</sup> The fund was intended to assist close to 50 initiatives and set to last until sometime between 2021 and 2023.<sup>175</sup>

As noted in Foreign Investment in Chile section, Chilean legislation does not allow the exploitation of lithium through ordinary mining concessions, despite Chile having around one fourth of world reserves, as well as the lowest exploitation costs worldwide.<sup>176</sup> There is currently only one deposit being exploited: *Salar de Atacama*, which was allowed before lithium became of strategic importance to the Chilean State in 1979.<sup>177</sup>

However, lithium exploitation should increase in the medium term following the creation of the National Lithium Commission in 2014, which recommended that a sustainable lithium mining policy be instituted in order to allow greater development of this substance in several salt flats, including Maricunga and

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<sup>168</sup> *Ibid.*

<sup>169</sup> KPMG Chile, *supra* note 123 at 10.

<sup>170</sup> Cademartori, *supra* note 161 at 3.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Simplifica el Sistema de Tributación a la Renta y Perfecciona otras Disposiciones Legales Tributarias, Ley 20.899*, Chile 8 February 2016, Biblioteca del Congreso Nacional de Chile, art 8 N°1 b), ii) 5. para 8, online: <<https://www.leychile.cl/Navegar?idNorma=1087342>>.

<sup>173</sup> Ministerio de Minería, Gobierno de Chile, “Fondo Fénix”, online: <<http://www.minmineria.gob.cl/fondo-fenix/>>. Please note that the six investment funds chosen to allocate the funds are Asset, IM Trust, Zeus, EPG, Administradora de Inversiones Mineras and Celfin.

<sup>174</sup> Corporación de Fomento de la Producción, News Release, “Corfo y Ministerio de Minería Lanzas el Fondo Fénix para la Exploración Minera” (4 March 2011), online: <<http://www.corfo.cl/sala-de-prensa/noticias/2011/marzo-2011/corfo-y-ministerio-de-mineria-lanzas-el-fondo-fenix-para-la-exploracion-minera>>.

<sup>175</sup> *Ibid.*; *Supra* note 173.

<sup>176</sup> *Supra* note 122; Minería Chilena, “Informe Final de la Comisión Nacional del Litio”, *Minería Chilena* (January 2015), online: <[http://www.mch.cl/wp-content/uploads/sites/4/2015/01/Informe-Final\\_Comision\\_Litio.pdf](http://www.mch.cl/wp-content/uploads/sites/4/2015/01/Informe-Final_Comision_Litio.pdf)> [IFCL].

<sup>177</sup> IFCL, *supra* note 176 at 9.

Pedernales. Development would be structured as a public private partnership, and be directed and closely supervised by a State company in conjunction with foreign or national investors.<sup>178</sup>

## Environmental Law

The main environmental regulation in Chile affecting the mining industry is the General Law on the Environment, “GLE” (*Ley sobre Bases Generales del Medio Ambiente*), which establishes two sorts of environmental reports that must be submitted depending on the characteristics of the project in question.<sup>179</sup> Enterprises regulated by the GLE include all activities or projects that could have an impact on the environment, including mining exploration, exploitation and processing, as well as electric generation over 3 MW, water management and transportation, transportation infrastructure, and others.<sup>180</sup> In advance to developing a new mining project or modifying an existing one, a company must submit an Environmental Impact Study or Environmental Impact Declaration depending on the magnitude of the environmental impacts generated thereof, as follows:

- Environmental Impact Assessment, “EIA” (“*Estudio de Impacto Ambiental*”): is required for any project that could generate or potentially cause (i) a risk to the health of humans due to the amount and quality of effluents, emissions and/or residues; (ii) a major adverse effect on the quantity and quality of renewable natural resources, including land, water and air; (iii) resettlement of communities or significant alteration of their living conditions (including culture and traditions), or projects that are located close to settlements or protected communities, priority conversation areas, protected wetlands and glaciers that might be affected, as well as significantly altering the landscape or sites of cultural significance. Mining extraction operations fall under this category, and also some exploration projects.<sup>181</sup>
- Environmental Impact Declaration (“*Declaración de Impacto Ambiental*”, “EID”): any development project, including exploration and exploitation projects, processing plants and other facilities that do not require an EIA will require an EID.<sup>182</sup>
- Project modifications: depending on the type of modification, an EIA or EID may be applicable. Changes to brownfield projects must be environmentally evaluated.<sup>183</sup>

<sup>178</sup> *Supra* note 122; IFCL, *supra* note 176 at 21-23, 29.

<sup>179</sup> *Ley sobre Bases Generales del Medio Ambiente, Ley 19.300*, Chile 1 March 1994, Biblioteca del Congreso Nacional de Chile, art 9, online: <<http://www.leychile.cl/Navegar?idNorma=30667>> [GLE].

<sup>180</sup> *Ibid*, art 10.

<sup>181</sup> *Ibid*, art 11; *Aprueba Reglamento del Sistema de Evaluacion de Impacto Ambiental, Decreto 40*, Chile 30 October 2012, art 3, online: <<https://www.leychile.cl/Navegar?idNorma=1053563>> [Decree 40].

<sup>182</sup> *GLE, supra* note 179 at art 18; *Decree 40, supra* note 181 at art 3.

<sup>183</sup> *GLE, supra* note 179 at arts 7 bis para 1, 8; the Environmental Impact Assessment Service Regulations state that there is a “considerable change” when: (a) the intervention of a project constitutes by itself a project or activity that is required to be submitted to the Environmental Impact Assessment Service; (b) when the intervention determines that the original project and its modification reaches the magnitude or the requirements set forth for the submission of determined projects to the Environmental Impact Assessment Service; (c) when works, actions or measures intended to intervene or complement a project or

The EIA and/or EID are delivered to the relevant public agencies, which evaluate and make comments in connection with and request additional information about the project's economic, social and environmental aspects. Once the project owner satisfactorily responds to such comments and requests, the environmental approval resolution is granted by the Assessment Commission (or by the Executive Director of the Environmental Impact Assessment Service when the project has potential impacts in areas located in several regions).<sup>184</sup>

Reflecting Chile's commitment with sustainability, Chile and Canada signed a Memorandum of Understanding on Cooperation for the Sustainable Development of Mining and Metals in 2008. The MoU promotes joint work in the development of green technologies to increase sustainability in mining operations.<sup>185</sup>

We should emphasize that environmental regulatory compliance has not only been a focus of Chilean governments over the past decade, but also of the Chilean public. It is not uncommon for companies with operations in Chile to face important socio-political challenges following non-compliance with environmental regulations, which could critically affect a company's social license to operate.

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activity substantively modify the extension, magnitude or duration of the project's environmental impacts; and (d) when mitigation, reparation and compensation measures to address a project significant impacts are substantively modified (*Decree 40, supra* note 181 at art 2).

<sup>184</sup> *GLE, supra* note 179 at art 86.

<sup>185</sup> Canada International, Embassy of Canada in Chile, "Canada-Chile Cooperation for the Sustainable Development of Minerals and Metals", online: <[http://www.canadainternational.gc.ca/chile-chili/bilateral\\_relations\\_bilaterales/mining.aspx?lang=eng](http://www.canadainternational.gc.ca/chile-chili/bilateral_relations_bilaterales/mining.aspx?lang=eng)>.

## Peru<sup>186</sup>

Peru is the third largest country in Latin America after Brazil and Argentina, the third largest producer of copper and silver, sixth largest producer of gold, and also produces considerable amounts of lead, tin, zinc and molybdenum. Mining sector foreign direct investments account for 24%, and mining investment in 2015 was of approximately USD \$6.5 billion.<sup>187</sup> 60% of Peru's exports are minerals, and represent around 15% of the country's GDP.<sup>188</sup>

Peru is a unitary state, and therefore all laws regulating the mining industry are approved by one legislature. The body of Peru's mining laws is the General Mining Law (*Ley General de Minería*, "LGM"), which is complemented by several other regulations.<sup>189</sup>

Canadian investors have steadily increased their general investments in Peru over the past decade, going from \$USD 188 million in 2005 to over \$1 billion in 2015, which could be explained in part by Peru's straightforward and welcoming laws on foreign investment (see Foreign Investments in Peru section).<sup>190</sup>

As Chile, Peru is a member of the Pacific Alliance, and also of the Asia Pacific Economic Cooperation forum.<sup>191</sup>

## Foreign Investments in Peru

The basis of Peru's policy towards foreign investment is found in article 63 of Peru's Constitution, whereby foreign investments are constitutionally guaranteed to receive the same treatment as national investments, and foreign investors' property rights to be the same as those of Peruvians.<sup>192</sup>

Expanding the protection of article 63, Legislative Decree N°662, "DL 662" (*Decreto Legislativo N°662*) ensures that investors that are recognized as per the DL 662 as "foreign" have the same rights and obligations as national investors, are not discriminated, and are subject to the same property and

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<sup>186</sup> The authors would like to thank Luis Carlos Rodrigo Prado, Partner of the Peruvian law firm Rodrigo, Elias & Medrano, managing partner and head of the firm's Natural Resources Group for his valuable lessons and comments about Peruvian mining law and contributions to this chapter; nonetheless, any mistakes or omissions are entirely the fault of the authors (whom would be grateful if the readers could bring them to their attention).

<sup>187</sup> KPMG Global Mining Institute, "Peru Country Mining Guide", *KPMG* (February 2016) at 1, online: <<https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/peru-mining-country-guide.pdf>> [KPMG Peru]; Fernando Pickmann and Gallo Barrios Pickmann, "Mining 2016 Peru" (13 July 2016), at s 1, online: <<http://latinlawyer.com/jurisdiction/1003006/peru>> [Mining 2016 Peru].

<sup>188</sup> Mining 2016 Peru, *supra* note 187 at s 1; KPMG Peru, *supra* note 187 at 1, 6.

<sup>189</sup> See generally *Texto Único Ordenado de la Ley General de Minería, Decreto Supremo N° 014-92-EM*, Peru 3 June 1992, Congreso de la República, online: <[http://www2.congreso.gob.pe/sicr/cendocbib/con3\\_uibd.nsf/89E200B65DCF6DE9052578C30077AC47/\\$FILE/DS\\_014-92-EM.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/89E200B65DCF6DE9052578C30077AC47/$FILE/DS_014-92-EM.pdf)> [LGM].

<sup>190</sup> ProInversión, "Saldo Inversión Extranjera Directa a Peru por Pais de Domicilio", online: <<http://www.investinperu.pe/modulos/JER/PlantillaStandard.aspx?ARE=0&PFL=0&JER=5652>>.

<sup>191</sup> APEC, *supra* note 125.

<sup>192</sup> *Constitución Política del Perú*, Peru 29 December 1993, Congreso de la República, arts 63, 71 para 1, online: <<http://www4.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf>> [CPP].



intellectual property regulations as national investors.<sup>193</sup> The latter, notwithstanding foreigners, may not directly or indirectly own or possess any real estate within 50 kilometers of the frontier, except where authorized by the Council of Ministers through a supreme decree due to public necessity.<sup>194</sup>

Foreign investors covered by DL 662 are also guaranteed the right to freely expatriate the total amount of their investment, including income generated from the sale of shares, rights, capital reduction, and partial or total dissolution of companies. Investors may also freely expatriate whatever dividend or net income that is generated by their investment. No governmental authorization is required to move funds abroad.<sup>195</sup> Foreign investors are not subject to any restrictions regarding general imports or exports, mineral exports, ownership, use or exchange of foreign currency, participation or acquisition in any manner of the social capital or property of national investments.<sup>196</sup>

In order to benefit from the DL 662's foreign investment protection, the investment must be registered with the relevant governmental institution, be made in any economic activity that generates income, and be invested through any of the following means: physical or tangible property, or currency, provided through Peru's National Financial System to a new or existing company; national currency investments originating from resources that may be expatriated; conversion of foreign private obligations into equity; reinvestments admitted by law; investments in goods that are physically located within Peru; intellectual property and other intangible technological contributions; acquisitions of titles, documents, and financial documents; investments that increase local business production capacity; and any other form of investment that contributes to the development of Peru.<sup>197</sup>

Peru is a member of the Multilateral Investment Guarantee Agency, which applies the legal framework established by the International Centre for Settlement of Investment Disputes, with the aim of solving any legal dispute regarding the rights of investors and the Peruvian state.<sup>198</sup> Peru has free trade agreements with Canada, China, and the United States, and has treaties to avoid double taxation with Brazil, Canada and Chile, amongst others.<sup>199</sup>

<sup>193</sup> *Decreto Legislativo N° 662*, Peru 29 August 1991, Congreso de la República, arts 2-5, online: <[http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/ED760CA3685D01CC05257CC8006B3A10/\\$FILE/4\\_DECRETOS\\_LEGIS\\_662\\_ESTABILIDAD\\_JURIDICA.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/ED760CA3685D01CC05257CC8006B3A10/$FILE/4_DECRETOS_LEGIS_662_ESTABILIDAD_JURIDICA.pdf)> [DL 662].

<sup>194</sup> *CPP*, *supra* note 192 at art 71 para 2.

<sup>195</sup> *DL 662*, *supra* note 193 at art 7.

<sup>196</sup> *CPP*, *supra* note 192 at arts 63 para 1, 64; *DL 662*, *supra* note 193 at arts 6, 8-9.

<sup>197</sup> *DL 662*, *supra* note 193 at arts 1, 3.

<sup>198</sup> Multilateral Investment Guarantee Agency, World Bank Group, "Who We Are", online: <<https://www.miga.org/who-we-are/member-countries>>.

<sup>199</sup> Acuerdos Comerciales del Perú, "Qué Acuerdos Comerciales Tenemos?", online: <[http://www.acuerdoscomerciales.gob.pe/index.php?option=com\\_content&view=category&layout=blog&id=36&Itemid=27](http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=36&Itemid=27)>; Ministerio de Economía y Finanzas, "Convenio para Evitar la Doble Imposición", online: <<https://www.mef.gob.pe/es/convenio-para-evitar-la-doble-imposicion>>.

## Mineral Exploration and Mining Rights in Peru

Peru's single jurisdictional regime creates a simple mining regulatory structure, whereby minerals are owned solely, inalienably and imprescriptibly by the State, and the bulk of mineral regulations are established in the LGM.<sup>200</sup>

As in Chile and Argentina, Peruvian law allows national and foreign third parties to explore and exploit minerals only after acquiring the relevant rights through the respective mining industry concession.<sup>201</sup> Peru has a notably distinct system of mining industry concessions: exploration and exploitation rights are granted through a single mineral exploration and exploitation concession (*concesión minera*), and mining industry concessions are also required in order to conduct general labor activities that constitute a service to third parties (services such as ventilation, drainage, etc.) (*concesión de labor general*), processing (concentration, purification, refining and smelting) (*concesión de beneficio*), and transportation of mineral products (outside project areas through non-conventional means, such as conveyor belts, pipes, rail, etc.) (*concesión de transporte*). Since processing activities are often performed within a single mining project, a project will often require several mining industry concessions in order to operate. All mining industry concessions grant exclusivity with respect to exercising the activities described in the respective concession.<sup>202</sup>

No mining industry concession is required to conduct commercialization or prospection of minerals. Prospection is prohibited within the areas covered by a mineral exploration and exploitation concession granted to third parties, fenced areas and agricultural areas, without prior authorization of the respective title holder. Prospection in urban areas or areas of urban expansion, areas reserved for national defense, and archeological areas, may only be authorized through a special permit.<sup>203</sup>

Requests for mineral exploration and exploitation concessions must be submitted to the Public Mining Registry, a process which is carried out at the national level, and which may be undertaken by foreign mining companies only after registering with said institution and with the National Office of the Public Registry. Processing, transportation and general labour concessions are granted by the General Mining Direction.<sup>204</sup> Appeal procedures regarding decisions on concessions and other administrative matters are heard on final instance by the Mining Council, which is appointed by the executive, but all final administrative decisions may be appealed at the judicial level within 30 days of the decision.<sup>205</sup>

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<sup>200</sup> *CPP*, *supra* note 192 at art 66; *Código del Medio Ambiente y Los Recursos Naturales, Decreto Legislativo N° 613*, Peru 8 September 1990, Congreso de la República, Título Preliminar, II, online: <[http://www2.congreso.gob.pe/Sicr/Comisiones/2004/Ambiente\\_2004.nsf/Documentosweb/D6ADC67B2DA2EC0805256F320051D6D5/\\$FILE/DL613.pdf](http://www2.congreso.gob.pe/Sicr/Comisiones/2004/Ambiente_2004.nsf/Documentosweb/D6ADC67B2DA2EC0805256F320051D6D5/$FILE/DL613.pdf)> [CMARN]; *LGM*, *supra* note 189 at Título Preliminar II, para 1.

<sup>201</sup> *LGM*, *supra* note 189 at Título Preliminar II, para 3, arts 3, 7.

<sup>202</sup> *LGM*, *supra* note 189 at Título Preliminar VI, para 1, VII, arts 2 para 1, 9 para 1, 17-19, 22-23, 127; *Reglamento de Procedimientos Mineros, Decreto Supremo N° 018-92-EM*, Peru 1992, Congreso de la República, arts 35, 40, online: <[http://www.peru.gob.pe/docs/PLANES/94/PLAN\\_94\\_DS%20N%C2%BA%20018-92\\_2008.pdf](http://www.peru.gob.pe/docs/PLANES/94/PLAN_94_DS%20N%C2%BA%20018-92_2008.pdf)>.

<sup>203</sup> *LGM*, *supra* note 189 at Título Preliminar, VII, art 2.

<sup>204</sup> *Ibid*, arts 101, 129.

<sup>205</sup> *Ibid*, arts 95-96, 125.

Mining industry concessions do not have a fixed term; instead, they are terminated only through abandonment, nullity, renunciation, cancellation, and non-payment of validity fees for periods of time that vary depending on the type of mining industry concession.<sup>206</sup>

Peruvian law provides that mining industry concessions are irrevocable as long as the title holder complies with all regulations.<sup>207</sup> Additionally, mining exploration and exploitation concessions are considered to be of public utility, and the promotion of mining investment, of national interest.<sup>208</sup> The LGM does not regulate the oil and gas industries.<sup>209</sup>

## Mining Exploration and Exploitation Concessions

Mining exploration and exploitation concessions may have either a metallic or non-metallic “status” at any given time, and title holders must at all times declare their concession’s status. The status of a mining exploration and exploitation concession will allow the exploration and exploitation of the mineral substances falling under the respective metallic or non-metallic category, and impede any activity in relation to mineral substances falling under the non-declared category. A simple declaration from the title holder suffices to switch a mining exploration and exploitation concession’s status from metallic to non-metallic, and *vice versa*.<sup>210</sup>

The reason for such a division is that non-metallic mining exploration and exploitation activities are prohibited in agricultural lands, and require a special provincial permit in urban areas or in areas where urban centers are expanding. Furthermore, non-metallic substances of a saline nature, such as lithium, are regulated by the LGM only with respect to extraction, but their processing and commercialization is regulated industrial legislation.<sup>211</sup>

Mining exploration and exploitation concessions are real immovable rights which are distinct from surface rights, and may be subject to all contractual operations applicable to immovable as per the Peruvian Civil Code, including mortgage. The same rules apply to all movables and accessories to a mining exploration and exploitation concession.<sup>212</sup>

Title holders of mining exploration and exploitation concessions are obliged to invest the funds in their investment plan with views of producing minerals. Production may not be inferior to the monetary equivalent of 1.00 UIT/yr/ha in the case of metallic substances, and of 10% of 1.00/UIT/yr/ha in the case of non-metallic substances. The deadline for complying with production requirements is ten years

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<sup>206</sup> LGM, *supra* note 189 at arts 58-59, 117, 185.

<sup>207</sup> *Ibid*, art 10 para 2. It is important to note that one of the requirements is to comply with a minimum production and if minimum production is not achieved within 30 years, the concession may be cancelled. There are also penalties applicable to the mining company if minimum production is not achieved at the end of the 10<sup>th</sup> year (2% of annual production), at the end of the 15<sup>th</sup> year (5% of the annual production) and at the end of the 20<sup>th</sup> year (10% of the annual production) (*Decreto Legislativo N° 1320*, Peru 4 January 2017, El Peruano, online: <<http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-modifica-la-ley-general-de-mineria-c-decreto-legislativo-n-1320-1470542-2/>>).

<sup>208</sup> LGM, *supra* note 189 at Título Preliminar V.

<sup>209</sup> *Ibid*, at Título Preliminar, para 1.

<sup>210</sup> *Ibid*, art 13.

<sup>211</sup> *Ibid*, arts 14-15.

<sup>212</sup> *Ibid*, arts 9-10; see generally *Código Civil, Decreto Legislativo N° 295*, Peru 24 July 1984, Congreso de la República, online: <<http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/00295.pdf>>.

as of the date when the mining exploration and exploitation concession was granted. For the purpose of calculating compliance with the above mentioned requirements, mining exploration and exploitation concessions of the same nature and declared mineral status may be merged into Economic-Administrative Units (“*Unidad Económica Administrativa*”). Specific distance requirements between concessions to be merged vary depending on the concessions’ mineral in question.<sup>213</sup> Regarding the physical extension of mining exploration and exploitation concessions, concession measurement units vary between 100 ha (minimum) and 1,000 ha.<sup>214</sup>

Title holders requiring the use of surface land may request easements where agreements with surface land owners may not be reached.<sup>215</sup> Similarly, easements may be imposed in order to allow the mining industry concession’s activities to take place. Regarding water use, mining exploration and exploitation concessionaries may use whatever water is needed for business purposes, subject to the granting of a water use license, which is not easy to obtain, since mining is in lower priority than human, agriculture, farming and medicinal uses.<sup>216</sup>

Unlike other jurisdictions, Peru does not have restrictions on granting mining exploration and exploitation concessions on radioactive substances, and has openly established that their exploitation is not reserved to the State.<sup>217</sup>

## Taxes, Royalties and Incentives in Peru

There are several taxes and fees applicable to mining in Peru, as well as a standard royalty regime and two stability regimes providing several benefits:

### TAX

- Corporate Income Tax (“CIT”) (“*Impuesto a la Renta*”): as of January 1 2017, the CIT was increased to 29,5% over net income.<sup>218</sup> An additional 5% is paid for the distribution of dividends.<sup>219</sup>
- Royalty on Minerals (“*Regalía Minera*”): a rate varying between a minimum of 1% and a maximum of 12% that is applicable to the production of metals and non-metals, payable at the end of each trimester. Royalty amounts are calculated progressively and based on the operational profit registered each

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<sup>213</sup> LGM, *supra* note 189 at arts 38, 44-45.

<sup>214</sup> *Ibid*, arts 11 paras 2-3.

<sup>215</sup> Since the Peruvian Constitution of 1993 was enacted, expropriations were restricted to cases where the public need or national defence justify them, which general are not applicable to mining. Therefore, only easements are available when no agreement is reached with the surface owner, which in practice is very rare.

<sup>216</sup> LGM, *supra* note 189 at arts 37 para 8, 129-135.

<sup>217</sup> *Ibid*, art 16.

<sup>218</sup> *Decreto Legislativo N° 1261*, Peru 9 December 2016, El Peruano, art 3, online: <<http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-modifica-la-ley-del-impuesto-a-la-re-decreto-legislativo-n-1261-1462448-2/>> [DL 1261]; *Texto Único Ordenado de la Ley del Impuesto a la Renta, Decreto Supremo N.° 179-2004-EF*, Peru 8 December 2014, Superintendencia Nacional de Administración Tributaria, Título VII art 55, online: <<http://www.sunat.gob.pe/legislacion/renta/ley/>> [LIR].

<sup>219</sup> LIR, *supra* note 218 at V art 24°-A g); DL 1261, *supra* note 218 at art 3.

trimester, namely the income generated through mineral sales minus sales costs and expenses incurred through operations, administration, and sales. Royalty payments are considered expenses and may therefore be deducted from the CIT.<sup>220</sup>

- General Sales Tax or Value Added Tax (“VAT - *Impuesto General a las Ventas*”): a tax of 18%, of which 16% is levied by the Law on General Sales Tax (“*Ley de Impuesto General a las Ventas*”)<sup>221</sup> and 2% by the Municipal Taxation Law (“*Ley de Tributación Municipal*”).<sup>222</sup>
- Special Mining Tax (“*SMT - Impuesto Especial a la Minería*”): a 2% to 8.40% tax charged on operational profit from sales of metallic minerals by companies that are protected by a tax stability agreement (see below), and may be deducted from the CIT.<sup>223</sup>
- Special Mining Contribution (“*Gravamen Especial a la Minería*”): tax ranging from 4% to 13.2% levied on the operational profits made on sales of metallic minerals by companies that are not protected by a tax stability agreement (see below). It is deductible for income tax purposes, and mining royalty payments may be credited against this tax.<sup>224</sup>
- Regulatory Contributions Fee (“*Aporte por Regulación*”): a fee of up to 1% on yearly turnover value post VAT and any municipal fee deductions, payable to the OEFA and OSINERGMIN. The fee was set at 0.15% for 2017, and will decrease to 0.14% in 2018 and 0.13% in 2019.<sup>225</sup>

There are two different tax stability regimes available to mining companies in Peru: the Mining Stability Regime and the Legal Stability Regime for Foreign Investors.

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<sup>220</sup> *Ley 29788, Ley que modifica la Ley 28258, Ley de Regalía Minera*, Peru 28 September 2011, Congreso de la República, arts 2, 3.1-3.2, 4.1-4.3, 11 para 1, Annex, online: <[http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/7C82015CC10716F905257C200053BB29/\\$FILE/29788.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/7C82015CC10716F905257C200053BB29/$FILE/29788.pdf)>.

<sup>221</sup> *Texto Único Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo, Decreto Supremo No 055-99-EF*, Peru 15 April 1999, Superintendencia Nacional de Administración Tributaria, Título I Capítulo V art 17, online: <<http://www.sunat.gob.pe/legislacion/igv/ley/capitul5.htm>>;

<sup>222</sup> *Ley de Tributación Municipal, Decreto Legislativo No° 776*, Peru 30 December 1993, art 76, online: <[https://www.mef.gob.pe/contenidos/tributos/tbl\\_imp\\_er/DL\\_00776.pdf](https://www.mef.gob.pe/contenidos/tributos/tbl_imp_er/DL_00776.pdf)>.

<sup>223</sup> See generally *Ley que crea el Impuesto Especial a la Minería, Ley N° 29789*, Peru 28 September 2011, Congreso de la República, online: <[http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/B488007B66BDA11305257C200057CCF0/\\$FILE/29789.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/B488007B66BDA11305257C200057CCF0/$FILE/29789.pdf)>.

<sup>224</sup> See generally *Ley que Establece el Marco Legal del Gravamen Especial a la Minería, Ley N° 29790*, Peru 28 September 2011, Congreso de la República, online: <[http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/D5899EB52CE3855805257C2000558A8C/\\$FILE/29790.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/D5899EB52CE3855805257C2000558A8C/$FILE/29790.pdf)>.

<sup>225</sup> *Ley Marco de los Organismos Reguladores de la Inversión Privada en los Servicios Públicos, Ley N° 27332*, Peru 29 July 2000, ProInversión, art 10, online: <[http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/ML\\_GRAL\\_INVERSION\\_LEY\\_27332/08-Ley\\_27332.pdf](http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/ML_GRAL_INVERSION_LEY_27332/08-Ley_27332.pdf)>; *Decreto Supremo N° 099-2016-PCM*, Peru 19 December 2016, El Peruano, art 1, online: <<http://busquedas.elperuano.com.pe/normaslegales/aprueban-aporte-por-regulacion-del-osinergmin-sector-miner-decreto-supremo-n-099-2016-pcm-1469406-6/>>.



The Mining Stability Regime (*Régimen de Estabilidad Minera*, “MSR”) has three different levels available to mining companies depending on the investment and level of production they intend to reach. The basic one is available for companies producing 350 MT/day and up to 5,000 MT/day or investing no less than USD \$20,000,000.<sup>226</sup> It freezes for ten years all direct taxes, guarantees the free use and movement of income (in any currency) generated through exports or domestic sales, non-discrimination on exchange rates, free trade of mineral products, and other commerce-related benefits. The regime is optional and is guaranteed through contract. In order to qualify, holders of mining rights must have presented an investment plan, and protection will start as of the date of accreditation of execution of the investment.<sup>227</sup> This protection is extended to 12 years for new companies that invest no less than USD \$100,000,000 or existing ones that invest no less than USD \$250,000,000 or those that intend to have a production of no less than 5,000 MT/day<sup>228</sup>. The protection is for 15 years for companies with an investment of the equivalent of at least USD \$500,000,000 and where production is of 15,000 MT/day or more or expansion is intended to increase production to no less than 20,000 MT/day.<sup>229</sup> In the latter case, companies are also entitled to carry their accounting in USD and enjoy depreciation rates of 20% for equipment and machinery and 5% for civil works and immovable assets. For the 12 and 15 year stability agreements, companies need to submit a complete feasibility study of the project they intend to carry out. Companies benefitting from the MSR may irrevocably renounce it once.<sup>230</sup>

The Legal Stability Regime for Foreign Investors (*Regimen de Estabilidad Jurídica a las Inversiones Extranjeras*, “LSRFI”) may help smaller investors or even major investors before completing a feasibility study, even though most mining investments will try to be protected by the MSR, investments that are under USD \$20,000,000 or that do not involve the handling of 350 MT/day or those performed before completing a feasibility study will not be covered. In those cases, and where the investment qualifies as “foreign” (see Foreign Investment in Chile section), the LSRFI may offer an optional contractual protection for ten years. LSRFI’s guarantees include fixed taxes on corporate income, utilities and distributed dividends, freedom to acquire or dispose of currency, and non-discrimination. In order to qualify, foreign investors must: invest at least USD \$10,000,000 into a business established in Peru or into high-risk investments in Peru, with the effect of directly generating more than 20 permanent jobs and directly generating at least USD \$2,000,000 of export income within three years following the signing of the LSRFI contract.<sup>231</sup>

<sup>226</sup> *Ley 30230*, Peru 12 July 2014, ProInversion, art 6, online: <[http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY\\_30230\\_12072014/LEY30230.pdf](http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf)> [*Ley 3020*]; *LGM*, *supra* note 189 at art 78.

<sup>227</sup> *Ley 30230*, *supra* note 226 at art 6.

<sup>228</sup> *Ibid* at art 6.

<sup>229</sup> *Ibid* at art 5.

<sup>230</sup> *LGM*, *supra* note 189 at arts 78-83, 88. Note: at the time that this article was concluded, the electronic form of the *LGM* had not been updated to include modifications such as the ones instituted by *Ley 30230*.

<sup>231</sup> *DL 662*, *supra* note 193 at arts 10-11, 15, 17; *Ley N° 27342*, Peru 6 September 2000, ProInversion, art 2.1, online: <[http://www.investinperu.pe/RepositorioAPS/0/0/arc/ML\\_GRAL\\_INVERSION\\_LEY\\_27342/20-LEY\\_N\\_27342.pdf](http://www.investinperu.pe/RepositorioAPS/0/0/arc/ML_GRAL_INVERSION_LEY_27342/20-LEY_N_27342.pdf)>.

## FEES

- Mining Concession Request Fee (“*Petitorio de Concesión Minera*”): 10% of one Taxable Unit (*Unidad Impositiva Tributaria*, “UIT”)<sup>232</sup> payable to the governmental registry (*Oficina del Registro Público de Minería*) upon request of a mining concession.<sup>233</sup>
- Mining Right Validity Fee (“*Derecho de Vigencia (en Concesiones Metálicas y No-Metálicas)*”): a yearly USD \$3.00 fee for each requested or awarded hectare and as of the year in which the petition for the mining concession was made. This fee applies to concessions on metallic and non-metallic substances, and is independent of any fee applicable to surface land titles.<sup>234</sup>
- Processing Right Validity Fee (“*Derecho de Vigencia (en Concesiones de Beneficio)*”): a yearly fee reflecting mineral processing capacity, measured in MT/day. Up to and under 350 MT/day requires payment of 0.0014 UIT per each MT/day; from 350 to 1,000 MT/day requires payment of 1.00 UIT; from 1,000 to 5,000 MT/day requires payment of 1.5 UIT; and 5,000 MT/day and above requires payment of 2.00 UIT. Non-metallic processing validity fees are cut by half.<sup>235</sup>
- Mineral Transportation Validity Fee (“*Derecho de Vigencia (en Concesiones de Transporte Minero)*”): a one-time fee equivalent to 0.003% UIT per lineal metre of estimated work area, payable upon application for a mineral transportation concession.<sup>236</sup>
- General Labour Validity Fee (“*Derecho de Vigencia (en Concesiones de Labor General)*”): a one-time fee equivalent to 0.003% UIT per lineal metre of estimated work area, payable upon application for a mineral transportation concession.<sup>237</sup>

## Environmental Law in Peru

Peru has a centralized environmental regulatory framework that is equally applicable throughout its administrative districts. Approval of environmental impact studies is granted by the Ministry of Energy and Mines’ General Directorate of Mining Environmental Affairs (DGAAM), and since July 2015, all projects requiring an environmental impact assessment must also get approval from the Ministry of Environment’s Environmental Certification National Service (SENACE).<sup>238</sup>

<sup>232</sup> As of August 2016, 1.00 UIT equaled PEN \$3,950.00, or USD \$1,193.00 calculated on an exchange rate of USD \$0.30 to PEN \$1.00.

<sup>233</sup> *LGM*, *supra* note 189 at art 118 para 1.

<sup>234</sup> *Ibid*, art 39 paras 1, 2, 6.

<sup>235</sup> *Ibid*, art 46.

<sup>236</sup> *Ibid*, art 47.

<sup>237</sup> *Ibid*.

<sup>238</sup> *Decreto Legislativo N° 1078 Modifica la Ley N° 27446, Ley del Sistema Nacional de Evaluación de Impacto Ambiental*, Peru 27 June 2008, Ministerio del Ambiente, art 11.1, online: <<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>> [DL 1078];

The environmental impact assessment requirements for mining-related activities are established in the National System of Environmental Impact Assessment Law (*Ley del Sistema Nacional de Evaluación del Impacto Ambiental*). All mining-related activities that could cause a negative environmental require one of three types of environmental impact assessments in order to obtain an environmental permit.<sup>239</sup> Certifications are divided into the following three categories:

- Category I (“*Categoría I*”): projects whereby no considerable negative impacts are generated are included in Category I, and only require an Environmental Impact Statement (“*Declaración de Impacto Ambiental, DIA*”). Small exploration projects often fall under this category.<sup>240</sup>
- Category II (“*Categoría II*”): these projects involve operations that could generate moderate environmental impacts which may be eliminated or minimized through simple measures, and therefore require a Semi-Detailed Environmental Impact Assessment (“*Estudio de Impacto Ambiental Semi-Detallado, EIA-sd*”). Medium or large exploration projects usually require this type of assessment.<sup>241</sup>
- Category III (“*Categoría III*”): projects that could cause a quantitatively or qualitatively significant negative environmental impact are classified as Category III, and require a Detailed Environmental Impact Assessment (“*Estudio de Impacto Ambiental Detallado, EIA-d*”). All mining projects require an EIA-d.<sup>242</sup>

Finally, given the importance and vast number of sites with considerable cultural significance sites in Peru, we emphasize that exploitation of minerals in zones considered to be of cultural patrimony is prohibited.<sup>243</sup>

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International Comparative Legal Guides, “Peru Mining 2016” ICLG (2016), at 1.2, online: <<http://www.iclg.co.uk/practice-areas/mining-law/mining-law-2016/peru>>.

<sup>239</sup> CMARN, *supra* note 200 at art 62; DL 1078, *supra* note 238 at art 2.

<sup>240</sup> *Ley del Sistema Nacional de Evaluación del Impacto Ambiental, Ley N° 27446*, Peru 20 April 2001, Ministerio del Ambiente, art 4.1a) 2, online: <<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>> [LSNEIA].

<sup>241</sup> *Ibid*, art 4.1b).

<sup>242</sup> *Ibid*, art 4.1c).

<sup>243</sup> CMARN, *supra* note 200 at art 61.

## Conclusion

Latin America is a mineral rich region with proven and stable jurisdictions to develop mineral exploration and mining projects. Countries like Argentina, Brazil, Chile and Peru (among others) have excellent track-records in developing world-class mines, attracting foreign investment and regulating the mineral exploration and mining industries.

Argentina is certainly putting a great amount of effort in reshaping the country's image as a key Latin American jurisdiction to develop mineral exploration and mining projects. President Macri's administration is making significant improvements to Argentina's legal framework in an effort to attract foreign investments into Argentina's mineral exploration and mining industries and to demonstrate to investors around the world that Argentina is a foreign investment-friendly country.<sup>244</sup> Argentina has great geology and the potential to develop new mineral exploration and mining projects, yet its economy remains in deep recession and faces major challenges for 2017 regarding the reduction of fiscal deficit and inflation. It is expected that as President Macri's administration continues increasing investor confidence, we will start to see more capital being directed to Argentina's mining industry. According to a recent study done by EY in Argentina, there is around USD \$14.5 billion in mining projects pending and the changes Macri is implementing could see investment start to flow as the business environment improves for miners.<sup>245</sup> Until September 2016, 39 companies listed on the TSX and TSX-V with activities in Argentina raised together \$175 million dollars to invest in 140 mineral exploration and mining projects in Argentina. In 2015, 36 companies listed on the TSX and TSX-V raised together almost \$400 million dollars for mineral exploration and mining projects in Argentina.<sup>246</sup> Foreign direct investment in the second quarter of 2016 was of USD \$787 million, a considerable increase compared to USD \$301 million in 2015, but consistent with the second quarters of 2013 (USD \$777 million) and 2014 (USD \$855 million).<sup>247</sup>

Brazil is in the middle of the perfect storm. With the impeachment of President Rousseff in August 2016 and the establishment of President Temer's government, the discussions about the 2013 Mining Code Bill dissipated to only resurge more recently in 2017, as the county is trying to adjust its economy, fight corruption and create growth. Brazil is facing one of its most serious political crisis since the end of the dictatorial period in 1986. The corruption scandal at Petrobras reveled by the carwash investigations is bringing down corrupt politicians and businessmen. This fight against corruption was only possible to begin because of Brazil's recent modern and effective anti-bribery law and regulation enacted during President Rousseff's administration. Brazil has solid and efficient mining and foreign investment laws and regulations. Brazil does not need a brand new mining regulation, but instead needs to deal with the inefficiency of its mining department (DNPM), which is the government body responsible of regulating and overseeing mineral exploration and mining projects throughout the

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<sup>244</sup> An example of these changes is the removal of mineral export taxes (withholdings).

<sup>245</sup> EY, "Argentina Investment Outlook – Winds of Change" EY (June 2016) at 16, online: <[http://www.ey.com/Publication/vwLUAssets/Argentina\\_Economic\\_Outlook/\\$FILE/ATTVWO5E.pdf](http://www.ey.com/Publication/vwLUAssets/Argentina_Economic_Outlook/$FILE/ATTVWO5E.pdf)>.

<sup>246</sup> TMX, "A Capital Opportunity: A Global Market for Mining Companies", November 2016. Please note that the version of this presentation cited here is not currently available online. A previous version is nevertheless available: TMX, "A Capital Opportunity: A Global Market for Mining Companies", 2014, online: <<https://www.tsx.com/resource/en/99>>.

<sup>247</sup> Trading Economics, "Argentina Foreign Direct Investment", online: <<http://www.tradingeconomics.com/argentina/foreign-direct-investment>>.

country. It also needs to implement specific improvements on its mining regulation to update Brazil's 1967 Mining Code to allow, for example, the granting of security over mineral rights, but certainly does not need an entirely new mining law and regulation. The approach that the new Brazilian Government is taking to improve the legal framework for the mineral exploration and mining industries is a breath of hope that the country will finally put an end to ten years of discussions and move in the right direction, provided the new regulation does not increase tax or create other conditions for the granting of mineral rights not existent elsewhere. Brazil's great geology, domestic market and strength of its institutions place Brazil as one of the key jurisdictions for mineral exploration and mining investments in the region and we will continue to see during the next couple of years more capital being directed to this important industry. Until September 2016, 29 companies listed on the TSX and TSX-V raised together a bit over \$275 million to invest in over 90 mineral exploration and mining projects in Brazil, a significant drop from almost \$500 million dollars in 2015.<sup>248</sup> Foreign direct investment in 2016 reached its peak of USD \$8.7 billion in Q4, above the expected USD \$6.5 billion.<sup>249</sup> Two major mining M&A transactions in 2016 worth mentioning are the sale of Vale Fertilizer's division to Mosaic (\$2.5 billion) and sale of Anglo Niobium and Phosphate business for China Molybdenum Co for \$1.5 billion).

The Chilean economy has been suffering the consequences of low copper prices, an unpopular President Bachelet administration and aggressive reforms (tax, education and labour reforms). However, the acquisition by Antofagasta of a 50% stake in Barrick's Zaldívar copper and gold project in 2015 for USD \$1 Billion dollars demonstrates the enduring size, strength and potential of Chile's copper industry. Furthermore, the upcoming presidential elections in late 2017 will almost certainly bring new dynamic initiatives to instill further strength into Chile's mining industry, which has suffered from considerable decay since the fall of the prices in commodities. Chile is home to several major copper companies and to 35 companies listed on the TSX and TSX-V. Until September 2016, companies listed on the TSX and TSX-V raised together over \$460 million dollars for mineral exploration and mining projects in Chile, a significant increase from the \$300 million dollars in 2015 and almost \$85 million in 2014.<sup>250</sup>

Peru is one jurisdiction in Latin America where we are seeing a tremendous increase in mining transactions. A stable mining jurisdiction, Peru welcomes foreign investments and operates under a stable economy and regulatory environment. An EY report showed that an estimated USD \$60.9 billion is expected to flow into the country's mining industry over the next five to ten years.<sup>251</sup> There are currently 59 companies listed on the TSX and TSX-V that together raised on the TSX and TSX-V over \$900 million to invest in over 150 mineral exploration and mining projects; a sharp increase from almost \$100 million raised in 2015 and \$220 million raised in 2014.<sup>252</sup>

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<sup>248</sup> *Supra* note 246.

<sup>249</sup> Trading Economics, "Brazil Foreign Direct Investment", online: <http://www.tradingeconomics.com/brazil/foreign-direct-investment>.

<sup>250</sup> *Supra* note 246.

<sup>251</sup> EY, "Peru's Mining & Metals Investment Guide 2015/2016" EY (2015), at 13, online: [http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa\\_Minera\\_2015-2016/\\$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf](http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa_Minera_2015-2016/$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf).

<sup>252</sup> *Supra* note 246.

As noted throughout this paper, mining law and regulations in Latin America are very consistent and share general common mining law principles such as:

- *First-come First-served Principle*: this principle secures the rights of the holders of mineral exploration permits and mining concessions to exclusively explore and exploit a certain area for minerals, on a first-come first-served basis, meaning the first to claim;
- *Principle of Non-Discrimination*: this principle ensures that nationals and foreigners are treated equally, providing that a foreigner should have the same rights and be treated the same way as a national in its home country;<sup>253</sup>
- *Principle of Transferability*: mineral rights are freely transferred, provided the assignee fulfills the general requirements under local law;
- *Principle of Sustainable Development and Corporate Social Responsibility*: mineral exploration and mining companies shall be committed to behave ethically and responsibly, encouraging environmental stewardship and community engagement, contributing to economic development while improving the quality life of the workforce, their family, local community and society at large;
- *Principle of Transparency*: one of the pillars of democracy and rule of law, as well as of the international order, this principle generally translates into the obligation of States to make available and accessible, in a timely manner and without discrimination, information and documents relating to policies, activities, decisions, norms, rules and procedures, in our case, in connection with their respective mining regulation. These principles are well embedded into Argentina's, Brazil's, Chile's and Peru's mining regulation, and are accepted and applied there.

Our paper has highlighted interesting similarities and differences in the approach that Argentina, Brazil, Chile and Peru have in connection with the regulation of mining and foreign investment. It is interesting to note that Peru's all-in-one concession system for exploration and mining is not observed in our three other case studies, nor are Peru's independent concession requirements for processing, general labour, and transportation in relation to mineral activities. In practice, this means that, for instance, the installation of a conveyor belt would require a transportation concession to be granted. Consequently, mining projects require multiple concessions in order to be able to fully operate.

One of the main sources of government income from mining operations are royalties, which can be generally defined as the amount to be paid by a mining company in compensation for the right to exploit minerals and develop mining operations, normally calculated based on a percentage of a company's revenues. As royalties vary according to the type of minerals and local policies, a policymaker needs to keep in mind while establishing or reviewing its current mining taxation regime how the royalties interact with other applicable taxes, as well as the effects that increasing or decreasing a certain royalty will have on the global mining industry and how it could affect (positively or negatively) the competitiveness of mining companies in their domestic and international markets as

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<sup>253</sup> A few exceptions to these principles exist in several jurisdictions in Latin America, Brazil and Peru included, for example when regulating mining activities in the border zone of a country.



revenues from mining operations fluctuate according to commodity prices and global economy. In other words, they need to make sure that the level of royalty is competitive and efficient vis-à-vis the royalties adopted by other countries.

Before considering changes to a mining regulation, policymakers need to ask how to design and strengthen general economic policies to attract foreign investment and sustainably and responsibly develop the mining industry in such a way that it becomes a major pillar of domestic economy. A World Bank study on mining royalties suggests that from 1980 until 2000, over 110 nations have either replaced their mining law or made major amendments to it.<sup>254</sup> The past decade is also full of examples of countries that have changed their mining laws and/or are considering changes and improvements to current mining or mining-related regulation.<sup>255</sup> A nation with a strong desire to attract investors should consider either forgoing a royalty tax and relying on the general tax system or recognizing investors' strong preference to be taxed on their ability to pay. The chart<sup>256</sup> below summarizes royalties on copper, gold, iron ore, phosphate, potash and silver in Argentina, Brazil, Chile and Peru:

	ARGENTINA	BRAZIL	CHILE	PERU
<b>Format</b>	Provincial Law	National Law (CEFEM)	None	National Law
<b>Royalty Type (non-industrial minerals)</b>	Most Provinces: no royalty; others: ad valorem	Ad Valorem	N.A.	Ad Valorem, sliding scale based on annual cumulative sales
<b>Royalty Rate</b>	0-3%	0.2-3%	N.A.	.0-3% (exported minerals 1-3%; if no international price 1%; small scale 0%)

Argentina, Brazil, Chile and Peru are constantly trying to improve their attractiveness as key jurisdictions in Latin America to invest in mineral exploration and mining projects. In December 2015, the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) welcomed Brazil as their ninth member, together with Australasia, Canada, Chile, Europe, Mongolia, Russia, South Africa and the USA.<sup>257</sup>

We couldn't finalize our paper without touching on the importance of the relationship between Canada and Latin America for the mineral exploration and mining industries. Canada has been an important commercial partner for Argentina, Brazil, Chile and Peru, especially in the mineral exploration and mining industries; the relationship between Canada and key Latin American countries has been strengthening each year and has great potential to solidify and expand even more. Despite the challenges that mineral exploration and mining companies are facing globally, Canada continues to be an important hub for companies with projects in Latin America and is investing heavily in the region;

<sup>254</sup> *Otto et al., supra* note 7 at xiii.

<sup>255</sup> See e.g. Brazil, which has for years been debating whether a new mining law and regulation is necessary. On the environmental realm, Chile instituted several changes during the past decade, increasing the threshold that companies need to reach in order to get approval for EIAs, and instituted a new regime to attract foreign investment (which was conceived to a great extent as an incentive to attract mining investment following the slowdown of commodities). Argentina also recently cut export taxes on minerals, which, even though not constituting an important reform from the legal perspective, considerably increased the competitiveness of companies established there.

<sup>256</sup> *Otto et al., supra* note 7 at 91.

<sup>257</sup> CRIRSCO has a strategic partnership with the International Council on Mining & Metals (ICMM).

during the past three years, there were over \$3.8 billion dollars raised on the TSX and TSX-V for mineral exploration and mining projects in Argentina, Brazil, Chile and Peru, and during the past 5 years companies listed on the TSX and TSX-V raised over \$10 billion for projects in Latin America.<sup>258</sup>

Chile and Canada have a long history of cooperating and establishing mechanisms to foster mineral exploration and mining activities between the two countries. The Canada-Chile Free Trade Agreement has been in force since 1997, and was amended in 2012 to provide preferential access to Canadian financial institutions to the Chilean market and to benefit mining companies with investments in Chile through increased cooperation regarding best mining practices.<sup>259</sup> The latter amendment has been of particular benefit to Canada given that Chile constitutes its most important direct investment destination in Latin America and seventh worldwide, accounting for \$13.8 billion in 2014. Both countries are also bound by the Avoidance of Double Taxation Agreement since 2000,<sup>260</sup> More recently (March 2014), Chile also took the lead in Latin America when the TSX-V and the Santiago Stock Exchange entered into an agreement to create a streamlined dual listing process providing companies with access to public venture capital markets in both Chile and Peru.<sup>261</sup> No other country in Latin America has this type of system.

Canada has Foreign Investment Promotion & Protection Agreements in force with the following countries in Latin America: Argentina, Barbados, Costa Rica, Ecuador, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela,<sup>262</sup> also important to note that Canada has bilateral tax treaties with Argentina (Dec/1994), Brazil (Dec/1985), Chile (Oct/1999) and Peru (Feb/2003), among other Latin American countries. There are great opportunities in Latin America for mineral exploration and mining companies and Canada is certainly taking the lead and investing a great amount of effort in maintaining its position as a key partner for companies operating in the region.

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<sup>258</sup> *Supra* note 246.

<sup>259</sup> Global Affairs Canada, "Chile Market Access Plan 2015-2017", online: <[http://international.gc.ca/global-markets-marches-mondiaux/markets-marches/map\\_chile-pam\\_chili.aspx?lang=eng&pedisable=true](http://international.gc.ca/global-markets-marches-mondiaux/markets-marches/map_chile-pam_chili.aspx?lang=eng&pedisable=true)>. Note that in cases where a company's investment is governed by the *DL 600* (not applicable to new investments as of January 2016) and no investment treaties impeding double taxation exist between Chile and a given jurisdiction (an uncommon occurrence for Chile), the Foreign Investment Committee may reduce tax rates wherever such reduction is made on an amount that the Committee considers to exceed acceptable international rates and exclusively benefits the investor (*DL 600*, *supra* note 128 at art 15); Embajada de Canadá en Chile, Press Release, "Renovación del Acuerdo Marco de Asociación Estratégica Canada-Chile" (17 August 2015), online: <<http://www.canadainternational.gc.ca/chile-chili/highlights-faits/2014/renewed-canada-chile-strategic-partnership-framework-spa.aspx?lang=spa>>.

<sup>260</sup> Global Affairs Canada, *supra* note 259.

<sup>261</sup> CNW, "The Santiago Stock Exchange and TSX Venture Exchange Enter into Agreement that will Lead to the Development of a New Venture Market in Chile", *News Wire* (3 March 2014), online: <<http://www.newswire.ca/news-releases/the-santiago-stock-exchange-and-tsx-venture-exchange-enter-into-agreement-that-will-lead-to-the-development-of-a-new-venture-market-in-chile-513851021.html>>.

<sup>262</sup> Canada, Natural Resources Canada, "Exploration and Mining in Canada: An Investor's Brief", (Ottawa: February 2016) at 7, online: <[http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/poli-poli/pdf/Investment\\_Brief\\_e.pdf](http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/poli-poli/pdf/Investment_Brief_e.pdf)>.

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