New developments in Bolivia mining legislation foster private investment in the sector

玻利维亚采矿业立法的新发展鼓励私人投资进入该行业

Recent modifications to the legal framework that regulates the mining sector in Bolivia transform the current concession-based system into a contractual-based business model where the State will be the proprietor of mining rights and mining companies will be contractors providing services to the State. The legislative change will hopefully ameliorate the risk of nationalization of mining projects, bring a long-awaited measure of stability and boost the exploitation of Bolivia's vast mineral wealth.

近期监管玻利维亚矿业的法律框架的修订将目前的行政特许权模式的系统改成了合同性质的商业模式。这样政府将是矿权的所有人，矿业公司将是为政府提供服务的承包商。该法律修订会减少矿业项目被国有化的风险,但愿能够带来期盼已久的稳定措施，并促进玻利维亚巨大矿产资源的开发。

Background information

Until Supreme Decree No. 29117 of 1 May 2007, was passed, the State granted concessions to private individuals and entities which granted property rights over the minerals and metals within the concession area. However, the Supreme Decree declared all areas subject to "Fiscal Reserve", except those under concessions. In practice, this meant not only that that the State reserved for itself the prospection and exploration activities to be carried out in the affected areas, but also that it holds a preferential right to exploit them should minerals be found. All mining activities in the Fiscal Reserve were deemed no longer subject to concessions, but rather to the execution of Joint Production or Leasing Agreements with COMIBOL, the state mining company. As a general rule, COMIBOL is entitled to 50% of the profits.

The current Constitution of the Plurinational State of Bolivia, establishes that the State shall grant mining rights to private entities and national or foreign individuals through Mining Contracts and that all existing concessions must be transformed into Mining Contracts.

To date, no new Mining Law has been passed to regulate the legal regime described above. Existing concessionaires continue to operate freely within the limits of their corresponding areas but may no longer sell, encumber or transfer the concessions by way of inheritance.

Applicable mining taxes

Additional profit tax of 12.5%

This tax applies in addition to the regular 25% annual profit tax, provided the international price of the minerals continue to be equal or greater than those indicated below. The tax does not apply to Mining Cooperatives. Furthermore, companies producing metals and non-metallic minerals with added value are only obliged to pay 60% of the additional profit tax, which reduces the Additional tax rate to only 7.5%.

Mining Royalty ("MR")

The MR is levied as a percentage of gross revenues, with the percentage based on the official price in US Dollars of the mineral multiplied by its weight, paid at the time of each export shipment.

The official price of the mineral is determined by the Executive Branch, which shall utilize the average of international prices for each two-week period, as established by the London Metal Exchange or other international recognized reference. If an official price cannot be obtained, the gross revenues shall be determined by the sales price contained in the corresponding invoice.

The amount of the royalty varies depending on the mineral and metal in question, its state and official international price. This can range from 1% to 7%.

When determining the net profit of mining activities, voluntary contributions made to the municipalities may be deducted as expenses.

The MR may be credited to the profit tax when the official quotation of certain minerals or metals at the time of paying the MR is inferior to the following:

- Gold USD 400
- Silver USD 5.55
- Zinc USD 0.53
- Lead USD 0.30
- Tin USD 2.90
- Antimony USD 2,802
- Wolfram USD 80
- Copper USD 1.04
- Bismuth USD 3.50
- Iron (Slabs) USD 340 per metric ton

In the event that the prices are equal or superior to the aforementioned prices, no tax credit applies.

Mining Fee / Patent ("MF")

The MF is an annual fee that is progressive and based on the number of years of the concession. The Executive Branch updates the amount of the fees annually based on the variation of the US Dollar to the Boliviano, plus a correction factor equivalent to 50% of the inflation rate in the US.

The new Mining Law

A new mining law is expected to be passed this year. The main aspects of this law are likely to be:

a) The new law shall supersede any prior laws or regulations dealing with mining activities of any kind and type within the Bolivian territory.

b) All mining resources are the direct, undivided and perpetual property and domain of the State[1]. However, property rights over the land and assets used for mining activities will be guaranteed.

c) Mining activities such as exploration, production, refining, industrialization, transport and commercialization are of public utility and strategic interest. They are to be developed in the interests of the State, society and of the titleholder of the rights, adhering to environmental regulations and social security for the mining workforce.

d) Mining activities may be carried out by state companies, private entities (national or foreign) of any kind, mining cooperatives and community mining companies[2].

e) Mineral residues will belong to the entity that carried out such activities and may be subject to independent development or production agreements with other private or public entities.

f) Mining rights entail certain prerogatives granted to holders by the State for the development of mining activities throughout the whole mining production chain.

g) The State shall respect those rights acquired by private entities or cooperatives prior to the entry into force of the new law which are subject to transformation into Mining Contracts.

Contracts within a Fiscal Reserve:

a) Association Contracts - These contracts will be entered into between the State and private entities for joint mining activities prior to a public tender. Under no circumstances will the State be entitled to less than 50% of the net profits of all taxes and royalties. Both parties will have equal representation in the administration board.

[1] This principle is in accordance with article 349 of the Bolivian Constitution.

[2] These types of companies are new under Bolivian law and refer to the right of communities to be organized in such a way that they may independently develop mining activities.

b) Operation Contracts - This kind of contracts will be entered into between the State and private entities for certain joint mining activities, prior to a public tender. Under no circumstances will the State be entitled to less than 50% of the net profits of all taxes and royalties. Both parties will have equal representation on the administration board.

c) Leasing Contracts - These contracts will be entered into between the State and mining cooperatives for mining activities carried out by their own means and under which the latter must pay 1% leasing fees to the State on all sales. Prior leasing contracts entered into with private companies shall expire under their terms with no renewal.

Contracts within the Private Area – These contracts are awarded by the State to private entities who wish to carry out mining activities.

a) Exploration and Prospection Contracts – The contracts will be subject to certain compliance conditions and granting preferential rights over those areas explored for future exploitation via Exploitation Contracts.

b) Exploitation Contracts – These may only be granted for exploitation purposes, but may also include exploration, industrialization, commercialization and other mining activities.

<u>Transformation of Mining Concessions into Mining Contracts</u>

As anticipated above, all current concessions must be transformed into Exploration and Prospection or Exploitation Contracts. Existing mining concessionaries must request the transformation to the Ministry of Mining and Metallurgy and meet a number of legal requisites as established by the specific regulations. Concessionaires will be permitted to continue and operate in this capacity until the concessions are transformed into Contracts.

Current concessionaires who comply with the time limits set by law to transform the concessions into contracts, will benefit from priority over the concession areas and will therefore not be subject to a public tender process.

The Mining Contracts entered with the State will grant the private entity the right to carry out mining activities within the authorized area.

Congress must approve all Mining Contracts except for Leasing Contracts. The Mining Contracts are non-assignable unless approved by the Ministry of Mining and Metallurgy and will come into effect once they are duly registered in the Mining Registry. All disputes are subject to Bolivian law.

Conclusions

In 2007, the State expropriated the Vinto smelting plant (formerly a public entity) owned by Glencore International AG. In April 2011, the government announced the nationalization of mines owned by Pan American Silver Corp. and Glencore International AG (all formerly owned by COMIBOL). However, the government temporarily reversed this decision after the mining unions of such mines publicly rejected the nationalizations. In June 2012, the government moved forward to nationalize 45% of Colquiri mine, partly operated by Sinchi Wyra, an affiliate of

Glencore International AG, however, the nationalization of the mine is conditioned to the government's agreement to secure the miners' source of employment of several mining cooperatives.

Given the current modifications of the regulatory regime applicable to the mining industry, the exposure to nationalization of international mining companies operating in Bolivia will be somewhat diminished through the contractual business model that is currently being implemented. Primarily because the State will be the proprietor of the mining rights, and mining companies will be mere contractors providing services to the State. Therefore, even though the profitability of mining projects might be diminished due to these new policies, the new legal framework should bring a long awaited measure of stability that will hopefully attract foreign investors to exploit Bolivia’s vast mineral wealth.

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