URÍA MENÉNDEZ
LATIN AMERICAN NETWORK

OUTBOUND INVESTMENTS INTO LATIN AMERICA

A PAN-AMERICAN OVERVIEW FOR CHINESE INVESTORS

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IMPORTANT NOTE

This Guide is a collective work. It draws upon the joint experience of our group of independent leading law firms advising foreign direct investors in Latin America and is the tangible outcome of a number of joint seminars and training programmes for our clients and associates, and the common know-how developed by our Sino-Latin American Multilateral Practice Group, which is reflected in a number of publications and briefings that our firms regularly prepare for Chinese clients and contacts. The preparation of this Guide was made easier by that shared pool of knowledge and resources, as well as by the contributions from Uría Menéndez's Asian, European and Latin American offices (Buenos Aires, Chile, São Paulo, Lima and Mexico City) and from the leading independent firms of the group in Argentina (Marval, O'Farrell & Mairal), Bolivia (C.R.&F. Rojas Abogados), Brazil (Dias Carneiro Advogados), Chile (Philippi, Yrarrázaval, Pulido & Brunner), Colombia (prietocarrizosa and Brigard & Urrutia Abogados), Ecuador (Pérez, Bustamante & Ponce Abogados), Mexico (Galicia Abogados), Peru (Payet, Rey, Cauvi, Pérez, Mur), Uruguay (Guyer & Regules) and Venezuela (ARAQUEREYNA) who dedicated their valuable time and constructive thoughts in reviewing, updating and improving this Guide. This Guide is intended for information purposes only and does not constitute legal advice. If any further clarifications are required, any of the contributing firms are available to be contacted.

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AUTHOR'S PRESENTATION

Uría Menéndez

Uría Menéndez is a 500-lawyer firm widely recognized as a **leading European legal service provider** (Legal Week 2010), particularly in Spain and Portugal, where it has been consistently acknowledged as the leading law firm (Who's Who Legal 2014, IFLR 2013, Chambers Europe 2011, Legal Alliance Summit 2011, The Lawyer 2010, PLC Which Lawyer? 2009).

Uría Menéndez provides legal advice in **all areas of law**, and is the only law firm in Spain that ranks as a top tier firm in all practice areas (Chambers Global and The Legal 500 2013, Spain).

The firm has **15 offices in Europe, Asia and the Americas**. Along with its unmatched reputation in Spain and Portugal, with five offices in the largest Latin American economies (Argentina, Brazil, Chile, Mexico and Peru), Uría Menéndez has the ability to provide some of the broadest legal coverage in the region and has been acknowledged as the "go to" law firm for complex corporate and financial matters in Latin America (Harvard Business School, 2008).

Uría Menéndez's Latin American Network

Who we are

Uría Menéndez's Latin American Network consists of a group of over 1,400 lawyers recognized as the world's best network in the region (PLC Which Lawyer Awards 2009).

We provide clients a team of lawyers that operates seamlessly as a single law firm through:

- **shared experience** (we have worked together in the main FDI transactions in Latin America and Europe);
- **shared quality** (we are the leading firms in each of our respective jurisdictions); and
- **shared operational platform** (we operate joint offices throughout Latin America, cross-secondment programs, annual training for our associates and multilateral practice groups for our partners).

What we do

We focus on investment work, particularly assisting Chinese entities with their outbound projects in Spain, Portugal and Latin America. Over the years, both individually and as a group, we have developed a number of initiatives with the Chinese business community, the government and academia.

- As from April 2009, the **China Council for the Promotion of International Trade** (CCPIT) relies on our group to support their 70,000 members on their investments in Spain, Portugal and Latin America.
- On behalf of the **All China Lawyers Association** (ACLA), and with the approval of the Ministry of Justice of the People's Republic of China (PRC), we operated for five years the sole legal training program entrusted to a private organization by Chinese authorities, under which Chinese lawyers join our Latin American and European teams to gain exposure to cross border work involving China.
- Uría forms part of the consortium that operates the **China EU School of Law** (CESL), the only private law school in China established under the auspices of the European Commission and the Chinese government, and runs an educational program for CESL directed to Chinese lawyers on overseas investment in Europe.

In response to our increased involvement in China, we set up our **Beijing office** in October 2009 to assist Chinese outbound investors in their cross border ventures. To that end, and depending on the complexity of the deal and client preference, we put together an integrated team of lawyers in Beijing and Latin America or Europe to work from their respective jurisdictions.

- **From Beijing**, Latin American and other international lawyers contribute first-hand experience in China related work and overcome the challenges of having to liaise, coordinate and supervise a transaction in multiple time zones, languages and cultural environments.
- **In Latin America and Europe,** legal professionals with unparalleled expertise, influence, and track record advising foreign direct investors provide seamless execution capabilities in the target jurisdiction.

What it means for the client

The dominant position we enjoy in our respective markets has allowed us to maintain independence. That independence affords our clients:

- **flexibility:** we have no incentive to involve offices or lawyers other than those that are strictly necessary;
- **efficiency:** if a member of the group has a conflict of interest, we simply replace the firm without affecting our relationship with the client; and
- **value for money:** each member has its own fee structure, unlike many global firms that charge identical rates for all their lawyers regardless of location.

Applying this formula, we have built up a remarkable track record on Chinese financing and investments in Europe and Latin America, ranking fifth worldwide for value of deals in Latin America (Thomson Reuters, Mergers and Acquisitions, Legal Advisors, 2013) and ninth among worldwide legal advisors on Chinese transactional work (Bloomberg, Mergers and Acquisitions Legal Advisory League Tables, 2013).

LEGAL SYSTEM OVERVIEW

1. Introduction

Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Uruguay and Venezuela (the "Latam Countries"), as with all the other Latin American jurisdictions and mainland China, have a civil law system. Furthermore, if their legal systems are taken at face value, it becomes apparent that laws seem to be virtually copied from one country to another, a feature that probably stems from their common Spanish legal heritage.

Nevertheless, the way of applying and enforcing these regulations in the different Latam Countries varies greatly. In terms of contract enforcement before the courts, for example, there is a significant difference between countries in relation to the time and money required to recover a contractual claim. An unfortunate common feature that Chinese investors may encounter when enforcing contracts in any of these countries is that it will be more cumbersome than in their own country. The following table illustrates this point clearly.

COUNTRY	CONTRACT ENFORCEMENT	
	Time (days)	Cost (% claim)
Mexico	400	31.0
China	**406**	**11.1**
Peru	426	35.7
Chile	480	28.6
Venezuela	610	43.7
Ecuador	588	27.2
Argentina	590	20.5
Bolivia	591	33.2
Uruguay	725	19.0
Brazil	731	16.5
Colombia	1,288	47.9

Source: International Finance Corporation and World Bank (2013)

The conclusion is clear: unless contractual enforcement shortcomings are taken into account when structuring the deal from a legal standpoint, investors will receive dissimilar protection. When dealing with acquisitions, for example, collaterals permitting private enforcement (such as escrow accounts) are far more important in Latin America than in other Western countries. Most importantly, foreign investors should insist on arbitration as an alternative dispute mechanism for their investment contracts. Arbitration is a well-accepted, widespread and sophisticated means of settling investment disputes in the region. The enforcement of arbitral awards through an exequatur or similar proceeding is simple and non-controversial, probably because all the Latam Countries are bound (as is China) by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

FOREIGN DIRECT INVESTMENT

2. Are there any restrictions on foreign investments?

In comparison with other countries, the general FDI regime in Latin America is extremely liberal and welcoming to external capital inflows for productive investments. Equal treatment between foreigners and nationals is the general rule established in local foreign investment statutes, bilateral investment treaties (BITs) and, in some cases, the countries' constitutions.

Unlike countries such as Australia or India, there are no general foreign investment board approval requirements – except in Mexico where, regardless of the sector, foreign investments exceeding forty-nine percent of the capital stock of a local company, and with a total value of assets higher than certain monetary thresholds, must be approved by the government. However, as in all countries throughout the world, there are certain specific sectors:

- that are restricted for foreign investors as they affect national security (nuclear power, national defence, real estate close to national borders, etc.) or are particularly sensitive as regards national interests (farmland in Argentina and Brazil[1] ; certain areas of the health system and of the aerospace industry in Brazil; postal services in Brazil and Mexico; broadcasting services in Uruguay, Chile and Mexico; domestic land transportation in Mexico and Uruguay; retail sale of gasoline and liquefied petroleum gas and oil distribution in Mexico; hazardous waste disposal and private security in Colombia; lotteries and locally printed Spanish-language newspapers and magazines in Venezuela; etc.);
- where foreign investors are required to form a joint venture with a local partner (such as, certain media or broadcasting services in Argentina, Brazil, Colombia, Peru or Venezuela; insurance in Mexico; certain air transportation ventures in Brazil, Mexico, Peru and Chile; or certain oil and gas activities in Venezuela where foreign investors are only allowed to be minority shareholders in a company controlled by the government);

1.- In Argentina and Brazil, the restrictions mainly limit, depending on location and other factors, the area of farmland on which a foreigner can invest even if the investment is carried out by a local company controlled by foreigners. Furthermore, in Brazil, even if the area does not exceed the maximum thresholds, the foreign investor must, as a general rule, obtain administrative authorisation for any acquisition or lease transaction aimed at implementing agricultural, cattle-raising, industrial or land settlement projects in rural land.

- where foreign investment in certain specific types of entities requires prior approval or 'habilitation' by the government (such as investing in a bank in Brazil, where the investment must be approved by a decree).

There are, however, structured solutions available for foreign financial investors to invest in some of these restricted sectors (for example, in Mexico[2], by way of 'neutral investment schemes' structured through Mexican trusts or entities approved by the Ministry of the Economy).

3. Are there any exchange controls or restrictive currency regulations?

With few exceptions, Latam Countries do not impose foreign exchange controls or restrictions: foreign exchange is freely convertible, and there are no particular constraints applicable to overseas payment of dividends or to the repatriation of investments.

There are foreign exchange controls in Argentina and Venezuela, although these are quite different in nature. In Argentina, subject to certain requirements, foreign direct investors are allowed to carry out those transactions that are most relevant for them (transfer of dividends, repatriation of investments, imports of equipment, payments of services and financial debt servicing, etc.). Venezuela has tighter exchange controls and, recently, alternative means of access to foreign exchange (through swapping government bonds) have been called into question (although the government attempted to counter the foreign exchange shortage by setting up a bond/trading system run by the Central Bank (SICAD)).

Although there are no proper foreign exchange restrictions, it should be noted that in certain countries (most notably, Brazil) the government monitors and taxes specific foreign exchange transactions to curb speculative inflows and portfolio investments, as well as to control the effect of the inflow and outflow of funds on the fluctuation of local currency. In Brazil, the inflow of funds for the acquisition of listed stocks (except for certain transactions with derivatives) and the constitution of a guarantee margin required by stock exchange are subject to a federal tax on currency exchange, currently at a 0% rate that may be increased up to 25%. Ecuador charges 5% on most currency remittances abroad, excluding dividends subject to satisfaction of specific requirements.

2.- At the time this guide was printed, certain Constitutional amendments that would open new investment opportunities for foreigners in the energy sector had just been passed by the Mexican Congress. The extent of such opportunities will depend on the supplementary legislation, which is still under development.

Inevitably, there are reporting obligations on foreign exchange transactions in virtually all Latam Countries (Peru is a notable exception). Any failure to comply with these requirements generally results in fines and, in some cases, the forfeiture of benefits or the inability to exercise certain rights to which foreign direct investors are entitled.

4. Are there any special benefits or protection granted to foreign investors?

Public aid, subsides, tax breaks and refunds are available in certain Latam Countries and for certain sectors. Many take the form of a reduction in customs duties or taxes on imports of capital goods to be used in establishing a new foreign direct investment, such as the *maquila* programmes set up in Mexico for the manufacture of goods for future export.

In some of these countries (e.g. Brazil, Chile and Peru) foreign investors may enter into investment agreements with the government and be granted certain specific rights and benefits (in Peru, maintaining certain investors' legal rights and the income tax remaining unchanged; in Chile, access to foreign exchange to repatriate capital and profits; in Chile and Brazil, more favourable tax treatment for certain investments above a threshold amount, etc.). Moreover, Chinese investors are generally granted enhanced protection under a number of Bilateral Investment Treaties that China has entered into with all the Latam Countries (except Bolivia and Brazil), as well as by the Free Trade Agreement (FTA) recently entered into between China and Peru (there is an FTA in place between Chile and China, but it does not contain substantive investment protection rules).

Both the FTA and the BITs provide protection against unfair treatment, expropriation and inconvertibility, among other relevant areas for foreign direct investors. It should be noted, however, that most of these BITs belong to the 'first generation' of Chinese BITs (negotiated when China was predominantly a destination for inbound investment) and characterised by limited fair treatment rights and restricted investment dispute resolution mechanisms (generally limited to disputes arising from compensation due to expropriation). This shortcoming may be circumvented by channeling the investment in Latin America through companies incorporated and domiciled in other countries. With the broadest and most substantial network of BITs with Latin America, Spain is a popular choice.

STRUCTURING THE DEAL

5. How are acquisitions structured from a corporate perspective?

Acquisition deals in Latin America may be structured as asset deals or share deals, as in other countries around the world.

In an asset deal, the purchaser acquires individual assets and liabilities from the target company. This will generally require third party consents if agreements or licences are assigned (as opposed to some European countries where the consent of third party contractors, such as lessors or insurance providers, is not generally required for the subrogation of the acquirer of an ongoing concern). Furthermore, from a mechanical standpoint, asset deals will involve an individual assignment or transfer of each asset, agreement or liability (which means an additional level of complexity and greater transactional costs).

This drawback is mitigated to a certain extent, as most Latin American jurisdictions (including Argentina, Brazil, Colombia, Ecuador, Mexico, Peru and Uruguay) offer legal mechanisms to transfer assets and liabilities constituting an ongoing concern in a single, relatively simple transaction. It should be noted that in all these countries, the non-fulfillment of the relevant legal requirements to transfer an ‘ongoing concern’ has certain adverse effects on the parties, including, in some cases, the joint and several liability of the seller and purchaser for certain debts. In addition to the foregoing, even if, as a general rule, purchasers of assets and liabilities constituting an ongoing concern in the Latam Countries will be protected against the unwilling assumption of undisclosed liabilities or contingencies, it is worth highlighting that they will normally be liable for certain pre-acquisition tax and labour liabilities associated with the ongoing concern.

Moreover, in some jurisdictions, the acquirer of a single real estate asset will be liable for associated real estate taxes (in Brazil and Mexico, for example) or environmental liabilities (in Argentina and Brazil, for example). Purchasers are often able to assess these tax liabilities by requesting tax clearance certificates before the closing date (and adjust the price accordingly). Meanwhile, in some countries (such as Argentina), they can avoid inheriting tax liabilities by notifying the tax authorities of the transaction and prompting a response which, if unanswered within a certain period of time, will exonerate the purchaser from any tax liability in connection with the assets or business acquired.

The other common way of structuring an acquisition is a share deal, where the purchaser acquires the shares of the target company. Other than what is required in accordance with prudent supervision in some regulated areas (credit entities, for example) third parties have no say in a change of control situation and, in particular, senior officers have no statutory rights in the event of a change of control, as would be customary in other jurisdictions (e.g., termination or additional compensation). Buyers of concessionaires should be aware, however, that while the consent of the contracting authority is not required as a matter of law to proceed with a change of control (excluding Brazil and Ecuador), the bidding terms or governmental contracts of many Latam Countries would customarily contain this type of restriction (this is the case, for example, in Colombia, Mexico and Peru).

Frequently, a structural disadvantage of share deals is that the acquirer is required to deal with minority shareholders. However, in many of the Latam Countries, 'squeeze out' procedures are in place, which allow the purchaser of a majority stake in a company to force the minority shareholders to sell their holdings (subject to certain requirements and limitations, this is the case in Argentina, Brazil, Chile and Peru as regards listed companies, and in Venezuela and Colombia for simplified stock companies).

Within a global context, another issue arising in share deals is the inability to leverage the acquisition financing on the assets of the target company due to corporate restrictions dealing with 'financial assistance' (i.e., the prohibition of a target company to provide credit facilities of any kind to finance the acquisition of its own shares or any kind of collateral for such purpose). In this respect, the Latam Countries offer a competitive regulatory advantage for acquirers as they do not normally prohibit or restrict these leveraged acquisitions (except for Peru, where 'financial assistance' is prohibited, or in Venezuela, where it may be deemed contrary to the regulation restricting companies from acquiring their own shares in certain circumstances, or in Brazil, where although there is no general prohibition of financial assistance itself in Brazil, leveraged acquisitions may not be possible in practice due to other legal restrictions).

6. How are Chinese acquisitions structured from a tax perspective?

Traditionally, domestic tax laws in capital-importing countries (developing nations) establish high withholding tax rates on cross-border payments to foreign taxpayers. This enables these countries to increase their tax revenues. In general, this holds true in Latin America, where most countries apply high withholding tax rates on the repatriation of source income to foreign investors. For this reason, Chinese investors in the region should

work on setting-up an efficient tax structure from the outset that allows for the repatriation of income (in the form of dividends, interests, royalties or gains). This would reduce or eliminate, where possible, the tax leakage in the source country and hence increase the after-tax return on investments.

In this regard, the tax efficiency of the repatriation of income may be enhanced by legitimately using an intermediate holding company to hold the Latin American subsidiaries. The ideal holding entity will be resident for tax purposes in:

- a country boasting a large and favourable tax treaty network with Latin American countries;
- an attractive holding regime under which dividends and capital gains deriving from foreign subsidiaries are exempt under the participation exemption regime, and may be subsequently distributed to foreign shareholders of the holding entity without tax leakage; and
- an extensive BITs network with Latin American countries providing protection against unfair treatment for foreign investments.

Taking into consideration that China (i) has a reduced tax treaty network with Latin American countries, (ii) lacks an attractive tax regime for holding entities, and (iii) has signed only a few BITs in the region, Chinese investors may set up their holding entities abroad and, more specifically, in European jurisdictions that are better suited for these purposes (Spain, the Netherlands and Luxembourg are probably the most common routes to directly invest in Latin American countries). In this way, Chinese investors can significantly reduce withholding taxes on dividends, interest, royalties and gains deriving from their Latin American subsidiaries, and thus increase the net yield of their investments. It goes without saying that, when choosing the most favourable holding jurisdiction, Chinese investors will have to consider general anti-avoidance rules (GAAR) that may be used by the local or foreign tax authorities to challenge the use of conduit companies on 'treaty shopping' grounds, or on the lack of a valid business purpose for structuring the investment through a third country.

Besides reducing withholding tax rates in the source country, channeling the investment through an appropriate holding entity may enable the amortization of goodwill or avoid the application of other taxes. Tax planning of the financing of the investment and the use of intangibles can also be instrumental in reducing the overall taxation of the investment structure. By way of example, in Brazil, if goodwill needs to be paid on the acquisition of

shares of a third party entity, the acquisition should be structured with the acquirer being a company organized and domiciled in Brazil. If acquirer and target merge, then the goodwill will be amortized and the corporate income taxes (levied at a 34% rate) reduced.

7. Are minority shareholders of private companies entitled to certain rights?

Corporate law in the Latam Countries grants a number of rights to minority shareholders (equal treatment, information, officer's liability, pre-emption rights, cumulative voting, nullification of corporate decisions, etc.) and other corporate rights enhanced when the holding exceeds a minimum threshold (generally from 5 to 20%). Even in countries like Venezuela, where this protection is not set out in such a specific manner, Supreme Court decisions have reinforced those rights (for example, in terms of the shareholders' rights to participate in corporate meetings or the duties of the company management to report irregularities).

Once again, although investor protection throughout Latam Countries is fairly homogeneous, in the face of the law the perception of the effectiveness of these rights varies from country to country. A chart summarising the level of investment protection in each country is set out below. The chart indicates the intensity of additional measures which, from a legal standpoint, would be advisable to adopt in each country to ensure adequate protection of Chinese minority investments in the region, taking the same protection granted to minority shareholders in China as a reference:

COUNTRY	STRENGTH OF INVESTOR PROTECTION RANKING
Colombia	6
Peru	16
Chile	34
Mexico	68
Brazil	80
China	98
Uruguay	98
Argentina	98
Bolivia	138
Ecuador	138
Venezuela	182

Source: International Finance Corporation and World Bank (2013)

8. Are there any requirements concerning the nationality or residence of directors?

In virtually all Latam Countries, board members may be foreigners or reside abroad (except in very limited cases such as Argentina, where the majority of the board members must reside in the country, or Venezuela, where commercial registries request that foreign directors have a business or residence visa). Board members of companies doing business in certain sectors, however, should be resident in the country (for example, in Colombia, in the sector of public utilities and certain companies engaged in national security; in Uruguay, in the sector of passenger road transportation companies; or in Venezuela and Mexico -for senior officers, in certain financial institutions). Furthermore, in Brazil, the statutory executive officers (*diretores*) are required to reside in the country.

INVESTING IN LISTED COMPANIES

9. What triggers public disclosure when dealing in listed securities?

In all Latam Countries, it is mandatory to disclose the acquisition or sale of a stake in a listed company when it exceeds certain thresholds. The relevant stakes are defined differently in each of the Latam Countries but generally vary from 5 to 10%:

COUNTRY	PERCENTAGE
Argentina	5
Bolivia	10
Brazil	5
Chile	10
Colombia	5
Ecuador	10
Mexico	10
Peru	10
Uruguay	10
Venezuela	10

Additional public disclosure obligations arise upon subsequent acquisitions or disposals. It should also be pointed out that, as opposed to Europe, given that most Latam Countries have not enacted clear rules applicable to the disclosure of synthetic acquisitions (through equity swaps, options, forwards or other derivatives) there might be significant leeway to develop a stake-building strategy using financial instruments.

10. What triggers a compulsory bid?

Generally, when an investor acquires a controlling stake in a listed company, the investor would be required to launch a tender offer (the tender offer, depending on each country and the circumstances of the acquisition, may or may not be for 100% of the shares of the company). It should be noted that the price of this mandatory tender offer is generally affected by the pre-tender offer acquisitions (except in Mexico, for example, where pre-tender offer acquisitions have no bearing on the tender offer price). Thus, caution is

necessary in the stake-building undertaken prior to reaching the tender offer threshold. 'Controlling stake' is defined differently in each Latam Country, but generally the acquisition of a stake ranging from 25 to 52% of the voting rights will be considered the acquisition of control.

As an exception, in certain countries (such as Bolivia, Ecuador and Uruguay), tender offers have not yet been regulated, and in other countries (such as Argentina), mandatory tender offer rules may be opted-out by the issuer.

Rules of conduct in the context of a tender offer are generally laxer than in Europe. For example, they would not generally impose any express restriction on bidders that have carried out a due diligence of the target company, passivity rules for the target company's directors, etc.

COMPETITION

11. Which transactions and thresholds are subject to clearance by the competition authorities?

Antitrust clearance proceedings are the norm in Latam Countries (excluding, for instance, Peru, where they only exist in the electricity sector, Bolivia, where transactions in regulated industries may be subject to antitrust clearance, and Chile or Venezuela, where as a general rule the competitive effects of the transaction are only subject to judicial or administrative review if the transaction is challenged, though voluntary consultation procedures are also available). The thresholds triggering the review vary from country to country, although if compared to other Western countries these are relatively low.

While in some Latam Countries the price cannot be paid and the shares or assets cannot be transferred until the antitrust authority clears the transaction (as in Bolivia, Colombia, Peru, Ecuador and Brazil), in others the antitrust control does not hinder the closing of the transaction. This is because the review is carried out as an ex-post control (as is generally the case in Argentina, Chile, Uruguay and Venezuela).

LABOUR AND SOCIAL SECURITY

12. General labour features

In general, Latam Countries share common features regarding labour matters. A common feature worth noting – which distinguishes Latam Countries from other Western countries (mostly European) – is that employees are not entitled to block, or even be consulted about, corporate transactions (e.g., mergers, acquisitions). Mexico and Venezuela are a case apart and employees must be notified about such transactions and have the right to resign and be paid similar compensation to that for unfair dismissal.

Foreign employees require work permits and/or residence permits, which are easily obtained when the foreigner has an employment contract with a local company. However, when making a direct investment in any of the Latam Countries, Chinese investors should bear in mind that, except for limited cases such as Argentina and Uruguay, there are restrictions on hiring foreign employees. As the chart below shows, these restrictions are significant:

COUNTRY	MINIMUM PERCENTAGE OF NATIONAL EMPLOYEES	MINIMUM SALARY FOR NATIONALS
Bolivia	85%	85%
Brazil	66.6%	66.6%
Chile	85%	N/A
Colombia	80%[3]	N/A
Ecuador	80%	N/A
Mexico	90%	N/A
Peru	80%	70%
Venezuela	90%	80%

However, the apparent materiality of the restrictions is somewhat mitigated by the fact that, in calculating the employee's base, certain types of employees are excluded (i.e., it is customary to exclude from the base those with specialised technical capabilities,

3.- In Colombia, the minimum percentage of national employees does not apply generally to all industries, but to certain professions, such as engineers.

family ties with local citizens, key management, etc.). Special rules also apply to foreigners of countries with which the Latam Country has entered into a treaty regarding labour reciprocity or double nationality (which is fairly common in the region with Spain and Italy and, in the case of Brazil, with Portugal). They also apply to employees of certain type of companies (in certain countries, small companies engaged in high-technology sectors or that are undergoing a corporate restructuring, contractors of the public sector, etc.).

Typically, acquirers wish to restructure the payroll to maximise the returns or efficiency of the target company. In this regard, labour redundancy costs should be taken into account. However, these costs are not significant compared to those in China. The following chart compares these costs (average for workers with one, five and ten years of tenure) for each Latam Country and for China, using the same hypothetical case for all the jurisdictions:

COUNTRY	LABOUR REDUNDANCY (WEEKS OF SALARY)
Brazil	8.9
Peru	11.4
Chile	23.1
Colombia	16.7
Uruguay	20.8
Mexico	22
Argentina	23.1
China	**23.1**
Ecuador	31.8
Bolivia	Not allowed
Venezuela	Not allowed

Source: International Finance Corporation and World Bank (2013)

13. Social Security

The Latam Countries have very similar social security payments. The chart below provides the percentage of wages allocated to social security payments borne by the employer.

COUNTRY	PERCENTAGE
Argentina	23.0 - 28.0
Bolivia	16.71
Brazil	26.8 - 31.8[4]
Chile	18.20 - 19.42
Colombia	20.84 - 29.2
Ecuador	11.15
Mexico	25
Peru	9
Uruguay	13
Venezuela	11 - 13

4.- In Brazil, a new social contribution on the gross revenues of domestic companies that manufacture and sell certain goods or act in certain economic sectors has been imposed in substitution to the employer social security contribution reflected in the chart. This substitutive contribution will cease to apply as from January 2015, when the application of the employer social security contribution on the payroll will resume.

TAX

14. Domestic tax

The Latam Countries have very different taxation systems and tax pressures. The following chart illustrates the difference in each of the Latam countries in terms of the main taxes and nominal taxation:

COUNTRY	CORPORATE INCOME TAX (%)	PERSONAL INCOME TAX (%)	VAT (%)	WITHHOLDING TAX FOR FOREIGN TRANSFERS (%)
Argentina	35	9-35	21	14-35
Bolivia	25	0-13	13	12.5
Brazil	34	0-27.5	0-45[5]	0 (dividends) 25 (general)
Chile	20	0-40	19	4-35
Colombia	33-34[6]	0-33[7]	16[8]	0-33
Ecuador	22	0-35	12	0-13 (dividends) 22[9] (general)
Mexico	30	0-36[10]	16	N/A

5.- Brazil has three different VATs: (i) Federal VAT (IPI), which is levied on industrialised and imported goods. The IPI rates vary according to the classification of the good in accordance with the Harmonized Nomenclature of Mercosur; (ii) State VAT (ICMS): which is levied, in general, at a 18% rate on sales of all goods and at rates reaching 25% on all mineral goods produced in Brazil or imported into the country; and (iii) Federal Social Contributions on Gross Revenue (PIS/COFINS), which operate similar to the VAT mechanism and have a standard maximum rate of 9.25%. Lower and higher rates apply to specific products.

6.- The national income tax in Colombia comprises both a basic income tax and an "income tax for equity" (known as "CREE"). Foreign entities that receive Colombian sourced income, but do not have a permanent establishment or branch in Colombia, are only subject to the basic income tax at a 33% rate. National entities, and profits obtained through Colombian permanent establishments and branches, are subject both to the basic income tax (applying a 25% rate) and the CREE (whose rate is 9% for the years 2013-2015 and 8% from the year 2016 onwards).

7.- The income tax for individuals in Colombia has progressive rates (0%, 19%, 28% and 33%) depending on the amount of the taxable income of the individual.

8.- As a general rule, the VAT rate in Colombia is 16%, although there are a few exceptions regarding certain specific goods or services.

9.- In Ecuador, an additional 5% tax on remittances abroad applies. However, dividends are exempt if the final recipients are foreign corporations and natural persons.

10.- At the time of printing this guide, the income tax for individuals in Mexico was expected to be imminently increased up to 36% depending on the amount of the taxable income of the individual.

COUNTRY	CORPORATE INCOME TAX (%)	PERSONAL INCOME TAX (%)	VAT (%)	WITHHOLDING TAX FOR FOREIGN TRANSFERS (%)
Peru	30	5-30 (capital income) 15-21-30 (labour income)	18	N/A
Uruguay	25	0-25	22	7 (dividends) 12 (general)
Venezuela	6 - 34[11]	6 - 34	12	4,95 - 34

However, with the exceptions of Argentina and Bolivia, tax pressure in Latam Countries is comparable to that in China and, in a significant number of cases, more favourable. The following chart illustrates the varying pressure in each of the Latam Countries and in China, for the same hypothetical case for all jurisdictions[12]:

COUNTRY	TOTAL TAX RATE (% PROFIT)
Chile	27.7
Ecuador	33.9
Peru	36.4
Uruguay	41.9
Mexico	53.7
Venezuela	61.7

11.- Venezuela has a progressive scale.

12.- The indicator measures the amount of taxes and mandatory contributions payable by the company during the second year of operation. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. The case study assumes that the taxpayer is a medium sized corporation that started operations one year before. Taxes and mandatory contributions are measured at all levels of government and include corporate income tax, turnover tax, all labour taxes and contributions paid by the company (including mandatory contributions paid to private pension or insurance funds), property tax, property transfer tax, dividend tax, capital gains tax, financial transactions tax, waste collection taxes, vehicle and road taxes, sales tax and other small taxes (such as fuel tax, stamp duty and local taxes). A range of standard deductions and exemptions are also recorded.

COUNTRY	TOTAL TAX RATE (% PROFIT)
China	**63.7**
Brazil	68.3
Colombia	76.0
Bolivia	83.4
Argentina	107.8

Source: International Finance Corporation and World Bank (2013)

MINING

This chapter addresses special aspects of investing in the mining sector. The Latam Countries are also referred to as the "Mining Countries".

15. Overview

ARGENTINA

Mining projects in Argentina are generally carried out by private companies. In most cases, the private companies are partially or fully owned by foreign legal or natural persons (primarily from Canada, the USA and Australia, although Chinese, Russian, and South African companies are becoming increasingly prevalent).

There also exist some state-owned companies, such as Fomicruz SE and YMAD, which frequently cooperate with private sector entities on prospecting and exploitative activities.

BOLIVIA

Pursuant to recently approved regulation that has yet to enter into force, the Bolivian government has granted state-owned COMIBOL a monopoly on all mining rights in the country. Private parties must execute agreements with COMIBOL granting them the prospecting and exploitative rights. Nevertheless, for the time being a number of private companies continue to operate on the basis of mining rights granted under the previous legal framework. The major private player in the Bolivian mining industry is currently Minera San Cristobal S.A., a subsidiary of Sumitomo Corporation.

BRAZIL

Mining in Brazil is primarily carried out by private companies. Vale is the main player in Brazil as among the largest worldwide, with important operations in Asia. Other important players include Namisa (controlled by CSN with a minority stake held by a Japanese group), MMX (in which Wisco holds a minority stake), Usiminas, ArcelorMittal, and MBR. Other international players operating in the Brazilian mining sectors are Codelco, BHP Billiton, Mitsubishi and Rio Tinto.

CHILE

The Chilean mining industry has two main spheres: the state, through the fully- owned state-company CODELCO, and the private sector.

The private sector receives significant foreign capital from companies such as BHP Billiton, Phelps Dodge, Anglo American, Rio Tinto, Mitsubishi, and Barrick. Antofagasta Minerals is the largest Chilean-owned private company.

Foreign investment in the mining sector is primarily focused on large-scale copper mining.

COLOMBIA

Private companies are the main players in the Colombian mining industry. The most important companies are BHP Billiton PLC, Colombian Natural Resources I and III (affiliates of Goldman Sachs & Co.), Anglo American PLC, Xsastra PLC, Glencore International PLC, C.I. Productos de Colombia S.A., Vale Coal Colombia, Carboandes S.A., Consorcio Minero Unido S.A., Mineros S.A., Drummond Ltd, AngloGold Ashanti, Gran Colombia Gold, Rio Tinto and Votorantim.

ECUADOR

Ecuador's National Mining Corporation was recently created with the purpose of playing a leading role in the Ecuadorian mining industry. Although the National Mining Corporation is granted priority rights over all exploration and exploitation concessions, it has yet to be granted any concessions and the private sector remains the most important influence in the industry. Some of the companies that play a key role are: EcuaCorriente S.A. (a Chinese joint venture between the China Railway Construction Corporation (CRCC) and Tongling Nonferrous Metals Group Holdings Co. Ltd.), Kinross Gold Corporation and Iamgold Corporation.

PERU

The private sector is the most important sphere in the Peruvian mining industry. The most important mining companies are Southern Peru Copper Corporation, Chinalco, Goldfields, Cía. Minera Antamina, Minera Cerro Verde, Minera Yanacocha, Cía. de Minas Buenaventrua, Minsur, Volcan, Compañía Minera Miski Mayo SRL (Vale, SA), Barrick Misquichilca and Shougang Hierro Peru.

URUGUAY

Although Uruguay is not a traditional mining country, it has experienced in the past years a notable increase in the granting of prospection and exploration rights, probably due to the discovery of substantial deposits of metals such as iron and nickel, which has led to the

recent approval of a Large Scale Mining Law to complement the dispositions of the Mining Code. A gold mining project is already in operation, developed by Orosur Mining Inc.

VENEZUELA

Although the state enjoys a very strong presence in the Venezuelan mining business, whether through partially or totally state-owned companies, private sector companies have a notable presence in the prospecting and exploitation of mineral resources.

16. Legal restrictions

In general, private parties may obtain rights to explore or exploit mineral resources. Other than the general restrictions explained elsewhere in this guide, there are no specific restrictions on foreign companies in connection with mining activities. However, it should be noted that the mining of some strategic minerals (primarily radioactive minerals) is generally prohibited for the private sector. For example:

- In Argentina, private parties may obtain mining concessions to explore and exploit radioactive minerals (e.g., thorium and uranium), although the federal government has priority to exploit them, including the corresponding concentrates and derivate substances. The exportation of radioactive minerals is subject to prior authorisation and domestic supply must be guaranteed, as well as control of the final destination of the exported substance.
- In Bolivia, private parties are prohibited from exploiting radioactive minerals and other minerals considered to be of strategic interest within specific areas, such as lithium in the Uyuni Salt Plains and iron ore in the Mutun area.
- In Brazil[13] , radioactive minerals (e.g., uranium and thorium) may not be exploited by private parties but only by a state-controlled corporation (see section 26).

13.- In Brazil, There is a bill of law – still waiting to be discussed and voted under the House of Representatives – which contemplates the enactment of a new Brazilian Mining Code. Albeit premature to indicate which changes are likely to be effectively introduced to the current legal framework governing the mining sector in Brazil, it is expected that the New Mining Code contemplates substantial changes, such as: (i) constitution of the National Council of Mineral Policy (*Conselho Nacional de Política Mineral*), (ii) assignment of the competences, jurisdiction and attributions of the DNPM to a new regulatory agency to be created - the National Agency of Mining; (iii) a term of 40 years for the validity of the mining concessions (the current Mining Code does not establish a definite term); (iv) modification to the legal instrument pursuant to which a concession is granted to a mining company (currently this is implemented by means of a Decree issued by the Federal Government and under the New Mining Code this would be replaced by a concession agreement to be entered into by the mining companies and the National Agency of Mining); and (v) increase of the Financial Compensation for the

- In Chile, hydrocarbons and lithium are not subject to concessions, but may be exploited by private parties if they obtain a permit from the government; the state would have a first option to purchase thorium and uranium production (see section 26).
- In Mexico, radioactive minerals and hydrocarbons are not subject to concessions.
- In Uruguay [14], the exploration and exploitation of fossil fuels (i.e. oil, natural gas, coal, lignite, etc.) and other minerals suitable for industrial power generation (i.e. uranium) is reserved for the state, which can hire or partner with private parties.
- In Venezuela, the exploration and exploitation of gold and hydrocarbons is reserved for the state or, under certain circumstances, for private-public partnerships.

In Colombia and Ecuador, there are no restrictions on the exploration and exploitation of particular minerals (including those that are radioactive).

Even if it does not amount to a legal restriction, it is worth pointing out that in certain Mining Countries (for example, Brazil, Colombia and Mexico), a percentage of the minimg profits has to be paid to the government.

17. Establishment of mining rights

Mining rights derive from exploration permits that are typically followed by separate mining concessions to exploit a mine if the exploration or prospection is successful. Nevertheless, in some countries, such as Colombia, Ecuador, Mexico, Peru and Venezuela, no distinction is made between exploration and exploitation concessions (i.e., mining rights are acquired by means of a mining concession that allows the holder to prospect or explore and exploit mineral resources).

Mining rights are granted by an administrative mining authority (except in Chile and in certain provinces of Argentina, where concessions are granted by a judicial authority).

Exploitation of Mineral Resources ("CFEM") that the companies shall pay to exploit mineral resources (current percentage varies from 0.2% to 3% over the net profit arising from the sale of the mineral, depending on the type of mineral. Most minerals -e.g. iron, coal- are subject to 2% rate).

14.- In Uruguay, in accordance with the new legislation the Executive Power shall classify as a large scale mining project any exploitation project of metallic minerals that meets at least one of the following conditions: (i) it occupies an area of over 400 hectares; (ii) it requires an investment of over approx. USD 100 million; and (iii) the annual commercialization value of the product is projected to be in excess of approx. USD 100 million. When a project is classified as large scale mining, the granting of the exploitation concession shall be made by means of the execution of an agreement between the holder of the project and the Executive Power after negotiating the particular conditions. In this case, special rules regarding royalties and taxes shall apply.

Mining rights are generally granted on a first in time basis. That is, mining rights will be awarded to the petitioner that first requests them, provided that there are no legitimate objections from third parties (e.g., a mining right for the area was previously granted to the third party, the new area overlaps with other mining concessions). Nevertheless, certain exceptions apply:

- In Mexico, the first applicant will not have absolute priority in certain circumstances (e.g., an indigenous community simultaneously requesting the same concession, land located between existing mining concessions and specific minerals requiring special capabilities for exploitation). Mexico also requires a competitive public bid for certain mining areas, specifically those explored by the Mexican Geological Services and made available for exploitation.
- In Colombia, the first in time principle is not applied if the national government has declared the area to be subject to special selection procedures or a special indigenous or afro-descendant mining area.
- Chile has a peculiar framework, allowing the overlap of multiple exploration permits and exploitation authorisations on the same land. Nevertheless, in the case of competing rights to exploit minerals, the holder of the earlier-in- time mining right will be respected.

Bolivia is an exception. As previously mentioned, the country is undergoing significant regulatory changes and many aspects of the industry remain uncertain pending their enactment (including the rights of current concessionaires for areas they are in the process of exploring or exploiting). It is likely that concessionaires who are current on their payment obligations will have priority over the concession area and that the rights of concessionaires over areas that remain inactive revert to the Bolivian government.

The first in time principle does not apply in Ecuador, where all mining concessions are subject to a public bidding process.

18. Transfer of mining rights

While in some cases the transfer or mortgage of concessions only requires registration to be enforceable against third parties (e.g., Argentina, Chile and Peru), as a general rule, an administrative or judicial approval is required to transfer a mining right (e.g., Brazil, Colombia, Ecuador, Uruguay and Venezuela). Mining concessions in Bolivia may not be sold or encumbered.

An easier way to transfer mining rights is by transferring the equity of the company holding the mining rights, which, as a general rule, requires no authorisation.

19. Rights over the land of mining rights holders

Mining rights are distinct, separate and independent rights from ownership, possession or other surface rights. As mining rights do not grant any privilege over the surface land on which the mine is located, the mining right holder must acquire surface access rights.

In this respect, mining rights do not entail expropriation rights in themselves, but a separate expropriation procedure may be initiated to demonstrate that expropriation is required as a matter of public need and to ascertain the fair value to be paid to the land owner.

A more common way to gain access to the land is through easements that mining rights holders may request from administrative authorities or courts. The mining rights holder will negotiate the amount of consideration to be paid to the land owner. If the parties fail to reach an agreement, compensation will be determined by a court or another governmental authority.

Given the protracted and cumbersome nature of the procedures to expropriate or obtain an easement over the land, it is more common and advisable for the mining rights holder to privately negotiate access with the land owner in return for consideration.

20. Term of the mining rights

With few exceptions, mining concessions are granted to individuals or companies for a limited period of time:

- In Chile, exploration concessions are granted for two years and, provided certain conditions are met, may be renewed for an additional term of equal length or the concessionaire may request that the court transform the exploration concession into an exploitation concession; exploitation concessions have an indefinite duration;
- In Colombia, a concession may not in general exceed thirty years (including the exploration, construction, installation and exploitation phases); the term of the agreement may be extended for thirty or twenty additional years, depending on the applicable regime;

- In Ecuador, a mining concession may not exceed twenty-five years, although there exists the possibility of renewing the concession for additional consecutive terms of twenty-five years;
- In Mexico, concessions are granted for fifty years and, upon fulfillment of certain requirements, can be renewed for a new equal term;
- In Uruguay, prospection permits are granted for a maximum term of three years (renewable for an additional three years period), exploration permits for a maximum of three years (renewable up to three times for one-year periods), and exploitation rights for a maximum of thirty years (renewable for subsequent and indefinite periods of up to fifteen years each); and
- In Venezuela, concessions are granted for a maximum initial term of twenty years, although there is the possibility of requesting an extension for an additional ten years term.

21. Termination of mining rights

Mining rights can be terminated by the government in a number of circumstances, which generally relate to the breach of material obligations (e.g., failure to pay the annual fees, non-compliance with the investment plan and breach of other investment related obligations, non-compliance with the dates for beginning or restarting exploitation works, non-compliance with orders of the mining authorities, and exploitation below the agreed volumes). Abandonment of the mine or inactivity are also causes for termination in Argentina, Bolivia, Brazil, Colombia, Ecuador, Uruguay and Venezuela (inactivity for over four years in Argentina, or for over six months in Colombia). The opposite situation (the "ambitious" exploitation of mining ores) or the extraction of a substances not included in the mining concession may also result in the termination of the mining rights in Brazil and Colombia.

The concessionaire has the right to a hearing before a decision is made. The decision is subject to appeal.

The concessionaire is not authorised to claim any damages for termination of the concession, but is generally entitled to remove any equipment, machinery, tools, extracted minerals or other property of the owner of the mine, subject to some exceptions. In Brazil, no such rights are granted if the removal adversely affects the mine or the mine was abandoned by the concessionaire. In Colombia, some property, including assets installed on the sites and which cannot be removed without causing damages, must be returned to

the Colombian government. In Venezuela, mining equipment, machinery, tools, and other specific assets are automatically transferred to the state.

22. Rights of Indigenous Communities

The Mining Countries customarily grant some rights to afro-descendant and indigenous communities inhabiting the area proximate to the mine (such as prior consultation in Chile, Colombia, Ecuador, Peru and Venezuela or, in Colombia and Mexico, affording preference over any other mining right applicant in case of subsequent or simultaneous applications). Bolivia goes further, requiring that private companies enter into joint venture or other type of agreements with the corresponding indigenous communities. Indigenous rights present additional issues in Brazil, where mining activities in indigenous areas are as a rule not permitted until the National Congress of Brazil enacts the specific legal framework referenced in the Constitution. Although Argentina has no specific national legislation on the matter, caution is necessary given that some provinces have granted special rights to indigenous communities, such as participating in the process of issuing environmental permits. Uruguay has no afro-descendant or indigenous communities.

23. Incentivising legal frameworks

Other than Argentina and Colombia, the Mining Countries have no specific framework for promoting foreign investments in the mining industry).

ARGENTINA

The Argentinean Mining Investment Law (the “MIL”) provides a promotional investment framework for the mining industry, which mainly consists of varied tax benefits, a tax, foreign exchange and tariff stability regime for registered mining projects, and a 3% cap on mining royalties. The MIL applies at the federal level, although some Argentinean provinces and municipalities have incorporated its provisions. The main benefits are the following:

- **Income tax deductions**: Beneficiaries may annually deduct from their income tax statement the full amount invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works performed for the purpose of determining the technical and economic feasibility of a project.
- **Accelerated depreciation**: This allows the application of a different depreciation approach for capital investments made for the development of new mining projects

or the expansion of the productive capacity of existing mining operations, as well as those required during their normal operation.

- **VAT reimbursement**: Any tax credit derived from imports or the acquisition of assets or retaining of services for the performance of exploration or prospecting activities, studies or investigations, which remains as credit after twelve fiscal periods, will be reimbursed.
- **Capitalisation of mineral reserves**: The assessment of economically exploitable mineral reserves performed by a certified and qualified professional may be capitalised for up to fifty percent of its cost.
- **Import benefits**: Beneficiaries are exempt from import duties and other charges (excluding import service charges and VAT) in relation to the import into Argentina of (i) capital goods (e.g., ancillary machinery and new or used spare parts) and (ii) other goods as determined by the Federal Mining Secretary, necessary for the performance of activities covered by the incentives scheme for mineral deposits located within Argentinean territory.
- **Royalties cap**: As the owners of the mineral resources, each province (or the federal government if the mines are located on federal property) may charge a levy on mining companies calculated as a percentage of the value of the extracted mineral. The MIL establishes a cap of three percent of the "mouth of mine" value (as defined in the MIL) of the extracted mineral. The cap is only applicable for those to which the MIL applies. Mining companies that are not registered under the scope of the MIL provisions are subject to the royalties established by the relevant province, which may exceed three percent.
- **Environmental considerations of the tax incentives mechanisms**: Those falling under the scope of the MIL must create a reserve (for an annual amount fixed at their discretion) to guarantee the preservation of the environment. The reserve would be income tax deductible for an amount up to five percent of the project's extraction and production operating costs.
- **Tax, foreign exchange and tariff stability**: The incentive programme established a thirty year tax, foreign exchange and tariff stability programme for taxes, foreign exchange and tariff regulations in force at the time the feasibility report is submitted to the Federal Mining Secretary. In general, tax stability means that the aggregate tax burden on the beneficiaries cannot increase as a result of new taxes, increased tax rates,

increased scope of the acts or individuals subject to an existing tax or the abolition of existing exemptions which are not set off by a reduction or the abolition of other taxes or levies within the same jurisdiction, whether national, provincial or municipal.

Other than those indicated, no other tax reductions are available to foreign investors or mining investors in general.

No type of exports are subject to VAT. Exporters are entitled to a refund for all VAT credits accrued through their purchases.

COLOMBIA

The mining sector in Colombia grants specific promotional rules, as the sector has been one of the key assets of the country's economy. Tax law is not an exception and a number of tax incentives apply to the mining activity:

- **Royalties**: Royalties are levied as a percentage of gross production and may be payable in cash or in kind. The specific percentages vary depending on the mineral, but are in all cases established by law. Mining companies legally required to pay royalties are released from the obligation of paying the corresponding municipal turnover tax if the effectively paid royalties exceed the company's otherwise payable turnover tax. Exceptionally, the authority might renegotiate the economic obligations under the concession agreement at the time of its extension, depending on the specific legislation applicable to the mining right.
- **Income Tax**: The net value of assets directly linked to enterprises exclusively dedicated to mining activities (other than the exploitation of gaseous and liquid hydrocarbons) will not be used for calculating the presumptive annual income[15].
- **Deductible Expenses for Income Tax purposes**: Colombian tax law allows three (3) main deductions or allowances in relation to the hydrocarbon and mining sectors, as follows:

15.- For income tax purposes, it is presumed that the taxpayer's net income is at least 3% of its net equity on the last day of the immediately preceding tax year. If the taxpayer's net income is less than the referred 3%, the income tax rate will be assessed on presumed net income.

a) *Depreciation*: Fixed assets (other than land) are depreciable in accordance with their useful lives, as follows:

TYPE OF ASSET	USEFUL LIFE
Computers and vehicles	5 years
Machinery and equipment	10 years
Real estate (excluding land)	20 years

b) *Amortisation*: Amortisation of costs incurred in the acquisition, exploration and exploitation of non-renewable resources can be determined based on: a technical estimate of the cost of the operating units; or the straight-line method (throughout a minimum five year period).

c) *Depletion*: Under a lease or concession agreement, it is understood that the owner, the lessor, the concessionaire and the lessee all have economic interests in the depleted property. As a result, the depletion allowance can be claimed by any of the foregoing in accordance with the costs incurred by each of them during the project.

- **Additional special deductions**: Although not exclusive to the mining sector, Colombian tax law provides special deductions that may be significant for companies in the mining sector: scientific and technological developments, environmental protection, and the acquisition of productive fixed assets.

24. Export restrictions on minerals

There are no restrictions applicable to the export of minerals (excluding nuclear minerals) in the Mining Countries, excluding Venezuela, where all gold exploited through mining activities must be sold to the Venezuelan Central Bank, and Uruguay, where 15% of the minerals to be exported need to be offered to the domestic market at a Free On Board (FOB) price. Moreover, there are two important free-trade agreements that further liberalise international trade with China:

- Chile: the free-trade agreement with China has been in force since 2005 and immediately eliminated tariffs on ninety-two percent of Chile's exports to China and on fifty percent of the products that China exports to Chile. The agreement does not cover services. Tariffs on other sectors will be removed progressively.

- Peru: the free-trade agreement with China has been in force since March 2010 and establishes that import duties will be eliminated progressively, pursuant to a schedule, which may be accelerated by either signatory, when deemed possible. In practice, the elimination of import duties will allow more than sixty percent of Chinese products to enter Peru free of import duties.

25. Environmental law

ARGENTINA

Environment protection in Argentina is governed by federal, provincial and municipal regulations. The main rules specifically relating to mining activities are those of the Argentinean Mining Law. In accordance with the Mining Law:

- Individuals or entities who carry out prospecting, exploration, exploitation, development, preparation, extraction and storing of mineral substances must submit an Environmental Impact Report (EIR) before initiating such activities.
- EIRs must include (i) the location and environmental description of the project's area of influence; (ii) the description of the mining project, (iii) the possible alterations of the soil, water, atmosphere, vegetation and fauna, topography and social and cultural environment, (iv) safety, mitigation, rehabilitation, restoration or damaged environment restructuring measures, as the case may be, and (v) the methods used.
- In addition, the EIR must include a description of the possible risk of environmental damage, the work methods and the necessary environmental protection measures.

Provincial regulations include complementary provisions, some of which embrace public involvement prior to the approval of the environmental impact assessment (public hearings).

BOLIVIA

Bolivian environmental law and regulations provide that works, projects or activities that may cause potential adverse environmental effects require a prior Environmental Impact Evaluation (EIE) consisting of a group of administrative procedures, studies and technical systems.

Those works, projects and activities must also hold an Environmental Impact Declaration (EID). The EID includes studies, technical recommendations, regulations and limits within

which the works will be developed, evaluated, and registered before the appropriate environmental authorities. In practice, the EID constitutes an environmental licence.

Breach of the environmental regulations is considered an administrative violation and, in some cases, a criminal offence.

BRAZIL

Brazil features a complex and strict environmental legislation, setting forth as mandatory the obtaining of environmental licensing for the construction, installation, expansion, modification or operation of every project or activity likely to (i) have a significant environmental impact (ii) cause environmental degradation must be previously approved by the corresponding environmental agency.

Approval is obtained by mining companies being granted environmental permits. Basically, there are three kinds of permits in Brazil, which are granted by the environmental agencies in accordance with the status of the project/activity: (i) Prior Permit, (ii) Installation Permit and (iii) Operation Permit.

Furthermore, pursuant to Brazilian legislation, mining activities by nature constitute an activity that has a significant environmental impact or may cause environmental degradation. Thus, interested companies must obtain the required environmental permits prior to the commencement of activities.

Before obtaining the environmental permits, the interested company must present the environmental agency an environmental impact assessment (EIA) and its corresponding environmental impact report.

The environmental agency will analyse the EIA and the agency's report, if applicable, may require some adjustments and additional information. As such, the specific requirements and licences may vary depending on the complexity and impact of the project and activity.

CHILE

According to the Chilean Environmental Law, every project or activity likely to have an environmental impact and included in a list of projects and activities established by the Environmental Law must undergo an EIA prior to execution or modification. The list includes a broad array of projects, including dams, airports, ports, mining projects

and power generation plants. The EIA procedure is carried out within the context of the Environmental Impact Assessment System (SEIA for its Spanish acronym).

Mining development projects are expressly listed among the projects that require an EIA. For environmental purposes, a mining development project involves actions or works which main purpose is the extraction of one or more mineral deposits and which have a mineral extraction capacity that exceeds five thousand metric tons per month. Prospecting activities with more than twenty or forty platforms (depending on the location of the project) must also comply with the environmental assessment requirements under the Environmental Law.

The Chilean Environmental Law establishes two ways in which projects can be subjected to the EIA within the SEIA:

- by presenting an Environmental Impact Study (the Study), which is a mechanism designed for large-scale projects that could cause a significant impact to the environment; or
- by presenting an Environmental Impact Statement (the Statement), which is designed for simpler and small-scale projects.

Although the legal periods for the assessment of the Study and the Statement are, respectively, one hundred and twenty and ninety days, both of which could be respectively extended for up to sixty additional days or thirty additional days, in practice, however, the assessment takes an average of one year and six months, respectively. Furthermore, the Studies must observe a sixty day term for citizen participation, during which time interested parties can submit observations regarding the project. The Statements are subject to a shorter twenty day term for citizen participation under certain legally specified circumstances. The environmental authority will take into consideration the comments made during the citizen participation period when deciding to approve or reject the project.

The EIA ends with an Environmental Qualification Resolution (RCA for its Spanish acronym) granted by the environmental authority that approves or rejects the project and establishes the main environmental obligations and conditions that the project must satisfy. The permit operates as a “global environmental permit” certifying that the specific project satisfies all applicable environmental requirements and regulations.

The RCA also entitles the project’s concessionaire to obtain specific environmental permits that are necessary to develop a project. Those permits are granted by the corresponding

state agencies (e.g., Water Agency, Mining Authority, Flora and Fauna) according to their own jurisdiction and the project's specific characteristics, such as the industrial qualification of the facilities, the land use amendment, the permit for the construction of sewage systems, and the permit to build hydraulic works as referred to in the Water Law.

COLOMBIA

As a result of the impact of the mining activity on the environment, the Colombian Mining Law establishes that the concessionaire must obtain an environmental licence in order to start any construction of the required facilities or start the exploitation activities. Exploration activities may be conducted without an environmental licence, authorisation or permit, except if the activities to be carried out during the exploration phase require an environmental licence (e.g., if the exploration activities are carried out during the exploitation stage), or authorisation or permit for the use and/or impact on renewal natural resources (e.g., water concession and forestry permits).

Depending on the particular activities to be carried out, the environmental licence for exploitation may cover some of the following: permits for occupation of channels, discharge waste permits, underground water concessions, surface water concessions, authorisation for use of isolated trees, authorisation for tree logging, authorisation for forest use, emissions permit, exploration of wells permit, exploration of subterranean water permit, forestry permit.

Finally, certain mining projects may not be developed in areas of exceptional value for the national natural heritage that due to their natural, cultural or historic characteristics have been declared as protected (generally national parks, natural reserves, single natural areas, fauna sanctuaries, flora sanctuaries and "park roads").

ECUADOR

Prior to performing any mining activity, the Ecuadorian Environmental Regulations for Mining Activities require that an environmental licence be obtained from the Ministry of Environment.

In order for a company to request an environmental licence, a consultant must first be selected from a short list of authorised consultants issued by the Ministry of Environment. The selected consultant will then prepare the environmental impact study (EIS) in accordance with the terms of reference issued by the Ministry of Environment. The EIS

must include, at least, an environmental management plan and the citizen participation report. Within thirty days of the EIS being submitted for the Ministry's consideration, the Ministry may request additional information. The additional information requested must be submitted within forty-five days of the request. Once all information is submitted, the Ministry must either grant or deny the environmental licence within fifteen business days.

According to Ecuadorian law, a newly-licensed mining company must have an environmental audit within one year from the issuance of the environmental licence and, subsequently, every two years.

Finally, two years before the closing of mining operations, the mining company must submit a closure plan for the approval of the Ministry of Environment. The plan must include the proposed procedures for the environmental recovery of the area and a compensation plan to mitigate the social impact of the mining operations. If the environmental impact has been significant, the company must also submit a remediation project for the Ministry's approval.

Mining projects may not be developed in protected areas, such as natural parks and natural reserves.

MEXICO

The General Law for Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y la Protección al Ambiente*) is Mexico's legal framework for federal environmental matters. The law establishes environmental policy instruments that are applicable to most projects and activities carried out in Mexico. Nevertheless, there are many other regulations, statutes and norms that regulate different environmental aspects of specific projects.

The feasibility of developing any project or activity from an environmental standpoint in Mexico will greatly depend on the compatibility of the project with the applicable ecological regulation programmes and local urban development programmes, which is primarily evaluated through the environmental impact assessment procedure.

The Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales* - SEMARNAT) and other entities that stem from or are linked to the agency will apply the federal environmental regulations and issue the permits required for the development of specific activities, with the General Attorney's Office for the Protection of the Environment (*Procuraduría Federal de Protección al Ambiente* - PROFEPA) acting as the enforcement agency.

The most relevant federal environmental policy instruments are:

- the environmental impact assessment;
- the territorial and marine ecological regulations; and
- the establishment of natural protected areas.

Certain activities will fall under the jurisdiction of local environmental authorities, and therefore must comply with local regulations, which tend to be similar to or less stringent than federal regulations.

The General Law for the Prevention and Integral Management of Waste (*Ley General para la Prevención y Manejo Integral de Residuos*) regulates the handling of hazardous waste and establishes rules on environmental liability resulting from the acquisition of contaminated sites, as well as the rules for site remediation. The most relevant are:

- the obligation of a contaminated site's owner/seller to inform the acquirer about the existence of the contamination;
- the authorisation from SEMARNAT for the transfer of the ownership of a contaminated site; and
- joint and several liability of owners, operators and holders of a possession right over a contaminated site for any required remediation.

The Federal Maritime Zone or "ZOFEMAT" (beachfront zone) is considered public domain. As such, its use to the detriment of third parties can only be conducted by means of a concession granted by the SEMARNAT. Concessions for the use of the ZOFEMAT area are generally granted for fifteen year renewable terms and result in the obligation to pay fees to the government. The fees are established in the Federal Law of Rights (*Ley Federal de Derechos*) and vary depending on the location of the surface area of ZOFEMAT under concession and the concessionaire's use.

PERU

The competent authority in charge of overseeing Peru's environmental matters arising from the mining activities in the country is the Mining Environmental Affairs Office (*Dirección General de Asuntos Ambientales Mineros* or DGAAM for its Spanish acronym) under the Ministry of Energy and Mines ("MEM"). Supervising and enforcing powers are excercised by the Environmental Evaluation and Control Agency (OEFA for its Spanish acronym), an entity dependent on the Ministry of the Environment.

The Peruvian applicable regulation establishes that investment projects involving the execution of activities or works that are likely to cause a significant impact on the environment shall have the corresponding environmental certification.

Environmental supervision involves the inspection, control, monitoring, verification and other similar actions conducted by the Environmental Ministry and by other authorities to ensure compliance with the regulations established in the Environmental Law and all complementing laws, rules and regulations.

In addition to the environmental certification, the execution of mining projects may require that other permits and authorizations be granted by the corresponding authorities. Specifically, the following requirements must be met and permits obtained to perform mining activities:

- Annual Consolidated Statement (DAC for its Spanish acronym): Holders of mining concessions must submit the DAC by 30 June of each year, describing environmental emissions and follow-up actions taken pursuant to the previously approved EIA.
- Approval of any environmental assessment is subject to the previous favourable opinion of the National Service of Protected Natural Areas (*Servicio Nacional de Áreas Naturales Protegidas* - SERNANP) if the mining activity is to be developed in a protected natural area declared by the National System of Protected Natural Areas (*Sistema de Áreas Naturales Protegidas por el Estado* - SINANPE) or in its buffer zone.
- Permits for operation and storage of explosives: (i) certificate of Mining Operation, to be granted by the MEM; (ii) authorization for Use of Explosives, to be granted by SUCAMEC (*Superintendencia Nacional de Control de Servicios de Seguridad, Armas, Municiones y Explosivos de Uso Civil*), (iii) manipulation License of Explosives for each individual that intends to handle explosives, to be granted by SUCAMEC, and (iv) explosive's Warehouse Operation License, to be granted by SUCAMEC.
- A water right granted by the National Water Authority (*Autoridad Nacional del Agua* or "ANA") needs to be obtained prior to the use of underground or fresh water sources in a mining project. If the proposed activities will generate domestic or industrial wastewaters discharged into natural water sources or soil, it is necessary to obtain an authorization granted by the ANA, with the favorable opinion of the General Bureau of Environmental Health (*Dirección General de Salud Ambiental*).
- If the design and development of mining projects involve the removal of topsoil, mining companies need to obtain from the Ministry of Culture a Certificate of Non-Existence

of Archaeological Remains (*Certificado de Inexistencia de Restos Arqueológicos*) with respect to the relevant surface area.

- A Mine Closure Plan is required to close activities on mining sites (i.e., sealing of subterranean access points, the removal of surface infrastructure and the environmental rehabilitation of the surface).
- Finally, a Sanitary Authorisation for Disposal of Industrial Waste for effluents from mining activities must be obtained if solid, liquid or gaseous waste is discharged into the country's coastal or inland waters as a result of the mining activities.

URUGUAY

Large-scale mining projects are required to obtain the environmental authorization from the national environmental agency (DINAMA), for which purposes a complete environmental impact study (including an "urban impact" assessment) and a public hearing shall be required.

The petitioner of the environmental authorization shall also present a closing plan addressing all the actions to be taken to mitigate the effects of the mining activity and to assure the reconditioning of the affected area. The closing plan shall be reviewed every 3 years. Further, a guarantee for compliance of the closing plan shall be put in place in an amount to be determined by the authorities based on the updated estimation of the cost of carrying out all the actions set forth in the plan.

VENEZUELA

There are no specific environmental regulations applicable to mining activities in Venezuela. Mining regulations generally state that mining activities must be conducted in a manner compatible with a sustainable development and environmental conservation. According to Venezuela's Environmental Law, the Ministry entrusted with mining matters is in charge of overseeing and monitoring legal conformance in connection with mining activities.

An authorisation for the use of land issued by the Ministry of Environment must be obtained before being granted a mining concession. All concessionaires must post a bond to secure any environmental liability before carrying out mining activities.

In order to obtain the authorisation for the use of land for a project, the interested mining company must complete and return a questionnaire from the Ministry of Environment. Within thirty days of the submission, the Ministry of Environment will decide whether or not

an environmental impact study (EIS) is required. If so, the mining company must submit a proposal of the scope to be covered by the EIS. Within forty-five days, the Ministry of Environment will provide the definitive terms of reference under which the EIS must be prepared. Once the complete EIS is submitted to the Ministry of Environment, the Ministry has sixty days to either grant or deny the authorisation for the use of land. The Ministry may also request that the EIS be complemented or corrected according to its observations and reconsider its decision based on the modified EIS.

26. Particular aspects of the industries for Fe, Cr, Mn, Ni and Ur

ARGENTINA

As a radioactive material, uranium-related activities are subject to special provisions. Those who exploit mines containing radioactive minerals are required to submit a restoration plan for the affected area, and to neutralise and conserve radioactive and corrosive materials. These materials may not be reused or granted for other purposes without prior authorisation from the mining authority and the commission on atomic energy. All information concerning reserves and production of the minerals must be provided to the authorities whenever requested. The federal government has the first option to acquire nuclear minerals produced in the country, including its concentrates and derivate substances. The export of nuclear minerals requires prior authorisation and internal supply must be guaranteed, as well as control of the final destination of the exported substance. There is currently no uranium produced in Argentina, but prospecting and exploration projects have increased. Uranium projects are operated by Argentina's atomic energy commission as well as private sector prospecting companies.

BRAZIL

All radioactive elements (e.g., thorium and uranium) are subject to special provisions. Brazil's government holds a monopoly on the research and exploitation of nuclear mineral deposits located in the country. Nevertheless, under the Brazilian Mining Law, if uranium and thorium deposits are combined with other elements of economic value, the exploitation of these others elements may be authorised or granted by the National Department of Mineral Production (*Departamento Nacional de Produção Mineral* - DNPM).

CHILE

Liquid and gaseous hydrocarbons and lithium are not subject to mining concessions. The Chilean state is the only entity that may mine and exploit these resources, whether directly or through special operation agreements with third parties (a well spread local practise to allow private development of projects on those areas, particularly lithium).

Nevertheless, Chile is currently one of the world's largest lithium producers. The lithium mines are operated by private entities through old mining concessions which allow the lithium extraction. Presently, the largest producer of lithium is Soquimich, S.A., a private Chilean company that produces lithium through the treatment of salt solutions in Salar de Atacama.

The Chilean state would have a priority to purchase the production of thorium and uranium when extracted.

COLOMBIA

There are is no special treatment regarding the exploration and exploitation of radioactive minerals. Specific licences are required for handling, selling, transporting and exporting radioactive minerals.

ECUADOR

Private exploration and exploitation of radioactive minerals is not prohibited in Ecuador. However, prior special governmental authorisations must be obtained in order to exploit, handle, sell, transport and export radioactive minerals.

MEXICO

Radioactive minerals and liquid and gaseous hydrocarbons are not subject to mining concessions.

URUGUAY

Uranium and other fossil fuels or minerals suitable for industrial power generation are not subject to mining concessions. Only the state, through its national oil and gas company (ANCAP), has the right to explore and exploit the aforementioned minerals, although it is legally entitled to hire or partner with private to parties to carry out exploration and/or exploration activities. There is no special treatment regarding the exploration and exploitation of any other kind of minerals.

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