



Mining

in 31 jurisdictions worldwide

2013

Contributing editors: Michael Bourassa and John Turner



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Chile

Rafael Vergara and Francisco Corona

Carey

Mining Industry

- 1 What is the nature and importance of the mining industry in your country?

The mining industry accounts for 13 per cent of the GDP and 62.6 per cent of Chile's total exports (US\$49.3 billion). Chile is the largest producer of copper (31.9 per cent) in the world market and also produces other metals, such as silver and gold, and many non-metallic substances.

The mining industry is mainly owned by private foreign and national companies. A significant part of the copper production of the country is in the hands of state-owned companies (Codelco and Enami).

- 2 What are the target minerals?

The target minerals in metallic mining are copper, iron, molybdenum, manganese, lead, zinc, gold and silver.

In non-metallic mining, there are different groups of target minerals, of which nitrate, lithium and iodine are the most significant.

- 3 Which regions are most active?

The most active regions in mining are Arica and Parinacota, Tarapaca, Antofagasta, Atacama and Coquimbo, all located in the northern part of the country.

Legal and regulatory structure

- 4 Is the legal system civil or common law-based?

The legal system is civil law-based.

- 5 How is the mining industry regulated?

The mining industry is regulated by means of certain provisions in the Political Constitution (PC), specific mining laws – the Constitutional Organic Mining Law (COM) and the Mining Code (MC) – and other general and special regulations.

- 6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The PC provides that the state is the owner of all mines although any individual or entity may apply for a mining concession to explore and exploit mines. Ownership of mines and concessions are different from the ownership of the surface land, which may be subject to obligations and limitations to facilitate mining exploration and exploitation activities.

The COM regulates mining concessions and establishes that all metallic and non-metallic substances may be subject to conces-

sions, except for oil and gas deposits, lithium, and deposits of any kind located in the sea bottom under Chilean jurisdiction or in areas deemed, by law, to be important to national security. These non-claimable mineral substances may be mined by the state or state-owned companies or under administrative concessions or special operational contracts, all of them governed by their own legal statute.

The MC elaborates on the provisions of the PC and the COM.

Chilean civil courts are the only entities that can receive the application for a concession, grant it and declare it terminated or extinguished. They also resolve all situations and conflicts related to concessions.

The National Geology and Mining Service (Sernageomin) is the governmental entity within the Ministry of Mining that approves the technical requirements related to the form, boundaries and location of concessions; it keeps a public record of concessions; and supervises the technical compliance with certain mining regulations.

- 7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

A code for reporting mineral resources and reserves was prepared in December 2003 (the Code) and approved later by the commission created by Law 20,235 of December 2007. The Code was prepared by the Chilean Institute of Mining Engineers and other entities, such as the Chilean Securities and Exchange Commission, together with representatives of the private sector; and was sponsored by the Ministry of Mining. The Code is based on the Australian JORC system and has been recognised by CRIRSCO. Law 20,235 of December 2007 authorises the creation of the above-mentioned commission, together with some other tools to create a Chilean venture capital market for the mining business.

Under the Code, mineral resources are defined as a concentration or occurrence of natural, solid, non-organic or organic fossilised terrestrial material in such form, quality and quantity that there is a reasonable prospect of its technical-economic potential. The location, tonnage, contents, geological characteristics and the grade of continuity of the mineralisation is estimated, known or interpreted from specific geological, metallurgical and technological evidence. Mineral resources are classified, in order of increasing geological confidence, into inferred, indicated and measured resources.

The Code also defines mineral reserves as the economically mineable part of a measured or indicated resource in accordance with a productive, environmental, economical and financial scenario derived from a mining plan. The mineral reserve includes losses and dilutions of material surrounding part of the resource, which is contaminated as an effect of the mining. The assessment can come from pre-feasibility or feasibility studies where realistic conditions, at the time of the assessment, include geological, metallurgical-geotechnical, environmental, social and governmental factors. These assessments must demonstrate the technical, economic, extractive and sequential feasibility at the time that they are reported. Mineral

reserves are classified in order of increasing confidence into probable and proved reserves.

Mining rights and title

8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

According to the PC, the state is the owner of all mines although any individual or entity may apply for a mining concession to explore and exploit the mines. Ownership of mines and concessions are different from that of the surface land, which may be subject to obligations and limitations to facilitate mining exploration and exploitation activities. Therefore, the ownership of the surface land does not give any preference or right over the mining concessions located in the same areas. Mining concessions are granted by a judge through a non-discretionary and very competitive procedure.

9 What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

There is a public record of concessions (including information on their location) and certain geological data, managed by Sernageomin. Mining statistics are available from the Chilean Copper Commission (Cochilco) and from the Mining Ministry web page. There is also a directory of mining companies in Editec. All of these databases are available online.

10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?

The right to explore or exploit a designated area and acquire concessions through the non-discretionary judicial procedure explained below is on a first come, first served basis. Concessions can be freely assigned or transferred, mortgaged and, in general, be subject to any legal contract.

A concession ownership right can be enforced against the state or any other third party.

Exploration concessions last two years unless an extension is requested prior to expiration for a maximum of two additional years, together with waiving half of the area allocated. While an exploration concession is in force, its holder has preference to claim for an exploitation concession in the same area, mentioning the exploration concession and attaching some information regarding thereto.

Exploitation concessions are granted for an indefinite time.

The owner of a concession has the following additional rights and obligations.

Rights

- To occupy as much of the surface land as necessary for the exploration or exploitation works, upon payment of the proper indemnity for damages to the surface landowner.
- To impose easements upon an unwilling surface landowner through a simple and summary procedure before the relevant civil court (certain exceptions apply in the case of houses and their appurtenances and lands where vineyards and fruit trees are planted).

Obligations

- To pay (in March of each year) an annual fee equivalent to approximately US\$1.5 per hectare, in the case of exploration concessions, and US\$7.5 per hectare, in the case of exploitation concessions. Failure to pay any annual fee may cause the loss of title to the concession through an auction procedure.
- To obtain the necessary environmental approvals.
- To comply with:
 - health and safety protection rules;
 - rules regarding civil construction developments, mining work, machinery, equipment, tools, buildings and mining facilities; and
 - special environmental authorisations (fines, closure and even termination of mining activities may apply in case of infraction of such obligations).
- To comply with, or be subject to, the general rules of contracts and torts in connection with their liability in case of infractions or violations of Chilean civil law.

11 What is the regime for the renewal and transfer of mineral licences?

Exploration concessions last two years unless an extension is requested prior to expiration for a maximum of two additional years, together with waiving half of the area allocated (see question 10). To obtain this extension, the exploration concession holder must request it from the judge prior to the expiration of the existing term. The judge will grant the extension if the technical requirements are met. Therefore, there is no government discretion involved.

As the exploitation concessions are granted for an indefinite time, it is not necessary to request their renewal.

The holder of a mining concession is able to freely transfer the concession without requesting a special governmental authorisation or consent. The only requirement for a transfer, applicable to any real estate in Chile, is a public deed, which must be registered with the relevant custodian.

12 Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

There are no restrictions on foreigners owning mining rights. No domestic partner is required.

13 How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

The PC grants protection, as a constitutional right, to the property rights of concessions. There is an independent judicial system that adheres to the rule of law and due process.

Foreign arbitration awards are freely enforceable in Chile following the rules of the New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards, if applicable, or the general rules set out in the Civil Procedure Code, which consider, among other matters, reciprocity, existence of special treaties and other rules to effectively obtain enforcement in Chile.

14 What surface rights may private parties acquire? How are these rights acquired?

Private parties may acquire any kind of surface rights (ownership, easements, leases, etc) through direct negotiations with the surface landowner.

Private parties may judicially impose easements to facilitate the convenient exploration or exploitation of their concessions provided damages are paid.

- 15** Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The government is able to participate in mining projects and other kinds of business through a state-owned company, which needs to be organised and regulated by a special law. A significant part of Chilean copper production comes from state-owned companies (Codelco and Enami). However, such companies do not have any special right over mining concessions and are not privy to any information different from that which is available to any private party.

There are no special local listing requirements for project companies.

- 16** Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The PC provides that nothing can be expropriated unless there is a general or special law authorising such expropriation for reasons of public utility or national interest qualified by the law; the expropriated party will be always entitled to claim against the expropriation and has a right to be duly compensated. The COM refers to the compensation, providing that it will amount to the commercial value of the ability to begin or continue with the extraction and appropriation of the mineral substances which are the subject of the concession, calculated on the present value of net cash flows of the concession.

- 17** Are any areas designated as protected areas within your jurisdiction and which (in general terms) are off-limits or specially regulated?

Chile does not have a comprehensive regulation related to protected areas. Therefore, the relevant regulation is spread over several laws that establish many categories of official protected areas, such as: national parks, national reserves, natural monuments and wildlife reserves (Decree 4363/31 Forest Law, Law No. 18,362); nature sanctuaries (Law No. 17,288 on National Monuments); areas of tourist interest (Law 20,423 on Institutional System for the Tourism Development); wetlands of international importance (Ramsar Convention); marine parks and reserves (Law No. 18,892 on Fishing and Aquaculture); etc. In turn, the creation and management of these areas are assigned to several agencies.

Even though a National System of Wild Protected Areas of the State (SNASPE) was created by Law No. 18,362, it never came into force and thus, the protected areas are still ruled by sectoral regulations. In this regard, currently, there is a bill under discussion in the National Congress which will create a National Service of Biodiversity and Protected Areas that will manage the National System of Wild Protected Areas and the protected areas of the state, and promote the creation of private wild protected areas.

Article 10 of Law No. 19,300 on General Bases of the Environment (Law No. 19,300) sets forth that the execution of work, programmes or activities in national parks, national reserves, natural monuments, wildlife reserves, nature sanctuaries, marine parks, marine reserves or in any other area under official protection – in those cases allowed by the relevant laws – must be submitted to the Environmental Impact Assessment System (ELIAS). In connection with the development of projects inside these areas, and beyond the 1940 Convention for the Protection of Flora, Fauna and the Scenic Natural Beauties of America (Washington Convention), which sets specific restrictions on commercial activity within these areas, the Supreme Court has ruled that it is possible to carry out projects or works in national parks and other protected areas, providing such activities are compatible with the objective of such areas, subject to strict assessment by the environmental authority.

To date, Chile has 99 protected units: 36 national parks, 48 national reserves and 15 natural monuments, which cover an area

of more than 14 million hectares, equivalent to 20 per cent of the continental national territory.

Duties, royalties and taxes

- 18** What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

There are three different income tax regimes applicable to mining activities, depending on the scale and volume of the mining project in question. Small miners (artisanal miners who personally work a mine, with a maximum of five employees) are subject to an overall income tax at a fixed rate applicable according to a formula that takes into account the average copper price and the company's sales during the tax period. Medium-sized miners are subject to a presumptive tax regime, under which the taxable income of the period is presumed to be a certain percentage of their net sales, being subject to the general tax rates (explained below). This percentage ranges from 4 per cent to 20 per cent according to the average copper price during the tax period. For this purpose, medium-sized miners are those which cannot be categorised as artisanal small miners and are not stock corporations or limited partnerships and whose annual sales do not exceed 36,000 metric tonnes of metallic non-ferrous mineral, or do not exceed 2,000 UTA, regardless of the type of mineral. Large mining companies (those that exceed the aforementioned limits) are subject to the Chilean general income tax regime.

The Chilean general income tax regime is an imputation system, where profits are taxed in two stages. In the first stage, profits are subject to a corporate tax at a 20 per cent rate, (the first category tax), which applies on the annual accrued taxable income (income minus cost and necessary expenses of the period). In a second stage, when distributed to the shareholder, profits are subject to the personal tax with a tax rate that ranges from zero per cent to 40 per cent, in the case of individuals with residence or domicile in Chile, or to the withholding tax with a 35 per cent rate, in the case of non-Chilean residents (individuals or entities). The corporate tax is a credit against the personal tax and the withholding tax, as applicable. Dividend distributions among Chilean-resident entities are not subject to taxation.

Specific mining tax

The specific mining tax is regulated in articles 64-bis and 64-ter of the Chilean Income Tax Law (ITL). It was first introduced through Law No. 20026, becoming effective on 1 January 2006. In 2010, by means of Law No. 20469, it was subject to significant amendments aimed at increasing the tax burden applicable to large mining companies.

The specific mining tax is structured as an income tax on the mining operational taxable income obtained by mining operators. For these purposes 'mining operator' means any individual or entity that extracts minerals that could be subject to a mining concession and sells them at any stage of production. 'Mining operational taxable income' means the net income determined for corporate tax purposes, with the adjustments indicated on article 64-ter of the ITL, including:

- the deduction of all income not directly connected to the sale of mining products;
- the addition of costs and expenses not directly connected to income from the sale of mining products;
- the addition of the specific following expenses:
 - interests paid or accrued over owed amounts during the relevant tax period;
 - carry-forward losses;
 - the amount deducted for application of accelerated depreciation (only ordinary depreciation can be deducted); and
 - expenses related to the acquisition of a right to exploit a mine owned by a third party (ie, a lease, usufruct, etc), among other adjustments.

The applicable tax rate is progressive, based on the taxpayer's annual gross sales of mining products expressed in metric tonnes of fine copper (MTFC), in accordance with the average price of Grade A copper, as registered during the relevant period on the London Stock Exchange. Related parties' sales of mining products must be added to determine the annual gross sales of mining product of a mining operator.

Mining operators whose annual gross sales of mining products are equal to or less than the equivalent of 12,000 MTFC are exempt from the specific mining tax.

Mining operators whose annual gross sales of mining products are equal to or are less than the equivalent of 50,000 MTFC, and greater than the equivalent of 12,000 MTFC, are subject to a progressive tax rate by brackets from 0.5 per cent to 4.5 per cent.

Mining operators whose annual gross sales of mining products are greater than the equivalent of 50,000 MTFC are subject to a progressive tax rate by brackets from 5 per cent to 14 per cent, which is determined in relation to the 'mining operational margin'. This last concept was incorporated by Law No. 20469 and corresponds to the result, multiplied by 100, from dividing the mining operational taxable income by the mining operational income (all income earned or accrued from the sale of mining products).

According to article 11-ter of Decree Law 600, on foreign investment (DL 600), in case of mining investments of US\$50 million or more, foreign investors may claim tax stabilisation for 15 years from the commencement of commercial production, for: the specific mining tax, including its rate and taxable basis, and the future taxation of any other income tax on mining activities, including royalties and similar duties; and the mining licence rate and its calculation method. The mining tax stabilisation is incompatible with the income tax stabilisation rights generally available to foreign investors under other DL 600 provisions.

Duties

As a general rule, Chile applies a flat 6 per cent custom duty on imports of all merchandise, which is calculated on the cost, insurance and freight (CIF) value of the merchandise. For this purpose, The Chilean Customs Service has the authority to assess the price paid for the goods imported, when it is not determined on an arms-length basis. No special customs duties apply to mining activities.

On the other hand, Chile has entered into free-trade agreements whereby the Chilean customs duties are reduced for most of the merchandise produced in the relevant contracting state.

19 What tax advantages and incentives are available to private parties carrying on mining activities?

Under DL 600, foreign mining investors may choose to be subject to one of the following special tax regimes:

- a 15-year mining tax stabilisation (see question 18); or
- a 10-year income tax stabilisation, at a fixed rate of 42 per cent (excluding the mining tax). This income tax stabilisation can be extended to 20 years for mining projects over US\$50 million.

Additionally, under DL 600, foreign investors are entitled to be treated in the same manner as local investors. Moreover, they can apply for stabilisation of the customs duties and value added tax (VAT) rates applicable to the import of certain equipment not produced in Chile.

Also, a special tax regime has been established for mining and other industrial activities conducted in the extreme northern and southern regions of the country.

Other incentives include:

- accelerated depreciation of fixed assets, under certain circumstances, to one-third of their normal life (only for corporate tax determination purposes);

- deferred payment (from one to seven years) of customs duties on the import of certain capital goods;
- cash refund of the VAT paid on the acquisition of fixed assets and on the hiring of certain services by taxpayers, if some requirements are met; and
- VAT exemption on the import of capital assets that form part of foreign investment projects agreed with the state of Chile under a DL 600 agreement.

20 Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

Yes, DL 600 provides for the tax stabilisation agreements discussed in questions 18 and 19.

21 Is the government entitled to a carried interest, or a free carried interest in mining projects?

The government is not entitled to force a carried interest in mining projects. As explained above, the government can participate in a mining project through a state-owned company, which does not have any special right over mining compared with any private party.

22 Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Capital gains arising from the sale of mining concessions can be subject to either:

- a 20 per cent corporate tax as a sole tax, as long as the relevant requirements are met; or
- the general tax regime (ie, 20 per cent corporate tax plus 35 per cent withholding tax, in the case of non-Chilean residents, with the first being a credit against the latter).

The 20 per cent corporate tax as a sole tax is available when:

- the sale is made between non-related parties;
- the sale of mining concessions is a non-recurrent or non-habitual activity of the seller; and
- the mining concession is not part of the assets of a company that declares its effective income under the corporate tax.

If any of these requirements are not met, capital gains arising from the sale of mining licences will be subject to the general taxation regime mentioned above.

23 Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

See question 18.

Business structures

24 What are the principal business structures used by private parties carrying on mining activities?

Most foreign investors set up a stock company or corporation, a limited liability partnership or a branch office in Chile. It is also possible to organise stock companies, which are characterised by their flexibility both in incorporation and the determination of their provisions, giving more importance to the parties' agreements. There are also companies governed by the Mining Code, the most common of which is the contractual mining company, created by public deed with at least two partners.

25 Is there a requirement that a local entity be a party to the transaction?

There are no requirements regarding the nationality of the parties.

26 Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

See question 41.

Financing

27 What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Project finance is the main source of financing for large-scale mining projects. Local commercial or syndicated loans are the source of financing or refinancing for medium-sized or small-scale mining projects. Although there are some mining companies on the stock market, to date, the stock market does not play a significant role in the financing of the Chilean mining industry. The bond market is also a good available alternative, though only a couple of mining entities have issued bonds, either domestically or internationally. Recently, the purchase of a royalty associated with future production of a mine and the *avío*, a similar contract to the above, have appeared as alternatives to finance.

28 Please describe the regime for taking security over mining interests.

Mining concessions are considered as real estate by Chilean regulations. Therefore, concessions can be freely mortgaged and, in general, be subject to any agreement. The only requirement, which is applicable to all real estate in Chile, is that the mortgage must be stated in a public deed, which must be registered with the relevant custodian.

Restrictions

29 What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no specific limitations. All merchandise can be imported into Chile, with certain exceptions.

30 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

There are no restrictions other than the one established by Law No. 16,624, which requires copper producers (over 75,000 tonnes per year) to reserve or stock a percentage of their production for consumption by domestic industry. The amounts of copper to be reserved are determined by Cochilco.

31 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Funds must be imported to Chile through a member of the formal exchange market (FEM) formed by all commercial banks, certain exchange houses, stockbrokers and some entities authorised by the Central Bank of Chile. The investment of capital in Chile and the repatriation of an investment and its profits must be carried out either under chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile or under DL 600. The first procedure is a mere registration of the investment with the Central Bank and it is available to individuals or legal entities irrespective of their domicile or residence and does not imply a prior approval.

DL 600 offers investors the opportunity to enter into an agreement with the Republic of Chile to bring foreign capital into the country under terms that are guaranteed not to change, and it is available to individuals or legal entities domiciled or resident abroad investing more than US\$5 million. With regard to mining projects, as long as the companies fulfil certain specific requirements, the length of the agreement can be longer.

Exporters may choose either to bring the foreign currency resulting from an export transaction into Chile or to keep such foreign currency abroad by making investments, paying import operations or foreign loans. If an exporter chooses to bring the foreign currency into Chile, there is no obligation to bring the foreign currency into the country through the FEM nor to convert it into Chilean pesos.

The applicable regulations provide for compliance with certain reporting requirements regarding the outcome of the relevant export and the use of the foreign currency.

Environment

32 What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The PC guarantees the right to live in an environment free of pollution and it establishes that the law may determine specific restrictions in exercising particular rights and privileges in order to protect the environment. In turn, Law No. 19,300 of 1994, as amended by Law No. 20,417 of 2010, provides the basis for the whole legal-environmental system in Chile and regulates issues of significant importance for investment projects, such as the Environmental Impact Assessment System (EIAS); air and water quality and emission standards; prevention and decontamination plans, etc. Regarding the mining industry, Law No. 19,300 sets forth that mining development plans, including coal, oil and gas projects, and including exploration, exploitation, processing plants, and debris and waste disposal must be submitted to the EIAS and obtain the corresponding environmental approval before their construction. Additionally, there are several regulations by sector that have to be complied with, such as those related to air and water emissions, mining and industrial liquid and solid waste, hazardous substances and waste, explosives, safety, etc.

The main regulatory bodies are those created by Law No. 20,417:

- the Ministry of the Environment, responsible for assisting the Chilean president in the design and implementation of environmental policies, plans and programmes, as well as the protection and conservation of biological diversity and of renewable natural and water resources;
- the Environmental Assessment Service, which is in charge of the management of the EIAS; and
- the Environmental Commission, which oversees the continued compliance with standards, conditions and measures set out in the environmental approval resolution (EAR), on the basis of inspections, controls, measurements and analyses, and imposes sanctions in case of infringements of the EAR and other environmental laws and regulations.

In addition, the EIAS procedure involves the participation of other public agencies with authority to establish environmental regulations and supervise the compliance thereof. The main specific authorities are the Regional Secretariat of the Ministry of Health, the Live-stock and Agricultural Service (SAG), the General Water Bureau (DGA), the Mining and Geology National Service (Sernageomin), the National Forest Corporation (CONAF), the National Monuments Council, the Superintendency of Sanitary Services (SISS) and the General Directorate of Maritime Territory and Merchant Navy (Directemar), among others.

- 33** What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The holder of a mining project must submit the project to the EIAS either through an environmental impact study (EIS) or an environmental impact statement (EID), depending on the magnitude of the environmental impacts. The assessment procedure takes 120 business days for an EIS (extendible to 180 business days) and 60 business days for an EID (extendible to 90 business days). However, they usually take approximately 12 and 6 months, respectively, as the public agencies may request additional information which has to be provided by the project holder during the process, during which time the term is suspended. Once the assessment procedure is finished, the project may be approved or rejected. If the project is approved, the authority issues an EAR that operates as a 'global environmental permit' which certifies that the specific project complies with all applicable environmental requirements and regulations, and also grants specific environmental permits needed for the project, known as 'environmental sectorial permits'. These permits usually require – in addition to the environmental authorisation – a sectorial approval which is granted after the EAR by the corresponding agency. This agency cannot deny the authorisation for environmental reasons, but it may do so on other grounds such as non-compliance with technical requirements.

- 34** What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Law No. 20,551, in force since 2012, regulates the closure of mining works. It establishes that mining projects must present to Sernageomin a closure plan for mining works prepared in accordance with the corresponding EAR. The objective of this closure plan is to integrate and execute all the measures and actions destined to mitigate the effects caused by the extractive mining industry within the places where it is developed, in order to assure their physical and chemical stability, according to the environmental regulation. The closure plan must be approved by Sernageomin before starting the exploration or exploitation of a mining work, or the operation of a processing establishment. In addition, mining projects with an extraction capacity over 10,000 tonnes per month must grant a guarantee of compliance with the closure obligation, which amount will be determined based on the periodical estimation of costs of implementing and managing the closure plan.

Health & safety, and labour issues

- 35** What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

With regard to health and safety, the PC guarantees all persons the right to live in a clean environment and it establishes that the law will determine specific restrictions on the exercise of particular rights and privileges in order to protect the environment.

The most important regulation regarding mining safety and health is Executive Decree No. 132 of 2004, which contains many specific obligations for mining companies in regard to mining works, machinery, equipment, tools, buildings and mining facilities. Supplementary Executive Decree No. 594 of 2000 regulates the sanitary conditions in every workplace (noise, hazardous substances management, ventilation, industrial, hazardous and household waste, etc), including mining activities.

The principal regulatory authorities are the regional office (Seremi) of the Health Ministry and Sernageomin,

Regarding labour matters, the PC secures for all persons labour freedom and forbids any discrimination based on criteria other than

personal capacity and suitability; notwithstanding that the law may require the Chilean nationality and age limits in certain cases. The Constitution also guarantees the right of the employer to freely choose his or her employees. Therefore, the employer may freely choose to hire an individual, solely based upon his or her personal capacity and suitability for the job.

The Labour Code is the most important labour-related regulatory instrument. Particularly, article 184 of the Chilean Labour Code provides that the employer must adopt all necessary measures to effectively protect the life and health of employees. There are other general and specific regulations regarding health and safety laws, such as Law No. 16,744, which set rules on occupational accidents and diseases, and Supreme Decree No. 76 which rules the application of article 66 bis of Law No. 16,744 which provides the employer's obligation to have a health and safety system in the workplace, among other regulations. The principal regulatory authorities are the Labour Office and the Labour Ministry.

- 36** What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

General rules apply: no less than 85 per cent of the workers of one given employer with more than 25 employees must be Chilean, though certain exceptions may apply in calculating the number of Chilean workers. General immigration rules also apply: foreign workers are required to obtain work visas to work in Chile and individual employment contracts of foreigners must include certain mandatory clauses.

Social and community issues

- 37** What are the principal community engagement or CSR (corporate social responsibility) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

There are no laws regarding CSR, usually each company makes its own policies or undertakings in relation to CSR.

- 38** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

The Indigenous Law No. 19,253 of 1993 and Convention No.169 of the International Labour Organization of 1989, which was ratified by Chile in September 2008 and became enforceable in September 2009, set up a special status for indigenous lands and natural resources, and subjects their acquisition and exploitation to some obligations and limitations.

According to the Indigenous Law, indigenous land cannot be alienated and requires the prior approval of the Indigenous Development National Corporation (Conadi) to impose a lien (eg, an easement) on indigenous land; therefore, the exploration or exploitation of works of a mining concessionaire may be slowed down if such arrangements are not entered into in due course.

- 39** What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

There is no law regarding CSR issues.

Chile has ratified the Convention No. 169 from the ILO concerning indigenous and tribal peoples of independent countries and the United Nations Declaration of Rights of Indigenous People adopted in 2007, that establishes basic principles like the recognition of the indigenous and tribal people, and the right to self determination and autonomy in relation to their culture, religion, education, communications, health, and several other matters.

Update and trends

In September 2008, the Chilean Congress ratified Convention No. 169 of the International Labour Organization, which became enforceable in September 2009. Despite this, there are still some grey areas regarding how the participation of indigenous people – and the community in general – affected by a mining project should be addressed.

A current trend in the mining industry is to face the issue of the relationship with and the participation of the community as a part of the core of the business. In this regard, the adoption of criteria from the concept of corporate social responsibility has been a key development. The mining industry has recognised the importance of reconciling the interests and necessities of the mining business with values such as transparency and ethics in the implementation of social programmes and in the fulfilment of labour and environmental regulations. Prevention, anticipation and participation are three main concepts that, beyond the development in regulation on this matter, have been implemented in the strategy of the industry.

International treaties

41 What international treaties apply to the mining industry or an investment in the mining industry?

Chile has signed agreements for the promotion and protection of investments with many countries throughout the world. It is a member of the WTO, is a signatory of the Kyoto Protocol, the Washington Convention and the Stockholm Convention. Chile has also signed many double taxation treaties (Canada, Mexico, Spain, Norway, South Korea, etc) and free-trade agreements (Canada, the United States, the European Union, Mexico, South Korea, New Zealand, Singapore, Brunei and China) as well as a mining treaty with Argentina.

Foreign investment

40 Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

See question 12.

/Carey

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