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Mining

Chile: Law & Practice

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Dentons Chile

practiceguides.chambers.com

2021

Law and Practice

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1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

The mining industry in Chile has been historically the most significant economic activity in the country. Mining has been the main source of economic growth and development for the country. This sector accounts for approximately 10% of Chile's GDP during the last century.

At the same time, Chile is the world's number-one producer of copper, iodine, rhenium and molybdenum. Chile has also the largest reserves in the world of lithium and is the world's number-two producer of this mineral, which is forecast to increase in the years ahead. So, in the future, mining activities will continue to be the main economic sector of this country.

Geographically and geologically, Chile has favourable conditions for mining activities, especially in the Atacama Desert, combining attractive mineral resources with short distances between extraction sites, mostly located in the Andes Mountains, and the exporting facilities located on the coast of the country. Chile's most important mineral resources are copper, molybdenum, silver and gold, exploitation that is concentrated mostly in the north, in the Antofagasta and Atacama Regions.

The mining legal system seeks to promote the exploitation of mining resources, establishing clear rules for those who invest and assume the risk of mining activity.

In Chile, the world's leading mining companies are present and have competed for many years with the state-owned Codelco (*Corporación Nacional del Cobre de Chile*), the largest state copper company on the planet, which operates the Chuquibambilla and El Teniente mines.

1.2 Legal System and Sources of Mining Law

The Chilean mining regime is based on a civil legal system and it is contained in three fundamental statutes:

- the Political Constitution of the Republic of Chile, which establishes the fundamental rules on which Chilean mining legislation is built;
- the Constitutional Organic Law on Mining Concessions, which describes the characteristics and features of mining concessions granted by the State to whomsoever complies with the requirements linked to their acquisition and for their exploitation, as well as all rights and obligations attached to those concessions; and
- the Chilean Mining Code, which provides a detailed regulation of mining concessions for exploration or exploitation, including the proceedings necessary for them to be granted to a concessionaire, the rights and obligations attached to

mining concessionaires, the mining concession protection regime, and, finally, certain rules of contracts associated with them. In addition, the Mining Code is complemented with many regulatory rules itemised by the Mining Code Regulation regarding the closure of mining operations and the Mining Safety Regulation, which contains provisions for the protection of mining workers' lives and safety, as well as on-site safety regulations in connection with machinery, equipment, instructions and facilities in mining sites.

1.3 Ownership of Mineral Resources

The Political Constitution of the Republic of Chile states that the State is the absolute, exclusive and permanent owner of all mines, including metalliferous sands, salt pans, coal and hydrocarbon deposits, with the exception of surface clays. There is no mandatory national or government joint venture, contracting or participation.

The Chilean Constitution also grants individuals, natural persons or legal entities, either Chilean or foreign, the opportunity to acquire, explore and exploit mineral deposits, through a mining concession granted by the courts of justice. However, there are some limitations/restrictions for foreign persons or entities regarding lands located close to the country borderline.

A novel circumstance in Chilean mining law is that the ownership of the State is independent and notwithstanding the rights of the owners of the surface land. Therefore, an absolute distinction between ownership over surface land and ownership over the mining concession is made. Thus, they are completely independent assets, even in cases in which they are both held by the same individual or entity. For that reason, the Constitution mandates that surface property shall be subject to the obligations and limitations established by law in order to facilitate mining exploration and exploitation as well as mineral processing, for example the land owner must accept easement in favour of the mining concessions. However, the owners of surface lands must be compensated for all damages caused.

1.4 Role of the State in Mining Law and Regulations

In Chile, the role of the State in mining is that of a grantor-regulator, but, as previously expressed in **1.3 Ownership of Mineral Resources**, the State is the absolute, exclusive and permanent owner of all mines and grants individuals or entities the opportunity to acquire, explore and exploit mineral deposits, through a mining concession granted by the courts of justice.

1.5 Nature of Mineral Rights

Mineral rights in Chile have a constitutional basis but, as outlined in **1.2 Legal System and Sources of Law**, they are also regulated in the Constitutional Organic Law on Mining Conces-

sions, the Chilean Mining Code and the Mining Code Regulation.

In this context, mineral rights do not have the status of property because they are defined as a concession granted by the state over the minerals. Notwithstanding, the property rights held by the concessionaire over its concession are guaranteed under the constitutional right of (and to) property.

In general, the mining law acknowledges after the concession has been established that its owner shall be empowered to make any works required for exploring or exploiting the mine.

Because of the distinction made by law between ownership over surface land and ownership over the mining concession, both the exploration and exploitation concessionaires have the right to impose easements or rights of way over the surface properties if they are necessary for exploration works and for stockpiles, processing facilities, energy and communications systems, access roads, pipelines, channels, housing, and, in general, any other ancillary or supplementary facilities or components necessary for free and unconstrained exploitation of the mining concession.

1.6 Granting of Mineral Rights

As previously stated, the granting authority in Chile are the courts of justice, who are completely independent of the government.

The mining concession must always be established by a judgment issued by the judge of the territory in which the concession is located. The Mining Code has established a detailed process, which must be duly complied with, otherwise the rights arising from these concessions may be subject to cancellation at the request of anyone. Later, the resolution declaring the establishment of a mining concession must be registered in the Mining Registry/Register of the respective commune. Once this registration is completed, any transfer or granting of any in rem right over the concession must be executed by means of a public deed.

Another aspect that must be highlighted is that the upper face of mining concessions, from a horizontal perspective, corresponds to a right-angled parallelogram, and its depth is indefinite within the vertical layouts that limit it. The location of the parallelogram in the land necessarily must be determined by UTM (Universal Transverse Mercator) Co-ordinates, and the length and width of the parallelogram must be oriented north to south of the country.

However, according to Chilean mining legislation there are two different types of mining concessions: (i) an exploration concession, with a duration limited to two years, which grants its hold-

er the exclusive right to investigate and prospect the existence of all mineral substances that may be granted in the concession; and (ii) an exploitation concession, with an indefinite duration, which grants its holder an exclusive right freely to explore and exploit the land and become the owner of all the mineral substances (metallic and non-metallic) that are extracted from within the limits of the exploitation concession, with the sole exception of the minerals that the law has reserved to the State.

Both forms of mining concessions are in rem rights, enforceable upon the State and any other individual or entity. They can be freely transferred, transmitted, and encumbered by mortgages or other forms of in rem collateral if formal requirements are met, which are similar to any sale of property in the related regulation.

A government body called the National Geology and Mining Service (*Servicio Nacional de Geología y Minería* - SERNAGEOMIN) participates in the process of the constitution of mining concessions, which advises the Ministry of Mining from a technical point of view on geology and mining issues. This agency has an important participation in the procedures of establishing mining concessions, reviewing the technical aspects of them, as well as in the approval of the exploitation's methods and the closure plans of the mining projects. In addition, SERNAGEOMIN is in charge of a national registry of mining concessions, to keep a special record of all the established/existing mining concessions over the Chilean territory and to supervise compliance with the Mining Code Regulation, among others.

There are no jurisdictional overlaps because there is a central administration service responsible for the technical aspects and the courts of justice are responsible for granting correctly concessions on mineral rights through judicial resolutions.

However, these mineral rights can be transferred to third parties through private contracts, which must be registered in a Mining Registry.

1.7 Mining: Security of Tenure

Any natural person or legal entity, Chilean or foreign, is entitled to acquire or request a mining concession in compliance with the requirements established by law, with the exceptions mentioned in the Mining Code. However, there are some limitations/restrictions for foreign persons or entities regarding lands located close to the country borderline.

Both kinds of concession are granted after a judicial writ is submitted to the competent court. The date of initial filing for the establishment of a concession determines the preference to exercise the rights arising from the concession that is being established/founded. The law presumes that whoever first sub-

mitted for the incorporation of the exploration or exploitation concession is the discoverer.

An exploration mining concession is granted for a period of two years and is renewable for another two years. Holding this type of concession gives priority to those applying for an exploiting mining concession, which is granted to the requesting party without a time limit.

Both forms of mining concessions are in rem rights, enforceable upon the State and any other individual or entity. They can be freely transferred, transmitted, and encumbered by mortgages or other forms of in rem collateral if formal requirements are met, which are similar to any sale of property in the related regulation.

According to the mining law, the owner of the mining concession has the obligation to pay a yearly mining licence, to the benefit of the State, based on the surface of the concession and the type of concession. It is important to note that the non-payment of the mining licence may give rise to an auction process affecting the concession. In this case, the highest bidder may acquire the mining concession, paying only the value of the unpaid mining licences. If there are no bidders in the auction, the judge must declare the land on which the concession is located as a “free land”.

In addition, it should be noted that the grounds for extinction of termination of a mining concession are expressly stated in the Mining Code. Mining concessions can be extinguished by:

- the failure of some procedures within their process of establishment;
- for its owner not having exercised any court action to avoid overlap;
- the expiry of the term (only in the case of the exploration concession);
- the declaration of nullity or invalidity by judicial resolution; and
- the abandonment by the owner unilaterally relinquishing the concession.

2. Impact of Environmental Protection and Community Relations on Mining Projects

2.1 Environmental Protection and Licensing of Mining Projects

The main environmental laws in Chile are Law No 19,300 (the Environmental Framework Law), Law No 20,417, which created the Ministry for the Environment, the Service of Environmental

Assessment (SEA) and the Superintendence of the Environment (SMA) and Supreme Decree No 40/2012 that approves the regulation of the Environmental Impact Assessment System (SEIA).

Thus, the main agencies overseeing environmental issues are the Ministry of Environment, the SMA and the SEA.

Many public services participate in the environmental approval applications for mining projects, such as: General Water Services, the Ministry of Public Works, the Agriculture Ministry, the Ministry of Mining, the Ministry of Health, among others. SERNAGEOMIN also plays a relevant role in every aspect of the approval, the operation of the project and in the approval of the mine closure procedure (regulated by Law No 20,551).

This regulatory structure for obtaining the environmental approval for a project is set on a nationwide basis and forces all regions of the country (15) to follow an administrative process once the regional office of the SEA where the project is located has received environmental approval applications. SEA fulfils the role of co-ordinator between all the services.

Although, according to law the process for obtaining the environmental approval will be different, depending on whether the project is subject to an environmental evaluation through an environmental impact declaration (DIA) or environmental impact study (EIA). The DIA are needed for minor projects (such as those for which the mineral extraction capacity does not exceed 5,000 tons per month) where the potential impact to the environment is limited, whereas the EIA focuses on major and more environmentally perilous activities.

In the case of mining projects (including phases of exploration and mining) they are expressly mentioned as one of the activities subject to the SEIA in accordance with the provisions of Articles 10 letter i) of Law No 19,300 and 3 letter i) of Decree No 40/2012. These Articles define the strict characteristics that these mining projects must have in order to be subject to a mandatory evaluation before the SEIA environmentally, either through a DIA or an EIA.

With regard to the efficiency of environmental authorities, it should be considered that the SEA, once receiving the required documentation, has 60 or 120 days to communicate a decision on the application (by the DIA and EIA respectively). However, in practice the SEA on average approves environmentally the projects in ten months in the case of a DIA and 16 months in the case of an EIA.

The environmental laws establish that, after a regulated administrative process, the SEA will issue a resolution that will allow the construction, operation and closing of the mining project

and certify that it complies with the applicable environmental regulations (RCA).

The SMA is the authority responsible for monitoring and sanctioning compliance on environmental regulations (including the RCA).

2.2 Impact of Environmentally Protected Areas on Mining

According to Chilean law Protected Areas (PA) are especially regulated in our country. PA are legally defined as “Portions of territory, geographically delimited and established by an administrative act of competent authority, placed under official protection in order to ensure biological diversity, protect nature preservation or conserve environmental heritage”. The National Forest Development Corporation (CONAF) manages them. Originating in 2011, the draft law, which has been discussed in Congress, creates the Biodiversity and Protected Areas Service, depending on the Environmental Ministry, which will be in charge of biodiversity and conservation. This service will provide the administration of a national system of protected areas. This bill should be approved shortly, because it would be a great advance for protecting these areas in this country.

Currently in Chile there are 15 categories declared as under official protection for the purposes of the SEIA, which are congruent in part with those established in the Washington Convention as they are the most important (for example: National Parks).

Article 10 letter p) of Law No 19,300 establishes that the projects or activities that may cause an environmental impact, in any phase, must be submitted to the SEIA “the execution of works, programmes or activities in national parks, national reserves, natural monuments, reserves of virgin regions, nature sanctuaries, marine parks, marine reserves or in any other areas placed under official protection, in the cases that the respective legislation permits”.

In this regard, the SEA has interpreted that not every project (including mining projects) that is intended to be developed in a PA must enter the SEIA simply because it is located there. Characteristics of the magnitude and duration of the impacts of the projects should be considered and how these affect the object of protection, which must be established on a case-by-case basis.

Additionally, in accordance with the provisions of Article 17 of the Mining Code, special permits must be obtained from the government Regional Major or President in the case of the development of mining projects in certain areas. The most relevant from an environmental perspective are i) to execute mining work in places declared national parks, national reserves or

natural monuments, and ii) to carry out mining work in “*covaderas*” (guano deposit) or in places that have been declared of historical or scientific interest.

2.3 Impact of Community Relations on Mining Projects

Mining projects that are environmentally evaluated in the SEIA have a special stage of citizen participation (the EIAs and the DIAs, in some specific cases) whereby any interested party can raise doubts or objections to the project, which must be necessarily reviewed by the authority and must be responded to by the owner of the mining project if appropriate.

However, improvement of the instances of participation for the citizen continue to be a concern of all the last governments in Chile. Citizens affirm they are not sufficiently considered in the evaluation process.

In turn, the Mining and Society Unit of the Ministry of Mining helps strengthen the relationship and trust between mining companies and local communities from the early stages of a mining project (exploration). It also facilitates the participation of local communities in the identification of future problems with regard to the project and facilitates the implementation of economic and local development opportunities. In addition, this department encourages the development of alliances between mining companies, local communities, and NGOs, encourages the development of education and training opportunities for local residents to qualify for different forms of employment such as as mining jobs, and disseminates policies and/or good social practices in regions/communities associated with mining operations, among other tasks.

2.4 Prior and Informed Consultation on Mining Projects

Prior and informed consultation is not mandatory in Chile for mining projects (unless there are indigenous communities located in the area, as explained in **2.5 Impact of Specially Protected Communities on Mining Projects**).

However, during the environmental evaluation process, once a mining project enters the SEIA through an EIA, it must have a citizen-participation process for the communities to make their observations regarding the Project (PAC) and an indigenous consultation carried out by the State if indigenous communities are present in the area. In specific cases, the PAC is contemplated in the DIA. In both cases, this process is carried out by the State through the SEA.

2.5 Impact of Specially Protected Communities on Mining Projects

There is a special status for indigenous lands and natural resources within the national territory. Law No 19,253, the Indigenous Law, and Convention 169 of the International Labour Organization (ILO) set this status.

This Law entered into full force in Chile in 2009, confirming the right of indigenous communities to be consulted regarding any rule, law or resolution that may affect them directly — a practice known as “prior consultation.” In the same year, the Ministry of Development and Planning issued Supreme Decree 124, which requires that the consultation be carried out through State agencies. In addition, in 2014 Supreme Decree 66, which contains the regulation of the procedure to carry out the prior consultation process, entered in force.

According to this legislation, indigenous people cannot be detached from their land by any means without the approval of the Indigenous Development National Corporation (CONADI).

Because of the aforementioned law and regulation, the exploitation of a mining project might be hindered, thus the mining company must be aware of any indigenous land affected by its operations.

2.6 Community Development Agreement for Mining Projects

In Chile it is common for mining companies to have development agreements with communities that are close to the project site. However, they are not mandatory.

In the event that the mining project must enter the SEIA, there may be so-called “voluntary environmental commitments” in which development agreements can be included.

2.7 Good and Bad Examples of Community Relations/Consultation Impacting Mining Projects

Los Bronces mine is an example of good environmental and community relations/consultation behaviour. Operated by Anglo American, it is located in the Metropolitan region near to Santiago-Chile and produces copper concentrate and molybdenum that is mined open-pit.

This is a good example because the company has not had any environmental problems or contingencies and promotes sustainable development in its operations. For example, since 2016 they have developed a pioneer model for the education of children and youth. They seek the progressive transformation of educational establishments into centres of innovation that enhance the social bond with their communities. Currently,

the model is being implemented in 17 establishments in the Valparaíso and Metropolitan regions, involving more than 5,000 students and 500 managers.

Anglo American also won the prestigious “More for Chile” award for implementing a small business development programme called “Emerge”. This programme has supported more than 58,000 jobs in small- and medium-sized companies.

However, there are numerous examples of mining projects that may not have managed their community relations optimally, most of them developed in the Atacama and Antofagasta regions. In many of those cases, they reach the stage of judicial instances, delaying their operation and even resulting in the closing of the project after a long process of administrative and judicial claims carried out by the communities.

The main conflicting issues have been indigenous consultation (the ILO Convention 169) and the use and impact of water resources.

3. Impact of Climate Change and Sustainable Development on Mining

3.1 Effects

In 2017, Chile ratified the Paris Agreement on climate change, which was subscribed to by 195 countries in December 2015, during the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21). Last year, the United Nations Climate Change Conference (COP 25) took place in Madrid under the presidency of Chile.

Technological advances in energy plants play a fundamental role in the current situation of world mining, where Chile, as a key player in this industry, does not escape this trend.

This country is committed to continue developing policies in this regard and to move towards achieving sustainable development goals, promoting, for example, a decarbonisation programme and the use of renewable energies.

In this context, some mining companies have been renewing their strategy on how to address different environmental issues, placing sustainability at the centre of its operations and emphasising its importance. Some of the initiatives that certain mining companies have taken voluntarily to deal with climate change are: i) set a target to reduce forecast carbon dioxide emissions and assume the commitment to use renewable energy sources for their operation; and ii) encourage sea-water consumption for their operation, investing in desalination plants. Good examples of these initiatives are the following.

- The Broken Hill Proprietary Company Limited (BHP) – in 2019, the company initiated a bidding process for the supply of electricity to its operations in Chile for the long term, with the purpose of accelerating the transition to renewable electricity sources low in greenhouse gas emissions (GHS). The Escondida Water Supply plant is the largest sea-water desalination plant in Latin America, which aims to supply the operations of Minera Escondida.
- Codelco – in the North District of Codelco, in its Gabriela Mistral Division, located in the middle of the Atacama Desert, Codelco owns the largest solar thermal plant in Latin America, which since 2013 has supplied thermal energy to the electro-winning (electro-extraction) process for the production of cathodes. They also highlight at the corporate level the launch of the Sustainability Master Plan with specific medium- and long-term goals in the different axes of the plan, such as the environment, communities and territory, business and corporate governance, people and strategic innovation.
- Antofagasta Minerals – Antucoya Mining will be the second company in this Group to use only renewable energy sources to produce copper. They recently signed a long-term contract with Engie, which will be in force from 2022. Zaldivar Mining had already made the same decision.

3.2 Climate Change Legislation and Proposals Related to Mining

In January 2020, the Draft Framework Law on Climate Change, promoted by the Ministry of the Environment, began the processing process in the Senate. This bill establishes, among others, a goal of carbon neutrality by the year 2050.

This draft law was preceded by a broad participatory process in order to gather the vision and experience of the different key actors of society and attract widespread attention among Chile's citizens.

This law seeks to ensure compliance with international commitments assumed by the State of Chile to face the challenges that climate change imposes.

3.3 Sustainable Development Initiatives Related to Mining

As indicated in 3.1 Effects and 3.2 Climate Change Legislation and Proposals Related to Mining, there are different legislative and private initiatives relating to sustainable development in Chile.

An important legislative initiative relating to sustainable development in the energy sector was completed in 2013 when Law 20/25 was passed, which contemplates reaching 2025 with 20% of electricity in the country's energy matrix being generated

by unconventional renewable energy (NCRE). That goal has already been exceeded.

Currently, the Chilean Congress is discussing a draft law that seeks to protect glaciers and would forbid all type of economic activities in glaciers, in periglacial environments, and in permafrost and frozen ground. This is something unprecedented worldwide, with the exception of Argentina.

However, on the downside, the Chilean Government estimates that this will result in a 2.4% drop in GDP and the destruction of 42,000 jobs. They say if this law were approved it would strongly affect the mining industry, forcing five large mining operations (Andina, El Teniente, Caserones, Los Bronces and Pelambres) to be halted. At the production level, the Ministry of Mining calculates that the impact would be between 22% and 28% in the next decade.

4. Taxation on Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

In January 2020, a new tax reform was approved in Chile, which introduces changes to different legal bodies.

Concerning income tax, the mining industry is subject to the general tax system. In Chile, a general regime was established and companies have to pay the Corporate Income Tax (CIT) at the rate of 27%, except for those who opt for the Pro-Pyme Regime (small- and medium-sized companies with annual sales of less than USD2.8 million).

A surcharge for real estate tax was established; progressive in nature, it will affect properties of which the valuation is greater than approximately USD500,000.

In addition, the owners must pay Global Complementary Tax (residents) at a progressive rate ranging from 0% to 40% or the Additional Tax (Withholding tax) (non-residents) at a fixed rate of 35%. In both cases, the Corporate Income Tax paid by the company is creditable against these final taxes. In addition, there is a specific tax on the mining industry, which is a profit-based tax, and which is applied over the operational mining income of the company. The rate of the specific tax depends on the annual sales and in the mining operational margin of the taxpayer, according to the following:

- the taxpayers are exempt if the annual sales are inferior to the equivalent of 12,000 refined copper tons;

- the rate ranges from 0.5% to 4.5% if the annual sales are superior to 12,000 but inferior to the equivalent of 50,000 refined copper tons;
- the rate ranges from 5% to 14% if the annual sales are superior to 50,000 refined copper tons. In this last case, the determination of the rate depends on the mining operational margin.

4.2 Tax Incentives for Mining Investors and Projects

In Chile, there are no special tax incentives for the mining industry, but they can use the general incentives provided for all other activities. For example, they can apply for special VAT exemptions related to investments in fixed assets and for exportation.

Related to tax-stabilisation agreements, Law No 20,848 established that, in order to assure the application of the current tax rates, foreign investors could apply to sign new invariability contracts up to 31 December 2019. Notwithstanding, it is important to note that the Foreign Investment Contracts that were previously signed maintain their validity and assure the tax rates established in their clauses.

4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects

The transfer of property of a mining project in Chile is subject to the general tax regime. Therefore, the seller must pay taxes over the profit made at the corresponding applicable regime rate.

Besides, Chilean tax law regulates specifically the case of transfer of property through foreign corporate structures, determining that if there exist underlying assets located in Chile, the operation is taxable.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

As stated in **1.1 Main Features of the Mining Industry**, Chile is the world's biggest producer of copper, iodine and rhenium. In relation to quantities of other minerals, it ranks second in the production of molybdenum and lithium, third in the extraction of boron, and fourth in the production of silver. It has 22% of the planet's copper reserves, and 52% of the world's lithium reserves. The main deposits are located in the north of Chile and in the Valparaíso and Metropolitan region.

The country also has a mature, transparent and stable market. It is highly technological and harbours specialised human capital that can facilitate the development of a cluster of suppliers that meets world-class standards.

The largest mining companies in the world operate in Chile, such as BHP, Anglo American, Teck and Antofagasta Minerals, and the investment forecasts are for more than USD60 billion over the next seven years.

In Chile, there are programmes and government agencies that encourage investment in mining projects. Of particular note is the "Invest Chile" government agency responsible for promoting Chile in the global market as a destination for foreign direct investment and the "Office of Sustainable Project Management" (GPS), which has boosted foreign investment by trying to reduce the time it takes to obtain permits.

Additionally, the different Chilean government and mining ministers promote mining investments and have tried to make a series of efforts to raise new capital to encourage the entry of new mining companies.

5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors

The main regulations for foreign investment are (i) the Law of Foreign Investment (Law No 20,848), which replaces Decree-Law No 600 and creates the new legal framework for foreign investment and has established the Foreign Investments Promotion Agency (APIE), and (ii) the Special Tax for the Mining Industry (Law No 20,026), called Mining Royalty, which is a special regulation concerning taxation over mining activities.

In the new Law of Foreign Investment, there remain in force some of the benefits established in Decree-Law No 600. This law was one of the mechanisms established to enable the flow of capital into Chile.

Under this optional mechanism, foreign investors were authorised to bring capital, physical goods or other authorised forms of investment into Chile, through the execution of a foreign investment contract with the Chilean state. However, under Law No 20,848, foreign investment contracts shall not be entered into with the Chilean state - investors' rights shall be evidenced through a certificate granted by the Foreign Investment Promotion Agency.

5.3 International Treaties Related to Exploration and Mining

In the past 30 years, Chile has signed free-trade agreements with more than 60 countries and regions, the two most important being those with the United States and the European Union. As a result of these agreements, the Chilean economy has progressively become more open to the world and more attractive to foreign investors.

Particularly in the field of mining, Chile has two important treaties: (i) a Mining Treaty with Argentina, and (ii) a Mining Treaty with the Asia-Pacific Economic Co-operation (APEC). In addition, Chile has signed several double-taxation treaties with Argentina, Canada, Mexico and South Korea, among others.

The Mining Treaty with Argentina created a permanent body whose mission is to review and propose legislation and solutions to binational controversies and difficulties that any mining project may have. One of the main examples of the execution of this treaty is the Pascua Lama project (Barrick).

Regarding APEC, Chile is an active participant in identifying modern solutions to mining problems and delegates of the Ministry of Mining concern themselves with the most recent situations in the international forum.

5.4 Sources of Finance for Exploration, Development and Mining

In Chile, 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. It should be noted that currently many foreign banks operate in this country. However, 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.

In some cases, 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 the future production of a mine, has appeared as an alternative to finance.

A good example of companies specialised in financing mining projects is “Minería Activa”. Created in 2008, the company manages private equity investments in the mining industry. It currently has assets under management for USD160 million and is constantly looking for mining prospects at different stages, from mining property with no studies to productive projects. The company seeks control of the projects in which it gets involved and is focused geographically in Latin America with a special interest in Chile.

5.5 Role of Domestic and International Securities Market in the Financing of Exploration, Development and Mining

As indicated in 5.4 Sources of Finance for Exploration, Development and Mining, the stock market does not play a significant role in the financing of the Chilean mining industry. Project finance is the main source of financing mining projects.

5.6 Security Over Mining Tenements and Related Assets

It is globally known that the Chilean legal framework is effective, simple and fairly stable and is a leader in respect of security over mining tenements and related assets in the context of exploration, development and mining finance, compared to other countries in the region. These conditions have provided a concrete incentive for national and foreign mining investment in Chile.

Nevertheless, public policies that contribute to the development of the industry by resolving uncertainties in the regulatory field must be strengthened, in order to simplify and accelerate the granting of permits (currently, in Chile there are over 400 types of permits that are granted by 53 different public entities, of which the greatest number that must be obtained are for mining projects).

However, it is important to mention that the Chilean Government is working on this issue. The bill that modernises the Environmental Impact Assessment System (SEIA) is being processed in Congress. This draft law, among other changes, obliges private parties to carry out early citizen participation and formalises the minutes of agreements that serve as the basis for any future Environmental Impact Study that enters the system.

This year, however, the Environmental Protection Fund was created. It is the first competitive fund of the Chilean State to give financial support to environmental initiatives presented by citizens, because they demand more and more participation.

A clear example is the creation of the GPS, which is specifically in charge of co-ordinating the obtainment of permits for investment projects (speeding up response times) as well as maintaining the standards of environmental protection at all times, and proposing regulatory or management reforms that would improve the investment environment in the country (with an important focus on mining projects).

6. Mining: Outlook and Trends

6.1 The Mining Sector Two-Year Forecast

The annual 2019 survey of the Canadian study centre “Fraser Institute” has placed Chile as remaining by far the world’s largest copper producer, but its dominance waned in 2019. In the Latin-American sphere, it is in 16th place among the world’s most attractive countries in which to invest in mining.

Moreover, lately, Chile has again been sought after by investors. This situation is reflected in the investment portfolio that has been registered by the GPS for the 2019-2023 period, which

reaches USD33,000 million (of which 74% corresponds to the private sector and 26% to Codelco). It should be emphasised that 82% of this investment is concentrated in the regions of Tarapacá, Antofagasta and Atacama.

Furthermore, besides copper, Chile has countless other resources that have been exploited on various scales for decades. This is the case with lithium, which went from being considered a contaminating element, to becoming highly sought after by industrialised countries today. In fact, Chile, together with Bolivia and Argentina, concentrates almost 70% of this resource in the so-called “Triangle of Lithium”.

Considering this, the main challenges for the mining industry in the coming years are believed to be the following.

- The first matter of concern is the issuance of a new Constitution next year that could change mining regulation and property. It should be noted that, last October, 80% of citizens voted to issue a new Constitution in 2021.
- To encourage lithium-mining projects – the potential of the national territory regarding this mineral is very strong and there is a great opportunity to exploit this industry better, diversifying it among various actors, taking into account the relevance that this mineral has today and will have even more in the future, worldwide, especially due to the growing interest in electro mobility.
- To provide an incentive to the mining exploration market via tax incentives – subsidies or tax incentives would make mining exploration more attractive, because mining exploration in this country is concentrated in large companies and in consequence brings more investment to this field. The “Fenix Mining Exploration Fund” is a government initiative to encourage this class of mining activities.
- To incentivise and promote the development of sea-water desalination plants to have an alternative water source, because, currently and long term, water has a strategic importance in the development of the mining industry and for people, creating a big obstacle to mining projects. The shortage of fresh water is ever-present, especially in the North of Chile. In consideration of this scenario, the mining industry has made significant efforts to optimise water consumption and achieve higher levels of efficiency. Thus, the mining industry should include more sea-water desalination plants in its projects, for example, in the south of Antofagasta city, Minera Escondida is building the largest desalination plant on the continent and one of the largest facilities of this type in the world.
- To promote non-conventional renewable energy in the mining industry – given the geographical location of its mineral reserves and the existing radiation, Chile has a great opportunity to supply the energy demand of mining companies with 100% non-conventional renewable sources (solar and wind-power plants). Sustainable mining would become a reality; to improve the environmental assessment system to ensure compliance with requirements and the sustainable development of mining projects: during the last decade, an entry barrier for mining investors has been the inefficiency of the service of environmental approval. However, obtaining sectoral permits can take years and the judicialisation of projects delays its operations for many years. Thus, Chile needs a modern and efficient State, that duly grants the relevant permits, gives investors the required guarantees, and also responds in due time. Nevertheless, at the same time, also needed are investment projects that live up to the demands of today’s society, that are designed in consideration of the impact they have on communities and the environment, have their respective social and environmental licences and comply with the current environmental standards.
- Therefore, a joint effort between the State and the project-owners is required to achieve this dual objective.
- To enable the use of new technologies and job training – the implementation of new technologies in the mining industry entails a great challenge in the training of human capital, which must be taken into account when developing this project in the coming years. In Chile, the first tests with autonomous trucks were carried out in 2006 at Codelco’s Radomiro Tomic Division. Subsequently, it was implemented in the Gabriela Mistral mine, reaching 18 autonomous trucks in operation in 2014. Thus Gaby mine became the first operation in the world to carry out the entire mineral transportation process, operating with 100% of its trucks autonomously, guided through a global positioning system.
- Regarding the impact of COVID-19 last year, Chilean mining companies have implemented different plans to provide operational continuity and not affect the production. They have successfully managed various virus control mechanisms. However, asymptomatic cases remain a major concern. Until there is a vaccine available, this will remain the main concern of these companies. However, the pandemic has positively influenced the price of copper, especially due to increased demand from China. Further in growth is expected in the coming years.

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The Dentons logo, featuring the Chinese characters '大成' (Dacheng) and the word 'DENTONS' in white capital letters on a purple arrow-shaped background pointing to the right.

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