

The background of the entire page is a photograph of a mining operation, overlaid with a semi-transparent teal color. It shows two large excavators working in a deep, rocky pit. One excavator is in the upper left, and another is in the lower right. The text is positioned on the right side of the image.

MINING REPORT:

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Bolivia

P·P·O

• LEGAL & TAX •

WHAT IS NEW IN MINING

Russia shows interest in Bolivian lithium, but production is minimal.

Los Tiempos

04/14/2022: As a result of Russia's invasion of Ukraine, shipments of lithium from Argentina and Chile have been interrupted, so according to what the deputy head of the Metallurgy Department of the Russian Ministry of Industry and Commerce stated, Bolivia is the "only chance" they have to stock up on this supply. However, the country did not reach the intended levels of industrialization, since, at the moment, lithium is only produced in pilot plants. However, the Minister of Hydrocarbons and Energy stated that this year it is expected to be concluded the lithium carbonate industrialization plant with a production of up to 15 thousand tons per year, as well as the construction of an industrial plant with Direct Lithium Extraction technology.

VER MÁS



Bolivian trade balance shows a surplus of \$US 231 million as of February 2022.

Instituto Nacional de Estadística

03/2022: As of February 2022, national exports (which do not include re-exports or personal effects) reached 1,843.9 million US dollars, a figure 337.7 million dollars higher than that registered in the same period in 2021, representing an increase of 22.4%. This behavior is explained by the positive variations recorded by economic activities, including the extraction of minerals by 10.9%. This increase is due to the positive variations registered for zinc ore by 39.1% and lead ore by 16.6%, compared to the similar period in 2021.

Mineral exports in the period from January to February 2022 reached a total of 444.3 million US dollars. Of which, 261.4 million correspond to exports of zinc ore, 130.1 million to exports of silver ore, 35.8 to exports of lead ore, and the remaining balance corresponds to the export of other minerals such as borates, wolfram, copper, and barium sulfate.

VER MÁS



EFFECTS. The price of minerals, gas and soy rises after the invasion of Ukraine.

Los Tiempos

03/06/2022: Due to the war between Russia and Ukraine, the prices of minerals increased, for example, tin is quoted at 22 dollars per pound and more than 50 thousand dollars per ton. However, the royalties received by the State are low, in addition to the fact that there is smuggling and export of unprocessed mineral; Therefore, the analyst Héctor Córdova indicated that the Government must apply measures to make the most of this opportunity and collect more resources, since, for example, in 2021 of the 1,500 million dollars obtained from the export of minerals, the State only withheld 70 million. Said expert suggests measures such as centralizing the purchase of gold in the State, displacing private companies; standardize the scale of royalties and collect taxes from cooperatives.

VER MÁS



Mining will analyze amendments to the law to make it more attractive.

El Diario

02/25/2022: The high prices of minerals, which, according to reports from international organizations, will continue to rise, favored exports, generating important income for the country. For this reason, the Ministry of Mining and Metallurgy announced changes to the mining law to attract more private investment, making it less risky for investment capital. Advancing that there is already a first draft of the normative project agreed with actors from the mining sector and representatives of social organizations.

On the other hand, he announced that within the Social Economic Development Plan 2021-2025 one of the priorities is the construction of a Zinc Refining Plant to be completed in 2024. Finally, the creation of a Directorate of Technological Minerals and Rare Earths was announced, in order to regulate and focus attention on minerals of technological interest such as antimony, beryllium, cobalt, gallium, indium, magnesium, niobium, tantalum, uranium, thorium and rare earths.

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Supreme Decree No. 4721 of May 18, 2022 provided for changes in the structure of the Ministry of Mining and Metallurgy, which will allow the implementation of mining development and industrialization strategies for technological minerals and rare earth.

Taking into account the importance for the country of the exploitation and industrialization of non-traditional minerals for technological use and rare earth, the following modifications are made in order to enable the proposal of strategies for the insertion of the country into the market of technological minerals and rare earth in conditions of competitiveness and sustainability.

Main modifications and adjustments:

- The Vice Ministry of Mining and Metallurgical Productive Development was replaced by the Vice Ministry of Technological Minerals and Productive Mining and Metallurgical Development, creating in turn the General Directorate of Technological Minerals and Productive Development for their Industrialization.
- The scope for the formulation of mining development policies was expanded, so that they contemplate and include technological minerals and rare earth, promoting and encouraging their modernization and industrialization.
 - Within the most relevant faculties of the Vice Ministry of Technological Minerals and Metallurgical Mining Productive Development are:
- The promotion of investment and production with mining-metallurgical projects that prioritize the development of technological minerals and rare earth.
- The possibility of proposing the signing of conventions and/or agreements with public and/or private sector entities, for the development of research into technological minerals and rare earth.

It is important to mention that evaporite resources are outside the scope of the standard under Law No. 928 and radioactive minerals in the area of nuclear technology under Law No. 1205.



ANALYSIS AND OPINION

Bolivia's new era for mining through the Mining Production Agreement still pending

Since 2016, in Bolivia there has been a shift in the contractual relationship between the Bolivian Mining Corporation -COMIBOL-, a state company, and the private and cooperative mining productive actors. Although the regulation that approved the Mining Production Contracts ("MPC") was issued as a political measure aimed at annulling the contracts that the mining cooperatives had with private companies, Law No. 845 gave life to a new contractual framework for the development of mining activities in mining areas under control of the COMIBOL.

In the broadest sense, this type of contract provides for the performance of mining activities in COMIBOL areas under the premise that the state entity does not yield "ownership" of the area and the counterparty must determine as compensation a percentage of economic participation in its favor, which it will be calculated on the gross sale value.

From a more specific point of view, this type of contract has the following characteristics: 1) a percentage of COMIBOL's economic participation must be established; 2) may have a duration of 15 years and may be extended only once for a similar term; 3) they must contain similar clauses to the Mining Administrative Contracts and 4) legislative approval is required.

The MPC should replace lease contracts and take a leading role in state mining, however, the procedure established by the regulation provokes that this type of contract is treated in a very bureaucratic and complex manner so that, once signed by the COMIBOL and the other party, have legal effects and are opposable to third parties. The most tedious part of the entire process is undoubtedly the legislative approval of the contract, given that there are several filters to reach this stage and once in the legislature, treatment of the law that approves the MPC must be included in the legislative agenda, the latter is already beyond the control of COMIBOL and/or the executive body.

Regarding the contract as such and its approval by COMIBOL, the biggest challenge is reaching consensus or seeking acceptance of COMIBOL's percentage of economic participation. Both the law and the regulations applicable to the MPC do not determine an estimated range or a procedure for setting this percentage, being ultimately a discretionary decision by the state company that may or may not accept a proposal from the private counterpart. This detail means that the contracts have no guidelines or parameters that take care of the feasibility of the project in its entirety and not only reflect the economic benefit of COMIBOL. From a technical-legal point of view, the discretion of the percentage within the MPC can lead to observations in the long run, given that if the bar is set too high, i.e., 10% due to applicable administrative principles, it would be sought that all contracts satisfy a similar percentage, inducing that the case-by-case analysis would be almost nullified.

Contrary to the above, through a Supreme Decree it



was established that the mining production contracts between COMIBOL and the mining cooperatives have a fixed, predetermined and non-negotiable percentage of 1%. Clearly, this difference with private mining operators is substantial when requesting an MPC from COMIBOL, given that the "rules of the game" in the case of cooperatives are not subject to discretion and are non-negotiable.

In sum, the MPC was inserted within the national legal framework, but its application has been hampered -particularly for private mining operators- due to a long procedure and the asymmetries regarding the percentage of participation of COMIBOL among the contracts it signs with cooperatives and private mining.

The great challenge of this type of contract by the state will be in the simplification of the procedure, even giving deadlines for legislative approval, in order to generate greater legal certainty. Likewise, regarding the percentage of economic participation of COMIBOL, a band of percentages could be established in some way for the private sector, where the viability of the project prevails and all national taxes and state charges that private mining operators must be considered.

Finally, an additional observation is the maximum term established, given that, unlike the Mining Administrative Contract ("AMC"), the MPC may have a maximum duration of 30 years -including its renewal-, a similar term to that of an AMC, except that the latter has the possibility of being extended for the same period, that is, 60 years in total. This point will generate a debate once the MPCs that have been signed become effective after legislative approval, it should be noted that to the date not one MPC was approved by law.



MATTIAS GARRÓN
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DID YOU KNOW THAT...

Grounds for reversal and loss of mining rights in Bolivia

All mining rights are subjected to the control and supervision of the competent authorities, which must periodically verify compliance with the legal, contractual, and administrative obligations, and any other technical, environmental, or economic regulation or provision that must be executed for the maintenance and exercise of the recognized and/or granted mining rights. Cases of non-compliance according to law may result in the suspension or extinction of mining rights, as appropriate.



Mining rights granted and/or recognized by the State through Mining Contracts or mining licenses, may be extinguished, or revoked when incurring in the following causes determined by law:

1. Waiver of mining areas
2. Mining contract resolution
3. Expiration Term
4. Death or dissolution of the titleholder
5. License revocation
6. Reversion of rights

The loss of mining rights granted by contracts and/or licenses results in the return of the mining area to the state administration as a free mining area. However, this does not release the titleholder from compliance with the environmental obligations framed within the environmental license and in the applicable regulations.

For the reversion of mining rights an administrative procedure by the regulator entity must be initiated, which will assure and guarantee a due process.

ABOUT US

PPO Abogados is the largest law firm in Bolivia, with more than 100 professionals working from their offices in La Paz, Santa Cruz, Sucre, Cochabamba and Cobija. PPO is recognized for being the leader in the Bolivian legal market and has highly specialized teams in mining.

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