

ANALYSIS

CHALLENGES AND SOLUTIONS IN BOLIVIA´S LEGAL FRAMEWORK FOR INVESTMENT IN LITHIUM AND TECHNOLOGICAL MINERALS

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We are in an era marked by technological advances and shifts in the global energy landscape, which has led to a shift in the mining industry's interest from traditional industrial minerals, such as tin or zinc, to those of increasing importance like lithium, technological minerals, and rare earth elements. These minerals are crucial for the production of batteries, electronic circuits, microchips, and other high-demand electronic components.

It is globally recognized that Bolivia possesses a wide range of mineral reserves and is currently identified as the nation with the largest lithium reserves in the world, along with considerable reserves of technological minerals and rare earths across various regions of the country.

The Political Constitution, specifically in Article 369, along with Law 535 of Mining and Metallurgy in Articles 26 and 27, confer a strategic and reserved status for the state over the aforementioned minerals. This classification comprehensively covers the mining production chain in the lithium sector, while for rare earths, it is limited to the exploitation stage. Consequently, the Corporación Minera de Bolivia (Comibol) and Yacimientos de Litio Bolivianos (YLB) have been designated to manage the comprehensive operations related to evaporitic resources, technological minerals, and rare earths, including the essential chemical, extractive, and industrial processes. As a result, the awarding of mining rights to private individuals or entities for mining activities associated with these resources within the production chain is precluded.

However, promoting the extraction and industrialization of these minerals demands technological advancements that often exceed the current capabilities of the state sector. Therefore, the integration of external entities equipped with the necessary technical experience, intellectual property assets, and qualified personnel is essential for executing relevant projects in this field.

For technological minerals and rare earths, Supreme Decree 4721 incorporated the Vice Ministry of Technological Minerals and Mining Metallurgical Productive Development within the Ministry of Mining and Metallurgy, whose primary mission is to promote sustainable development of the sector through investment plans, research, and production projects. Additionally, the Management of Technological Minerals, dependent on COMIBOL, was created to promote mining exploitation initiatives of these resources together with the aforementioned vice ministry.

To date, there are no publicized or relevant cases of public-private collaboration in terms of exploitation or industrial transformation of technological minerals, as the state entities authorized for this are still in the national exploration stage. However, it is important to emphasize that the industrial or processing phases subsequent to the extraction of technological minerals and rare earths have not been explicitly reserved for the State. This is because Article 27 of the Mining and Metallurgy Law restricts the extraction of rare earths exclusively to state entities, without explicitly prohibiting subsequent processing phases to all private actors that may be interested. Under this legal context, it is viable for a private investor to start rare earth processing operations within the national territory following the established legal structures.

For cases requiring the development of comprehensive mining projects, incorporating private mining actors together with state entities, the Mining and Metallurgy Law establishes two mechanisms: the Mining Association Contract and the Mining Production Contract. These contractual forms emphasize the need for significant state participation, setting a minimum of 55% in association contracts or a variable state participation based on technical and economic feasibility assessments in production contracts.

Additionally, these instruments ensure the preservation of state sovereignty over mining resources during their validity, resulting in terms generally favorable to the state. In practice, the technical and financial investment and management of operations primarily fall on the private partner, while the state benefits from the profits generated by the project, thus enabling the development of projects on mining areas of state ownership or control that the state could not have undertaken on its own due to the intensity of the required investment.

On the other hand, concerning lithium and its current regulatory framework, there exists a structure with greater development and precision regarding activities exclusively reserved in favor of the state and the tools available for developing projects in conjunction with private companies. Following the promulgation of Law 928, Yacimientos de Litio Bolivianos (YLB) was founded, which is the state company responsible for the comprehensive management of mining activities related to evaporitic resources, including the execution of essential chemical processes, encompassing the production and commercialization of Lithium Chloride and other derivatives and intermediates of the evaporitic sequence, maintaining one hundred percent state ownership of these resources.

However, in the same law, it is established that semi-industrialization, industrialization, and waste treatment processes can be carried out in collaboration with private mining entities, both national and international.

Among the range of options that the legislation establishes to materialize the aforementioned, there are Association Contracts, provided for by Law 928 and framed within Law 535, which are based on the commitment to carry out mining activities through various segments of the productive chain within the mining domains managed by the company. It is conclusive to emphasize that the scope of these contracts is strictly limited

to semi-industrialization, industrialization, and/or waste management activities, in accordance with the strict regulations governing lithium.

There is also the possibility of applying the Public-Private Enterprises model, or Mixed Company, as a different option to the structure described in Law 928, due to the corporate nature of YLB that allows the creation of subsidiaries both in Bolivian territory and abroad, in accordance with its business management. This method is based on the guidelines of Law 466 on Public Companies, complemented by the Commercial Code and related regulations. In this context, companies are established as legal entities with state participation. These entities are established as economic units with the primary function of producing goods and providing services, potentially intended to fulfill strategic or social purposes within their operational scope.

Finally, by Supreme Decree 3627, YLB was granted the character of a corporate public company, which is relevant due to the powers that the executive president of said entity acquires in contractual matters. He is now fully authorized to sign contracts for goods and services, possibly adhering to the contractual formats of their counterparts, and explicitly incorporates the possibility of contracting with national or foreign companies. This enables a wide range of legal possibilities for developing lithium projects that end up being attractive to both contracting parties and respecting the sovereignty of the Bolivian state concerning the ownership or property of the resource, as it allows the incorporation of innovative contractual figures that, depending on their level of sophistication, would facilitate the fulfillment of various objectives.

Unlike the case with technological minerals and rare earths, in the case of Bolivian lithium, public-private development projects were observed. In December 2018, the Bolivian State and ACI Systems Germany (ACISA) created a mixed company for the industrialization of lithium from the Uyuni Salt Flat, with an initial investment of approximately 300 million dollars, which was later dissolved in 2019 for political reasons. Subsequently, YLB formed alliances with the Chinese consortium CATL BRUNP & CMOC and with Uranium One Group and CITIC GUOAN to develop industrial complexes in the Uyuni, Coipasa, and Pastos Grandes salt flats, focused on the production of lithium carbonate with a projected and increased investment in some cases, incorporating technology transfer and skills development, in addition to an interest in investing in an electric vehicle assembly plant in Bolivia. The contractual figures for these cases are being handled as "Development and Pilot Agreements".

Therefore, the Bolivian legal framework for investment in lithium and technological minerals adopts a strategic approach, safeguarding state sovereignty over critical resources while seeking to integrate external technological and financial capacities for their development.

National legislation classifies lithium, technological minerals, and rare earths as strategic resources, limiting direct exploitation to state entities but allowing some collaboration with the private sector in industrialization and processing phases.

In the case of lithium, Law 928, Supreme Decree 3627, and Law 466 provide a framework for public-private partnerships, allowing the formation of association contracts, Mixed companies and the signing of specific contracts for semi-industrialization and waste treatment.

Regarding technological minerals and rare earths, the development of comprehensive projects requires predominant state participation. Legal provisions allow the inclusion of private partners under partnership or mining production models, conditioned on maintaining state preeminence. This balance aims to encourage investment and technological transfer while simultaneously preserving state control over strategically important resources.

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