



## WHAT IS **NEW** IN **MINING**



## Bolivia goes after uranium, rare earths, and other scarce minerals

El Deber

07/19/2022: The growing demand for scarce minerals has generated interest for the Bolivian Government, specifically because of its essential nature for the technology industry (medical equipment, radars, LED screens, microprocessors, batteries, etc.). In this sense, through Supreme Decree 4721, the structure of the Ministry of Mining and Metallurgy is modified by incorporating the Vice Ministry of Technological Minerals and Metallurgical Mining Productive Development, an entity that will implement development strategies for the productive chain of technological minerals and rare earths for its industrialization.

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## 96% of La Paz's exports are mining or its manufacturers Los Tiempos

07/14/2022: The National Statistics Institute (INE), reported that 96.5% of La Paz's exports in 2021 were minerals; 85% corresponding to metallic gold and jewelry. In 2021, the department exported 2,484 million dollars, of which 92 percent corresponds to the manufacturing industry (gold, as well as other metals and metal derivatives).

The main destination countries for La Paz exports are India (51%), the United Arab Emirates (15%), Italy (10%), the United States (6%), and China (4%), among others.

Figures reveal that the Gross Domestic Product (GDP) of La Paz grew by 5.3% in 2021 after an 11.1% drop in 2020, the year the pandemic began. As of May 2022, exports reached 1,088 million dollars.

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## Tax collection for minerals rises by 1,277% to June Los Tiempos

07/12/2022: As of June, this year, tax collection in the domestic market from the metallic and non-metallic minerals sector rose by 1,277 percent compared to the same period in 2021. The amount exceeds tax collections from the crude oil and natural gas sector (without considering the Direct Tax on Hydrocarbons – IDH) at 173 percent, according to information from the Tax Service. A rebound in mining is seen due to high international prices and the greater volume of production. During the first half of 2022, 2,392 million bolivianos were collected in the domestic market from the metallic and non-metallic minerals sector. With this figure, what was collected in this sector throughout the past year has been surpassed: 891 million. In 2020, the collection was 129 million.

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## Bolivia explores salt flats to identify new areas rich in lithium

El País

08/30/2022: The Bolivian government is executing an exploration project in the salt flats of Coipasa in Oruro and Pastos Grandes in Potosí with the main objective to identify and quantify new lithium reserves. The areas of major concentration of lithium reserves will be appointed for the commencement of industrialization processes executed using technology for the direct extraction of lithium.



## A bill proposal seeks a change of politics surrounding lithium

El Diario

08/31/2022: During a presentation to the President of the State, Luis Arce, the Civic Committee of Potosí (Comcipo) explained a proposal for the treatment of evaporite resources. Through the proposal, Comcipo seeks a change in the national policy, seeking the participation of private foreign or national companies in mining activities related to the exploitation of lithium. Additionally, Comcipo intends a change in the policy on lithium and departmental royalties that would be between 11 and 20% of exports based on two variables: profitability and price in the international market.

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#### **ANALYSIS AND OPINION**

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#### **Mining Activities and Environment**

The Environmental Regulation for Mining Activities approved by Supreme Decree No. 24782 (DS 24782) provides that mining actors that carry out activities in mining areas must have an environmental license for that purpose. The current environmental regulation (enacted in 1997) requires that mining companies must have operating plans as well as have appropriate and specific remediation plans for each mining project, which must be strictly complied.

Failure to comply with this norm implies the commission of administrative infractions and, depending on the case, can generate criminal responsibility.

Not having an environmental license, as well as the omission of the environmental obligations imposed by the current environmental regulations, can cause the reversal of the holder's mining rights in favor of the State.

Environmental licenses for mining companies are beneficiated by a prerogative that differentiates them from other licenses granted to companies engaged in non-mining activities, since environmental licenses are indefinite until the conclusion of the mining project. Given the scope and environmental impact of mining activities, mining actors must comply with environmental remediation obligations even in the closure and post-closure stages once the mining activities are completed.

#### **Environmental Administrative Infractions**

Currently, mining plays a preponderant role in the Bolivian economy and attracts the interest of private –national and foreign– mining productive actors, willing to invest in the activities of the mining production chain. The actors involved in mining activities must take into account the importance of complying with environmental regulations, since as stated supra, their omission can lead to the imposition of sanctions by the Competent Environmental Authority (CEA), which, in most cases, is the Secretary of the Environment dependent on the Departmental Autonomous Government in charge of the jurisdiction in which the mining project is located.

According to Supreme Decree 26705 (DS 26705), the sanctions for committing environmental infractions are: (i) written reprimand, when the infraction is for the first time, as long as it does not cause severe impacts on the environment; (ii) written reprimand and fine equivalent to a figure of 3 per 1,000 of the total amount of declared equity or assets of the company, project or work site, in the event that these cause severe environmental impacts or entails imminent danger to the human health or the environment; (iii) a fine equivalent to the figure of 3 per 1,000 of the total amount of

declared equity or assets of the company, project or work site, in the event that the infraction is not corrected, and revocation of the environmental license in the event of recidivism of the infraction that generates impacts on the environment. Likewise, we note that the CEA (iv) can order the suspension of activities of the mining company until it complies with the environmental conditioning and obligations.

#### **Extinction of the Mining Right**

The responsibility for non-compliance with environmental obligations does not end with the imposition of administrative sanctions by the CEA. Failure to comply with environmental obligations is a cause for the extinction of mining rights prior to the resolution of the administrative mining contract or the revocation of licenses (for prospecting and exploration, aerial prospecting, or others).

In the case of administrative mining contracts, it is common that one of their clauses provide that non-compliance with environmental legislation is grounds for termination of the contract, for which the Jurisdictional Administrative Mining Authority (JAMA), at the express and duly justified request of the CEA, by means of a substantiated, firm and stable administrative act, may initiate the mining rights reversal procedure.

The reversal of mining rights is a cause for the extinction and suspension of mining rights prior to substantiation of the corresponding administrative and judicial procedure, which, in the event that the cause for resolution is declared proven and the legal means of challenge exhausted, provides for the reversion of mining areas to the domain of the State. The loss of mining rights for any reason does not release the holder from compliance with its environmental remediation obligations.



# DID YOU KNOW THAT...

#### Lithium's legal framework in Bolivia

Lithium plays a fundamental role in technology, since it allows massive energy storage in small spaces. For example, lithium is essential for the manufacture of mobile phone batteries, solar panels and batteries, electromobility, among others. Because of this, lithium is one of the most coveted metals in every industry. Argentina, Bolivia, and Chile concentrate about eighty-five percent of the world's known lithium reserves.

Bolivia, through Law No. 535 on Mining and Metallurgy (Law 535) determines that the Bolivian State may reserve minerals that it considers strategic for their exclusive exploitation by state companies.

In that sense, Law 535 establishes as reserved areas the salt flats and lagoons of Uyuni, Coipasa, Chiguana, Empexa, Challviri, Pastos Grandes, Laguani, Capina, Laguna, Cañapa, Kachi, Colorada, Collpa, Lurique, Loromayu, Coruto, Busch or Kalina, Mama Khumu, Castor, Coranto, Celeste, Hedionda, Kara, Chulluncani, Hedionda Sud, Salares in Saucarí, Sajama and Sajama Sabaya. Additionally, Law 535 declares lithium, as well as potassium, as strategic elements whose development must be carried out through state mining companies exclusively.

In line with Law 535, in 2017 Bolivia enacted Law No. 928 (Law 928) through which a strategic national public company called Yacimientos de Litio Bolivianos ("YLB") was created. Endowing it with responsibility for conducting prospecting, exploration, exploitation,



benefit, refining, and commercialization activities on lithium, with one hundred percent state participation.

However, Law 928 allows subsequent processes of semi-industrialization, industrialization, and residues processing to be carried out through association contracts with national or foreign private companies, maintaining the majority participation of the Bolivian State.

It is evident that the Bolivian State is cautious about its interests in lithium, which is why it has insisted on concentrating practically all the activities of the mining production chain in YLB, with the only exception that, for the processes of industrialization, it may rely on private, national, or foreign productive mining actors.

Currently, Bolivia requires the support of private companies for the development of the mining industry. In view of this situation, on May 18, 2022, the government enacted Supreme Decree No. 4721 (DS 4721), which modifies the structure of the Ministry of Mining and Metallurgy to implement strategies for the development and mining industrialization of technological minerals and rare earths. However, these modifications do not affect lithium, so the activities of prospecting, exploration, exploitation, refining and marketing of lithium still fall exclusively to YLB.

Recently, the Potosinista Civic Committee (COMCIPO), civic institution of great relevance for its defense of

non-renewable resources in the Department of Potosí made a proposal to the president, Luis Arce, regarding a change in the policy on lithium and departmental royalties. In its proposal, COMCIPO requested (1) that departmental royalties range between 11% and 20% of exports based on profitability and the price on the international market, and that (2) the State allow private participation in all lithium production activities.

Given the interest of the Bolivian State in the exploitation and industrialization of rare earths and technological minerals and the entire current situation surrounding lithium and its development, it is necessary that the regulatory framework that governs mining activities related to the extraction, processing and commercialization of lithium is modified, allowing the participation of private actors in strategic activities.





### **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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