



# Mining

The regulation of exploration and extraction in 31 jurisdictions worldwide

Contributing editors: Sean Farrell and Robert McDermott

# 2010

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# Argentina

## Ignacio Celorrio

Quevedo Abogados

### Mining industry

#### 1 What is the nature and importance of the mining industry?

Argentina's increasingly expanding industry has taken advantage of the improvement in international prices and has expanded existing and new mineral projects (such as lithium projects in the north). The industry is still on the road to becoming a key factor in Argentina's economic development. It is mainly focused in the Andean provinces, which traditionally have not benefited from Argentina's significant agro-business and manufacturing industries. New exploration developments (as Los Azules, Cerro Moro, Cerro Negro increase the possibility of new mines in the near future) and the start of construction of the Pascua-Lama Mine (the first binational world class gold and silver mine in the world, located on the Chilean-Argentine border) is being carried out.

The industry continues to face challenges, largely arising as a direct consequence of its exponential increase in activity from the early 1990s to date, but it has sustained almost unbroken record amounts of direct foreign investment and employment in the country.

Proper regulation of the industry (the flaws of which are primarily due to the limited experience of current industry standards in some provinces), environmental groups' criticisms and the level of contributions from mining projects to the federal and provincial states continue to remain the key challenges.

### Legal and regulatory structure

#### 2 Is the legal system civil or common law-based?

Argentina is a federal country that applies the civil law system. It has 24 provinces, at least 12 of which are relevant for the metallic mining industry.

#### 3 How is the mining industry regulated?

The mining industry is regulated by laws, which are applied on a non-discriminatory basis to any individual or legal entity that requires or obtains mining rights. The National Constitution delegates in the National Congress the power to enact the Mining Code and most of the significant mining legislation, which is uniformly mandatory across the country. On the other hand, provinces are the enforcement authority of any mining activity located in their territory, in accordance to the Mining Code provisions.

The National Constitution recognises the provinces' 'original ownership' of the mineral resources located in their territory, but private parties have the right to search, take advantage and dispose of mines as if they are its owners under the Mining Code rules through a non-discretionary concession framework that enables any private party that discovers a resource to become the exclusive owner of the minerals and consequently the sole beneficiaries thereof.

National Law 24,196 (1993), as amended and generally referred to as the 'Mining Investment Law' is a key instrument that has

enabled the expansion of the mining activity through an aggressive tax incentive and investment promotional framework that has been ratified by all Argentinian mining provinces.

#### 4 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

##### Principal law

Mining activities throughout Argentina are subject to the provisions of the National Mining Code and to provincial laws of procedure that must follow the Mining Code guidelines.

The Mining Code was enacted in 1887 and was amended several times, particularly by Laws 24,196 (Mining Investment Law), 24,224 (Mining Reorganisation Law), 24,228 (Federal Mining Agreement), 24,498 (Mining Actualisation Law) and 24,585 (Mining Environmental Law).

It is a very liberal Code, offering wide scope of action to private enterprise and limiting any direct government action in the mining sphere to a minimum. In practical terms, it establishes two wide differentiations of mineral substances, namely:

- those that do not belong to the owner of the land in which they are discovered (first and second category): original ownership is vested upon the provinces (or federal government, if on federal land), and the provinces grant exploitation concessions to private parties who become the exclusive owners of the minerals and consequently the sole beneficiaries thereof. The right acquired by the concessionaire to exploit and use the mine is exclusive and broad in scope; it is perpetual and transferable without discrimination as to the nationality of the prospective purchaser. In return for this use, the concessionaire pays the province a tariff for the exploration or subsequent exploitation, among other obligations. The more important minerals such as gold, silver, copper, lead, nickel, tin, lithium, potassium, borate, etc, belong to the first category. Uranium and thorium regulations are very similar to first category minerals; and
- those that belong to the owner of the land who is the sole person entitled to exploit or use them, or both (third category). These minerals include rocks for application and decoration, rocky or earthy minerals, quarries, etc.

##### Enforcement authorities

The Mining Code enforcement authorities are those selected by the provincial governments in their respective territories. Modern provincial enforcement authority structures rely completely on an executive power subordinate (usually a mining secretary or director) who oversees the Mining Cadastre, Mining and Environmental Surveillance and Administrative Offices; however, several provinces (Salta, Catamarca, Jujuy, etc) still rely on a mining judge not subject to the executive but the judicial courts for the granting and control of mining rights.

Although the National Secretariat of Mining ([www.mineria.gov.ar](http://www.mineria.gov.ar)) does not have surveillance or concession powers over mining

properties, it is the political body responsible for national mining policy and it is the enforcement authority of the Mining Investment Law regulations. It is also the Argentinian authority that deals with the Argentina–Chile Mining Treaty.

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

The Mining Code does not provide for a mandatory specific reporting mineral resources system. Nevertheless, to obtain certain benefits under the Mining Investment Law, reporting of mineral resources and reserves is required by the National Secretariat of Mining Resolution No. 326/94 (Feasibility Report Filings) and No. 39/96 (Mining Investment Law Reserves Capitalisation Regulations). Both resolutions do not have a specific mandatory reporting system, which is delegated to the reporting company (chapter 11 and annex 1, respectively).

Other reporting obligations, although not directed to mineral reserves, are found in section 27 of the Mining Investment Law (Federal Mining Database of Surface Geological Information Requirements).

#### Mining rights and title

- 6 Who has title to metallic minerals in the ground?

The Mining Code prescribes that mines are real estate property differentiated from the surface (and therefore, from the surface owners) and its exploration and exploitation are of public interest.

Original ownership of first and second category minerals – which includes all significant metallic minerals – is vested upon the government (either provincial or federal, the latter basically controls the continental shelf) where the minerals are located. Such authority grants exploitation concessions to private entities who become the exclusive owners of the minerals and consequently the sole beneficiaries thereof.

In practice, this concession grants the private entity almost equal rights to a real estate ownership, as long as the provisions of the Mining Code related to maintaining such concession (usually referred to as *amparo minero*) are met. Concession rights granted on a non-discretionary basis to the mine's first discoverer, who files a mining concession petition before the pertinent enforcement authority, are free of charge, transmissible without restrictions, absolute and exclusive, unlimited in time and can be subject to any lien for the concessionaire's benefit.

Furthermore, the Mining Code has a general provision that prohibits the federal and provincial government from directly exploiting minerals, although such restriction does not apply to state mining companies that are subject to the same obligations set out by the Mining Code that apply to private entities.

- 7 What information and data is publicly available to private parties that wish to engage in mining activities?

The Servicio Geológico Minero Argentino (SEGEMAR; see [www.segemar.gov.ar](http://www.segemar.gov.ar)) is the technical state entity within the National Secretariat of Mining that compiles and studies Argentinian geological information for mining activities.

Additional information regarding concession rights and other geological information can also be found on the Mining Secretariat's webpage, [www.mineria.gov.ar](http://www.mineria.gov.ar), but only each province's mining register can provide information about the certainty of the legal status of a particular area (ie, if it is available or under an exploration permit or mining concession – the two available rights to search for and exploit minerals under the Mining Code).

It is worth noting that Law 24,466 created the Federal Geological Information Database for the purpose of compiling all geological information provided by companies registered under the Mining Investment Law framework, although fulfilment of these reporting obligations is still pending regulation.

- 8 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have?

Mining rights to explore and exploit first and second category minerals are granted on a first come, first served basis (*prior in tempore prior in jure* rule). Third category minerals are property of the surface owner.

According to the Mining Code there are two types of mining rights, the exploration permit and exploitation concessions (mineral discovery).

#### The exploration permit

Any individual may require a basic land exploration permit to explore a maximum of 10,000 hectares per permit for a maximum time of 1,100 days (although the area must partially be freed at the holder's discretion after 330 and 730 days from the granting of the permit). There is a maximum of 20 permits per province. The permit holder is entitled to explore the area during the period granted, for a fixed one-off tariff of 400 pesos per unit of exploration (an exploration unit comprises 500 hectares and a permit can hold up to 20 units), a minimum investment plan and the approval of an environmental impact report. In the event of discovery of a mine, the permit holder has an exclusive right to apply for an exploitation concession. There are no renewals or extensions of the term originally granted; moreover, the permit holder cannot apply again for a permit for the same area until a year has elapsed.

Section 31 of the Mining Code also allows for an aeroplane exploration permit that grants similar rights as the land exploration permit, although it has less requisites (a consequence of the lack of intrusion in the surface and no environmental impact) and its period is shorter (120 days). The permit extension varies from 20,000 to 40,000 square kilometres, depending on the size of the province where it is required.

#### The exploitation concession

A mining exploitation concession grants the right to exploit and use the mine on an exclusive basis very similar to real estate ownership; it is perpetual and transferable without discrimination. It can also be subject to any lien or contract or both at the concessionaire's discretion. However, it may be revoked by the Mining Authority if the concession holder fails to comply with the requirements of law, which basically include:

- the payment of an annual tariff, the amount of which varies in accordance to the mineral involved but in general equals 800 pesos per exploitation unit of typically around 100 hectares. An exploitation concession usually has a maximum of 25 units and when a new mine is discovered the owner benefits from three years without free of tariff payments;
- compliance with working and investment plan obligations (equal to 300 times the tariff obligation through a five-year period); and
- measurement obligations.

Concessionaires must also file an environmental impact assessment that must be updated every two years, although non-compliance does not carry the loss of mining rights but only sanctions to the concessionaire.

There are different ways of acquiring an exploitation concession:

- by discovery of a mine as a consequence of an exploration process as discussed above;
- when a mine is discovered by 'chance', that is, without an exploration process; and
- by petition with regard to an exploitation right that has been declared and posted in the register as 'vacant' due to non-compliance by a prior concession-holder with the legal requirements.

- 9 Is there any distinction between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

There are no distinctions whatsoever between domestic and foreign parties in connection with mining rights in Argentina. Foreign parties only need to establish a branch or an Argentinian subsidiary to carry out commercial acts, which naturally includes any commercial mining activities. The non-discrimination principle with respect to foreign investors is not only explicitly included within the framework of general foreign investment legislation, but is also contained in specific mining rules. Local and foreign investors are treated on an equal basis, possessing the same rights, and are subject to the same obligations. There is no particular legal advantage for a foreign party to have a domestic partner.

- 10 How are mining rights protected?

The Argentinian Federal Constitution expressly adheres to the rule of law and due process, as well as establishing an independent federal judicial system. All provincial constitutions follow these principles too. Federal and provincial judges are appointed for life. The federal judicial system (and those of most provinces) is divided into a three-tier structure (first instance judge, Court of Appeals and Supreme Court). Argentina has also entered into several bilateral investment treaties (BITs) that contemplate ICSID and UNCITRAL arbitration for the resolution of foreign investors' claims.

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

Indigenous lands are not significant in Argentina. The Federal Constitution commands the Federal Congress to enact laws that ensure Argentinian aboriginal population participation in the administration of natural resources in their territories, but there is no specific regulation related to mining yet. There has been some reaction against mining activities in or close to indigenous territories but they have not yet caused significant judicial claims and most have been dealt with through private agreements between title holders and the indigenous population. Still, companies should take care with proper community involvement and understanding of the areas they are interested in exploring.

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

To the extent mining is declared of 'public interest', there are practically no legal restrictions against mining activities that can be filed by surface owners where an exploration permit or exploitation concession exists. Nevertheless, it has been common practice for mining companies to reach private deals with surface owners for prospective and exploration activities, as well as to directly purchase the land when advance exploration or exploitation activities are considered. There are basically no restrictions for the purchase of land that may be made subject to general real estate legislation. It is worth noting that in addition the Mining Code empowers the mining company to force the sale of a surface property, if necessary, to carry on mining activities.

The Mining Code also provides for camp, road, etc, easements when areas outside an exploration permit or exploitation concession are necessary to carry on mining activities.

#### Duties, royalties and taxes

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

Without prejudice to the benefits granted to the mining activity by the Mining Investment Law framework, corporations and branches of foreign companies are subject to the following tax system:

#### Federal taxes

##### Income tax

This tax is levied on net taxable income from Argentine or from foreign sources obtained by Argentine residents. Non-residents are taxed only on their Argentine source income. Corporations pay 35 per cent on their net taxable income at the end of the tax year.

##### Minimum presumed income tax

This tax is levied on all assets of companies established in Argentina at a rate of 1 per cent. Income tax payments are credited against this tax. As a result, payments on account of this tax apply if and when corporate income tax liability is lower than the minimum presumed income tax liability where only the difference between them must be paid as minimum presumed income tax.

Neither the minimum presumed income tax nor the corporate income taxes are refundable if the latter exceeds the former. Subject to certain conditions, minimum presumed income taxes paid may be used as a credit against corporate income tax for the following 10 periods. This tax does not apply to companies registered in the National Mining Investment Law Registry.

##### Value added tax (VAT)

This tax is levied on the sales price of moveables in Argentina, on contracts for the performance of works and services in general, and on imports of moveables, at a standard 21 per cent rate (although there are exceptions at higher (27 per cent) or lower (10.5 per cent) rates). The tax is levied at each phase of the production and distribution chain on a non-cumulative basis. Every month, taxpayers must pay to the Tax Department the difference between their tax debit (or VAT applicable to the sales made or services rendered by them) and the tax credit (or VAT charged by their suppliers or service suppliers). VAT credit balances may be carried forward. Exports are exempted from VAT.

##### Tax on banking credits and debits

A federal tax is levied on each banking credits and debits at a rate of 0.6 per cent.

##### Export duties

The applicable rate for these taxes varies (generally from 5 to 10 per cent) depending on the level of industrialisation process given to the extracted ore.

#### Provincial taxes

##### Stamp tax

This is a tax applicable to documents evidencing transactions such as contracts, promissory notes, corporate capital increases, etc. In general, the rate applied is 1 per cent on the economic value of such instruments. Most Argentine provinces have repealed this tax for mining activities.

##### Tax on gross income

This tax is levied on all kinds of industrial or commercial activities carried out regularly and for a consideration. The tax rate varies depending upon the activity and the jurisdiction (generally between 1 to 3 per cent). Mining activities are usually taxed at a 1 per cent rate.

##### Royalty taxes

As a consequence of the Mining Investment Law framework, all significant mining provinces have enacted a common royalty policy with a stipulated 3 per cent ceiling to a common determination of calculations basis (mine-head value of the mineral extracted).

#### Double taxation treaties

Argentina has signed double taxation treaties, which may reduce the impact of the above-mentioned taxes, with Australia, Austria,

Belgium, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Spain, Sweden, Switzerland and the UK.

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

Mining in Argentina is promoted by several regulations granting important benefits to local or foreign investors in these activities. The main regulations to this effect are set forth in the Mining Investment Law (in order to obtain these benefits, the company must be previously registered with the National Mining Investment Law Registry, for which purpose certain legal requirements must be met), but there are also other laws granting benefits to mining activities. The key features of this legal framework are the following:

**Fiscal and foreign exchange stability during the life of the project (30 years) as from the filing of the project feasibility study with the competent authorities**

**Tax stability**

The 30-year tax stability benefit has been a key element of the explosive expansion of mining activity in Argentina from its enactment in the 1990s.

Under this benefit, the aggregate tax burden of a particular project or enhancement of an existing one cannot be increased by either federal, local or municipal new taxes or increases in the existing ones. The law tax burden definition is sufficiently broad to include any increase of the existing tax burden (reductions of such burden benefits the mining company) that may occur during the 30-year guaranteed term. Due to its neutrality, VAT is not included in this promotional system.

The Supreme Court in *Cerro Vanguardia SA* (TF 22.172-I) c/ DGI decided on 30 June 2009 clearly in favour of the legality of this benefit not only for the Argentinian entity with mining rights but also to its shareholders that received the benefits through dividends or distributions.

**Foreign exchange stability**

Delegated Decree No. 753/2004 excluded companies that obtained the stability rights afforded by the Mining Investment Law from the application of certain exchange control regulations currently in force. Mining companies that obtain stability rights are:

- exempted from the obligation to bring into Argentina and to trade on the foreign exchange market the proceeds from exports of products extracted from the project;
- allowed to collect certain tax returns for the exportation of products without bringing into Argentina and trading on the foreign exchange market the proceeds from its exports (which is an obligation for exporters under the current exchange control regulations);
- exempted from restrictions on the free availability of foreign exchange from foreign borrowings for the development of productive mining ventures in Argentina intended for export; and
- allowed to use export and financing proceeds directly abroad for the payment of disbursements or commitments required to be made or satisfied abroad.

**Income tax benefits**

Registered mining investors have special income tax benefits such as:

- double deduction of 100 per cent of all prospecting and exploration expenses;
- accelerated amortisation of investments in equipment and infrastructure (first fiscal year: 60 per cent, second and third fiscal year: 20 per cent);
- deduction of reclamation allowance up to 5 per cent of operative costs;
- exemption on profits from capital contribution of mining rights; and

- exempted capitalisation of up to 50 per cent of the mineral reserves.

**Other benefits**

Other benefits include:

- VAT reimbursement for prospecting and exploration activities; accelerated VAT reimbursement for new projects or projects to expand production capacity, on the definitive import, or to purchase new capital goods and investments in production-related infrastructure;
- exemption from all import duties and other charges for capital assets and other goods as determined by the Secretariat of Mining used in mining activities;
- exemption from the minimum presumed income tax;
- a three-year tariff payment exemption as from granting of an exploitation concession;
- a royalty cap of 3 per cent mine-head value of extracted minerals; and
- many provinces have repealed the stamp tax for mining activities.

**Foreign exchange regulations**

The Argentinian Central Bank enacted several restrictions to the inflow of funds into Argentina as a deterrent against speculative investments (mainly, a mandatory one-year deposit over 30 per cent of funds transferred into Argentina). Mining activities are exempted from the imposition of this restriction, but investors must be aware that several reporting obligations must be fulfilled to avoid infringing the foreign exchange regulatory framework.

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

There is equal treatment under the law. To conduct mining activities in Argentina, foreign parties are required to set up an Argentinian branch or a subsidiary in Argentina. There is no difference between the tax treatment of these vehicles and any similar mining activities under the control of domestic parties.

**Business structures**

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

Corporations and branches of foreign companies are the most generally used legal structures for doing business in Argentina. Corporations may be 100 per cent owned by non-resident stockholders. The corporate form of a joint-stock company is the most usual and practical to do business in Argentina and permits the shareholders to limit their liability to the par value of the shares they have agreed to subscribe. This limitation of liability is not available for companies that opt to register a branch to carry out business in the country. Without prejudice to the foregoing, other company structures (such as limited liability companies) may also be employed for taxation or other reasons.

As the Mining Code permits only one entity (either physical or legal) to hold mining rights, contractual joint ventures are commonly used for earn-in stages in exploration activities but eventually develop into new corporations that held the mining rights (unless it is agreed that only one party maintains the mining title indefinitely, eg, the Bajo de la Alumbrera Mine). Trusts cannot directly hold mining titles although the Secretariat of Mining's Resolution 996/97 allows the fiduciary assignment of mining rights to collateral trusts in connection with the financing of mining projects.

**Financing**

- 17** 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?

Although there were some attempts to close an IPO for certain advanced mining projects in the Buenos Aires Stock Exchange, and as consequence thereof, certain basic amalgamation of listing requirements for mining activities were carried out, to this date practically all sources of financing mining in Argentina (project financing and commercial lending) have been provided by foreign parties.

**Restrictions and limitations**

- 18** What restrictions and limitations are imposed on the importation of machinery and equipment or services required in connection with mining activities?

Companies that have been registered for the Mining Investment Law benefits are exempted from all import duties and other charges (excluding import service charges) in relation to the import into Argentina of capital goods (including ancillary machinery or spare parts whether new or used) and other goods as determined by the National Secretariat of Mining. The same benefits are granted to registered mining services companies.

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

There are no significant restrictions other than compliance with a fairly liberal immigration regime and the general labour law regulations. Although hiring of local workers is informally encouraged, this does not alter in any form the hiring of skilled foreign workers.

- 20** What restrictions or limitations are imposed on the processing, export or sale of metallic minerals?

There are no restrictions on the exportation of minerals (other than the export taxes referred to in question 13, except for nuclear minerals (uranium and thorium)).

Argentina's current legal framework for nuclear minerals encourages foreign investment with only a few restrictions relating to the holder of mining rights, namely:

- the government has first refusal to purchase, under usual market terms, nuclear minerals, concentrates and by-products that are produced in Argentina; and
- the government's prior consent for the exportation of nuclear minerals, concentrates and by-products. In addition, the internal supply and control of the final destination of export minerals or materials must be guaranteed.

- 21** What restrictions or limitations are imposed on the import of funds for mining activities or the use of the proceeds from the export or sale of metallic minerals?

Since 2002 Argentina has enacted several foreign exchange controls rules specifically designed to deter speculative investment and created tighter controls over the currency floatation. Nevertheless, the inflow of funds for mining exploration activities are exempt from these controls provided the mining companies strictly comply with Central Bank information requirements. In connection with mine development, as a consequence of Delegate Decree 753/2004, almost all the impacts of these regulations has been diminished for those projects that have filed a feasibility report in accordance with Law 24,196 and Federal Mining Secretariat Resolutions No. 326/1994 and 114/04.

**Environment, health and safety**

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

**Environmental**

While compliance control and enforcement of environmental rules have largely been and continue to be vested upon provincial authorities, both national and provincial constitutions, laws and regulations have traditionally coexisted in governing environmental matters, including those pertaining to mining. Following its reform in 1994, in an attempt to reorganise jurisdictional issues among national and provincial governments, the national constitution has acknowledged the provinces' powers to issue the rules necessary to complement the basic legislation to be enacted by national government through the 'minimum environmental standards or requirements' legislation and to enforce both national and provincial rules. The legislation on 'minimum environmental standards' however is limited in number and does not abrogate previous environmental legislation. The result is a complex legal environment where a number of different rules apply to similar types of matters. Enforcement is primarily vested upon provincial bodies.

In connection with mining, Law No. 24,585 embodies a specific regulation the purpose of which is the protection of the environment and the conservation of the natural and cultural resources within the sphere of mining activities. This law states that it is the obligation of any company carrying out mining activities in Argentina to obtain a declaration of the impact on the environment that approves an environmental impact report (EIR), which describes the type of action to be taken and the potential risk to environment, to be submitted to the relevant enforcement authority prior to starting up of any activities.

The environmental impact declaration must be updated at least every two years by the filing of an updated report. Several other federal and provincial regulations have been enacted in connection with EIRs with the scope depending on the mining activity to be carried out in the area.

In turn, the Mining Investment Law establishes tax exemptions for investments in environmental protection. To protect the environment, mining companies must establish special reserves set up in accordance with the criteria of each company, that may be deducted for income tax purposes up to a limit equal to 5 per cent of the operative costs and benefits.

Other relevant national legislation includes Laws 25,675 (General Environmental Law), 24,051 and 25,612 (Hazardous Waste Management) and 25,688 (Water Environmental Minimal Standards).

Furthermore, producing mining establishments should be aware of the mandatory environmental insurance established by General Environmental Law (section 22), and regulated by Environmental Secretariat Resolutions 1398/2008 and 1639/2007.

As noted above, several provinces have also established additional regulations, including Mendoza, Rio Negro, San Luis and Chubut, among others, which have enacted legislation prohibiting the use of cyanide and other substances for mining activities or open pit mines.

Others (Neuquen, Santa Cruz) have set up rules related to 'protected zones' where mining activity is not allowed on environmental grounds.

Although the constitutionality of these laws is contested, some provincial law courts have not accepted such challenges and the Federal Supreme Court has yet to decide on a case in which these laws are challenged.

**Health and safety**

A general health and safety framework has been established in Law 19,587 but the specific requirements for mining activities are established in Regulatory Decree No. 249/2007, enacted by the federal government. Some additional requirements are included in the

**Update and trends**

The pillars of the Argentinian legal framework that have encouraged strong growth of the mining activity are all in place, giving Argentina one of the most advantageous frameworks for exploration and exploitation activities.

The geological potential, competitive legal framework, strong tax benefits and local skilled labour are encouraging strong mining developments. Furthermore, the almost 20 years of experience with the legal framework has established firm acknowledgement of the industry's capacity and potential, especially in certain provinces.

But companies should give serious consideration to more activism from self-proclaimed environmental groups and ensure strong interaction with local communities and all branches of government, as non-traditional mining communities are usually inexperienced with common standard mining practices. Such activities should not be limited to local interaction, as usually the scope of investment and

reach of such efforts are insufficient to impact at a social level.

Although several provinces are studying ways to increase direct investment in mining activity, they also are looking to increase provincial revenue from the industry and are wary of increasing anti-mining sentiment fuelled by environmental groups and some political parties.

It is expected that the industry will continue to grow in the future and, at current metal prices, several projects are commercially feasible in the short term. The increase in exploration and development activities is supporting an increase in mining service providers, particularly those with Argentinian offices.

Finally, it is expected that Argentina will continue to diversify its mineral potential to non-traditional minerals, such as uranium and lithium, among others.

mining industry's Collective Labour Agreement No. 38/89. The National Superintendency of Labour Risk is the national enforcement authority of this law, in addition to the provincial applicable authorities.

Other key legal provisions include Law 20,249 (National Weapon and Explosive Management Law), Law 24,557 (Law on Occupational Accidents) and the more general Law 20,744 (Employment Contract Law).

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

As mentioned above, an EIR has to be approved by the applicable provincial authority prior to the commencement of any mining activity. Depending on the activity involved, other permits might be required (water concessions, waste management, use of explosives, etc) which significantly increases with progress through the stages of exploration or development. Prospecting and early exploration stages usually do not require many more approvals other than an approved EIR.

Although the National Mining Code, section 254 provides for a 60 working day period for the approval or rejection of an EIR, some significant delays are occurring in several provinces due to an excessive workload and lack of specialised personnel. Early submission of an EIR is recommended to avoid delays in the working schedules of mining companies.

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

The rules issued by the National Secretariat of Mining for the presentations of development environmental impact reports include

several provisions regarding closure and post-closure activities to each specific project. There no specific rules in the Mining Code related to mine closing and few regarding mine termination.

In turn, section 22 of Law 25,675 provides that certain industries obtain environmental insurance. Although this has not yet been put in practice, the National Environmental Secretariat Resolution 177/2007 has included producing mining industry activity as a sector subject to such obligation. Furthermore, the National Environmental Secretariat Resolution 1398/2008 has enacted the calculation formula for the minimum insurance for each project. It has been reported that in some provinces inquiries have been made to several mining projects operators about environmental insurance, but local insurance companies have yet to provide this product in the Argentinian market.

**International treaties**

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

As described in questions 10 and 13, Argentina has entered into numerous bilateral investment treaties and treaties to avoid double taxation with most of the countries traditionally involved in the development and financing of mining activities. It is worth noting that under Argentinian constitutional framework, a treaty supersedes any federal or local law.

In 2000, Argentina entered into a key mining treaty with Chile, enabling the development of cross-border or near border projects between the two countries, which practically isolates the project area from the two countries' 5,000km-long border through which the Andean Mountains run.

The treaty sets a framework that regulates all legal aspects related to cross-border mining operations (including, but not limited to duties, taxes, immigration and labour law, environment and use of



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water, among others) that, under the treaty's provisions, are further tailored to each project's needs through specific bilateral protocols. To date, operational protocols have been entered into for the benefit of the Pascua Lama, Project Amos-Andres, Las Flechas, El Pachón and Vicuña projects.

The treaty establishes a common administrative commission headed by the Argentinian Secretariat of Mining and the Chilean Ministry of Mines.

The Pascua Lama project, one of the world's biggest gold and silver deposits, began construction in September 2009 under the treaty and a specific binational protocol umbrella.

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