

InfoPAK<sup>SM</sup>

## Energy and Natural Resources Multi- Jurisdictional Guide: Mining in Chile

Sponsored by:

# Practical Law

# Energy and Natural Resources Multi-Jurisdictional Guide: Mining in Chile

December 2014

Provided by the Association of Corporate Counsel  
1025 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036 USA  
tel +1 202.293.4103  
fax +1 202.293.4107  
[www.acc.com](http://www.acc.com)

This InfoPAK<sup>SM</sup> provides a high level overview of the domestic mining sector, its regulatory structure and ownership, the environment and health and safety. It covers foreign ownership and tax issues and proposals for reform.

The information in this InfoPAK<sup>SM</sup> should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of PLC or of ACC or any of its lawyers, unless so stated. This InfoPAK<sup>SM</sup> is not intended as a definitive statement on the subject but rather to serve as a resource providing practical information for the reader.

This material was developed by PLC. For more information about PLC, visit their website at <http://www.practicallaw.com/> or see the “About the Author” section of this document.

# Contents

<b>I.</b>	<b>Overview .....</b>	<b>4</b>
	A. Provide an Overview of the Recent Developments in the Exploration and Extraction of Mineral Resources in Your Jurisdiction.....	4
<b>II.</b>	<b>Regulatory Structure .....</b>	<b>5</b>
	A. Regulation .....	5
	B. Ownership.....	6
	C. Authorisation .....	7
<b>III.</b>	<b>Environment .....</b>	<b>9</b>
	A. What Are the Main Ongoing Requirements for Environmental Protection? .....	9
<b>IV.</b>	<b>Health and Safety .....</b>	<b>10</b>
	A. What Are the Main Ongoing Requirements for Compliance with Health and Safety Regulations?.....	10
<b>V.</b>	<b>Foreign Ownership.....</b>	<b>10</b>
	A. Are There Any Restrictions Concerning the Foreign Investment and Ownership of Companies Engaged in the Exploration and Extraction of Mineral Resources in Your Jurisdiction?.....	10
<b>VI.</b>	<b>Tax .....</b>	<b>11</b>
	A. What Payments, Such as Taxes or Royalties, Are Payable by Interest Holders to the Government? .....	11
	B. Does the Government Derive Any Other Economic Benefits from the Exploration and Extraction of the Mineral Resources?.....	11
	C. What Taxes and Duties Apply on the Import and Export of Mineral Resources?.....	11
<b>VII.</b>	<b>Reform .....</b>	<b>12</b>
	A. Are There Any Plans for Changes to the Legal and regulatory framework? .....	12
<b>VIII.</b>	<b>The Regulatory Authority .....</b>	<b>12</b>
	A. National Geology and Mining Service ( <i>Servicio Nacional de Geología y Minería</i> ) .....	12
<b>IX.</b>	<b>About the Authors .....</b>	<b>13</b>
	A. Gonzalo Nieto, Partner.....	13
	B. Maximiliano Urrutia, Associate.....	13

# I. Overview

## A. Provide an Overview of the Recent Developments in the Exploration and Extraction of Mineral Resources in Your Jurisdiction.

Chile's most important mineral resources are copper, molybdenum, silver and gold. Their exploitation is concentrated mostly in the north of Chile, in the Antofagasta and Atacama regions. On 2013, they were produced in the following amounts:

- Copper: 5.8 million metric tons or 32% of world production.
- Molybdenum: 39,000 metric tons or 14% of world production.
- Silver: 1,217 metric tons or 5% of world production.
- Gold: 49 metric tons or 2% of world production.

Although there are no official updated statistics, according to the Chilean Copper Commission (COCHILCO), by 2011, investments in the mining industry represented 25% of total investment in Chile, while foreign investment in the mining industry represented 35%.

With regards to Chile's gross domestic product, the mining sector contributes approximately 15%.

In 2013, mining exports were worth US\$44.295 million.

Some of the current major mining projects in Chile are:

- Chuquicamata, El Teniente & Andina, owned by CODELCO, a Chilean state-owned mining company.
- Minera Escodida, owned by BHP Billiton.
- Anglo American Sur Andes, owned by Anglo American.
- Collahuasi, owned by Glenco Xtrata plc, Anglo American and Mitsui & Co. Ltd.
- Los Pelambres, owned by Antofagasta PLC.
- El Abra and Candelaria, owned by Freeport-McMoran.

Some of the upcoming major projects are:

- Caserones, a copper and molybdenum mine owned by the Japanese firm SCM Minera Lumina Copper Chile, with an estimated investment of US\$4,200 million.
- Copper development projects by CODELCO, with an estimated investment of US\$4,370 million.

- Organic Growth Project 1, a copper mine owned by Minera Escondida Limitada, with an estimated investment of US\$3,800 million.

## II. Regulatory Structure

### A. Regulation

#### I. Describe the Regulatory Framework for the Exploration and Extraction of Mineral Resources in Your Jurisdiction.

##### a. **Regulatory Framework**

The regulatory framework governing the exploration and extraction of mineral resources in Chile consists of:

- The Political Constitution of the Republic of Chile, which provides the legal basis for mining legislation, as it expressly stipulates that ownership of a mining concession is protected by the constitutional guarantee related to property rights.
- The Organic Constitutional Law on Mining Concessions, which describes in general terms what mining concessions are, their duration and expiration, and the rights and obligations of titleholders.
- The Chilean Mining Code, which addresses topics covered in the Organic Constitutional Law on Mining Concessions in more detail, and sets out:
  - the procedure for obtaining exploration and exploitation concessions;
  - how such concessions are protected; and
  - the regime governing contracts related to mining operations.
- The rules that complement those of the Mining Code, the Mining Code Regulations, which explain the different requirements needed to exercise the rights and comply with the duties stated in the Code, and detail the phases of each procedure.
- The Mining Safety Regulation contained in Supreme Decree No 132/2004, whose objective is to protect the life and physical integrity of those who work in and are related to the mining industry, as well as to protect facilities and infrastructure that allow mining operations and their continuance.

- The Regulation on the System of Environmental Impact Assessment and some provisions of the Water Code, Health Code and Labour Code are also applicable to mining operations.

#### **b. Regulatory Authorities**

The main authority responsible for dealing with mining issues is the National Geology and Mining Service (*Servicio Nacional de Geología y Minería*), which serves as an adviser to the Ministry of Mining on geology and mining issues (see Section VIII). Some of its duties are to keep a record of mining concessions granted and to supervise compliance with the Mining Code Regulations, among others.

Some other public entities are involved with mining operations, such as the Environmental Assessment Service and the Superintendence of Environmental Affairs.

## **B. Ownership**

### **I. How Are Rights to the Mineral Resources Held, and Who Holds Those Rights?**

The state has absolute, exclusive and inalienable rights over all mines, which cannot be taken away by prescription or lapse of time (*Mining Code*). This is regardless of any claim by natural or legal persons over lands within which mines are located. However, a person (natural and/or legal) can obtain exploration and exploitation mining concessions, regardless of who owns the land.

This means that there is an absolute distinction between the ownership of surface land and ownership of the mining concession granted within the same piece of land. As a result, the land owner and the mining concession owner can co-exist if they are different persons. Mining law stipulates that land ownership is subject to the obligations and limitations established by law to facilitate mining exploration and exploitation as well as mineral processing via, for example, mining easements.

Statistics provided by the National Geology and Mining Service show that as at 2012, mining concessions had been granted in relation to 42% of Chilean territory.

## C. Authorisation

### I. What Are the Key Features of the Leases, Licences or Concessions Which Are Issued under the Regulatory Regime? Can These Rights Be Leased by the Right-Holder?

A mining concession is a right *in rem* (against all persons), which is different to and independent from the ownership of the surface land, even if both rights belong to the same person, and as such is enforceable against the state and all persons (*Article 2, Mining Code*).

Mining law also prescribes that surface property is subject to the obligations and limitations established by law to facilitate mining exploration, exploitation and mineral processing.

Chilean mining legislation allows two types of mining concessions:

- **Exploration concession.** This type of concession grants its holder the exclusive right to investigate and prospect the existence of all mineral substances for which concessions can be granted.
- **Exploitation concession.** This type of concession grants its holder an exclusive right to:
  - freely explore and exploit the concession, having previously obtained the corresponding permits and complied with all legal and regulatory obligations, and;
  - become the owner of all the mineral substances extracted from land within the limits of the exploitation concession.

In general, both types of mining concession can be subject to any type of contract, such as a mortgage, lease agreement or purchase and sale agreement.

#### a. Lease/Licence/Concession Term

Exploration concessions last for two years from the date of grant, although they can be renewed for another two years.

Exploitation concessions do not expire, provided that the right holder pays applicable annual taxes. If the holder fails to pay these taxes, the concession is auctioned off.

#### b. Fees

An application fee must be paid after the filing of a request for a mining concession, and its amount depends on whether it is an exploration or an exploitation concession, as well as on the area it covers (measured in hectares).

The payment unit is calculated on 1/100 of a Monthly Tax Unit (MTU), a Chilean inflation-linked currency (1 MTU is about US\$80), and the rate is applied through a progressive tax system.

For instance, the application fee for an exploration concession of over 3,000 hectares is 4/100 MTU per hectare, while the application fee for an exploitation concession of over 600 hectares is 5/100 per hectare.

In addition, after the mining concession is granted, the titleholder must pay an annual licence fee of 1/50 MTU per hectare for an exploration concession and 1/10 MTU per hectare for an exploitation concession. However, if the mining exploitation concession relates to non-metallic substances, the amount payable is 1/30 MTU per hectare.

### **c. Liability**

A concession holder must pay an annual licence fee (see Section II.C.1.b). Concession holders are not liable to third parties for non-payment of their licence fee.

### **d. Restrictions**

The general principle under Chilean mining law is that all metallic and non-metallic substances can be the object of a mining concession, in whatever form they may be naturally found. However, there are certain mineral substances that are reserved only to the owner of the surface land, such as surface clays. Concessions cannot be granted in relation to hydrocarbons (either liquids or gases), lithium, underwater deposits and mineral deposits of any kind located wholly or partially within areas defined by law as relevant for national security.

The Mining Law prohibits the overlap of mining concessions owned by different titleholders. It sets out different mechanisms and procedures to protect the preference of the first applicant and annul or cancel mining concessions requested or granted after that.

Finally, there are some legal restrictions regarding foreign ownership of lands located in border areas. However, Chile has signed a Mining Integration and Complementation Treaty with the Republic of Argentina.

## **2. How Are Such Leases, Licences or Concessions Awarded?**

Mining concessions are granted by a judicial resolution issued at a non-contentious proceeding.

Although the procedure for granting both exploitation and exploration concessions have some particular features and steps, they both start with a request for an exploration or exploitation concession filed by any person interested in undertaking a mining activity before the court in whose jurisdiction the concession will be located, providing the exact geographical location of the area to be explored or exploited.



Such requests must be registered in the Registry of Mining and published in the Mining Gazette, and the applicant must then pay the application fees. After this, the file is sent to the National Geology and Mining Service for it to issue a report either in favour or against the grant of the mining concession. If the report is favourable, the court grants the concession by a final judgement that must also be registered in the Registry of Mining and published in the Mining Gazette.

If the above procedure is not complied with, the concession may be subject to cancellation at the request of any third parties who notice omissions or illegalities in the procedure.

### III. Environment

#### A. What Are the Main Ongoing Requirements for Environmental Protection?

Generally, the environmental protection measures that mining companies must adopt depend on the environmental components that may be affected by the mine's operation, such as water resources that might be polluted by mining waste, or communities settled nearby that could be affected in any way by the operations.

With regards to mining waste, the most important issues are the location and construction of the waste dump and the functioning and maintenance of tailings dams.

The Health Code requires the prior approval of the National Health Service for the construction of a waste-treatment plant of any kind. The Mining Safety Regulation requires that the stability of waste dump projects be guaranteed and that the highest safety measures are adhered to with regards to their construction and expansion. Such projects must be reviewed and approved by the National Mining and Geology Service.

There is a specific regulation on the construction and operation of tailings dams, Supreme Decree No 248/2007, which establishes procedures for the approval of tailings dams projects and requirements for their design, construction, operation and closing that guarantee the safety of people and assets.

## IV. Health and Safety

### A. What Are the Main Ongoing Requirements for Compliance with Health and Safety Regulations?

All health and safety regulations related to mining activity are contained in the Mining Safety Regulations, although there are some provisions of the Labour Code and Health Code that are also binding, as well as specific regulations in other Chilean legislation, such as that relating to tailings dams (see Section V.A).

Some of the most important regulations on health and safety matters concern:

- The obligation to train workers to operate heavy machinery and work in high altitude conditions.
- The need for proper signage at work sites.
- The need for proper facilities and evacuation procedures.
- The need for an adequate system for the treatment and disposal of all types of waste.

## V. Foreign Ownership

### A. Are There Any Restrictions Concerning the Foreign Investment and Ownership of Companies Engaged in the Exploration and Extraction of Mineral Resources in Your Jurisdiction?

Chilean legislation does not restrict foreign investment and ownership of mining concessions in any way. On the contrary, foreign investment is encouraged and welcomed.

Under the Foreign Investment Statute (Decree Law No 600) and Chapter XIV of the Foreign Exchange Regulations of the Chilean Central Bank, a foreign investor and the Chilean state must sign a foreign investment contract that sets out the parties' rights and obligations. The investor's obligations include bringing the investment capital into the country within a specified amount of time and in a previously determined form. The state guarantees that the investor will not be discriminated against in economic matters, among others.

## VI. Tax

### A. What Payments, Such as Taxes or Royalties, Are Payable by Interest Holders to the Government?

Apart from the application fees and annual licence fees that interest holders must pay (see Section II.C.1), Chilean taxation law recognises three types of miners, which are subject to different tax regimes:

- Small artisanal miners pay a single tax that is calculated on gross sales, with rates of 1%, 2% or 4% of copper's international price. For mineral products without copper, gold or silver content the rate is 2%.
- Medium level miners are subject to a presumed income tax regime under which taxes are paid on the basis of gross annual sales. Depending on the average price of a copper pound (referential payment unit determined by the Chilean Copper Commission), the tax base/presumed income of a copper miner can be 4%, 6%, 10%, 15% or 20% of gross annual sales. The tax rate is 20% of such presumed income.
- Major miners pay taxes on their effective income, at the rate of 20%.
- In addition, interest holders must pay a royalty calculated on the basis of production and sales levels. For instance, copper mining producers whose sales are less than 12,000 metric tons of copper per year are exempt from payment of the royalty, while mining producers whose sales levels are between 12,000 and 50,000 metric tons of copper per year pay between 0.5% and 4.5% of their operational taxable income.

### B. Does the Government Derive Any Other Economic Benefits from the Exploration and Extraction of the Mineral Resources?

There are no other taxes, fees or licences than the ones described above (see Section II.C.1 and VI.A). There are no specific taxes applicable to joint venture agreements.

### C. What Taxes and Duties Apply on the Import and Export of Mineral Resources?

All income derived from the importation and exportation of mineral resources is included in the general tax regime (see Section VI.A). There are no additional taxes or specific regulations regarding the import and export of mineral resources.

## VII. Reform

### A. Are There Any Plans for Changes to the Legal and regulatory framework?

In relation to the application procedure for mining concessions, in October 2013 a group of Senators presented a bill to parliament requiring that requests for mining concessions be published in a regional newspaper and notified by radio, in addition to the current mandatory publication in the Mining Gazette.

In May 2013, another bill was presented to parliament to revise the water rights regime applicable to holders of mining concessions.

Discussion of and voting on both bills is still pending.

## VIII. The Regulatory Authority

### A. National Geology and Mining Service (*Servicio Nacional de Geología y Minería*)

**Address.** Av. Santa María 0104,  
Providencia, Santiago  
Chile  
T +562 2 482 5500  
W [www.sernageomin.cl](http://www.sernageomin.cl)

**Main responsibilities.** Advises the Ministry of Mining on geology and mining issues, and contributes to government programmes on the development of mining and geological politics

## IX. About the Authors

### A. Gonzalo Nieto, Partner

Urrutia & Co

T +562 2 499 5900

F +562 2 335 1842

E [gnieto@urrutia.cl](mailto:gnieto@urrutia.cl)

W [www.urrutia.cl](http://www.urrutia.cl)

**Professional qualifications.** Chile, 1996

**Areas of practice.** Litigation and mining law.

#### Recent transactions

- Constitution of mining concessions for Pascua-Lama project and others.
- Constitutional, civil and environmental litigation related to the Pascua-Lama project's approval and construction before the civil courts, Courts of Appeal, Supreme Court, Superintendence of Environmental Affairs and environmental courts.

**Languages.** Spanish and English

### B. Maximiliano Urrutia, Associate

Urrutia & Co

T +562 2 499 5900

F +562 2 335 1842

E [murrutia@urrutia.cl](mailto:murrutia@urrutia.cl)

W [www.urrutia.cl](http://www.urrutia.cl)

**Professional qualifications.** Chile, 2013

**Areas of practice.** Litigation and mining law.

#### Recent transactions

- Constitution of mining concessions for Pascua-Lama project and others.
- Constitutional, civil and environmental litigation related to the Pascua-Lama project's approval and construction before the civil courts, Courts of Appeal, Supreme Court, Superintendence of Environmental Affairs and environmental courts.

**Languages.** Spanish and English