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Inés Agüero Ovejero, Reporter

Latest Major Modifications to Mining Legal Framework in Argentina

Memorandum of Understanding on Critical Minerals

On August 22, 2024, the United States and Argentina entered into a Memorandum of Understanding (MOU) concerning critical minerals. This agreement was signed by Argentina's then-Foreign Minister, Diana Mondino, and José Fernández, the Under Secretary for Economic Growth, Energy, and the Environment at the U.S. Department of State.

The purpose of the memorandum is to enhance collaboration between Argentina and the U.S. regarding critical mineral supply chains, as well as to foster trade and investment in the exploration, extraction, processing, refining, and recycling of these minerals. It aims to create more investment opportunities and identify potential co-financing options for critical mineral projects.

The agreement specifies the following areas of cooperation:

- *Information Sharing*: Both countries will exchange technical knowledge and best practices to boost the competitiveness of Argentina's mining sector, while also coordinating support for key projects.
- *Cooperation Mechanisms*: This may involve meetings between government officials, organizing seminars and training sessions, and forming working groups that include the private sector, universities, and other stakeholders.

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BOLIVIA

Mattías Garrón, Reporter

Economic Progress and Environmental Sustainability in Responsible Mining

Mining is known for its high demand for natural resources and its considerable impact on the environment. Large-scale operations, if not strictly regulated, can cause the destruction of ecosystems and consequently serious alterations in the communities near the areas of exploitation. Faced with these challenges, Bolivia has adopted a regulatory framework that seeks to mitigate the negative effects of mining activities. This set of regulations, both international and national, guarantees that mining companies operate in a sustainable manner and respect the rights of local communities and ecosystems.

In this context, the concept of responsible mining takes on special relevance, as it refers to those mining activities that, in addition to complying with the country's set of regulations, take into account environmental and social impacts. Responsible mining involves making decisions that comply with environmental regulations, allowing operations to be transparent, subject to legal review and, in the event of non-compliance, subject to penalties.

The international legal framework plays a decisive role in the regulation of mining, especially in a global context where environmental protection, sustainable development and the protection of local communities are fundamental priorities. Therefore,

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- *Topics of Focus*: The MOU will address ESG and sustainability standards, global and regional supply chains, and the relationship between subnational and national governments. Both nations will work together to create a roadmap detailing the projects and activities to be undertaken under this agreement.
- *Information Exchange*: The Argentine government has committed to sharing details about upcoming auctions and projects with the United States as soon as they are available, and it will encourage subnational governments to do the same, ensuring that the United States and other members of the Minerals Security Partnership have adequate time to engage.

Regulation of the Incentive Regime for Large Investments (RIGI)

On August 23, 2024, Decree Nº 749/2024 was published in the Official Gazette, establishing regulations for the Incentive Regime for Large Investments (RIGI) as outlined in Title VII of Law Nº 27,742, also known as "Bases and Starting Points for the Freedom of Argentines."

As mentioned in a previous report, RIGI is designed to provide federal incentives and stability in tax, exchange, and customs matters to encourage investment projects with a minimum threshold of US$200 million. The targeted sectors include forestry, tourism, infrastructure, mining, technology, steel, energy, and oil and gas.

Key Regulations of the Decree

- *Scope of Application*: The Decree specifies which subsectors within the covered industries are eligible and sets minimum investment amounts for each.
- *Investment Clarifications*: It outlines what types of investments can be counted towards meeting the minimum investment requirements.
- *Tax and Customs Benefits*: The Decree details the various tax, customs, and exchange benefits available under RIGI, ensuring clarity on the stability these incentives provide.
- *Supplier Participation*: It describes the benefits available to suppliers involved in projects under RIGI.
- *Existing Projects*: The Decree allows for the application of RIGI to existing entities and the expansion of preexisting projects.
- *Dispute Resolution*: Additional procedural regulations are established for resolving disputes related to the implementation of RIGI.

Relevant Details

- *Enforcement Authority*: The Ministry of Economy will oversee the implementation of RIGI, handling applications, compliance verification, and management of relevant registers.
- *Application Requirements*: The documentation required for RIGI adherence has been established and must include a project description, investment plan, total anticipated investment, key investment items, estimated disbursement schedule, a declaration of non-distortion of the local market, financing plan, employment forecast, supplier plan, production estimates, exports and foreign currency flow, feasibility study, and necessary permits.
- *Sector Inclusion*: The eight sectors confirmed for RIGI include Forestry, Tourism, Infrastructure, Mining, Technology, Steel, Energy, and Oil & Gas. Notably, Defense and Security are included within the infrastructure sector, and the automotive industry can submit projects under Technology.
- *Foreign Exchange Regulations*: While free availability of foreign exchange is maintained, the Central Bank may prioritize the use of external assets generated from RIGI for accessing the foreign exchange market.
- *Importation of Goods*: A list of goods eligible for free importation will be established upon supplier approval,

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with a focus on customs interoperability to streamline import processes.

- *Local Supplier Commitment*: Applicants must commit to using at least 20% local suppliers, including for civil works, and must certify compliance with this requirement every two years.

Considerations for the Mining Sector

RIGI encompasses a wide range of activities related to mineral resources, including prospecting, exploration, extraction, and various processing methods. These activities must be integrated and performed by the same economic unit to qualify under the regime.

Other Regulation

Moreover, through Resolution No. 814/2024 published in the Official Gazette on September 3, 2024, the RIGI Project Evaluation Committee was created, which will be responsible for the final evaluation of applications for adherence to the RIGI and the investment plans submitted by the Single Purpose Vehicle.

Additionally, on October 22, 2024, Decree 940/2024 was published in the Official Gazette, modifying certain articles of the Regulatory Decree (clarifying some concepts and improving their understanding and application), along with Resolution 1074/2024, which approved the procedures for the implementation of the RIGI, thereby enabling the TAD platform (remote procedures) to initiate the RIGI processes.

Reduction of the Lithium Carbonate Export Reference Values

By means of Resolution Nº 5526/2024, published on July 16, 2024, the export reference values was reduced for lithium carbonate intended for Canada and the United States (Group 3), as well as for the Democratic People's Republic of Korea, Republic of Korea, China, the Philippines, Taiwan, Japan, Thailand, and Hong Kong (Group 33). This adjustment reflects the significant decline in lithium prices since September 2022.

The updated Free on Board (FOB) values are as follows:

- *$11.35 per kg*: For lithium carbonate with a purity of 99.2% or higher, excluding grades defined by publicly available standards (such as pharmacopoeia, analytical, food, etc.) classified under tariff position 2836.91.00.
- *$11.00 per kg*: For lithium carbonate with a purity of 98.9% or more but less than 99.2%, also excluding publicly available standard grades under the same tariff position.
- *$10.84 per kg*: For lithium carbonate with a purity of 89.9% or more but less than 98.9%, again excluding grades defined by publicly available standards under the same tariff position.

Previously, under Resolution Nº 5197/2022, the reference FOB value was set at *$53 per kg* for lithium carbonate with a purity of 99.5% or higher, excluding grades according to publicly available standards.

Incentive Regime for Large Investments (RIGI): Province's Adhesion

As of now, six provinces have adhered to the Incentives Regime for Major Investments under Title VII of National Law 27,742 (RIGI). The provinces that have adhered, in chronological order, are:

(1) *Río Negro*: This province was the first to adhere to RIGI, with legislative approval on July 18, 2024, passing with 35 votes in favor and 10 against. The regime took effect on July 26, 2024, largely due to the potential designation of Río Negro as the site for a Liquefied Natural Gas (LNG) plant being considered by YPF and Petronas.

(2) *Jujuy*: The legislature approved adherence on August 8, 2024.

(3) *Mendoza*: The provincial congress approved adherence on August 13, 2024, with a vote of 24 in favor and 14 against.

(4) *San Juan*: Adherence was approved by the provincial congress on August 15, 2024, with a vote of 21 to 14.

(5) *Chubut*: On August 15, the Chubut legislature approved adherence with 18 votes in favor and 9 against. Notably, Article 2 of the law maintains a veto on mining activities, exempting those prohibited by Provincial Law XVII Number 68 (which bans open-pit mining and cyanide use). The law is pending enactment and will automatically take effect if not enacted within 10 business days.

(6) *Salta*: In late August, the Provincial Senate approved Salta's adherence to RIGI, following a prior vote in the Chamber of Deputies. The initiative, supported by the Executive, passed with a significant majority, with only two opposition votes.

This summary highlights the progress of provinces in adhering to the RIGI, reflecting their commitment to fostering significant investment opportunities.

The Province of Salta implements Electronic Payment for Canon

Companies in Salta can now make electronic payments for the mining canon through the Mining Information System of Salta (SIMSa). This initiative supports an orderly transition, as this new payment form will become mandatory in 2025, promoting greater transparency in the sector's management.

Jimena Vega Olmos, Reporter

Implementation of the Incentive Regime for Large Investments

As previously reported, on June 27, 2024, the Federal Congress passed Law N° 27,442 known as the *Bases and Starting Point of the Freedom of Argentines Law* (the "Omnibus Law") that, inter alia, approved the Incentive Regime for Large Investments (RIGI, according to its acronym in Spanish).

RIGI is a promotional regime that grants several benefits and guarantees of regulatory, fiscal, customs, and exchange

rate stability for 30 years as from the inclusion date to qualifying projects in certain sectors, including energy, oil and gas.

Following the passing of the law, the Government issued several implementing regulations:

- On August 23, 2024, the Executive issued Decree Nº 749/2024 (amended by Decree Nº 940/2024 of October 22, 2024) approving the RIGI's implementing regulations. It limited the scope of RIGI to certain subsectors. While the scope of the mining and power sectors was not restricted, a different approach was adopted in connection with the hydrocarbons sector. Onshore upstream projects were left out of RIGI, unless associated with an LNG export project.

  The decree also established the minimum required investment (generally US$200 million, except for certain specific subsectors providing for a higher minimum investment; and in the case of Long-Term Export Strategic Projects the minimum investment amounts to US$2,000 million).

  The decree also clarified the type of investments that may be considered, regulated the participation under RIGI of existing entities and expansion of pre-existing projects, and approved additional procedural regulations and clarifications in connection with the dispute settlement mechanism.
- Through Communication "A" 8099 (August 29, 2024), the Central Bank issued the implementing regulations applying to the foreign exchange benefits under RIGI.
- Procedural regulations were issued by the Ministry of Economy on September 3 and October 31, 2024. Through these resolutions, the Ministry of Economy, as RIGI's enforcement authority, created the RIGI Projects Evaluating Committee and approved the proceedings for RIGI application and voluntary withdrawal.
- Finally, through Resolutions Nº 5589/2024 and 5590/2024, the Argentine Federal Revenue Service issued implementing regulations applying to the tax benefits under RIGI including, but not limited to, the procurement of RIGI Single Purpose Vehicles (SPV)s' tax ID, registration of covered exports and imports, issuance of VAT certificates by RIGI SPVs; applicable transfer pricing rules, special income tax amortization regime and invoicing.

Also, following the passing of the Omnibus Law, the following Provinces have approved the incorporation to RIGI: Catamarca, Chaco, Chubut, Córdoba, Corrientes, Entre Ríos, Jujuy, Mendoza, Río Negro, Salta, San Juan, San Luis and Tucumán. In addition, several Argentine municipalities have also adhered to the new incentive regime. Through this incorporation, the relevant jurisdictions undertake to respect the RIGI benefits in their territories (including but not limited to, provincial and municipal tax stability, as applicable).

Based on the information made available by the Ministry of Economy, as of this date, three applications have been filed under RIGI: a solar farm to be developed in the Province of Mendoza and two lithium brine production and export projects.

Province of Chubut: New Environmental Liabilities Sustainable Management Regime

On August 5, 2024, the Province of Chubut (Chubut) published Law XI Noº 85 on "Sustainable Management of Environmental Liabilities," approving new standards for the identification, reporting and remediation of environmental damage. The law was implemented through Provincial Decree Nº 1218/2024.

The law defines "environmental liability" broadly, as any environmental damage with a negative impact on biota, water, soil, subsoil, atmosphere, natural resources, ecosystems, landscape, and historical-cultural heritage caused by any public or private activity, creating a permanent or potential risk to public health, the ecosystem and property. In turn, "environmental impact," is defined as any significant alteration that negatively modifies the environment, natural resources, the ecosystem's balance or collective assets or values.

The law regulates closure audits. Pursuant to the same, following the end of activities or in the case of transfer of participation interests in hydrocarbon concessions, the operator or the assignor, as applicable, must submit an environmental closure audit for approval by the Secretariat of Environment and Control of Sustainable Development of Chubut, together with a specific environmental remediation plan.

Lack of approval of the closure audit and the remediation plan result in the assignor and assignee's joint environmental liability. In addition, the law states that any contractual agreement waiving the assignor's responsibility for environmental liabilities or transferring such responsibility to the assignee, unless approved by the enforcement authority, shall not be enforceable against Chubut.

The law also regulates the sanctions to be applied in case of breach of obligations and creates the Provincial Registry of Environmental Liabilities, which will be publicly accessible.

2024-2025 Summer Contingency Plan

Through Resolution SE 294/2024 (October 1, 2024), the Secretariat of Energy approved a contingency plan to address urgent vulnerabilities in the national power system for the 2024-2025 summer.

Resolution Nº 294 identifies different urgent issues including the need for infrastructure upgrades to cope with the problems generated by outdated thermal plants and the country's limited renewable energy generation plants. The plan also seeks to expand and improve the transmission grid and the local distribution network, given the constraints of actual capacity. The Resolution also considers the regulatory controls that, during the last years, artificially depressed the price of electricity, resulting in a significant gap between generation costs and consumer prices.

Resolution Nº 294 identifies different urgent system upgrades, focusing on transmission infrastructure improvements and operational adjustments to improve the management of peak summer demand and enhance dispatch protocols to avoid the need to resort to emergency imports of electricity from neighboring countries. The Resolution recommends creating a monitoring committee composed of representatives from key energy subsectors that shall monitor and review progress and suggest necessary measures and adjustments.

Resolution Nº 294 also highlighted the need for a reform of the regulatory framework with the goal of attracting private investment and achieving a competitive market.

Prohibition to Incorporate in Natural Gas and Power Distribution Bills Concepts Alien to the Rendering of Such Services

Through Resolution ENRE 708/2024 (October 6, 2024) and Resolution ENARGAS 625/2024 (October 4, 2024), ENRE and ENARGAS, the federal electricity and natural gas regulators,

respectively, ordered the different distribution companies to exclude from invoices to consumers any charges that are unrelated to the relevant distribution service.

These measures are consistent with the general rule, established by the federal Secretary of Industry and Commerce through Resolution SIC 267/2024, pursuant to which invoices issued by suppliers of goods and services may only reflect the costs and charges corresponding to the specific services or supply contracted by the consumer.

As a result, these resolutions prohibit the collection, through natural gas and power bills, of provincial and municipal taxes and charges, something extremely common during the last decades and thus shall likely impact provincial governments and municipalities. In this regard, for example, until these measures, the invoices included concepts such as a public lightning charge, public space occupation charge, safety and hygiene charge, provincial taxes, and forced contributions to public funds and trusts.

The Federal Supreme Court Rejects Federal Jurisdiction in Environmental Case

On August 13, 2024, the Federal Supreme Court rejected its original jurisdiction in an environmental case initiated by the Mapuche Community "*Lof Wirkaleo,*" the Environmental and Natural Resources Foundation (*Fundación Ambiente y Recursos Naturales*) and residents of the Province of Neuquén against the Province of Neuquén. The action, that had been initiated before the Federal Court of Neuquén, sought the issuance of an order: (i) requiring the Province to conduct environmental impact studies, public hearings and prior consultation with the native communities in connection with hydrocarbon exploration and exploitation projects; (ii) requiring that hydrocarbon projects' environmental impact studies include all impacts caused by the activity and measures to prevent induced seismicity; and (iii) declaring the unconstitutionality of Resolution Nº 54/2021 of Neuquén's Ministry of Energy, which approved the provincial seismic monitoring program.

The Federal Court of Neuquén declared its incompetence to hear the claim arguing that provincial courts should intervene. The Federal Court of Appeals of General Roca reversed this decision and stated that the case should be subject to the Federal Supreme Court's original jurisdiction.

The Federal Supreme Court reversed the Court of Appeals' decision and rejected its original jurisdiction on the basis of the following reasons: (i) federal jurisdiction in environmental matters only applies when the claim involves interjurisdictional environmental resources or geographic areas; (ii) the determination of whether an interjurisdictional matter is involved must be interpreted restrictively. In this case, the claims were limited to areas of the Province of Neuquén; (iii) the fact that the Vaca Muerta formation may extend beyond the provincial border is not sufficient to consider the existence of interjurisdictional damages; (iv) no evidence was produced to show otherwise; and (v) the protection of the environment within its territory is the province's responsibility.

Developments Concerning Argentina's Hydropower Plant Concessions

On August 9, 2024, the Federal executive issued Decree Nº 718/2024, setting forth additional transition regulations regarding the operation of Argentina's hydropower plants, whose concession terms have already expired.

The Decree establishes that the concessionaires of the Cerros Colorados, El Chocón-Arroyito, Piedra del Águila and Alicurá hydroelectric complexes will continue to operate the generation plants for an additional year, provided that they execute certain joinder letters included in the regulation.

Such operation shall be subject to the following conditions: (i) the concessionaires must comply with all the obligations under their Concession Contracts; (ii) the concessionaires must update and submit the contract performance bond for an amount of US$4,500,000; (iii) considering that power generation is an activity at the expense and risk of the concessionaires, any changes in the power remuneration scheme as a consequence of the measures that may be adopted by the government to normalize the power market may not be invoked as a default of the Argentine State. However, such measures and regulations cannot affect the current remuneration of the concessionaires; (iv) the companies must comply with the royalty scheme agreed upon between the Energy Secretariat and the Provinces of Río Negro and Neuquén; (v) on a quarterly basis, the concessionaires must submit a detailed and updated inventory of the concession assets; failure to comply with this obligation shall be considered a material breach of contract; (vi) the transfer of the concession assets provided for under the concession contracts shall be postponed until the expiration of the extended operation term; and (vii) access must be granted to those interested in participating in the tender process convened for the sale of the shares of these companies.

Within 180 days following the issuance of Decree Nº 718/2024, the government must call for a national and international public tender for the sale of the controlling interest in the different concessionaires. If the public tender is unsuccessful or declared void and the extended operational term expires, the shares shall be transferred to the National State.

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countries must adhere to international regulations and agreements that guide their domestic policies and ensure the sustainable management of their resources.

It is important to point out that, under the fundamental principle of international law, each State has sovereignty over the management of its natural resources (United Nations, 1972), a principle that is reflected in Article 349 of the Political Constitution of the State. This right was formally recognized at the United Nations Conference on the Human Environment, held in Stockholm, Sweden, where Principle 21 of the Stockholm Declaration was adopted.

Along the same lines, during the United Nations Conference on Sustainable Development (Rio+20) in 2012, the final document entitled *The Future We Want* was presented, through which the States, including Bolivia, recognized the relevance of establishing robust regulatory frameworks for the mining sector, which not only generate economic and social benefits but also integrate effective guarantees to mitigate environmental and social impacts. These frameworks must be designed to preserve biodiversity and ecosystems, even after mining activities have been completed. Thus, the need to implement sound policies and practices that not only benefit local communities and economies but also ensure the long-term protection and conservation of natural resources was highlighted (United Nations, 2012, para. 228).

Notwithstanding the existence of these international agreements, the regulation of mining in Bolivia continues to be

the responsibility of public institutions and national legal frameworks. In this sense, the normative set that regulates mining activities in Bolivia is composed of the Political Constitution of the State, Law Nº 1333 of the Environment, its regulations, the Environmental Regulations for Mining Activities (RAAM), and other regulations in force (Law Nº 535, 2014, art. 217).

The RAAM establishes a set of precepts that seeks to integrate environmental protection into the different phases of mining activity. By requiring environmental licenses and mandatory environmental impact assessments (EIAs), this regulation ensures that mining companies identify and mitigate potential damage to ecosystems before starting operations. In addition, it imposes the obligation to implement environmental management plans, constant monitoring, and restoration of affected areas, which promotes corporate responsibility in protecting the natural environment. These provisions not only ensure that mining activities contribute to the country's economic development, but also prevent the irreversible degradation of natural resources.

Under this regulatory context, an essential component for the protection of the rights of local communities arises: the prior consultation established in Art. 403 of the Political Constitution of the State. This process is crucial to guarantee that the rights of these communities are respected prior to the initiation of any mining project. Prior consultation allows for participation in decision-making on projects that impact their territories and natural resources, ensuring that their concerns and rights are fully considered during the elaboration and execution of mining contracts.

However, prior consultation also acts as a mechanism for environmental protection in mining projects by ensuring that indigenous communities, whose lives and territories are closely linked to ecosystems, participate in the evaluation of potential environmental impacts. This process allows risks to be identified, respect for natural resources to be promoted and more sustainable decisions to be made, ensuring that mitigation and environmental protection measures are considered from an integral and culturally informed perspective.

In conclusion, mining, given its high demand for natural resources and its significant environmental impact, requires a robust regulatory framework to minimize its negative effects. Bolivia has responded to these challenges by adopting a set of national and international regulations that promote sustainable mining that respects the rights of local communities and ecosystems. The implementation of responsible mining, reflected in regulations such as the RAAM, ensures that operations are rigorously evaluated and that appropriate mitigation measures are adopted. Prior consultation emerges as a key mechanism to ensure that affected communities actively participate in decision-making, thus protecting their rights and the environment. Despite international agreements guiding these practices, the ultimate responsibility lies with national institutions, which must ensure the effective implementation of these regulations to ensure the long-term sustainability of mining activities in Bolivia.

Gonzalo Dávila, Reporter

Results of the Application of the New Regulations on Green Bonds in Bolivia

A Brief Reminder of the Regulations Issued in 2022

In our first report, published in Vol.1, No. 1 (2023) of this *Newsletter*, entitled "Bolivia Gets on the Green Bonds Train," we informed about the publication in the Electronic Gazette of Financial Regulation, of the Administrative Resolution ASFI N°1392/2022 dated December 30, 2022, approved by the Financial System Supervisory Authority of Bolivia (ASFI). This resolution approved modifications to the "Regulation of the Securities Market Registry" and related regulations. The approval responded to the desire to adapt Bolivia's securities legislation to the contemporary context of environmental protection, following the principles and guidelines for the issuance of Green Bonds, Social Bonds, and Sustainable Bonds set forth by the International Capital Market Association (ICMA). In doing so, it aligns with both the Sustainable Development Goals (SDGs) of the United Nations' 2030 Agenda and the Paris Agreement on Climate Change, to which Bolivia is a signatory. This initiative aims to advance the development of sustainable finance, where capital markets play an irreplaceable and fundamental role, thereby facilitating the financing of projects related to environmental, social, and sustainability issues.

Thus, throughout the said report, we shared the aspects related to the regulation of the registration, authorization, trading, and issuance of Green, Social, and Sustainable Bonds in the Bolivian Securities Market, which have been incorporated, as amendments to the "Securities Market Registration Regulations," emphasizing:

(a) The definitions of "Social Bonds," "Sustainable Bonds," "Green Bonds," "Social Projects," "Sustainable Projects," and "Green Projects" included in paragraphs b), c), d), m), n), and o) of article 3 of Resolution ASFI N°1392/2022;

(b) The scope of the guidelines for both project selection and use of funds outlined in the "Principles for the Issuance of Green, Sustainable, and Social Bonds" contained in Annex 4 of Book I, Title I, Chapter III of the compilation of Regulations for the Securities Market; and

(c) The importance of the condition that all funds from the issuance of Green, Social, and/or Sustainable Bonds must be exclusively allocated to financing or refinancing new or existing green or social projects.

The report concluded by stating that, following the dissemination of information by the Bolivian Stock Exchange through the "Guide to Social, Green, and Sustainable Bonds," in April 2023, the Bolivian bank Banco de Desarrollo Productivo Sociedad Anónima Mixta (BDP), announced the authorization of the "Sustainable Bonds Program" under which it would make the first issuance of US$50 million in the national securities market, aimed at financing environmentally responsible investments.

Bolivia's Progress Toward Sustainable Finances

On December 21, 2023, eight months after BDP announced the authorization for the first issuance of Green Bonds amounting to US$50 million, it issued a press release announcing the first Issuance of Green Bonds in the country's securities market for Bs102.9 million (approximately US$15 million) intended to finance the use of renewable energy. It was reported that "Valores Unión" was the brokerage agency responsible for structuring the program and facilitating this first issuance, which complies with the ASFI regulations issued in 2022, aligned with the principles of the International Capital Market Association (ICMA) and the Climate Bonds Initiative (CBI). The report is available at https://www.bdp.com.bo/el-bdp-realizo-la-primera-emision-de-bonos-verdes-en-bolivia-por-bs1029-millones/.

In this regard, a report by the United Nations Development Programme (UNDP) highlighted that one of the key aspects of this issuance is the financing of the financial product "BDP

Ecoefficiency," which aligns with environmental protection goals, strengthens mitigation actions, and measures impacts on climate change. The publication underscores the commitment of the BDP and the fundamental role of the financial sector in promoting sustainable economic practices, contributing to global efforts in the fight against climate change. The report is available at https://www.undp.org/es/bolivia/noticias/bolivia-avanza-en-finanzas-sostenibles-con-su-primera-emision-de-bonos-verdes.

BDP's Ecoefficiency product is financed with the bank's own resources and has been well received by producers in the country. In this regard, the Chair of the Board of the BDP, Denise Paz, stated: "In one year and two months, the balance of the Ecoefficiency BDP portfolio reached nearly Bs90 million, across 31 high-impact environmental credit operations. Therefore, it is expected that the First Issuance of Green Bonds will be quickly absorbed, thus achieving BDP's goal of reducing 1,200 tons of carbon emissions." (https://www.bdp.com.bo/el-bdp-realizo-la-primera-emision-de-bonos-verdes-en-bolivia-por-bs1029-millones/)

This achievement, as reported by the BDP, indicated a portfolio balance of Bs 102.3 million with the BDP Ecoefficiency product by June 2024. This was shared by the General Manager of the financial institution at the International Green Finance Forum (FIVERR – 2024), held in Lima, Peru, from September 16 to 18, 2024. Thus, the BDP Ecoefficiency product was presented as one that positively impacts sustainable finance in Bolivia, positioning the country on the map of nations mobilizing capital toward climate goals. Furthermore, the bank is poised to become the first Bolivian institution to access the Green Climate Fund. (https://abi.bo/index.php/component/content/article/36-notas/noticias/economia/55202-bdp-muestra-su-impacto-positivo-en-las-finanzas-sostenibles-en-foro-internacional-en-peru?Itemid=101)

Green Bonds to Finance Lithium Production? Constitutional Issues to Address

According to news from the specialized site *Bloomberg*, cited by the Bolivian newspaper "El Deber," in its article "Bolivia Explores Issuing Green Bonds for US$1,000 million to Finance Lithium Extraction, according to Bloomberg," published on March 12, 2024, and shared on the website of the Bolivian Chamber of Hydrocarbons and Energy (CBHE), the National Government, in line with sustainable finances, is analyzing the sale of up to US$1,000 million in green bonds in New York, tied to the future production of lithium, which is a key component for the production of electric vehicles.

The article notes that Bolivian Minister of Economy and Finance Marcelo Montenegro, stated that Bolivia is in discussions with Wall Street to sell debt intended for lithium extraction. In addition, it highlights that the Bolivian government aims to take advantage of the market demand for clean energy investments, hoping to reduce borrowing costs to 10% or less. (https://www.cbhe.org.bo/index.php/noticias/67155-bolivia-explora-emitir-bonos-verdes-por-us-1-000-millones-para-financiar-la-extraccion-de-litio-segun-bloomberg)

However, while the operation is certainly interesting, economist Jaime Dunn, in the article "It is Noted that the Constitution Limits the Issuance of Bonds Tied to Lithium" (from the March 13, 2024, edition citing the newspaper "El Deber" and shared by the digital outlet Eju-TV), stated that the current Political Constitution of the State would need to be reviewed. That is because article 350 states that "any title granted over fiscal reserves shall be null and void, except by express authorization for state necessity and public utility, in accordance with the law." (https://eju.tv/2024/03/observan-que-constitucion-limita-la-emision-de-bonos-atados-al-litio/)

The Future of Green Bonds in Bolivia

In the future, considering the development of green bonds implementation in Bolivia nearly two years after its introduction, it will be important to see whether other financial institutions in the country will be motivated by the BDP's initiative toward thematic bond issuances for sustainable development. On the other hand, it remains to be seen how the government will address its proposal for green bonds linked to lithium production in light of the constitutional issues raised.

CHILE

Alejandro Montt, Reporter

Chilean Government Introduces Amendments to Two Key Bills to Overcome the Barriers of Permit Processing Delays for Projects

Modification to the Bill on Coastal Border Management and Maritime Concessions

On October 16, 2024, the Chilean Government presented an amendment in the bill that modifies the regime of Maritime Concessions (Bulletin N° 8.467-12). The Government's proposal in this matter seeks to transfer the administration of these maritime concessions to the Ministry of National Property.

Currently, the average time taken to process a maritime concession from the submission of the application to the granting of the concession is around 45 months (almost four years). The Ministry of National Property, which would be the body in charge of maritime concessions in the event that this indication of the Government is approved, also currently processes other types of concessions (some specific concessions related to surface land occupation and others), and it is intended that the processing of maritime concessions, which is essential for the proper functioning and administration of the Chilean coast and activities related to it, will be centrally located in this body.

Amendment to the Cultural Heritage Bill, which modifies the Council of National Monuments

The Government announced that it will introduce an amendment to the Cultural Heritage Bill (Bulletin Nº 12.712-24), with the aim of seeking a balance between the protection of cultural heritage and the country's development, reducing the time it takes to obtain permits. Among other matters, the government indicates that it seeks to achieve international standards of historical protection, but at the same time it will incorporate tools, procedures and deadlines to ensure legal certainty for the development of projects. The government also indicated that there will be changes to the control and sanction regime.

The government also indicated that the amendment to the bill will include a change in the name of the Council of National Monuments, which will be renamed the Cultural Heritage Council (*Consejo de los Patrimonios Culturales*), thereby expanding the paradigm of safeguarding not only the tangible, but also the intangible, as well as that related to Chile's indigenous heritage.

The Chilean Government Announced the Areas Prioritized for the Development of New Lithium Exploration and Exploitation Projects

On September 26, 2024, the Minister of Mining, Aurora Williams, together with other key ministers that make up the Lithium and Salt Flats Committee, informed about the areas prioritized for the development of new lithium exploration and

exploitation projects in the country. In this regard, six saline systems were prioritized: Coipasa, Ollagüe, Ascotán, Piedra Parada, Agua Amarga and Laguna Verde, all located in northern Chile. These areas represent 38% of the expressions of interest received in the process on the RFI platform, which began on April 15 and whose results were published on July 9. The corresponding indigenous consultations are expected to be carried out soon in order to move forward with the assignment of the Special Lithium Operating Contracts (CEOL).

Once the consultations are completed, the Ministry of Mining will establish the requirements and conditions of the CEOLs (one for each prioritized saline or lagoon) and launch a public tender process for the acquisition of a CEOL in the identified areas.

In addition, a simplified procedure will be implemented to expedite the execution of the CEOLs, in which companies or consortiums that have the following requirements may participate:

(1) Experience in any stage of the lithium industry value chain;

(2) Financial capacity to develop the project; and

(3) Have a percentage of mining concessions equivalent to or greater than 80% of the referential polygon established by the Ministry of Mining of any of the prioritized salt systems.

Interested parties may participate in this simplified procedure until December 31, 2024, attaching the documentation that proves compliance with the above requirements in accordance with the provisions of resolution N° 2765 published by the Ministry of Mining on October 30, 2024.

Once compliance with the requirements has been accredited, the Ministry of Mining will present a CEOL model to the applicant and, in case of agreement between both parties, the contract will be signed.

Finally, a second list of prioritized saline systems will be released before the end of this year.

Joaquín Corvalán Azpiazu, Reporter

Competition Tribunal Accepts Lawsuit Against the National Electricity Coordinator (CEN)

On October 23, 2024, The Tribunal de Defensa de la Libre Competencia ("Competition Tribunal" or "TDLC") partially accepted a claim initiated by Ferrovial Power Infrastructure Chile SpA (Ferrovial), a company participating in an international electricity transmission tender, against the National Electricity Coordinator (CEN), the independent operator of Chile's electricity system, for committing acts against competition, in particular, for disqualifying an economic offer made by Ferrovial in the International Public Bidding for New Projects and Conditional Expansion Projects of electric transmission, despite the fact that the economic offer submitted by Ferrovial was the most economical for the Projects, of all the offers submitted in the Bidding. *See* Case file C-476-2022.

The judgment of the TDLC constitutes an important precedent in electricity and competition matters, since in addition to declaring for the first time that the CEN committed acts that violated competition by disqualifying the lowest bid in the bidding process despite the fact that this agency had no economic interest in the outcome of the tender or economic incentives involved, it imposed on CEN a fine of 500 Annual Tax Units (about US$420,000). The TDLC also declared, at the time of the court ruling, that the infringement to the rules of competition by the CEN generated an extra charge of about US$43 million, which is especially serious considering that the CEN, by legal mandate, has the duty to ensure the most economical operation for all the facilities of the electricity system.

The TDLC, in partially accepting Ferrovial's claim, although it declares with its judgment that the National Electricity Coordinator has infringed with its conduct certain rules of competition (article 3 of Decree Law 211) and that such infringement is of a serious nature, does not accept the main request of Ferrovial to annul the Evaluation Act of the Bidding Procedure, since, if it were to do so, in addition to jeopardizing the aptitude and effectiveness of the bidding procedure itself, it would inevitably bring about very harmful economic consequences for the electricity system as a whole, with economic damage to end consumers, and a delay in the fulfillment of transmission planning for the national electricity system.

Electricity Subsidy Bill

Summary and Objectives of the Bill

On August 26, 2024, the Government sent a Message to the National Congress to initiate a Bill (Bulletin N° 17064-08) with the purpose of extending the coverage of the electricity subsidy and stabilizing electricity tariffs, among other matters. As context, it should be recalled that on April 30, 2024, Law N° 21,667 was published in the Official Gazette (Diario Oficial), which aimed at the gradual normalization of electricity tariffs, and thus ending the "freezing" of electricity prices established in laws for the years 2019 and 2022. The bill also seeks to gradually pay the debt accumulated during the five years of validity of the aforementioned laws. At the same time, for the increase in electricity bills not to have such a significant impact on end residential users, especially those with scarce resources, Law N° 21,667 established a transitory subsidy for the payment of electricity bills.

With the Bill contained in Bulletin N° 17064-08, the Government seeks to (1) increase the coverage of the electricity subsidy to provide it to the most vulnerable 40% of the population; (2) establish an additional subsidy for households inhabited by electro-dependent people; and (3) extend the delivery of the transitory electricity subsidy by one year, with a gradual decrease, among other measures. The Government has indicated that the collection target required to implement the proposed measures is around US$350 million per year.

Impact of the Bill on the Small Distributed Generation Means (PMGD)

As context, it should be noted that today approximately 3 GW of the installed generation capacity correspond to PMGD (generators with power up to 9 MW), and according to the National Electricity Coordinator (CEN), 67% of these plants are ascribed to a transitory regime of stabilized price (which is in effect, according to Supreme Decree Nº 88 of 2019, until 2034), which allows them to inject energy into the electricity system at the "Short-Term Node Price" (prices set in April and October of each year by the National Energy Commission (CNE)).

The Bill, in order to finance the electricity subsidy, among other forms of financing, establishes a transitory charge (FET Charge) attributable to energy withdrawals from the National Electricity System, which alters the stabilized price regime, as mentioned above. The Bill, if approved, will have an exclusive impact on some 500 PMGD, which will decrease the profitability of their companies, due to the establishment of the FET Charge.

The Bill, as of November 8, 2024, is still under legislative discussion and has been the subject of several debates and public discussion.

Ministry of Energy Initiates Public Consultation on the Decarbonization Plan

On November 8, 2024, the Ministry of Energy published the Draft for Public Consultation of the Decarbonization Plan, as part of what the Government has called the "Second Time of the Energy Transition." This Public Consultation process seeks to establish a link or connection between the electricity sector authorities, the Government, local governments, and the central administration, with the citizenship; as well as to define certain milestones and basic proposals that tend towards a decarbonized, efficient, safe, and flexible electricity system.

In this public consultation process, any natural person, as well as companies and organizations, may participate by completing the form that can be downloaded from the website of the Ministry of Energy; there is a deadline of December 16, 2024, to do so. After having the information gathered by Public Consultation, the Ministry of Energy will work on the Consolidation of the questions asked by the Citizenship, will analyze observations and comments, and will elaborate and publish them. Additionally, the Ministry of Energy will evaluate and weigh the opinions that arise because of this public consultation process, and will generate a final document, the Decarbonization Plan.

ECUADOR

Patricio Albuja, Reporter

Enactment of New Regulation for E&P Companies Regarding the Use and Flaring of Associated Gas in the Amazon Region

Background

Ecuador's Agency for the Regulation and Control of Hydrocarbons (ARCH) in coordination with the Ministry of Energy and Mines (MEM), enacted a new regulation for the "Use of Associated Gas" (Reglamento para el Aprovechamiento de Gas Asociado through Resolution No. ARCH-003/2024 issued on September 25, 2024) ("New Regulation"). The New Regulation outlines the actions and technical parameters necessary to progressively reduce routine gas flaring in exploration and production operations from private and public companies and to promote the efficient use of associated gas in the hydrocarbon industry. It was enacted in order to comply with local rulings and international obligations which the Ecuadorean State has to abide by and consequently its oil and gas operators.

The first obligation for the State to reduce gas flaring arose from Constitutional Action No. 21201-2020-00170 which was filed by nine people from a community near Petroecuador's (Ecuador's national oil company) operations. The claim was filed against Petroecuador as well as the Ecuadorean State. In this action, claimants requested the court to immediately prohibit gas flaring, arguing it has caused harm to the environment and to their health. Ecuadorean constitutional actions are structured to be a fast and efficient procedure for when there is an imminent damage that should be eliminated. In this case, the second instance court—the Provincial Court of Sucumbios—accepted the plaintiffs' arguments in a ruling dated January 26, 2021, and ordered Petroecuador and the Ecuadorean State to immediately eliminate gas flaring close to populated centers and to eliminate all other gas flaring of oil and gas operations progressively until the year 2030. The Court argued that Ecuador is bound by the Paris Agreement, adopted at the United Nations Climate Change Conference (COP 21), by which the State committed to reduce greenhouse gas emissions by 25% as well as gas flaring reduction by 2030.

The Provincial Court ruling has been appealed by the plaintiffs to the Constitutional Court, requesting that gas flaring be immediately eliminated and not grant a term—until the year 2030—for all flares to shut down. Neither Petroecuador nor the Ecuadorean State has challenged the ruling. The Constitutional Court has not issued a ruling yet; nevertheless, the Provincial Court of Sucumbios' ruling is enforceable—consequently, the Government has enacted regulations for compliance.

In October 2022, MEM enacted a regulation that enabled associated gas use and flaring and imposed a progressive elimination of gas flaring until 2030. This regulation set two major requirements in order for public and private oil and gas operators to obtain associated gas use and flaring annual permits: (1) submit gas flaring reduction plans to eliminate flaring by 2030; (2) eliminate gas flaring immediately from at least 100 meters from populated centers (defined as 20 adjacent houses).

At the time of such regulation, the State had an obligation for gas flaring elimination and a regulation to implement it from the Sucumbios ruling; therefore, no additional regulations were needed. Circumstances changed with the amendment to the Amazon Law, enacted on January 30, 2023 (Ley para Planificación de la Circunscripción Territorial Amazónica) ("Amazon Law") which imposed a new obligation in regard to the use and flaring of associated gas. The New Regulation is a direct consequence of a new obligation for gas flaring included in the Amazon Law. The Amendment to the Amazon Law provides in article 57.2 what appears to be a total prohibition of open-air gas flaring in the Amazon region. The following is a translation to English of such rule: "open-air combustion of associated and natural gas is prohibited in the Amazon region in gas flaring mode which endangers the population of communities and ecosystems. However, the State shall promote strategies to use such natural resources with commercial and social benefits in favor of the people." As a result of this law, MEM has not granted to exploration and production oil and gas companies the permits required for associated gas flaring or usage in 2024.

After the Amazon Law amendment, the State had to comply with it as well as with the Sucumbios ruling, thus the need for the new technical regulation that will allow the State to comply with the new obligations whilst providing a process for the companies to obtain the permits for use and flaring of associated gas.

Key Elements of the New Associated Gas Regulation

Scope

The regulation applies nationwide and governs the use of associated gas of public and private oil and gas exploration and production contractors in their usage and potential gas flaring.

It is worth explaining that Ecuador's Constitution provides that all hydrocarbons are the property of the State. By means of an exploration and production contract, the State may pay for such services in kind—such as in a production sharing agreement. Exploration and production contractors may freely use associated gas for self-consumption in their operations—for such usage they need the MEM permits, the requirements and process for which are set in this new regulation.

Authorization for Gas Use and Flaring as of 2025

The New Regulation provides a clear process and requirements for oil and gas companies to request and obtain from MEM the annual permit for usage and flaring of associated gas as of 2025.

The companies shall provide annual reports, usage plan and compliance with, during the exploratory period and a five-year utilization plan when in the production period. The latter will be used for control purposes as well as for complying with gas flaring elimination by 2030. These requirements and process shall enable MEM officials to approve the annual permits needed for companies to use and flare associated gas while including obligations and monitoring their compliance towards gas flaring elimination.

Reduction of Routine Flaring

The New Regulation aims to progressively eliminate routine gas flaring at production facilities, prioritizing self-consumption and energy efficiency with the goal of reaching maximum usage efficiency by September 2030.

Monitoring and Control

MEM and ARCH are jointly responsible for overseeing the oil and gas companies' activities which includes measuring associated gas production, flaring, utilization, maintaining flaring equipment, and compliance with reduction plans.

Industrialization and Commercialization

The New Regulation promotes the industrialization (refining), and commercialization of associated gas once the maximum capacity for associated gas usage is reached. For industrialization and commercialization of associated gas, a company which holds a contract for exploration and production of crude oil (such as production sharing agreements or service contracts) shall have to execute an additional agreement to obtain title over the associated gas in order to be able to refine it or sell it afterwards. According to Ecuador's Constitution, non-renewable resources such as associated gas or crude oil are the property of the State. The State, through oil and gas contracts, may be able to pay the companies—in consideration of the operation of exploration and production—in-kind. Currently, Ecuador only has exploration and production contracts for crude oil production; thus, additional contracts should be executed by these companies for associated gas if they want to use it for other than self-consumption.

MEM shall prepare a model additional contract for associated gas exploration and production. Once companies have title over gas, additional permits shall be necessary from MEM in order to refine gas. Gas exports need no additional permits.

Use of Excess Gas in Blocks Operated by the Same Operator

As part of the New Regulation requirements, exploration and production companies have to file with MEM for approval of the activities they shall commit to in order to progressively reduce gas flaring.

The regulation lists several activities such as electricity generation, reinjection, and artificial lifting, among other similar. The most interesting new activity that the Ministry may approve as self-consumption for an operator with multiple exploration and production contracts is to transfer associated gas within the block operated by the contractor. This means that a company that has fulfilled its associated gas consumption in a block may be able to transfer it to another block that may be in need of such associated gas. The rationale for this new activity is that otherwise, the associated gas would be flared in a block and additional fuel might be purchased in the other one. This new activity allows a company with multiple blocks to maximize associated gas usage.

Open Air Gas Flaring

As mentioned above, the Amazon Law prohibits open air gas flaring—despite the Hydrocarbon Law specifically allowing it previously through annual permit. The New Regulation applies this prohibition and includes the possibility of enabling new technologies of flares that are not open air. MEM, in compliance with the New Regulation, will only allow flares that comply with specific technical requirements. New flaring technology shall comply, principally, with a combustion efficiency of at least 96.5%. Old flares should be changed to this new technology by December 31, 2030.

Possibility to Use Associated Gas for Electricity Generation

The New Regulation authorizes associated gas to be used for electricity generation and not just for self-consumption as it used to be. It allows electricity produced by means of associated gas to be injected into the national grid, delivered to Petroecuador, to other exploration and production contractors or community-aimed projects.

For this alternative to be effective, additional electricity-oriented regulations shall be enacted by the corresponding agency. This required regulation should take into account the most important milestones and several questions should be answered in order for this possibility to be settled: (1) how will the companies obtain a return of any investment and costs needed to connect to the grid and transfer electricity; (2) is there any payment involved; (3) what would be the electricity pricing if the associated gas is the property of the State; and (4) what are the benefits that would incentivize an oil and gas company to invest in electricity generation and connect it to the grid.

MÉXICO

Rodrigo Sánchez Mejorada Raab, Reporter

Mexico Enacts Sweeping Constitutional Reforms in Energy, Natural Resources, and Railways

Mexico has officially enacted a series of constitutional reforms targeting strategic industries, including energy, telecommunications, and railways. The changes, published in the Official Federal Gazette, amend articles 25, 27, and 28 of the Political Constitution of the United Mexican States, reinforcing state control and redefining the role of public enterprises.

State-Owned Enterprises Reclassified: Articles 25 and 27

Under the reforms to article 25, the Federal Electricity Commission (CFE) and Petróleos Mexicanos (Pemex) are transformed from "State Productive Companies" into "State Public Companies." This reclassification eliminates their corporate, profit-driven mandates, refocusing their missions on providing public services and promoting social welfare.

Additionally, the article grants CFE exclusive control over the National Electricity System (SEN) and the public services of electricity transmission and distribution. It also reaffirms state control over hydrocarbon exploration and production, emphasizing principles of efficiency, transparency, and accountability, although profitability will no longer be a constitutional requirement.

Lithium Declared a Strategic Resource: Article 27

Article 27 now designates lithium as a "strategic natural resource." Similar to restrictions on radioactive materials, private companies are prohibited from obtaining concessions for lithium extraction.

Tightened Restrictions on Private Sector Involvement: Article 27

Amendments to article 27 also maintain the prohibition on granting concessions to private entities for:

- Planning and controlling the National Electricity System (SEN)
- Electricity transmission and distribution

Notably, the ability of the state to enter into contracts with private companies for these activities has been removed. While this does not explicitly constitute a constitutional prohibition, it reflects the administration's stance against private sector involvement in these areas.

CFE's Dominance in Electricity Market: Article 27

The reforms clarify that private sector participation in electricity generation will continue but must not exceed the CFE's share. Article 27 mandates that CFE maintain a majority share in electricity activities, shifting its focus from competition in the wholesale power market to fulfilling its social responsibilities and ensuring affordable access to electricity.

The government is targeting a 54% market share for CFE, leaving 46% for private companies. Future legislation may impose additional restrictions on private sector involvement.

Strategic Services and Monopoly Exemptions: Article 28

Article 28 now exempts the following activities from being considered monopolistic:

- Lithium-related activities
- State-provided internet services
- Planning and control of the SEN

The changes emphasize that the objective of SEN management is to ensure energy security, self-sufficiency, and affordable electricity, prioritizing national security and autonomy over profits. Activities carried out by State Public Companies are also exempt from monopoly rules.

Railways and New Assignment Framework: Article 28

Article 28 also prioritizes railroads as key to national development, covering both passenger and freight services. It introduces the concept of "assignments" alongside concessions and permits, enabling greater flexibility in managing and expanding railway infrastructure.

Implementation Timeline

Congress has been given 180 days from the publication of the decree to update relevant laws in line with the constitutional changes. Furthermore, all provisions from the 2013 Energy Reform that conflict with these amendments have been repealed.

These reforms mark a significant shift in Mexico's policy, reinforcing state control over critical industries, with a focus on public welfare and national sovereignty.

Mexico Enacts Constitutional Reform to Strengthen Rights of Indigenous and Afro-Mexican Communities

As the reform mentioned above, one of the last acts of former President Andrés Manuel López Obrador before leaving office, was enacting a package of constitutional amendments, and this one is aimed at protecting the rights of Indigenous and Afro-Mexican communities. The reform, which will have significant implications for projects in the energy, construction, and mining sectors, was approved by 26 state legislatures as part of López Obrador's "Plan C" constitutional reform package.

Legal Recognition and Consultation Rights

One of the central aspects of the reform is the legal recognition of Indigenous and Afro-Mexican communities as subjects of public law, marking a major step forward in recognizing their autonomy and rights. Under the new constitutional framework, these communities are granted the right to be consulted before any legislative or administrative measures that could impact their environment, land, or ways of life are enacted.

Consultation will be required if an Indigenous or Afro-Mexican community formally requests it, ensuring that their voices are heard on decisions that directly affect them. In certain circumstances, companies operating in sectors such as energy, mining, and construction may be required to partner with the communities.

Key Implications for Development Projects

The reform's provisions will have wide-reaching consequences for industries involved in large-scale projects. Here are some key points:

- *Uncertainty over Community Definition*: While the reform grants recognition and consultation rights, the legal definition of an Indigenous or Afro-Mexican community remains unclear. This ambiguity could lead to challenges in determining which groups are eligible for consultation.
- *Influence of Environmental NGOs*: Environmental nongovernmental organizations (NGOs) may play a significant role in advising communities to oppose industrial development, potentially complicating the permitting process for companies.
- *Cost of Consultation*: Private entities that benefit from administrative decisions subject to consultation will be responsible for covering all associated costs. This includes funding the consultation process and any follow-up measures.
- *Compensation for Communities*: Communities must be compensated if individuals or businesses profit from measures arising from the consultation process. This ensures that any economic benefits derived from projects affecting the communities are shared fairly.

PERÚ

Oscar Benavides & Tomás Denegri, Reporters

Updated Regime for Mining Environmental Liabilities

One of the main issues of the Peruvian political agenda has been the restructuring of the informal mining regime to enforce the measures to put an end to the formalization process of small and artisanal miners. This matter has become an issue of national security, due to the connection between informal and illegal mining with criminal activities, as well as the pollution caused by this mining, and is on the forefront of all political discussions in the media.

The Government and Congress are expected to very soon pass provisions to narrow down the legal loopholes that have been used by illegal miners within the informal mining framework. Unfortunately, there is no consensus yet between Congress and the Government on which route should be taken to achieve this purpose. Our next report should address this urgent matter.

As mentioned, one of the main problems associated with illegal and informal mining is the pollution caused by these activities, as well as the generation of environmental liabilities that are not duly taken care of.

Indeed, since 2004, the Peruvian State has been making efforts to identify the responsible parties generating the mining environmental liabilities and allocating the costs for their environmental cleanup.

As of September 2024, more than 6,000 abandoned mining environmental liabilities have been identified by the Ministry of Energy and Mines (MINEM), which are sources of water, soil, and air pollution. Because of this, the MINEM constantly seeks to allocate responsibility for their cleanup, sometimes even attributing responsibility on current operators of mining concessions that have not generated the mining environmental liabilities (but inherited them due to past operations). This allocation of responsibility has been the cause of litigation between mining operators and MINEM.

To provide some context, on July 7, 2004, the Peruvian legal framework on "mining environmental liabilities" was established through the Mining Environmental Liabilities Law (Law Nº 28271).

The purpose of Law Nº 28271 is to set the mechanisms and tools for identifying the generators of the mining environmental liabilities located throughout the country. By identifying the generators, responsibility for these liabilities can be allocated to ultimately achieve their environmental cleanup.

Legally, mining environmental liabilities are defined as those "facilities, effluents, emissions, remains or deposits of residues produced by mining operations" that, as of July 7, 2004 were inactive or had been abandoned, and that entail a risk for public health, the ecosystem, and the property. Liabilities generated after July 7, 2004, are not legally considered as "disturbed areas" (Law Nº 28271 does not apply to them).

On September 28, 2024, several provisions of Law Nº 28271 were amended through Legislative Decree No. 1670 (DL1670). The purpose of these amendments is to clarify and further develop certain aspects regarding the determination of those responsible for mining environmental liabilities, and the role of MINEM in the remedying of environmental liabilities and in sanctioning those responsible.

DL1670 (save for some specific provisions) will enter into force on the day following the publication of the adaptation of the regulations of the Law (Supreme Decree No. 059-2005-EM). Thus, the provisions mentioned below have not yet come into effect.

DL1670's main amendments are:

(a) There will be a risk classification system for mining environmental liabilities (insignificant, low, medium, high, very high).

(b) The generators and/or contractually responsible parties for environmental liabilities must, within one year from the day following the date of approval of the resolution of identification of liability, must submit to MINEM (or to the competent authority) the closure plan of environmental liabilities. The plan must be executed within a maximum period of five years.

(c) If the responsible parties do not submit the plan for closure of environmental liabilities within the legal deadline, they will be barred for five years from applying for mining concessions and from obtaining authorizations to initiate mining activities in their projects.

(d) The remediation of liabilities classified as low or insignificant will not require a closure plan of environmental liabilities.

(e) Different modalities of voluntary remediation have been set, which include: (i) reuse; (ii) recovery; (iii) alternative use; and (iv) definitive closure of the mining environmental liability.

(f) Incentives have been set for voluntary remediators, as they will be able to credit their remediation expenses within the investments necessary to exonerate the payment of the penalty for lack of minimum production in their mining concessions.

(g) Third parties with legitimate interest may contain or mitigate the damage caused by a mining environmental liability, having to report their actions to MINEM within ten days from the beginning of their intervention.

(h) MINEM and OEFA (the Environmental Supervision and Enforcement Agency) have been granted express faculties for supervising and sanctioning infractions related to mining environmental liabilities.

(i) Fines of up to US$840,000 have been established to those responsible for non-compliance with the provisions on mining environmental liabilities.

There is no indication as to when will the regulations to Law Nº 28271 be updated and, therefore, the amendments enacted by DL1670 will enter into force.

URUGUAY

Clara Villaamil, Reporter

Another Step into the Second Energy Transition: First Regulation on Hydrogen Safety

On July 5, 2024 (10 days from its publication in the Official Gazette) the Safety Regulation for Hydrogen Projects as a Secondary Energy Source (the "Regulation") came into force, approved by Resolution N° 349/024 of the Energy and Water Services Regulatory Unit (URSEA), available at https://www.impo.com.uy/bases/resoluciones-ursea-originales/349-2024/1.

URSEA has recently been assigned with specific competence in hydrogen as a secondary energy source, and in particular is responsible for: (1) controlling the compliance of the specific regulations within the hydrogen framework, and (2) issuing new regulations in connection with the quality and safety of products, services, materials, facilities and devices linked to hydrogen as a secondary energy source.

The approval of Resolution Nº 349/024 was the result of an interdisciplinary analysis, which involved carrying out a public consultation of the preliminary draft to include all the input and contributions that were provided by the relevant actors and those interested in the sector.

This Regulation is also part of the H2U Program, approved by Resolution Nº 294/022 of the Executive, which aims to ensure comprehensive and sustainable coordination, planning, and articulation throughout the country for developing the economy of hydrogen and its derivatives nationwide. Among the different areas of work that are included in the H2U Program, safety regulations of this energy vector and its derivatives are one of the main needs.

Main Provisions of the Regulation

- *Scope (articles 1 and 2)*: projects for the development of activities related to hydrogen as an energy vector in any of the following stages: production, conditioning, storage, distribution, consumption and commercialization as included in the H2U Program. The Regulation is intended to be applied to projects in their development stage and before they start their operations. It is also relevant to mention that derivative products from hy-

drogen are excluded from the Regulation, and therefore will be regulated separately.

- *Registration (articles 3 and 5)*: companies interested in developing activities included in the Regulation must be registered in the Register of Regulated Companies ("*Registro de Regulados*") of URSEA prior to carrying out any proceeding before URSEA. The registration is mandatory for projects in their initial stages of development (design stages prior to their commissioning).

  The Regulation states which documentation must be submitted in order to register the company and the project: (i) name and contact information of the company; (ii) geographic location; purpose and description of the project; (iii) design and layout of the project; (iv) declaration of the technical person responsible; (v) safety plan; and (vi) any other documentation that URSEA may require. With respect to a safety plan, the scope of the plan is not expressly regulated and therefore, URSEA shall have discretion when analyzing the plan for each project.

- *Standards of safety and security (article 4)*: In order to prove the safety conditions, the project holders must rely on international technical standards of reference in this area. The Regulation includes a list of the international standards that URSEA considers as reference for the hydrogen value chain. The project holder must indicate which regulatory standard/rule the project will comply with. The Regulation allows the project holder to choose the standard/rule (within the ones included in the Regulation) that will be applicable to its project. Once it identifies such standards/rules, the project holder must comply with such rules and URSEA will control its fulfillment.

  Within the list of standards/rules included in the Regulation, NFPA (hydrogen technologies code) and ISO 19880 (general requirements for fueling stations) are the most relevant. During the public consultation process, several private and public companies made relevant contributions and proposals to the list. The final list approved by the Regulation is included as Annex I.

  URSEA stated that the list was not intended to be exhaustive. In addition, project holders may submit standards of recognized prestige, not included in the list, which will be considered by URSEA, at its sole discretion, provided that they provide a level of security comparable to or greater than the ones included in the Regulation, which must be evidenced by the applicant.

  The Regulation states that the installation and operation companies will also have to comply with the cited safety standards and rules.

- *Amendments to the project (article 7)*: The project submitted to URSEA will establish the conditions for its implementation, and its execution must be in accordance with the specifications registered with the unit. In the event of modifications between the submitted project and the execution conditions, these must be registered with URSEA with the corresponding sworn statement by a qualified professional in accordance with the provisions of articles 4 and 6. During the execution stage of the project, a qualified professional must be available to ensure compliance with the established conditions.

- *Process and timing (article 9)*: URSEA will review the documentation submitted to ensure it is complete, in good condition, and meets the requirements detailed in the Regulation and will inform the project holders of satisfactory registration when all the conditions defined in the Regulations are met. URSEA reserves the right to request additional documentation, clarifications, and to carry out the observations, inspections, and controls it deems appropriate. It is relevant to mention that there is no specific term for URSEA to process and accept the registration of the project.

In conclusion, the Regulation is a crucial step to regulate the projects and activities linked to hydrogen production in Uruguay, ensuring that it is carried out safely and in accordance with international standards. The Regulation seeks to promote the sustainable development of hydrogen as a key energy source for the country's future.

VENEZUELA

Isabella Sordo & Santiago Fontiveros, Reporters

From Natural Gas to Petrochemical Products: Private Investment Prospects in Venezuela

This article explores the opportunities for private investment in Venezuela's petrochemical industry within the current legal framework. It highlights how the country's abundant gas reserves can be leveraged for petrochemical production, exportation, and monetization, promoting investment through obtaining foreign income to the country. The discussion focuses on how existing laws governing natural gas and petrochemicals complement each other, facilitating viable commercialization projects that can attract foreign financing.

The article also highlights the relevance of Venezuela holding one of the world's largest reserves of natural gas and petroleum, positioning it as a key player in the global energy market, and how understanding the legal framework is crucial to mutually leverage the production of natural gas and petrochemical products for the benefit of the State and private investors.

Legal Framework for Private Investments in the Petrochemical Sector in Venezuela

The Venezuelan legal system provides avenues for private investment in the petrochemical sector through the 2015 Law No. 2.171/15 ("Petrochemical Law") (*Ley Orgánica para el Desarrollo de las Actividades Petroquímicas*). This law establishes the regulatory framework for all petrochemical activities in Venezuela, focusing on the chemical or physical transformation of raw materials derived from hydrocarbons, such as natural gas. Notably, the Petrochemical Law allows for private participation in petrochemical projects.

In accordance with Article 5 of the Petrochemical Law, the right to carry on basic and intermediate petrochemical activities is reserved to the State, and such activities may be performed through *Petroquimica de Venezuela, S.A.* (state owned company), its subsidiaries or through mixed companies. However, unlike for crude oil regulation, the petrochemical mixed companies can have majority participation of a private participant.

Generally, the State shall have at least 51% of the shares in petrochemical mixed companies. Nonetheless, this law encourages private investment as its Article 14 allows private companies to have majority participation in petrochemical mixed companies if (1) it is essential for project development; (2) the private partner's financial or technological contribution is crucial and favorable to the state; and (3) the private partner

agrees to grant special powers to safeguard the State's interests.

It is important to note that there are petrochemical mixed companies with private majority operating now in Venezuela, specifically producing methanol.

Synergy Between Natural Gas and the Petrochemical Industry

Venezuela's vast natural gas reserves offer a foundation for expanding the petrochemical industry in the country, as natural gas can be processed into a variety of petrochemical products, including methanol, ammonia, and urea, which have high demand in global markets.

In addition to considering natural gas as raw material for other products, the 1999 "Gas Law" (*Ley Orgánica de Hidrocarburos Gaseosos*) also offers an opening for private investors as its Article 2 establishes that all the activities from the value chain of natural gas can be carried out by the State directly or by private companies. In fact, there are 100% private gas producers currently operating in Venezuela that may supply gas to the petrochemical industry.

Therefore, the Petrochemical Law and the Gas Law seem to be complementary, facilitating integrated projects. The Gas Law provides the basis for gas production and processing, while the Petrochemical Law governs the manufacturing and commercialization of derived products. This legal synergy enables streamlined operations from upstream gas production to downstream petrochemical processing and exportation with private participation.

Final Thoughts

Venezuela's legal framework offers viable opportunities for private investment in the petrochemical industry, particularly through projects that leverage natural gas production. The complementarity of the Petrochemical Law and the Gas Law creates a conducive environment for commercialization initiatives. Investors can capitalize on the potential for exportation, contributing to the revitalization of Venezuela's economy while achieving profitable outcomes.

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