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Mining

Peru

Payet, Rey, Cauvi, Pérez Abogados

chambers.com

2019

Law and Practice

Contributed by Payet, Rey, Cauvi, Pérez Abogados

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Payet, Rey, Cauvi, Pérez Abogados has a first-class mining practice, with extensive experience in all legal aspects of mining activities, including titling and real estate, environmental and social aspects, regulation, project development

and construction, financing, tax and labour, etc. The team advises on all stages of mining projects, including exploration, construction, operation and closure, as well as M&A and financing transactions.

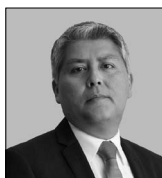
Authors



José Cúneo is a partner at the firm and leads the environmental and mining area, specialising in corporate law, financial transactions, M&A and mining transactions. He regularly advises local and international mining companies and other participants in the mining sector, as well as investors and financiers. He has extensive experience in mining project financing, acquisitions of mining assets, the negotiation of joint ventures, royalties, mining leases and options, and other mining agreements.



Alexandra Pázzara is an associate at the firm, and specialises in mining, corporate law and real estate. She is a member of the National Law Institute of Mining, Petroleum and Energy (INDEMIPE), and the Institute of Mining Safety (ISEM).



Ángel Chávez is counsel at the firm, specialising in mining law, environmental law and public management. He has more than 20 years' experience in working for public entities of Peru linked to the mining sector, and has recently served as Normative Director of the General Directorate of Mining Environmental Affairs of the Ministry of Energy and Mines. He was formerly legal counsel to the Institutional Presidency of the Geological Mining and Metallurgical Institute (INGEMMET), as well as General Director of the Mining Concessions Directorate.

1. General Structure of Mineral Ownership and Regulation

1.1 Ownership of Mineral Deposits

Pursuant to the General Mining Law, the Peruvian state is the owner of all unexploited mineral resources. However, the Peruvian state can grant private companies the right to extract and exploit mineral resources through mining concessions. Mineral resources exploited and extracted under valid mining concessions are owned by the holder of the concession or whoever has acquired the right to carry out mining activities in the relevant mining concession.

1.2 Regulation of Mining Industry

The mining industry is primarily regulated by national laws enacted by the Peruvian Congress and by regulations issued by the executive branch of government, principally the Ministry of Energy and Mines (MEM).

The main body of law for the mining industry is the General Mining Law, which is supplemented by several regulations issued by the MEM. Therefore, the MEM is the most relevant governmental authority in the Peruvian mining sector and is responsible for establishing the main regulatory policies and norms applicable to the carrying out of mining activities. However, there are several other governmental entities with competence to regulate or supervise matters that are relevant to the mining industry (please see **1.4 Administration of the Mining Industry**, below).

The MEM performs its functions and duties principally through its General Bureau of Mining (*Dirección General de Minería* – DGM) and its General Bureau of Mining and Environmental Affairs (*Dirección General de Asuntos Ambientales Mineros* – DGAAM).

1.3 Independent Regulations for Mining

The regulations applicable to the mining industry are separate from those that apply to the oil and gas industry. As mentioned above, the mining industry is primarily regulated by the General Mining Law and its supplementary regulations, while the oil and gas industry is regulated by other specific laws and regulations.

1.4 Administration of the Mining Industry

As mentioned above, the main governmental authority for the mining industry in Peru is the MEM.

However, there are other authorities that regulate and supervise different aspects of mining activities. For instance, the Ministry of Environment, the Agency for Environmental Assessment and Enforcement (OEFA) and the National Service for Environmental Certification of Sustainable Investments (SENACE), which are the main governmental entities dealing with environmental matters concerning mining activities; the National Authority of Water (ANA) is in charge of granting rights for the use of water resources; the Mining and Metallurgical Geological Institute (INGEMMET) is responsible for granting the mining concessions and keeping the mining cadastre; the National Superintendency of Public Registries keeps the Mining Rights Public Registry, in which ownership and transfer of mining rights are registered; and the Energy and Mining Investment Supervisor (OSINERGMIN) has the authority to supervise compliance with mining regulations.

2. Required Authorisations and Permits

2.1 Requirements to Conduct Prospecting

Prospecting activities do not require any permits or authorisations to be obtained, unless they are carried out in crop-lands or archaeological sites, in which case certain additional permits and authorisations are required.

2.2 Requirements to Conduct Exploration

A mining concession is required to carry out exploration and exploitation activities. The exploration and exploitation activities can be carried out either by the holder of the mining concession or by a third party who has acquired the right to carry out mining activity from the holder by means of a mining lease or mining joint venture agreement.

As mentioned above, the INGEMMET is the authority entitled to grant mining concessions.

In addition, as Peruvian law deems a mining concession to be an immovable property that is separate from the surface on which it is located, a legal title to conduct exploration activities on the surface land is also required. Legal title can be obtained through ownership of the land or by executing

agreements for the use of land with whomever has legal title over it.

Also, depending on the number of drilling platforms to be installed, it can be necessary to obtain either a Technical Environmental Report (FTA), an Environmental Impact Declaration (DIA) or a semi-detailed Environmental Impact Study (EIA-SD) from the MEM. Finally, the initiation of mining exploration activities needs to be formally authorised by the MEM.

2.3 Requirements to Conduct Mining

As mentioned above, the conducting of mining exploitation activities requires a valid mining concession.

Also, as in the case of exploration, legal title over the surface land is required in order to carry out mining exploitation activities.

Depending on the impact of the exploitation activities, the approval of either an Environmental Impact Study (EIA) by SENACE or a semi-detailed Environmental Impact Study (EIA-SD) by the MEM will be required to carry out such activities. Regional governments have authority to approve environmental studies of small-scale operations.

In addition to the above, the MEM has to formally approve the initiation of mining exploitation activities.

These are the main permits required to carry out mining exploitation activities. However, there are several other authorisations, permits and registrations that will need to be obtained in order to carry out activities that are essential to mining, such as rights to use water resources, permits for powder kegs and the handling of explosives, permits to store fuels, certifications of non-existence of archaeological remains, electricity generation or transmission concessions, authorisations for the discharge of waste water and residues, etc.

Also, beneficiation or refining activities specifically require the obtaining of a beneficiation concession, while the provision of ancillary mining services (eg, ventilation, draining, etc) requires a general labour concession. A transport concession is specifically required to install and operate non-conventional transportation facilities (conveyance belts, mineral pipelines, etc). These activities will also require the filing or approval of an environmental instrument and the obtaining of other authorisations and permits required to carry out the relevant activities.

2.4 Environmental Requirements to Conduct Exploration and Mining

The carrying out of exploration and mining activities requires a valid environmental certification. As previously noted, such environmental certification for exploration

activities can be achieved by obtaining a Technical Environmental Report (FTA), an Environmental Impact Declaration (DIA) or a semi-detailed Environmental Impact Study (EIA-SD) from the MEM, depending on the number of drilling platforms to be installed in the mining concession.

With respect to mining exploitation, environmental certification can be obtained by means of one of the following:

- the approval of an EIA-SD, when the negative environmental impact of the mining project is moderate; or
- the approval of an EIA, when the negative environmental impact of the mining project is significant.

3. Duties and Rights Derived from a Mining Title or Concession

3.1 Rights Granted by a Mining Title to Holder

Under Peruvian law, a mining concession is considered an autonomous immovable property, which is separate from the surface land located within the UTM co-ordinates of the mining concession.

The mining concession grants its holder – or a third party who has acquired the right from the holder – the right to carry out mining activity, to explore and exploit mineral resources. However, as the mining concession is separate from the relevant surface land, the mining concession does not confer title over the surface land. As mentioned above, such title can be obtained by acquiring ownership or by entering into agreements for the use of the land with whom ever has legal title over it.

3.2 Duties Acquired by the Title Holder

In order to maintain mining concessions in good standing, the holder or the person entitled to carry out mining activities on the concession is required to pay an annual mining fee (*derecho de vigencia*).

The first annual mining fee is payable at the time the granting of the mining concession is formally requested, and is payable annually thereafter. The annual mining fee is equivalent to USD3 per hectare per year if the holder is subject to the general regime, or USD1 per hectare per year if the holder is classified as a small mining producer.

In addition to payment of the annual mining fee, the holder of a mining concession or the person entitled to carry out mining activities is required to meet a Minimum Annual Production/Investment Target (MAPT) after a certain number of years have elapsed from the granting of the concession. If the holder or person entitled to carry out the mining activities fails to comply with the required MAPT, an annual penalty shall be payable until such time the MAPT is achieved.

As of January 1 2019, holders of metallic mining concessions will be required to reach an MAPT equivalent to one tax unit (approximately USD1,250) per hectare per year by the tenth year of having obtained the concession. If the required MAPT is not reached by that time, as of the 11th year an annual production penalty equivalent to 2% of the applicable MAPT shall be payable. If the MAPT cannot be reached by the 15th year, the production penalty will increase to 5% of the MAPT as of year 16, and thereafter increase to 10% of the MAPT from year 20 onwards. If the MAPT is not achieved by the 30th year of having obtained the concession, said concession will be revoked.

Different MAPT and penalties apply in case of non-metallic concessions.

As of January 1 2019, failure to pay either the annual mining fee or the annual production penalty for two consecutive years will result in the revocation of the mining concession.

3.3 Rights Acquired by the Title Holder

The mining concession does not grant ownership over the relevant surface land nor the right to use it to carry out mining exploration or mining exploitation. Legal title of the surface land needs to be obtained, either by acquiring its ownership or by entering into agreements for the use of the land with the relevant titleholders.

3.4 Duties Acquired by the Landowners

The obligations and duties to the relevant titleholders of surface land are established in the agreements entered into by the relevant parties.

3.5 Duties of the Title Holder at End of the Title

Existing regulations require that the person carrying out mining exploitation activities submits a mine closure plan (“MCP”) to the MEM. The MCP is an environmental management instrument that establishes the technical, legal and financial commitments undertaken by the person that will carry out the mining exploitation activities to remediate the areas affected by such activities.

4. Environmental

4.1 Principal Environmental Laws

The General Environmental Law is the main body of law regarding environmental matters and it applies, in general, to all operations or activities that have an impact on natural resources and the ecosystem.

The General Environmental Law is supplemented by the regulations specifically issued for the mining sector by the Ministry of Energy and Mines, as well as those passed by other entities that have competence on environmental matters (eg. OEFA, SENACE).

4.2 Bodies of Environmental Competence

The Ministry of Environment is the main authority of the executive branch of government with competence over environmental matters, although the Ministry of Energy and Mines also has jurisdiction on environmental issues that are specific to the mining industry, through the Directorate of Mining Environmental Matters.

The OEFA is part of the Ministry of Environment and is the agency responsible for supervising compliance with environmental obligations, while SENACE is the entity in charge of approving detailed environmental studies.

There are other entities that have specific environmental competence, such as the Forest and Wildlife Authority (SERFOR), which is responsible for the conservation of forest resources and wildlife, or the National Authority for Protected Areas (SERNANP), which is responsible for defining natural protected areas.

4.3 Environmental Obligations

Whoever carries out mining activities is essentially required to comply with the maximum permissible limits, the environmental quality standards and all other environmental obligations established by applicable laws or undertaken in the relevant approved environmental impact studies or certifications.

5. Miscellaneous

5.1 Special Rules or Taxes

In general, foreign investors are granted the same treatment as Peruvian investors. There are no restrictions on foreign investors owning or possessing mining concessions or surface land, either directly or indirectly, except that according to the Peruvian Constitution foreign individuals may not directly or indirectly acquire or otherwise possess land, mining rights or other immovable property within 50 km of Peru's national borders, unless authorised by governmental decree.

5.2 Restricted or Excluded Zones

Mining activities cannot be carried out in natural protected areas declared by SERNANP, in glaciers, in urban areas and in areas outside of the mining corridor established in the Department of Madre de Dios. The government can also reserve certain areas where no mining claims can be filed. Also, mining activities can only be carried out in areas with archaeological remains if authorised by means of a conservation plan approved by the Ministry of Culture.

5.3 Rights of Indigenous or Ethnic Communities

Indigenous or ethnic communities own their communal lands, pursuant to the General Law of Peasant Communities (Law 24656). Accordingly, anyone who wishes to carry

out mining exploration or exploitation activities on communal lands must obtain authorisation from the relevant communities.

Also, as part of the approval process for environmental impact studies, local communities, population and other stakeholders have to be consulted and informed about the potential impacts of the relevant project, and mechanisms for their participation must be considered in such studies.

In addition to the above, in 2011, the Peruvian government approved the Law of Prior Consultation to Indigenous or Tribal Populations, in line with Convention N° 169 of the International Labour Organization. According to this law, the Peruvian government has the obligation to consult in advance with relevant indigenous or tribal populations on any legislative or administrative measures (including the granting of authorisations to initiate mining exploration and exploitation activities) that may directly affect the collective rights related to their physical existence, cultural identity, quality of life or development. The prior consultation process is promoted, managed and controlled by the government, but the results of the consultation process are non-binding for the government.

5.4 Unilateral Termination of a Mining Title

The Peruvian State cannot terminate a mining title unilaterally, except for causes specifically contemplated in the applicable law. Mining concessions can be revoked by the State when the obligations attached to them are not fulfilled (eg, non-payment of the annual mining fee or the applicable annual productions penalty, or non-achievement of the MAPT by the 30th year of having obtained the concession). Mining concessions can also be terminated due to abandonment (when the applicant does not fulfill the legal requirements to obtain them), cancellation (in cases of overlap with prior mining titles), annulment (when obtained by persons that are forbidden to acquire mining concessions) or voluntary renunciation by their holders.

5.5 Taxes or Royalties

Mining companies are subject to the general taxation regime, which essentially comprises income tax and value-added tax (VAT).

Income tax: the general corporate tax is 29.5% of a company's net income. Dividends payable to Peruvian individuals or non-residents are subject to a 5% withholding tax.

VAT: 18% VAT applies to the sale of goods and the provision or utilisation of services in Peru and the import of goods. VAT paid is a tax credit that can be offset against operations that are subject to VAT.

In addition to the above, mining companies are subject to a special tax regime that is structured around the Mining

Royalty Law, the Special Mining Tax Law and the Special Mining Charge Law.

- The Mining Royalty Law establishes payment of a mining royalty for the exploitation of metallic and non-metallic resources by holders of mining concessions. This mining royalty is determined by applying a sliding scale rate (ranging from 1% to 12% of sales) to the quarterly operating profits of mining companies. Mining royalties are deductible for income tax purposes.
- The Special Mining Tax is payable by mining companies that have not executed a Mining Tax Stability Agreement with the MEM. The Special Mining Tax is calculated by applying a sliding scale of rates (ranging from 2% to 8.4%) to the quarterly operating profits of the mining company, and is deductible for income tax purposes.
- The Special Mining Charge is similar to the Special Mining Tax but applies to those mining companies that have executed a Mining Tax Stability Agreement with the MEM. It is calculated by applying a sliding scale of rates (ranging from 4% to 13.12%) to the quarterly operating profits of mining companies, and is deductible for income tax purposes.

Also, since 2012 mining companies have been required to pay an annual supervisory contribution to the OSINERGMIN and OEFA. The sum of both contributions may not exceed an amount equivalent to 1% of the total value of annual invoicing for concentrate sales, after deducting VAT. For the fiscal year 2018, the OSINERGMIN contribution was set at 0.14%; for 2019, it will be set at 0.13%. The OEFA rate will be 0.11% for 2018 and 2019.

Payet, Rey, Cauvi, Pérez Abogados

Av. Víctor A. Belaúnde 147
Torre 3, Piso 12
San Isidro,
Lima - Perú

Tel: +511 612 3202
Email: lexmail@prcp.com.pe
Web: www.prcp.com.pe





2019