

LEGALINK | LATAM

MINING



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### What are the main challenges of the mining sector?

- a) Incentive to the mining exploration market via tax incentives.

Even though Chile is one of the main destinations in the world for mining exploration, concentrating 7% of the exploration of non-ferrous metals and 18% of the copper exploration (COCHILCO, 2015), this activity has not been as developed as we would want it to, considering its importance and impact in our country and its economy. Various records indicate that the sources of financing of mining exploration are insufficient. Also, our legislation does not include any subsidies or tax incentives that would make mining exploration more attractive.

Because of this, mining exploration in our country is concentrated in large companies. The participation of junior companies in this activity is far below the world average.

On this respect, subsidies and tax reductions should be studied and considered, especially because, even though mining projects are highly profitable, they are also highly risky. In this way, we believe tax incentives would make mining exploration more attractive, bringing more investments to this field.

Finally, we must also point out the existence of the “Fenix Mining Exploration Fund” (or “Fenix Fund” in short). This incentive, offered jointly by the Chilean Ministry of Mining and the National Corporation for the Promotion of Production (or “CORFO” for its initials in Spanish), aims to promote the development of the mining industry, by providing financing to investment funds so that they, in turn, can invest in small or medium mining project. Through it, the funding is done in a shared basis: when it was first launched, of the total US\$ 150 million that was raised, US\$ 92 million was contributed by the government and US\$ 58 million by private investment funds.

- b) Availability of water resources

During the last decades, the growth of the world's population and climate change have had an important effect on the availability of the water resource, which has increased the competition associated with its use.

In the short and long term, water has a strategic importance in the development of the mining industry. The process associated with the extraction of the mineral necessarily needs it, and its lower availability may affect the productive performance of this sector, making it less competitive over time. Considering this scenario, the mining industry has made significant efforts to optimize water consumption and achieve higher levels of efficiency. These efforts have brought about important improvements like reduction in the use of fresh water in the productive processes, increase in the use of recirculated water and the replacement of fresh water for sea water. Thanks to these efforts, today the mining industry represents only 3.1% of the country's water consumption, and the use of recirculated water reaches about 73% of the said total consumption.

## CHILE

### Grasty Quintana Majlis

Finally, it is also worth mentioning that, currently, all important mining projects executed in the country also have desalination plants associated to them. Through them, mining companies can meet their water demands through treated seawater, which is brought to them through pipelines that may go as long as 100 kilometers.

#### c) Mining and energy

An increase in the energy consumption by the mining industry is expected to occur in the future, which is associated with the effort to maintain the current production levels in a scenario of lower grades, greater depth of the mines, harder minerals and greater use of energy to drive seawater to operation.

Nevertheless, we hope that in future times the industries will be more conscious of their impact in the environment. In that regard, the mining sector is expected to put its innovation, technology and talent to work in order to deliver products with greater environmental added value. A great opportunity to do this would be for mining companies to supply their energy demand with 100% renewable sources, having renewable technologies grown greatly during the past years (solar and wind power plants) replacing older, more contaminating technologies. In that case we would really be in the presence of sustainable mining, which can be maintained over time.

In the case of the northern part of our country, an interesting combination happens: on one hand, it receives one of the highest radiations on the planet (which is why solar energy projects are usually located in it), and on the other, it concentrates the most relevant mining industries in the world. Thus, it is not surprising that experts forecast a gradual and increasing penetration of solar generated energy in a mining industry that seeks to become more sustainable.

The increase in non-conventional renewable energy projects has resulted in great advances in our energy issues and in the fight against global warming, which has materialized through the entry of new actors and the decrease in supply prices.

#### d) Fulfillment of environmental requirements and sustainable development of mining projects.

A delay in investments produces a significant decrease in the development of social and economic opportunities in Chile and its regions.

At present, the initial, evaluation phases of large investment projects, where all the relevant permits and authorizations must be obtained, may take about four years or more, especially considering that the law does not include clear deadlines in which the said permits must be granted by the authorities. In this sense, the current situation of uncertainty is worrisome, considering that an important part of the investment projects that have been initiated have yet not materialized. In the same manner, the growing judicialization and uncertainty associated with the granting of environmental permits by the Chilean Environmental Assessment Service (or "SEA" for its initials in Spanish) is also very concerning. In recent times, the Chilean courts have ruled, and even cancelled existing concessions and permits, based purely on technical issues.

## CHILE

### Grasty Quintana Majlis

Currently, in Chile there are over 400 types of permits that are granted by 53 different public entities, being mining projects the ones that must obtain the greatest number of them. In relation to this, more than 55% of all of these permits do not have a specific regulation that defines the procedure and timings under which they must be granted, and often times there are conflicts between different public entities for the same authorization.

This confirms that our government faces great challenges when evaluating projects and granting the relevant authorizations and permits. In general, the public entities in charge of evaluating mining projects often operate with excessively long response times and usually apply different evaluation criteria.

In order for these types of investments to be reactivated in our country, we must improve the efficiency and coordination of these permit granting procedures, so that projects are properly evaluated according to high environmental, social and economic standards. In this regard, the NGO Mining Value Alliance (or “Alianza Valor Minero” in Spanish) has proposed the creation of an “Office of Large Project Management” (or “Oficina de Gestión de Grandes Proyectos” in Spanish) that would be in charge of coordinating the different public entities involved in the evaluation and granting of permits. This new entity would seek to rationalize processes and introduce greater efficiency and effectiveness. It would coordinate and establish mechanisms to monitor the public institutions responsible for the environmental evaluation of projects. Additionally, it would also be in charge of facilitating the dialogue and cooperation between all the relevant stakeholders, and especially coordinating the needed spaces of citizen participation. Its creation would constitute a contribution to finally materialize the mining projects that are currently postponed and to encourage mining investment.

In the same vein, the Chilean Ministry of Economy has created the “Office of Sustainable Project Management” (or “GPS” for its initials in Spanish), which is in charge of coordinating the obtainment of permits for investment projects (speeding up response times) as well as maintaining the standards of environmental protection at all times, and proposing regulatory or management reforms that would improve the investment environment in the country.

Chile has been, and will continue to be, a mining country. Because of this, together we must assess and solve the challenges that are faced by investment projects in this sector. On one hand, we need a modern and efficient State, that duly grants the relevant permits, gives investors the needed guarantees, and also responds in due time. But, at the same time, we also need investment projects that live up to the demands of today's society, that is designed considering the impact they produce in communities and the environment, have their respective social and environmental licenses and comply with the current environmental standards. To achieve this double challenge, it is essential that both sides, the State and the private sector, work in coordination towards a common objective: that Chile continues moving towards sustainable mining.

## CHILE

### Grasty Quintana Majlis

e) Use of new technologies and job training.

In Chile, the mining industry has systematically integrated high-impact, technological solutions that have improved the continuity of its processes and the profitable use of installations and facilities. Nevertheless, their introduction has not been very fast, and their replacement has turned out to be very complex due to multiple reasons, like the high requirements of financial capital for their development, packaging and implementation (not always available in a timely manner) and the lack of preparation of the sector's workforce in light of the new technologies.

With regard to human capital requirements, the mining industry faces challenges both in a quantitative and a qualitative perspective, which implies that important adjustments in the mining training and education programs should be implemented, so that employees are able to duly respond to the requirements of the industry.

### What are the opportunities in this sector?

From the 39th position we held three years ago, the annual survey of the Canadian study center "Fraser Institute" has placed Chile in the sixth place of the world's most attractive countries to invest in mining. It also considered it to be the most attractive place in Latin America to invest in this field.

Currently, Chile is the world's biggest producer of copper, iodine and rhenium. In relation to other minerals, it ranks second in the production of molybdenum and lithium, third in the extraction of boron, and fourth in the production of silver. It has 22% of the planet's copper reserves, and 52% of the world's lithium reserves.

Moreover, lately Chile has again been sought after by investors. This situation is reflected in the investment portfolio that has been registered by the GPS for the 2019-2023 period, which reaches US\$ 33,000 million (of which 74% corresponds to the private sector and 26% to Codelco). This is good news for our country, especially considering the significant contribution that mining makes to its economic and social development. It should be underlined that 82% of the said investment is concentrated in the regions of Tarapacá, Antofagasta and Atacama. In relation to the territorial allocation of these investments, Chile's Second Region leads with around US\$ 11,100 million, being followed by the First Region, with US \$ 8,150 million, and, the Third Region, with US \$ 7.9 billion.

## CHILE

### Grasty Quintana Majlis

Furthermore, besides copper, Chile has countless other resources that have been exploited at various scales for decades. This is the case of lithium, which went from being considered a contaminating element, to becoming highly sought after by industrialized countries today.

In fact, our country, together with Bolivia and Argentina, concentrates almost 70% of this resource in the so-called "Triangle of Lithium", which, on the Chilean side, may be found in the form of dissolved salts in the underground water supplies, about 30 meters below the surface of the Salar de Atacama.

Even though it is not an important player in this market, more than a decade ago Bolivia established a strategic development policy for the extraction and commercialization of lithium. This policy has brought visible results: for the past five years they have operated a cathodic material generation plant for lithium batteries, maintaining a strong scientific-commercial relationship with Germany, to develop products with greater added value. Because of this, during the current year our country has begun unifying its industrial and academic criteria, in order to build a sustainable lithium industry that adds value and develops new technologies. Although this decision should have been taken more than 10 years ago, this new commitment, directed by CORFO, comes to compensate the lack of interest that the players of this industry have had with its development during the last years.

### What are the main current investment projects in the sector?

Copper mining is still the main player in the sector, with an 89.9% of participation in the total portfolio. This is reflected in an investment that reaches US\$ 59,103 million and 32 initiatives.

In 2018, copper mining reached a record production of about 5.83 million tons of fine mineral, and its participation in the global market marked a 27.7% in what was a rollercoaster race of mining countries to meet the global demand of red metal (especially from China).

Despite the size of copper investment, the investment in lithium projects must be highlighted, with 4 initiatives valued at US\$ 1,280 million having been included in the mining investment portfolio of 2018-2027 elaborated by the Chilean Copper Commission (equivalent to 1.9% of the portfolio).

## CHILE

Grasty  
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### How stable is the legal and legislative framework? Are some changes expected and what will be their impact?

The Chilean legal framework is effective, simple and fairly stable, notwithstanding that we still have a long way to go (especially in the regulatory field (permits).

The granting of concessions through transparent, legally established procedures gives the necessary legal certainty to both national and foreign investors alike and is currently praised abroad. These conditions have provided a concrete incentive for national and foreign mining investment in our country.

However, in the regulatory field, deciding to invest in Chile today is to accept the challenge of competing in an obstacle course. A study by the National Productivity Commission (or “CNP” for its initials in Spanish) revealed that the number of permits required to start a mining project in Chile exceeds 2.000.

In order to face the above, we must insist with public policies that contribute to the development of the industry. What is relevant here is that the investor must have mechanisms that give him the legal and economic certainty to materialize projects in our country. We must continue to clear uncertainties in the regulatory field, and to simplify and accelerate the granting of permits.

In the legislative field, there are no substantial changes to be mentioned regarding mining regulations; however there are other legal changes being carried out in other areas of law that may affect the mining market.

The most important one to be mentioned is the bill that aims to reform the Chilean Water Code, and that is currently being discussed in Congress. This reform bill constitutes a great advance in several aspects, but also introduces changes that could have negative consequences for the mining industry, generating new sources of uncertainty. As an example, although this reform does not aim to change the legal institution known as the “Aguas del Minero” (or the “Miner’s Water” in English), it introduces new regulations that harden its operation and timely management. The “Aguas del Minero” are defined as those waters that arise spontaneously in a mine, and that can be used by the miner without the need for an administrative permit or concession. According to articles 110 and 111 of the Mining Code, these rights are inseparable from the mining concession and will exist and terminate with it.

## CHILE

### Grasty Quintana Majlis

In that regard, the reform plans to modify the origin of the right, which now will have to be granted by the Chilean General Water Directorate (or “DGA” for its initials in Spanish), by means of an administrative authorization. Nevertheless, this reform bill does not include a clear procedure by which the granting of this authorization will be carried out, and thus opens a range of doubts regarding the impact that this change will have on the mining activity. How long will this procedure take? What if the authorization is denied or is granted for less water than what is really needed? What should be done with the water that emerges and affects the mining work? Is it possible to manage water while obtaining the needed authorization? Who assumes responsibility for the damages that arise from inaction?

In sum, and especially considering that its implementation would have very detrimental effects on our national mining activity, there are no objective technical reasons to carry out this legal change.

### Can you describe your firm’s involvement with projects in this sector?

GQM has a full range of mining services to offer Chilean and foreign mining companies, that include counsel in the following matters: review of mining titles, drafting of legal opinions, execution due diligence of mining concessions, drafting and revision of mining option agreements, royalty agreements and other mining-related contracts, project finance and development (mining, operations, EPC, EPCM and other agreements, commercial and supply contracts), land use and easements (both contractual and judicial), environmental, construction and regulatory matters, obtainment of permits, mergers and acquisitions (including cross-border transactions for private and public companies), and dispute resolution related to mining issues, amongst others.

Also, GQM has a subsidiary company called Tecnomin, which provides technical mining services, which include the constitution, protection and control of mining concessions, as well as the carrying out of due diligence and mining cadastres. This entity provides services to mining companies, and also to other clients in diverse business fields (i.e. real estate, energy, agricultural, oil and gas, transportation, utilities, among others).

Tecnomin is currently in charge of the constitution and monitoring the exploration and exploitation concessions of BHP Billiton in Chile.

GQM and Tecnomin have participated in the execution of the mining project “Cobaltera”, located in the third region of Chile, and dedicated to the extraction of cobalt. Both GQM and Tecnomin counselled in the obtainment of the mining concessions and the mining permits that were needed to carry out this project.

## **CHILE**

### **Grasty Quintana Majlis**

We also give ongoing counsel to Minera Tres Valles (Sprott Resource Holding), which operates two important mining projects: the Papomono mine (underground mine) and the Don Gabriel mine (open pit mine), both located in the Manquehua creek in the Chalinga valley.

We also give ongoing counsel on day to day issues to Vale Exploraciones Chile, Sumitomo Metal Mining Chile Ltda. and mining suppliers such as Bridgestone Mining Solutions Latin America S.A.

#### **Who is your firm's contact for mining related issues?**

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