

Doing Business in Chile

Guide 2025

MINING



EXECUTIVE SUMMARY

The legal framework for Chile's mining sector has three main pillars: the Chilean Constitution (Constitución Política 1980), the Organic Constitutional Law on Mining Concessions (Ley Orgánica Constitucional sobre Concesiones Mineras 1982), and the Mining Code (Código de Minería 1983).

The Chilean Constitution rules that the State holds absolute and exclusive ownership of all mines, while granting concessions to individuals or entities for exploration and/or exploitation.

Ownership of concessions is distinct from surface land ownership, which may be encumbered to facilitate mining activities.

The Organic Constitutional Law on Mining Concessions allows private parties or legal entities to apply for and obtain rights to explore and exploit most mineral substances, except for oil and gas deposits, lithium, and those located in certain areas deemed vital to national security. These substances can be directly mined by the State, State-owned companies, or through administrative concessions or special contracts with the Chilean State.

Civil courts in Chile grant and terminate mining concessions through judicial rulings, and they adjudicate disputes related to these concessions. Mining concessions are registered with the corresponding Mines Registrar. Concessions are granted on a "first come, first served" basis.

The National Geology and Mining Service (Servicio Nacional de Geología y Minería - SERNAGEOMIN) is the government body responsible for approving technical requirements related to the form and location of concessions in Chile. It maintains a public record of concessions and ensures compliance with mining regulations.

The only two types of concession are exploration and exploitation. Holding an exploration concession is not a prerequisite for obtaining an exploitation concession. Mining concessions are legally considered to be property and are distinct from surface land rights.

The holder of an exploration concession has exclusive rights to explore within its boundaries, while the holder of an exploitation concession has exclusive rights to explore and/or exploit minerals within its boundaries.

Under the Mining Code, the owner of a mining concession has the right to utilize surface land as needed for its activities. They can impose easements on a surface landowner if necessary and utilize water within the concession boundaries, provided that such use is reported to the Water Bureau (Dirección General de Aguas) and complies with legal requirements.



MINING RIGHTS AND TITLE

Main Rights

- (i) The owner of a mining concession has the exclusive right either to explore (in the case of an exploration concession) or exploit and acquire (in the case of an exploitation concession) the minerals found within the boundaries of the mining concession.
- (ii) The mining concessions are granted through a non-discretionary judicial procedure, explained below, on a first-come, first-served basis.
- (iii) Concessions can be freely assigned or transferred, mortgaged and, in general, may be subject to a legal contract.
- (iv) A concession ownership right can be defended against the State or a third party.
- (v) Beginning in January 2024, exploration concessions are valid for four years¹, contingent upon the holder paying an annual license fee. Extensions may be requested before expiration for up to four additional years, subject to fulfilling all legal obligations. During the validity of an exploration concession, the holder has priority to apply for an exploitation concession over the same area.
- (vi) Exploitation concessions are granted for an indefinite period, provided that the holder pays an annual license.

Mining Holder Obligations

The owner of a mining concession has the following obligations:

- (i) To pay an annual license in March of each year. In 2022, legislation was enacted to increase the annual license fees² for exploration concessions. Under the new regulations, the annual license fee amounts to approximately USD 4.4 per hectare.

1 Before that, exploration concessions were granted for two years, renewable for another two years, waiving at least half of their areas.

2 The new amounts for the exploration concessions licenses came into force in January 2024, while those for the exploitation concessions licenses are postponed until January 2025



For exploitation concessions, the new annual license fee varies progressively from USD 29.2 to USD 876.0 per hectare. However, concessions currently in operation may be eligible for a special reduced annual license fee of approximately USD 7.3 per hectare under certain conditions: with an approved environmental ruling, under environmental assessment, or exempted from environmental assessment but having obtained the necessary permits.

Failure to pay the annual license fee may result in the sale of the mining concession through an auction procedure or its termination if no interested buyer is found.

(ii) The holder of an exploration concession is required to provide SERNAGEOMIN with all geological information obtained from exploration work conducted in the corresponding area upon the expiration of the concession or thereafter. Similarly, they must submit all geological information acquired from geological exploration activities every two years.

(iii) The holder of mining concessions must obtain the necessary environmental approvals and/or other required permits to carry out mining activities.

(iv) Mining concession holders are obligated to adhere to all Chilean legislation, particularly regarding: (a) health and safety regulations; (b) rules concerning civil construction developments, mining operations, machinery, equipment, tools, buildings, and mining facilities; and (c) special environmental authorizations. Fines, closure, and even termination of mining activities may be imposed in the event of non-compliance with these obligations.

(v) Mining concession holders are subject to, and must comply with the general rules of contracts and torts regarding liability in the case of infractions or violations of Chilean civil law.

Mining Concessions Granting Process

Concessions are awarded through a judicial process following non-contentious procedures as prescribed by law.

The process begins with the submission of an exploration or exploitation concession application to the appropriate court. Priority is given to the first applicant. Each application must satisfy all legal requirements. Upon approval, the court will order the registration of the concession in the Discoveries Registry of the relevant Mining Registrar and its publication in the Official Mining Bulletin. Failure to complete registration and publication within 30 days of the judicial resolution will result in the termination of the application.

For exploration concessions, within 90 days of the resolution ordering registration and publication, the holder must request the Court to issue the judicial award granting the concession. If all legal requirements are met, the Court forwards the file to SERNAGEOMIN for technical review. If no objections arise, the Court grants the concession. A



summary is published in the Official Mining Gazette and registered within 120 days. Failure to do so terminates the concession. Typically, the process takes five to seven months.

For exploitation concessions, the applicant must request a concession survey (“mensura”) within 90 to 120 days of the application. If all legal requirements are met, within 30 days the Court orders the survey request’s publication in the Official Mining Gazette. Third parties with preferential mining rights can oppose within 30 days. Otherwise, the applicant-appointed expert conducts the survey. Survey minutes and drawings must be filed with the Court within 10 months. The Court sends the documentation to SERNAGEOMIN for review. If no objections arise, the Court issues the final concession award, published in the Official Mining Gazette. A copy must be registered with the Property Registry within 120 days, or the concession terminates. Typically, the process takes 18 to 24 months, longer if there are oppositions.

Renewal and transfer of mining concessions

Under the latest legislative amendment, exploration concessions have a standard duration of four years, extendable for up to four additional years upon request before expiration.

To apply for an extension, the exploration concession holder must provide all geological information to SERNAGEOMIN within the first semester of the final year of the concession.

Subsequently, the holder must formally request the extension from the relevant civil court before the expiration date, submitting a certificate confirming the delivery of geological information.

Between the time an application for an exploration concession is filed and one year after its expiration, the holder is barred from obtaining, either directly or indirectly (e.g., through a relative or affiliated company), a new exploration concession that encompasses any portion of the area covered by the original concession. Breaching this rule leads to the termination of the application or concession, as deemed appropriate.

Moreover, a third-party reporting such a breach and receiving a favorable judicial ruling may petition for some or all of the area covered by the reported application, enjoying the filing date of the original application.

Exploitation concessions are granted indefinitely; thus, extension is unnecessary.

Concession holders can freely transfer their concession without needing special government authorization or consent. This transfer is executed through a public deed and registered with the relevant Mines Registrar.



Foreign Ownership

Foreigners are not subject to any restrictions on owning mining rights in Chile. Additionally, there is no requirement for a domestic partner to be involved in mining ownership.

Protection of Mining Concessions

The Chilean Constitution safeguards the property rights associated with mining concessions as a fundamental constitutional right. Chile maintains an independent judicial system that upholds the principles of the rule of law and due process.

Foreign arbitration awards are enforceable in Chile under the framework of the 'New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards', if applicable. Otherwise, enforcement follows the general rules outlined in the Chilean Civil Procedure Code. These rules consider various factors, including reciprocity, the existence of special treaties, and other provisions aimed at ensuring the effective enforcement of awards in Chile.

State Participation in Mining Projects

The Chilean State may engage in mining projects and other business activities through State-owned companies, regulated by specific laws. Notably, a significant portion of Chilean copper production is conducted by State-owned entities like CODELCO and ENAMI. However, these companies do not possess unique rights over mining concessions or information beyond what is accessible to private entities.

There are no special local listing requirements for mining companies.

Government Expropriation

The Chilean Constitution stipulates that no one can be subjected to expropriation unless there is a general or specific law authorizing such action for reasons of public utility or national interest, as determined by law. Additionally, the affected party is always entitled to challenge the expropriation and receive fair compensation.

The Organic Constitutional Law on Mining Concessions (LOCM) addresses compensation, which is determined by the commercial value of the right to initiate or continue the extraction and appropriation of mineral substances



under a mining concession. This value is calculated based on the present worth of the net cash flows generated by the mining concession.

Restricted Areas

As noted, the granting of mining concessions is restricted in certain areas, including deposits located in sea waters under national jurisdiction or in areas designated by law as crucial for national security in mining endeavors.

Furthermore, the Mining Code specifies that carrying out mining activities in certain zones necessitates prior authorization from either the landowner or specific governmental bodies. For instance, authorization from the Presidential Delegate is required for mining activities in national parks or reserves, areas designated as historically or scientifically significant, or within 50 meters of structures such as buildings, public roads, railways, power lines, and other public infrastructure.

Additionally, environmental legislation requires that projects or activities within national parks, reserves, natural monuments, wildlife reserves, nature sanctuaries, marine parks, marine reserves, or other protected areas undergo environmental assessment, as permitted by relevant laws.

In this context, the Supreme Court has ruled that projects or works within national parks or other protected areas can proceed only after stringent evaluation by the environmental authority. This evaluation ensures that such activities align with the conservation objectives of these areas.

Surface Land Rights

The owner of a mining concession holds certain rights concerning the surface land:

- (i) They can utilize the surface land as required for exploration and/or exploitation activities, provided they compensate the surface landowner for any damages incurred.
- (ii) They have the authority to impose easements on an unwilling surface landowner through a straightforward and expedited process before the relevant civil court. Certain exceptions apply in cases involving houses, vineyards and fruit trees, and forests.

It's important to note that private parties have the freedom to acquire various types of surface rights, including ownership, easements, and leases, through direct negotiations with the landowner.



MINERAL RESOURCES AND RESERVES CODE, AND CADASTRE OF MINING CONCESSIONS

Mineral Resources and Reserves Code

Chile's mining sector primarily targets metallic minerals such as copper, molybdenum, iron, manganese, lead, zinc, gold, and silver. Among non-metallic minerals, lithium, nitrate, and iodine are particularly significant.

The most active mining regions in Chile are Arica and Parinacota, Tarapacá, Antofagasta, Atacama, and Coquimbo, all located in the northern part of the country.

Mining holds considerable economic importance for Chile, contributing 13% to the GDP and representing 54% of the country's total exports, amounting to USD 34.4 billion.

Chile is the world's leading copper producer, accounting for 30% of global production, and the second-largest producer of molybdenum, holding an 18% share in the global market.

In 2002, Chile introduced the Resources and Reserves Code, which was subsequently endorsed by the Qualifying Commission on Competences in Mining Resources and Reserves (*Comisión Calificadora de Competencias en Recursos y Reservas Mineras*). This code, modeled after the Australian JORC system, gained recognition from the Committee for Mineral Reserves International Reporting Standards (CRIRSCO). Its purpose is to provide public information to the Chilean capital market in the mining business, regarding financing instruments related to mineral resources and reserves.

The Resources and Reserves Code outlines mineral resources as natural, solid, non-organic or organic fossilized terrestrial materials with sufficient form, quality, and quantity to warrant a reasonable assessment of their technical and economic potential. These resources are evaluated based on factors such as location, tonnage, content, geological characteristics, and the continuity grade of mineralization, as determined by geological, metallurgical, and technological evidence. Mineral resources are categorized, based on increasing geological confidence, into three types: Inferred, Indicated, and Measured.

A mineral reserve is considered as the economically mineable part of a Measured or Indicated Resource in accordance with a productive, environmental, economic, and financial scenario derived from a mining plan. Mineral reserve calculations also consider losses and dilutions that would be caused, during mining processes, by the ingress into surrounding deposits. The assessment can result from pre-feasibility or feasibility studies, where realistic conditions, at the time of the assessment, include geological, metallurgical, geotechnical, environmental, social, and governmental factors. These assessments must demonstrate the technical, economic, extractive, and sequential feasibility at the time that they are reported. A mineral reserve is classified in order of increasing confidence into Probable and Proved.



Cadastre of Mining Concessions and Statistics

SERNAGEOMIN manages the Public Record of Concessions which include information on mining concessions, such as registered holder, identification number, and location.

The same authority also oversees the Exploration Geological Information System (*Sistema de Información Geológica de Exploración* - SIGEX), which is the web platform designed for the capture, validation, and subsequent consultation of all types of background and technical data of exploration projects developed in Chile.

Mining statistics are also available from the Chilean Copper Commission COCHILCO (*Comisión Chilena del Cobre*) – www.cochilco.cl.

In January 2024, Cochilco released the Copper Market Trends Report containing copper price, demand, and supply projections for the years 2024 and 2025.

According to the report, the average copper price projected for 2024 is US\$ 3.85 per pound, and for 2025 US\$ 3.9 per pound.

Annual Copper production for 2024 is projected to increase by 5.8% to 22.79 million tons, and further increase in 2025 by 3.1% to 23.50 million tons.

DUTIES, ROYALTIES AND TAXES

Duties, Royalties, and Taxes in Mining:

In Chile, taxation is based on a national framework, without special distinctions or taxes for regions or political subdivisions. The main taxes in Chile are:

1) Income Tax:

There are three different tax regimes applicable to mining activities, depending on the scale and volume of the mining sector.

Small miners³ are subject to a total income tax at a fixed rate determined by a formula that considers the average price of copper ore and the company's sales during the previous annual period.

Medium-sized miners in Chile are subject to a presumptive tax regime, where income for the period is presumed to be a certain percentage of net sales. This percentage ranges from 4% to 20%, depending on the average copper price

3 Understood as artisanal miners personally working a mine with a maximum of 5 employees.



for the fiscal period. These medium-sized miners can include individual entrepreneurs, limited liability individual companies, communities, cooperatives, partnerships, and stock companies formed exclusively by natural persons. The qualification as a medium-sized miner is based on annual sales not exceeding approximately USD 640 thousand, irrespective of the type of mineral extracted.

Large mining companies which exceed the aforementioned limits are subject to the general Chilean income tax regime.

General Regime:

Under this regime, companies are subject to a corporate tax rate of 27%. This rate is applied to the net income obtained during the fiscal year. Companies under this regime are required to keep comprehensive accounting and comply with all corresponding tax regulations. This regime does not apply to small and medium-sized companies (SME's).

Small and Medium-sized Enterprises Regime:

Designed to support small and medium-sized companies with a more favorable tax rate and simplified accounting requirements. Eligible companies must satisfy specific criteria concerning effective capital and the annual average of gross income. For those entities that can opt for the SME regime, the following rates of Corporate Tax (First Category Tax) will apply:

Commercial Year	First Category Tax Rate
2023	10%
2024	12.5%
2025 and onwards	25%

Owners Dividends:

The Chilean tax regime considers a withholding tax of 35%, which can be paid:

In the case of the General Regime, 65% of the Corporate Tax paid by the company (27%) can be used as a credit against the final income taxes. Shareholders residing in a country with which Chile has a tax treaty to avoid double taxation can use 100% of the Corporate Tax paid by the Chilean entity as a credit against their final income taxes.

In the case of the SME Regime, foreign shareholders (with or without a tax treaty) can use 100% of the Corporate Tax paid by the Chilean entity as a credit against their final income taxes.



Debt Financing:

Interest is a deductible expense at the level of the Chilean company.

The tax rate on interest can vary between 35% (general rate), 4% (financial institutions*), and 10% to 16% treaty rate, depending on the creditor's country.

Documented Debt is subject to Stamp Duty at a rate of 0.066% on the principal per month, with a cap of 0.8%. Debt without maturity dates (on demand) is subject to a single rate of 0.332% on the principal.

Debt is not affected by Municipal Tax.

The principal can be repaid at any time without tax consequences.

Interest/Capital Taxation Comparison:

The following table compares the tax burden on two different approaches which can be used by a Chilean company to extract funds for the parent company:

	Debt (interest)	Capital (dividends)
Earnings before interest or dividend payments	USD\$ 100,000	USD\$ 100,000
Interest deduction as an expense (Chilean company)	(USD\$ 100,000)	
Taxable base (in the Chilean company)	USD \$ 0	USD\$ 100,000
Corporate Tax (27%)	USD \$ 0	USD\$ 27,000
Withholding Tax (4% / 15% or 10% / 35% - tax credit)	USD \$ 4,000	USD \$ 8,000
	USD \$ 15,000	
	USD \$ 10,000	
TOTAL TAX IN CHILE	USD \$ 4,000	USD\$ 35,000 ⁴
	USD \$ 15,000	
	USD \$ 10,000	

Limitations on Preferential Taxation of Interest: Excessive Debt Financing Rules.

Chilean tax legislation imposes restrictions on the allowable debt-to-equity ratio, specifically establishing a 3:1 ratio between debt and equity. This means that debt cannot exceed three times the company's equity. In scenarios where this threshold is exceeded, interest payments made to related entities abroad are subject to a significant tax penalty of 35% on the interest. This penalty is substantially higher than the standard tax rate of 15% or 10%, which must be carefully considered in financial planning.

⁴ The effective rate of 35% only applies if the dividend recipient is domiciled in a country with a tax treaty, or the Chilean company is under the SME regime. In other cases, the effective rate rises to 44.45%.



An example of the calculation method for excessive debt financing and its corresponding penalty will be presented below:

Annual Total Debt (ATD)	\$35,000,000
Less 3 times Equity	\$8,500,000 (X3 = -\$25,500,000)
Over-indebtedness	<u>\$9,500,000 or 27.14% excess.</u>
Interest Paid (assumption 15%)	\$3,000,000
Taxable Base	<u>\$3,000,000 x 27.14% = \$814,200</u>
Penalty Tax (35%)	\$284,970
Tax Credit	(27.14% x (15% x \$3,000,000)) (\$122,130)
Tax on Over-indebtedness	\$162,840

Transfer Pricing Rules:

Chilean law states that transfer pricing rules apply in the following situations:

To taxpayers who, as of December 31 of the reported year, are categorized as medium or large companies, and who in that year have carried out transactions with related parties not domiciled, resident, or established in Chile.

To Taxpayers not classified as medium or large companies during the reporting period who engaged in transactions with related parties not domiciled, resident, or established in Chile. The regulations apply if the transactions exceed \$500,000,000 (five hundred million Chilean pesos) or its equivalent based on the exchange rate between the local currency and the foreign currency involved in these transactions, as of December 31 of the reported commercial year, as published by the Central Bank of Chile.

Tax Depreciation:

From a tax perspective, operating companies can use either regular or accelerated depreciation on their fixed assets. In the latter case, the useful life of the asset, determined by the Chilean Internal Revenue Service (SII), is divided by three.



For other purposes, such as financial accounting, operating companies may use any depreciation regime that is acceptable under normal accounting standards.

Accelerated depreciation can be applied to new assets purchased in Chile, and for new and used assets bought overseas, and whose useful life is at least 3 years. Furthermore, the Chilean Internal Revenue Service may establish special depreciation regimes on a case-by-case basis, if requested by the company.

Capital Repatriation:

The repatriation of capital is tax-exempt if a company has no accumulated profits. The concept of profits for these purposes includes both financial and tax benefits. For the repatriation of capital to be treated as tax free, it must be properly documented as an amendment to the company's statutes.

Mining Royalty:

Chile imposes an additional tax on income from mining operations. The regulations applicable to the "mining royalty", were updated in 2023⁵. This tax is calculated by making specific adjustments to net income, which adequately reflect revenues from the sale of mining products, and adopting a progressive approach based on production and sales.

Components of the Mining Royalty:

Ad Valorem: This component applies to copper miners with average annual sales, and specific sales in the year which exceed 50,000 Metric Tons of Fine Copper (TMCF). The rate applied is 1% of the annual sales.

Profitability: Is determined using the Adjusted Operational Mining Taxable Income (RIOMA) framework, which involves modifying the taxable net income to accurately represent revenues and expenses directly linked to mining operations. This calculation considers both the sales volumes and composition, delineating between two distinct scenarios:

Article 3: This scenario applies to copper miners where 50% of their total sales come from copper and whose total annual exceed 50,000 TMCF. The applicable rate on positive RIOMA is dependent on the Mining Operational Margin (MOM) and has a range of 8% to 20%. This component does not apply if the RIOMA is negative.

Article 4: This scenario applies to miners whose sales do not meet the threshold of article 3. Under this scenario RIOMA determines rates that are proportionate to the average annual sales of mining products, as follows:

Exemption: if the average annual sales are equal to or less than 12,000 TMCF.

5 Law 21,591 of August 10, 2023.



Rate Scale: if average annual sales are greater than 12,000 TMCF and less than 50,000 TMCF, progressive rates from 0.4% to 4.4% are applied.

Upper Rate: if sales exceed 50,000 TMCF, rates vary from 5% to 34.5%, with a specific rate of 14% for MOM over 85.

The Maximum Potential Tax Burden Limit (LCTMP) ensures that the total tax burden on the miner resulting from the application of the royalty does not exceed 46.5% of the RIOMA. If annual sales do not exceed 80,000 TMCF, this limit is reduced to 45.5%.

2) Sales and Services Tax (VAT)

VAT is applied at a rate of 19% on the sales of tangible movable goods, on real estate under certain circumstances, and on services rendered or utilized within the country. VAT at 19% is also applied to imports, whether regular or not, made by any individual or legal entity.

Chilean VAT operates on a credit and debit system. This means that the VAT levied by a company on its sales or services provided represents a VAT fiscal debit.

Conversely, VAT paid on the acquisition or importation of goods or services serves as a VAT fiscal credit. This credit is available only to taxpayers engaged in VAT-taxed activities and exporters.

2.1) Importation of Capital Goods:

Generally, all imports of goods are subject to VAT at its standard rate of 19%.

The VAT Law⁶ which was recently amended as part of a bigger tax reform, allows for VAT exemption on the importation of capital goods with a total project value more than US\$5M. The imported goods must be intended for use in projects related to energy, mining exploration or exploitation, industrial, forestry, infrastructure, telecommunications, technology, medical, or scientific research.

It applies to individuals and legal entities, whether residents or domiciled in the country; to foreign investors; and to companies that receive foreign investment.

Each case requires authorization from the Chilean Finance Ministry.

Projects that have received VAT exemption must not generate any form of revenues (taxed, untaxed, or exempt) for at least two calendar months since:

The entry into the country or acquisition in Chile of the capital goods for which the VAT exemption is requested.

6 Article 12, letter B), No. 10 of the VAT Law.



The issuance of the environmental qualification resolution issued by the Environmental Assessment Service “SEIA” (by its Spanish acronym); or

The granting of the concession for the onerous use of land granted by the Ministry of National Assets.

2.2) VAT Refund on Acquisition of Fixed Assets:

The VAT Law⁷ provides a special mechanism for reclaiming remaining tax credits by VAT taxpayers and exporters. These credits originate from the purchase of tangible or intangible assets intended for inclusion in fixed assets, or from services that contribute to their value. To qualify, the surplus credit must accrue over two consecutive tax periods. Importantly, the two-period calculation begins from the first month exhibiting a surplus and subsequent investment in fixed assets. Applicants must submit requests to the SII, which has 20 days to respond; failure to respond results in automatic approval (positive silence).

3) Municipal Tax:

The municipal license tax typically applies to the taxpayer’s fiscal assets, calculated at rates ranging from 0.25% to 0.5%, determined by the specific municipality. There is a cap set at 8,000 UTM⁸.

4) Stamp Tax:

Foreign loans incur stamp duty at a rate of 0.066% per month or a fraction thereof, from disbursement to maturity date, with a maximum of 0.8%. Foreign loans without a set maturity date or payable on demand incur a rate of 0.332%. Domestic loans undergo the same taxation, provided they are covered by a documented credit transaction.

BUSINESS STRUCTURES AND FINANCING

Business structures

Most foreign investors opt to establish a stock company, a limited liability partnership, or a branch office in Chile. Stock companies offer flexibility in incorporation and provisions and allow greater importance to agreements between parties. There are also companies governed by the Mining Code, the most common being contractual mining companies. These require at least two partners and the contribution of at least one mining concession, with issued shares established through a public deed.

⁷ Article 27 bis of the VAT Law

⁸ Equivalent to approximately US\$ 618,936. The “UTM”, or *Unidad Tributaria Mensual* (Monthly Tax Unit) is another monetary unit indexed yearly to inflation. As of December 2023, 1UTM amounts to Ch\$ 64,200 (approximately US\$73).



Financing

While project finance emerged as a viable option for financing large-scale mining projects, the challenges faced by mining companies have spurred exploration of alternative funding methods. Metal royalty and streaming transactions have thus become increasingly popular, giving rise to a burgeoning industry that has gained considerable traction globally.

Royalty transactions involve royalty companies providing an upfront payment to mining company operators. In return, they receive a long-term right to a percentage of the revenues from mineral sales, after certain costs are deducted.

Streaming transactions entail streaming companies paying the purchase price upfront, thereby supplying necessary funding to mining company operators. In exchange, they receive a percentage of the metal to be produced over the long term, which could range from a couple of decades to the entire lifetime of the mining project.

The primary distinction lies in the nature of the transaction: royalty agreements involve the acquisition of a portion of the mine's revenues, while streaming transactions entail the physical purchase of future mine production. In essence, the former is akin to a revenue-sharing arrangement, while the latter is a straightforward purchase and sale agreement⁹.

Mining concessions can be mortgaged and, in general, be subject to any agreement.

RESTRICTIONS AND LIMITATIONS

Mineral production

Chilean law mandates that major copper producers, those exceeding 75,000 tons per year, set aside a portion of their production for domestic industrial consumption¹⁰. The specific quantities of copper to be reserved are established by the Chilean Copper Commission.

9 Kari MacKay & Mark T. Bennett, "Under the Rocks Are the Words: How a Metal Purchase Agreement Revolutionized Alternative Financing and Launched the New Majors—A Look Back at the First Decade of Metal Streaming Transactions," 60 Rocky Mt. Min. L. Inst. 16-1 (2014).

10 Law 16,624.



ENVIRONMENT, HEALTH & SAFETY AND LOCAL COMMUNITIES

Legal framework

The Chilean Constitution ensures the right to reside in a pollution-free environment and empowers the law to impose specific limitations to safeguard this right and protect the environment.

The main environmental regulations applicable to the development of environmental projects or activities in Chile are the Environmental Law¹¹; the Environmental Assessment Service Law¹², and the Environmental Impact Assessment System¹³.

The main agencies overseeing environmental matters are the Chilean Ministry of Environment, the Environmental Assessment Service, the Environmental Superintendence and the Environmental Courts (*Tribunales Ambientales*).

The Environment Ministry (*Ministerio del Medio Ambiente*) is responsible for assisting the Chilean President in the design and implementation of environmental policies, plans, and programs. It enforces the protection and conservation of habitat, biological diversity, and water and other natural resources.

The Environmental Assessment Service (*Servicio de Evaluación Ambiental*) manages the Environmental Impact Assessment System, an instrument which determines whether an activity or project complies with current environmental regulations. Legislation defines if a full environmental assessment is required¹⁴. The procedure (explained in detail below) concludes with an Environmental Approval Resolution¹⁵.

The Environmental Regulator (*Superintendencia del Medio Ambiente*) ensures adherence to environmental standards, conditions, and measures outlined in Environmental Approval Resolutions. He conducts inspections, controls, measurements, and analyses to monitor compliance. He also imposes sanctions in cases of infringements of Environmental Approval Resolutions and other environmental laws and regulations.

Given the complexity of the Environmental Impact Assessment System, various state agencies with environmental jurisdiction actively participate in the evaluation of projects submitted to the Environmental Assessment Service. These agencies provide input, observations, and may request additional information during the assessment process.

11 Law No. 19.300 of General Basis of the Environment.

12 the Law No. 20.417 which creates the Ministry of the Environment, the Environmental Assessment Service, and the Superintendence of the Environment.

13 Supreme Decree No. 40/2012 issued by the Ministry of the Environment of Chile.

14 Set forth in Article 10 of Law 19.300 and Article 3 of Decree No. 40/2013.

15 “RCA” for its acronym in Spanish.



Some of the agencies that participate in the assessment process are:

Regional Secretariat of the Ministry of Health.

Livestock and Agricultural Service (*Servicio Agrícola y Ganadero* - SAG).

General Water Bureau (*Dirección General de Aguas* - DGA).

National Mining and Geology Service (*Servicio Nacional de Geología y Minería* - SERNAGEOMIN”).

National Forest Corporation (*Corporación Nacional Forestal* - CONAF).

National Monuments Council (*Consejo de Monumentos Nacionales* - CMN).

Superintendence of Sanitary Services (*Superintendencia de Servicios Sanitarios* - SISS)

General Direction of Maritime Territory and Merchant Navy (*Dirección General del Territorio Marítimo y de Marina Mercante* - DIRECTEMAR).

In 2023, the Biodiversity and Protected Areas Service Law¹⁶ was enacted with the primary goal of conserving biological diversity. It aims to achieve this by preserving, restoring, and sustainably using species and ecosystems, with a focus on those of significant environmental value or those in need of conservation due to threats or degradation. Consequently, a new agency specialized in the management and conservation of the country’s biological diversity and in the management and administration of protected areas was created. The Biodiversity and Protected Areas Service aims to contribute to the work of other environmental agencies.

Environmental Permitting Process

In the mining industry, environmental regulations mandate that certain projects undergo an environmental impact assessment before implementation. Specifically, the Environmental Law requires mining development plans, including coal, oil, and gas projects, to undergo assessment and obtain an Environmental Approval Resolution prior to construction and execution. Compliance with various regulations related to emissions, waste management, safety, and other aspects is also required.

A mining project must undergo the Environmental Impact Assessment System, either through an Environmental Impact Statement (*Declaración de Impacto Ambiental – DIA*) or an Environmental Impact Study (*Estudio de Impacto*

16 Law No. 21.600 which Creates the Biodiversity and Protected Areas Service and the National System of Protected Areas.



Ambiental – EIA), depending on the magnitude of the environmental impacts¹⁷. The main distinction between DIAs and EIAs is that the latter is required for projects with significant adverse environmental impacts. Consequently, the project holder must propose appropriate mitigation, compensation, and remediation measures.

Furthermore, EIAs always include a citizen participation phase (*Participación Ciudadana – PAC*) to ensure informed community involvement in the environmental assessment of projects or activities. During the Environmental Impact Assessment process, other public agencies may also participate, offering comments and observations within their respective areas of expertise and requesting additional information as needed.

The Environmental Assessment Service compiles all inquiries, clarifications, or amendments requested by government agencies into a document called the Consolidated Report of Clarifications, Rectifications, or Expansions (ICSARA). Once issued, the applicant must respond by submitting an Addendum, which addresses the observations and comments to enhance the EIA or DIA, as necessary. This Addendum becomes an integral component of the EIA or DIA, thus shaping the environmental assessment process.

A DIA should theoretically take 60 working days (extendable to 90), and an EIA 120 working days (extendable to 180). However, they usually take at least 6 and 12 months respectively, pending the submission of the addendum.

On completion an Environmental Approval Resolution (RCA) is issued. If the project is approved, the RCA will operate as a “global environmental permit” certifying that the specific project or activity complies with all applicable environmental requirements and regulations. The RCA also defines the specific environmental sectoral permits, known as (*permisos ambientales sectoriales*) or PAS, which are necessary for the project. These permits are designed to address specific environmental protection objectives¹⁸.

Closure and the remediation process

In 2012, legislation was introduced to regulate the closure of mining worksites and facilities¹⁹. As such mining projects are required to submit a Closure Plan to SERNAGEOMIN, which complies with the relevant Environmental Approval Resolution. Before commencing construction, each mining project must present this Closure Plan, outlining all the planned measures and activities for the closure process.

The Closure Plan aims to integrate and implement measures and actions aimed at mitigating the effects caused by extractive mining activities in the areas where they are conducted.

17 Set forth in Article 11 of Law 19.300 and Article 4 and onwards of Decree No. 40/2013

18 Environmental Sectoral Permits as regulated by Supreme Decree No. 40/2012.

19 Law No. 20,551.



The Closure Plan must be consistent with the mining permit approving the exploitation method. SERNAGEOMIN has 60 working days to respond to the request.

For mining projects with an extraction capacity exceeding 10,000 tons per month, the Closure Plan undergoes auditing every 5 years to ensure compliance with its obligations. Mining companies can also opt for voluntary audits to adjust or modify the Closure Plan. Based on audit results and SERNAGEOMIN inspections, adjustments or updates may be mandated. Mining companies must provide a compliance bond or guarantee to secure the Closure Plan's obligations, with the amount determined by estimating the present value of implementation and management costs.

The Closure Plan Law stipulates various financial instruments that serve as guarantees such as certificates of deposit and standby letters of credit. Mining companies are required to issue and deliver these guarantees to SERNAGEOMIN upon notification of the commencement of operations, and within two-thirds of the project's lifespan if it's under twenty years, or within fifteen years if the project's lifespan exceeds twenty years.

Once the Closure Plan is approved, strict compliance is mandatory for the mining company. Breaching or failing to adhere to the plan can result in fines of up to USD 68,800. If Abandonment of the Mining Work or its facilities is concealed, fines can amount to USD 688,000.

The Closure Plan should be completed before the conclusion of mining operations to ensure that physical and chemical stability is achieved by that time. However, the law allows for a temporary cessation of mining operations for up to two years. During this period, the mining company is not required to execute the Closure Plan, but it must submit a temporary closure plan to SERNAGEOMIN for approval. This plan aims to maintain the facilities and prevent any adverse effects. Nevertheless, bond guarantees must remain in force during this temporary closure period.

SERNAGEOMIN is responsible for the regulatory and oversight functions regarding Closure Plans:

- (i) Supervising the fulfillment of obligations outlined in the Closure Plan.
- (ii) Imposing penalties for violations of mining regulations.
- (iii) Executing the bonds or guarantees in case of breach or non-compliance with the Closure Plan.
- (iv) Certifying the fulfillment of the Closure Plan and releasing the bonds or guarantees once obligations are met.

Health and Safety

The Mining Safety Regulations²⁰ are pivotal for ensuring health and safety in mining operations. They encompass various obligations for miners concerning works, machinery, equipment, and facilities.

20 Supreme Decree N°132 of 2004.



The Supplementary Regulation On Basic Sanitary And Environmental Conditions in Workplaces²¹ controls the sanitary conditions in every workplace (noise, hazardous substances management, ventilation, industrial, hazardous and household waste, etc.), including mining activities.

The principal regulatory authorities involved are the Regional Office of the Health Ministry (Secretaría Regional Ministerial or “SEREMI”) and SERNAGEOMIN.

Industrial Relations

The Chilean Constitution ensures the freedom to work for all individuals and prohibits discrimination based on anything other than personal capacity and suitability. However, certain cases may require Chilean nationality or specific age limits as per the law. Employers also have the right to freely choose their employees based on personal capacity and suitability. Moreover, employees are guaranteed the freedom of association and the right to unionize.

The Labor Code is the cornerstone of labor regulation in Chile. It encompasses a wide range of statutory entitlements for employees, which include: the minimum wage, limitations on working hours, provisions for sick leave, maternity rights, protection against termination and discrimination, and violations of fundamental rights.

The Labor Code²² also requires that the employer must adopt all necessary measures to effectively protect the health and safety of its employees. Other regulations regarding health and safety include the Occupational Accidents and Diseases Law²³, and the regulation regarding the employer’s obligation to provide a Health and System in the workplace²⁴. The principal regulatory authorities are the Labor Office and the Labor Ministry.

The Labor Code allows employees to form Trade Unions within their company. The unions lead collective bargaining procedures by submitting collective employment agreement offer to their employers, thus triggering a formal negotiation procedure and if appropriate, the right to strike. Union delegates are protected from termination during their terms in office, and union members are protected during any formal negotiation.

The principal regulatory authorities are the Labor Inspectorate and the Labor and Social Security Ministry.

Local community issues

In Chile, there are no laws regarding corporate social responsibility; usually each company makes its own policies or commitments.

21 Supreme Decree N° 594/2000.

22 Article 184 of the Chilean Labor Code.

23 Law N°16,744.

24 Supreme Decree N° 76, which regulates the application of Article 66 bis of Law N° 16,744.



Nevertheless, the Indigenous Law²⁵ and Convention Number 169 of the International Labor Organization (ILO) of 1989²⁶, set out a special status for indigenous lands and natural resources, and make their acquisition and exploitation subject to various obligations and limitations.

According to the Indigenous Law, indigenous land may not be freely sold and any sale and/or the subsequent imposition of a lien (e.g., an easement) on the indigenous land requires prior approval of the Indigenous Development National Corporation (Corporación Nacional de Desarrollo Indígena - CONADI). Therefore exploration or exploitation projects may be slowed down if such negotiations are not managed on a timely basis.

ILO Convention Number 169 concerning Indigenous and Tribal Peoples of independent countries, and the United Nations (UN) Declaration of Rights of Indigenous People adopted in 2007, establish basic principles in these matters. These include the recognition of indigenous and tribal people, the right to self-determination and autonomy in relation to their culture, religion, education, communications, health, and several other concerns.

According to ILO Convention Number 169²⁷ if a project or activity is located on indigenous lands, indigenous development areas, or in the vicinity of groups of indigenous peoples, the Environmental Assessment Service will initiate an Indigenous Consultation Process (Proceso de Consulta Indígena – PCPI). The impact of the project, and measures to be applied, will be discussed to obtain the consent of the affected indigenous community.

INTERNATIONAL MINING TREATY

Chile has signed several treaties to promote mining activities with foreign countries; however, the only one that includes the regulation of mining activity and property was signed with Argentina in 1997²⁸.

The treaty aims to enable and streamline the development of mining projects situated on or near the borders of both countries. It establishes a legal framework to provide stability for such projects, addressing various legal and logistical challenges related to the movement of people and equipment across borders. Additionally, it grants investors from one country access to mining properties in the other country.

It outlines specific guidelines for tax, labor, immigration, and customs to simplify mining operations along the border. However, other factors like labor, health, safety, and environmental regulations defer to local laws, potentially leading to discrepancies due to varying requirements and standards in each country.

25 Indigenous Law N° 19,253 of 1993.

26 Ratified by Chile in September 2008 and became enforceable in September 2009.

27 Complemented by Supreme Decree 236 of the Ministry of Foreign Affairs which Promulgates Convention No. 169.

28 Mining Integration and Complementation between Chile and Argentina Treaty.



UPDATE AND TRENDS

(I) The mining industry recognizes the significance of engaging with and involving local communities as integral to its operations. This emphasis on community relationships underscores the need to balance mining interests with values such as transparency and ethical conduct in social programs, labor practices, and environmental compliance. Key concepts driving industry strategies include prevention, anticipation, and participation, extending beyond regulatory compliance to proactive engagement and collaboration with local stakeholders.

(II) The water scarcity in Chile's northern region, where much of the mining industry operates, has compelled the exploration of alternative water supply sources beyond relying solely on existing water rights or pursuing new ones through permit applications.

As such several mining companies have started to use seawater in their operations, or fresh water obtained from desalinization plants. As a consequence, more and more mining companies are considering the construction of their own desalination plants.

According to a recent report commissioned by Cochilco titled "Projection of water demand in copper mining, period 2022-2033," the Antofagasta, Tarapacá, and Metropolitan regions are expected to rely on seawater for over 80% of their water supply by 2030. Consequently, Chile has emerged as one of the leading countries in desalination capacity and potential development in recent years.

(III) The heightened requirements for obtaining environmental and regulatory permits have elevated this aspect to a become perhaps the most critical factor in today's landscape.