



IBARRA DEL PASO
GALLEGO

LITHIUM IN LATIN AMERICA

CURRENT SITUATION AND REGULATION

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A study, analysis and compilation prepared
by Ibarra del Paso Gallego and allies for:



Electro Movilidad
Asociación

México



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INTRODUCTION



This legal memorandum (“Memorandum”) is prepared in order to provide EMA Electro Movilidad Asociación, A.C., with a comprehensive overview of the regulation of lithium in certain countries of Latin America (“LATAM”). The rapidly expanding lithium market has prompted various regulatory responses throughout the region, and this Memorandum seeks to outline and summarize these regulations in a clear and concise manner, thus informing the legal framework governing lithium exploration, extraction, exploitation, commercialization and use (“E&C Activities”) within certain countries of LATAM.

In conducting and preparing this Memorandum, we have engaged the services and expertise of multiple local law firms throughout LATAM, who have kindly provided us with crucial information and insight. Their valuable assistance has been instrumental in compiling this overview, ensuring that it is not only reliable but also relevant and representative of the legal landscapes in the different jurisdictions in the region.

This Memorandum provides succinct responses to key inquiries concerning lithium regulatory affairs in LATAM. Specifically, it addresses the following:

- The extent to which the private sector can engage in the lithium market;
- The role of the private sector in E&C Activities;
- The nature of government participation in this sector;
- The legal framework governing E&C Activities including legal structures, conditions or limitations imposed; and
- Potential constraints related to communal or agrarian land use within the relevant territories.

The content of this Memorandum serves strictly as a board summary and is meant for informational purposes only. It is not intended as legal advice, nor should it be the only basis for decision-making. Given the complex and frequently changing nature of lithium-related laws in LATAM, we highly recommend seeking counsel from a qualified legal professional prior to any decision-making based on the information contained within this document.

Lastly, please note that at the end of each section in this Memorandum, there are underlined words in color blue and/or these two icons  (Table of Contents) or  (Map). These serve as links that allow you to navigate to the relevant section of Memorandum, return to the map of LATAM, or go back to the index of this Memorandum, without needing to scroll through every page of the Memorandum.



PART A

INTRODUCTORY FRAMEWORK

The lithium industry in LATAM has emerged as a significant player in the global economy, driven by the increasing demand for lithium-ion batteries in various industries. LATAM countries possess vast reserves of lithium, a valuable metal used extensively in the production of batteries for electric vehicles (“EVs”), portable electronics, and renewable energy storage. This overview will delve into the economic significance of the lithium industry in LATAM, major players, the countries involved and future prospects and challenges for LATAM:

1.- **Economic significance.** LATAM is home to the world’s largest lithium reserves [1], with Bolivia, Argentina, and Chile collectively holding over 60% of the world’s known lithium resources. This makes the region a key player in the global lithium industry, which is a key component in the manufacturing of batteries for EVs energy storage systems, and other electronic devices. As the global demand for Evs and renewable energy solutions continues to rise, LATAM’s lithium reserves have become increasingly valuable.

2.- **Major players.** The major players in the lithium industry in LATAM are the governments of Bolivia, Argentina, and Chile, as well as a number of multinational corporations:

·Bolivia has one of the largest lithium reserves in the world, primarily located in the Salar de Uyuni. Historically, the Bolivian government maintained strict control over lithium resources, nationalizing the industry in 2008. However, due to limited technical expertise and financial resources, Bolivia has faced challenges in developing its lithium reserves.

- Argentina possesses significant lithium deposits, particularly in the region known as the “Lithium Triangle” which includes the province of Salta, Jujuy, and Catamarca. Argentina’s lithium industry has experienced significant growth in recent years attracting foreign investment and partnerships with international corporations.
- Chile has been a major player in the global lithium market for decades. It hosts the world’s largest lithium reserves in the Salar de Atacama, where lithium is extracted through brine operations. Chile’s lithium industry has benefited from stable mining policies, well-established infrastructure, and partnerships with international companies.
- Multinational corporations: i) Albemarle Corporation (Chile); ii) Sociedad Química y Minera de Chile (SQM - Chile); iii) Livent Corporation (USA - Argentina); and iv) Ganfeng Lithium (Chinese). These companies are involved in all aspects of the lithium industry, from exploration and mining to processing and manufacturing.

3.- **Other countries involved.** Apart from the major players mentioned above, other countries in LATAM have also shown interest and potential in developing their lithium resources. These countries include:

- Mexico is 9th in the world in lithium reserves (1.7 million tons) having reserves in Baja California, San Luis Potosi, Sonora and Zacatecas.



[1] According to the U.S. Geological Survey, the identified lithium resources in LATAM are distributed as follows: i) Bolivia: 21 million tons; ii) Argentina: 19 million tons; iii) Chile: 9.8 million tons; iv) Mexico: 1.7 million tons; v) Peru: 880,000 tons; and vi) Brazil, 470,000 tons.

However, there is currently no commercial and operational mining exploitation of lithium in Mexico. In 2022, a significant legislative reform related to lithium was enacted implicating that lithium can no longer be freely concessioned to private entities; instead, the E&C Activities of lithium are now exclusively reserved for the Mexican State.

- Brazil has significant lithium reserves, primarily located in the Minas Gerais and Ceará states. The country has been exploring opportunities to develop its lithium industry to support the growing demand for EV.
- Peru has identified lithium reserves in its southern region and has shown interest in attracting investments to develop its lithium resource.

4.- **Future prospects and challenges.** The prospects for lithium in LATAM are promising. According to a World Bank report, by 2050, lithium production is forecast to increase by 488% compared to 2018. The ongoing transition to a low-carbon economy and the increasing demand for lithium-ion batteries is expected to drive substantial investment in lithium mining, extraction, and refining projects across the region. The establishment of strategic alliances and joint ventures between Latin American countries and international companies has further solidified the region's role in the global lithium supply chain. However, it is essential to consider potential challenges associated with E&C Activities, including:

- **Geopolitical and Socio-environmental Concerns:** the extraction and production of lithium often involve significant environmental impact, including water usage, habitat disruption, and potential pollution. Local communities and environmental activists raise concerns about the sustainability of lithium mining and its effects on ecosystems, water resources, and indigenous populations.
- **Investment and Infrastructure:** developing lithium projects requires significant capital investment. Many Latin American countries lack the necessary infrastructure, such as transportation networks and energy supply, to support large-scale lithium mining and production. The cost of building the required infrastructure can be a barrier to entry for some companies.
- **Regulatory Frameworks and Permitting:** proving clear and stable regulatory frameworks for the lithium industry is crucial for attracting investment and ensuring responsible mining practices. Delays in the permitting process or inconsistencies in regulations can hinder the development of lithium projects.



PART B

KEY POINTS

1.- In most LATAM countries, the E&C Activities are open to foreign investment. However, notable exceptions exist in Bolivia, El Salvador, and Mexico. In these nations, private sector participation particularly in the exploration, exploitation and use of lithium is severely limited. These jurisdictions maintain exclusive state control over these activities.

2.- The legal framework governing lithium is not specific; rather, it falls under the jurisdiction of each country's individual mining laws, where it is categorized as a mineral. To engage in the exploration and exploitation of lithium in LATAM, one must secure various authorizations, licenses, and/or concessions from the respective States. This process entails the payment of specific taxes and royalties to these States.

3.- To engage as a private entity in lithium-related operations, it's generally mandated to incorporate a domestic corporation in LATAM. Establishing this local corporation is the prerequisite for securing necessary approvals, permits, and concessions associated with such operations. However, it's important to consider that certain limitations may apply in each country, including prohibitions pertaining to certain geographical regions (restricted zones) and caps on the proportion of foreign investment, among other considerations.

4.- The majority of permits, licenses, and concessions related to engaging in activities associated with lithium in LATAM do not confer ownership rights or real property rights. To obtain ownership rights over these properties, separate procedures must be followed, such as entering into contractual agreements, such as purchase and sale, leasing, or usufruct agreements. This requires engaging in direct negotiations with each individual property owner.

5.- In addition to fulfilling the essential prerequisites for obtaining authorizations, licenses, and/or concessions to engage in E&C Activities of lithium as a private entity, as required by the relevant regulations in each LATAM country, it is imperative to acquire multiple permits and authorizations concerning environmental and social factors. These may include securing public consultation processes specifically in regions inhabited by indigenous communities.



PART C

COMPARISON & CONTRAST BETWEEN COUNTRIES

Country	Open to Foreign Investment	Private Sector Participation (License and/ or concession)	Specific regulation on lithium investment	Occupation rights and consultation
Argentina	✓	✓	✗	✓
Bolivia	✓	✗	✓	✓
Brazil	✓	✓	✗	✓
Chile	✓	✓	✓	✓
Colombia	✓	✓	✗	✓
Costa Rica	✓	✓	✗	N/A
Dominican Republic	✓	✓	✗	✓
Ecuador	✓	✓	✗	✓
El Salvador	✗	✗	✗	✗
French Guiana	✓	✓	✗	✓
Guatemala	✓	✓	✗	✓
Guyana	✓	✓	✗	✓
Honduras	✓	✓	✗	✓
Mexico	✓	✗	✗	✓
Jamaica	✓	N/A	✗	N/A
Panama	✓	✓	✗	✓
Paraguay	✓	✓	✗	✓
Peru	✓	✓	✗	✓
Trinidad & Tobago	✓	✓	✗	✓
Uruguay	✓	✓	✗	✓



[2] All those activities related to the chain production of lithium were declared by the government to be under full state control through the public entity incorporated for that matter. In this sense, lithium is open to foreign investment under specific conditions to be defined by such public entity.

[3] Idem.

PART D

COUNTRY-SPECIFIC REGULATIONS



ARGENTINA

Law firm: Bruchou & Funes de Rioja

Partner/Associate: Sergio Arbeleche & Eduardo Maella

1.- **Is lithium open to foreign investment?** Yes, Lithium is open to foreign investment. There are no restrictions based on nationality for the acquisition and operation of mining rights.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Acquisition of mining rights, maintenance, and negotiation is all regulated under Argentina Mining Code (AMC), which is a federal legislation applicable in all provinces, by the local provincial authorities. In addition, each province may issue provincial procedural regulations further regulating the AMC.

The AMC mining regulations operate on a "first come, first served" basis. This means anyone can stake a mining claim over an unoccupied area without having to demonstrate any technical, economic, or financial ability. As long as the claim application is properly submitted and the necessary procedures are followed, the exploration rights, known as "cateos", or mining concessions, will be granted to the first individual to make the claim.

Exploration rights (permits) are given for a specific duration and are subject to periodic reductions in the area available for exploration. In contrast, mining concessions, which refer to exploitation rights, are granted indefinitely as long as certain conditions and obligations are met. These requirements include the execution of statutory works, the performance of surveys, the payment of an exploitation fee, the submission and implementation of an investment plan, and avoiding a period of inactivity exceeding four years without the submission of a plan for reactivation.

A "cateo", another form of exploration permit, can be converted into a mining concession before its expiration. This is accomplished by filing a discovery claim within the cateo's area. Additionally, mining easements, which allow for necessary surface land activities to support mining operations, can either be negotiated with the owners of the surface land or requested from the mining authority.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** Argentina operates as a federal country, and as per the constitution, natural resources belong to the provinces where they are located. Thus, the provincial authorities manage the granting and regulation of mining rights.



Additionally, the provinces are responsible for the environmental assessments and approvals needed for mining. However, the specific provincial entity in charge of these responsibilities can vary by province. Most commonly, provinces assign "mining secretariats" within the provincial executive branch to manage mining rights and obligations. In some instances, a special mining court within the judicial branch might be appointed instead.

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term governmental duties or special taxes). In simplified terms, foreign companies interested in acquiring land rights may face certain nationality-based restrictions under the Rural Land Law. However, it's important to note that these restrictions do not typically impact 'first category' mining operations, such as lithium extraction. This is because mining rights and land ownership are considered separately.

A company doesn't need to own the land to conduct mining operations. They can obtain mining easements, which give them priority rights to use the surface land for mining purposes under specified conditions. Importantly, these mining easements are not subject to the limitations set by the Rural Land Law. Thus, foreign companies can conduct mining activities without purchasing the land, navigating around the restrictions of the Rural Land Law.

The key obligations associated with securing and maintaining a mining operation, which could involve an exploration permit (cateo), mining concession (exploitation rights), or mining easements, are as follows:

- **Payment of associated fees:** These may pertain to application, administration, or renewal processes;
- **Securing approval of the permit or concession:** The appropriate authority must grant the exploration permit or mining concession, which enables legal operations;
- **Payment of taxes:** There are federal, provincial, and municipal taxes imposed on mining activities;
- **Provincial royalty payments:** These are due based on the 'mine mouth' value for such purpose the calculations are made based on the first commercial sale deducting a series of costs set forth under Mining Investment Law which has been adhered by the Province; and
- **Agreement on surface land usage:** If your operations affect surface land, it is essential to negotiate an agreement with the surface land owner, which may involve paying them an indemnification.

5.- What are the ordinary structures (contracts and corporate) for the exploitation of lithium? Land- leases, incorporation of an entity in the country? Foreign companies need to be locally registered and have a local subsidiary mainly because the acquisition of mining rights entails the performance of regular activities, and the performance of such sort of regular activities by foreign companies require that such foreign company have either a local branch or a local subsidiary.



As opposed to Chile there are no restrictions for the acquisition of lithium mining concessions and as opposed to Bolivia there are no requirements to have a refinery or an added value associated project to own and acquire a mining right.

Furthermore, if the right is not directly acquired over an unclaimed area, but instead purchased from an existing mining right holder (who may, for example, own mining concessions not yet in production), the standard form of contract used is an exploration agreement with the option: i) execute an asset or share purchase; ii) establish a joint venture; or iii) obtain exploitation rights. Generally, these types of contracts include provisions for contractual royalties to be paid to the assignor.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? Please see above.

7.- Additional comments, references or links. There are other potential aspects worth considering that may affect investment and operations such as:

- Minimum environmental protection standards laws and bills (including glacier law, and wetlands protection bills);
- Provincial unsettled border issues (duplication of title granted by different provinces);
- Environmental protected areas;
- Environmental conditions arising from approval which may impose limits on production;
- Public participation process for environmental approvals;
- Aboriginal consultation OIT169;
- Current Fx restrictions for the inflow and outflow of foreign currency (probably to be amended by next administration). Currently some exceptional regimes for new investments have generated some facilitations to reduce the level of some of the FX restrictions (such as Decree 234/2021) and
- Aspects of the promotional mining regime and facilitations arising from the Mining Investment Law that have been breached by the federal government.





Law firm: Dentons Guevara & Gutiérrez S.C.
Partner/Associate: Mauricio Dalman

1.- Is lithium open to foreign investment? As of 2017, all those activities related to the chain production of lithium were declared by the Bolivian Government to be under full state control through the public entity incorporated for that matter: Bolivian Lithium Deposits (YLB, for its acronym in Spanish). YLB, if needed, has the possibility of launching international tenders to carry out specific activities with the participation of foreign companies. As an example, in 2021, YLB decided to launch a bid for the direct extraction of lithium. In light of the previous, it may be concluded that lithium is open to foreign investment under specific conditions to be defined by YLB.

2.- How can private parties apply for explore, exploit, and produce lithium? Concession, permit, license? Unfortunately, no private party is authorized to explore, exploit, and produce lithium in Bolivia as said element is found in specific areas declared as “strategic and reserved for exploitation by the State” (Pastos Grandes, Uyuni salt flat, etc.).

Under Law 928, dated April 2017, only YLB is responsible for conducting the prospecting, exploration, exploitation, concentration, installation, implementation, start-up, operation, and management, as well as the industrialization and commercialization of lithium in Bolivia.

Under this regime, subsequent process such as semi-industrialization, industrialization and waste processing of lithium may be executed by means of a contract of association, (similar to a joint venture agreement) to be entered into between national and/or foreign private companies and YLB. Such an agreement would allow private parties a mining right to execute the specific activity, but this is scenario is not yet clear due to lack of regulation.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? In general, the authorization to conduct mining activities in Bolivia (in the form of mining rights) is formalized through mining contracts before the Jurisdictional Administrative Mining Authority (AJAM, for its acronym in Spanish). Said regime, however, does not apply to lithium-related activities given its strategic nature under the Mining and Metallurgy Law 535 (Law 535).

Despite the previous, the full control vision of Bolivia’s government may change through the years. Tenders launched by YLB provide that YLB will not be able to take full responsibility to develop the lithium industry and the reason why it is seeking for advanced technology. As Law 928 allows the subscription of a contract of association, we believe that the agreement will grant private parties a mining right which would have to be obtained and formalized before the AJAM.



4.- What are the conditions or restrictions for investing in Lithium? (threshold on private / foreign investment? contracts, concessions, duration / term, governmental duties or special taxes). Investing in lithium in Bolivia will be under the requirements of YLB as it is the entity responsible for all activities related to the development of lithium; therefore, foreign companies need to be alert for international tenders to be launched in the future. As an example, the last tender process begun in May of 2021 and ended in June 2022. Six out of the eight companies that participated were selected for their technology, and in January of the present year CATL BRUNP & CMOC finally signed an agreement for the installation of two industrial complexes in Uyuni and Copasa salt flats.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country? As lithium's exploitation is restricted to full control by YLB, there are no ordinary corporate structures in Bolivia. However, outside lithium, to exploit minerals or to execute any other mining right, a company must have its own legal personality and shall be organized in any of the following industries recognize by article 369 of the Bolivian Constitution: **i)** State-Owned Mining Industry; **ii)** Private Mining Industry; and **iii)** Mining Cooperatives.

As explained before, the ordinary contract structure will be under an association agreement with the State, which does not include the exploitation of lithium. In addition, any mining right does not grant ownership or possession rights as natural resources are property of the Bolivian State/people. Hence, article 93 of Law 535 prohibits holders of mining rights to transfer, sell, or mortgage them and to grant leases over the mining areas.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? Article 113 of Law 535 states that any private party that was granted a superficial mining right will maintain its right as long as it was obtained before the granting of a property title over communal lands of origin (formerly known in Bolivia as Indigenous Territories of Peasant Origin) or agrarian lands.

7.- Additional comments, references, or links. The scenario of full control of the State over lithium could vary if a private party has a pre-constituted right that was granted before Law 535, which was enacted in 2014. Law 535 provides that the State will recognize any mining rights previously acquired by private owners or public companies, provided they comply with the new regime of administrative contracts (Art. 94-I). However, given the strategic nature of lithium, we consider that the recognition of pre-acquired mining rights in new operations would only be held if they are eventually approved by the Legislative Assembly and turned into Supreme Decrees.

Finally, we attached a link to YLB website in case any international tender is launched: <https://www.ylb.gob.bo/>.





Law firm: Dias Carneiro Advogados

Partner/Associate: Paulo Roberto M. de Toledo Leme

1.- **Is lithium open to foreign investment?** Yes. As a rule, foreigners may invest in Brazil and in the mining sector. We note that if such foreign investor intends to be the holder of an exploration authorization or mining concession (as described in item 2 below), it shall incorporate a Brazilian subsidiary. However, non-residents, for example, may be subject to certain regulatory restrictions, such as the inability to control mining activities located within the Brazilian border zones and the limitations on the acquisition and/or lease of rural property as further described in item 6 below.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** According to Decree No 9,406/2018, before carrying out mineral exploration or mining activities in Brazil, a mineral exploration authorization is required and shall be requested before the National Mining Agency (ANM). Upon completion of the research and subject to approval by ANM of the presented results, one may request a Mining Concession within one year. If the person that explored the area fails to do so, ANM will be responsible for declaring, by means of a public notice, the availability of the researched reserves, and another party may request a concession to exploit the reserves.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** As a rule, regulatory authorizations shall be requested before ANM. In addition, environmental licenses must be obtained. In this regard, environmental regulation in Brazil is carried out by a state-level agency, which may have multiple offices, one for each region of the state.

4.- **What are the conditions or restrictions for investing in Lithium? (Threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** In addition to the abovementioned conditions, there shall be arrangements over the surface rights of the land to be explored as well as proof of financial and technical capacity. The holder of the concession has several reporting obligations towards ANM, and the works are subject to inspection by the agency. The mining concession itself is granted for an indeterminate period of time, and it is linked to the depletion of the reserves. Further, under Brazilian law, mineral resources (whether known or unknown) are owned by the federal government and as such, concession holders must pay a royalty called CFEM (Compensação Financeira pela Exploração de Recursos Minerais) on the revenues from the sale of minerals extracted to the federal government. The mining activities and related operations are also subject to other federal and state taxes, which would vary according to the location of the mine and activities performed.



5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? Any company that wishes to hold an exploration authorization or a mining concession in Brazil shall incorporate a Brazilian subsidiary company and/or special-purpose companies. These will be the entities that will be granted a concession by ANM. Land arrangements should also be in place, subject to the limitations described in item 6 below.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation?

Yes, Brazilian law establishes restrictions and limitations regarding the acquisition and lease of rural property by foreign companies or foreign-controlled Brazilian companies. As a rule, the existence of restrictions for the acquisition or leasing of rural real property by foreign entities depends on the property's size, however, projects to explore rural properties usually exceed the maximum allowed. Due to such restrictions, the granting of the in rem right to use or in rem surface rights over rural real properties has become a common alternative for structuring projects subject to the restrictions described above, being certain that the applicability of each institute must be observed on a case-by-case basis. Additionally, the Brazilian legislation provides special restrictions to mining activities by foreign-controlled companies within areas located within 150km from the Brazilian border.

7.- Additional comments, references or links.

Brazil is looking to expand lithium production especially in the Jequitinhonha Valley in Minas Gerais, according to the government, which expects more than 15 billion reais (\$2.81 billion) in investments by 2030. On May 9, 2023, the government of Minas Gerais held a global launching for the "Lithium Valley" project. Please refer to the slide presentation prepared by the ANM regarding the project attached hereto as well as the links below.

<https://www.agenciaaminas.mg.gov.br/noticia/governo-de-minas-realiza-lancamento-mundial-do-projeto-vale-do-litio>

<https://www.gov.br/mme/pt-br/assuntos/noticias/mme-atua-para-garantir-ao-brasil-novos-investimentos-internacionais-com-o-litio-no-vale-do-jequitinhonha-mg>





Law firm: Carey

Partner/Associate: Juan Francisco Mackenna

1.- Is lithium open to foreign investment? The exploitation and processing of lithium, as a general rule, can only be undertaken by the Chilean State, whether directly or through State-owned companies, or by private entities regardless of their nationality, in the forms set out in the answer to the following question.

Exceptionally, the mining concessions constituted under the provisions of the former Mining Code (enacted in 1932 and in force until 1983), that were granted over lithium or other metallic substances listed in article 3 paragraph 1 therein, on or before January 1st, 1979, allow their holders, regardless of their nationality as well, to exploit lithium.

2.- How can private parties apply for explore, exploit and produce lithium? Concession, permit, license? Private entities, either Chileans or foreigners, can apply to the State for administrative concessions or lithium special operation contracts. It is likely that in such case, the State will call for a tender process in the area where the application has been made by the private entity.

There are, however, some salt flats that cannot be exploited whereas in others exploitation of lithium is under the control of Chilean State owned companies CODELCO and ENAMI, as explained in answer to question 4.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? Applications for administrative concessions or special operation contracts must be submitted before the Ministry of Mining, who will grant them upon the requirements and conditions set out, for each case in particular, by supreme decree of the President of the Republic of Chile.

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private / foreign investment? contracts, concessions, duration / term, governmental duties or special taxes). Restrictions have been referred to in previous answers, whereas conditions of administrative concessions and special operation contracts are set forth on a case-by-case basis, by Presidential supreme decree.

Also, the Government recently launched the National Lithium Strategy, which aims at strengthening State participation and involvement in lithium-exploitation projects through public-private partnerships. To that effect, and while the bill to create a National Lithium Company is submitted and discussed, State-owned mining companies CODELCO (National Copper Corporation) and ENAMI (National Mining Company) will be awarded special operation contracts where they already have mining projects in place (Salar de Atacama salt



flat), in which they will be able to decide the convenience to each project in particular of associating with private entities, maintaining State control.

In addition, such policy has entrusted State-owned mining companies CODELCO and ENAMI to initiate public tender processes to award special operation contracts for the exploration of lithium to private entities. If exploration results arising out of those contracts show potential, the contractor will hold a preferential right to associate with a State-owned company to undertake the exploitation stage of the relevant project. In projects deemed as of strategic value, the Chilean State will hold a majority stake in the partnership.

There are various specifics of this lithium policy that are yet to be defined. For instance, the meaning and scope of "strategic value", and the content and submission date of the bill that creates the National Lithium Company.

5. What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? Structures and permits have been referred to above. Note that to this date there are only two private companies who exploit and produce lithium products (SQM and Albemarle) through historical lease agreements over mining concessions entered into by and between those companies and CORFO (State agency that encourages economic production and development). Other than what the law and the recently announced lithium policy set out, as referred to above, there is not really an "ordinary structure" for these operations.

6. Are there communal or agrarian lands restrictions that affect private and/or foreign participation?

Salt flats, where lithium is exploited from in Chile, are public property. To undertake lithium exploration and exploitation, the relevant entity will need to obtain occupation rights (typically, mining easements) and engage with local communities - indigenous or not- surrounding the prospects, besides obtaining environmental permits.

7. Additional comments, references or links.

<https://www.carey.cl/en/chilean-government-announces-national-lithium-strategy/>





Law firm: Muñoz Tamayo & Asociados

Partner/Associate: Diego Muñoz Tamayo & Juanita Esguerra

1.- **Is lithium open to foreign investment?** Under Colombian regulations, foreign individuals and legal entities may submit proposals and enter into concession contracts to carry out investment operations on lithium, as long as they hold the necessary permits, licenses and concessions granted by the competent authorities and comply with legal and regulatory requirements, as will be explained below.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Pursuant to the Constitution and the Mining Code (Law 685 of 2001), the right to explore and exploit state-owned mines is obtained by means of a mining concession agreement, duly granted by the National Mining Agency (hereinafter "ANM", as per its acronym in Spanish) and registered in the National Mining Registry. The mining concession agreement grants the right to explore and exploit the minerals that are expressly mentioned in the contract.

Additionally, the mining concessionaire requires an environmental license to develop the works corresponding to the exploitation and production phase. Pursuant to Decree 2041 of 2014, compiled in Decree 1076 of 2015, the competent authorities to grant or deny an environmental license are the National Authority of Environmental Licenses (hereinafter "ANLA", as per its acronym in Spanish) and the Regional Autonomous Corporations (hereinafter "CAR", as per its acronym in Spanish), depending on the amount of projected production. On the other hand, the concessionaire does not require an environmental license to execute the exploration phase. However, it may require environmental permits if its activity is likely to affect natural resources.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** As stated above, in Colombia, the public agency to which the application for the concession agreement must be submitted and which may enter into this agreement with the concessionaire is the National Mining Authority - ANM. In turn, according to Decree 2041 of 2014, compiled in Decree 1076 of 2015, the competent authorities to grant or deny an environmental license for the development of works in the exploitation phase, depending on the amount of projected production, are (i) the ANLA and (ii) the CAR.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** Several legal sources, especially the Colombian Mining Code, regulate the relationships between the State and private parties concerning the activities of the mining industry in its different phases, and establishes the conditions and restrictions to the activities of the mining industry, which include the following:



- The concession agreement shall be entered into for the term requested by the proponent and up to a maximum of thirty (30) years, counted from the date of registration of the agreement in the National Mining Registry.
- Whoever has been sentenced for illicit exploitation or illicit exploration or exploitation of mineral resources, shall be disqualified from obtaining mining concessions for a term of five (5) years, and a judge shall impose this penalty in the judicial decision.
- Legal capacity requirements are provided to present a mining concession proposal and to enter into the corresponding agreement. Such capacity, as it refers to legal entities, either public or private, requires that their corporate object expressly and specifically includes mining exploration and exploitation. The foregoing is regulated by the general provisions on state contracting in accordance with Law 80 of 1993, which establishes that the persons considered legally capable under the provisions in force may enter into contracts with state entities.
- Finally, the concessionaire, before the final expiration of the exploration period (no longer than two years), must submit for approval of the granting authority or the auditor, the Program of Works and Exploitation Works to be annexed to the contract as part of the obligations and submit the environmental impact study demonstrating the environmental feasibility of such program. The provision establishes that, without the express approval of this study and the issuance of the corresponding Environmental License, the mining works cannot be initiated. Such license, with the restrictions and conditions imposed on the concessionaire, will be part of its contractual obligations.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? For the execution of the concession agreement, foreign legal entities must establish a branch, or a subsidiary domiciled in the national territory, in accordance with the provisions of the Colombian Code of Commerce (Decree 410 of 1971).

It should be noted that, in accordance with Article 18 of the Mining Code, foreign individuals and legal entities, as proponents or contractors of mining concessions, have the same rights and obligations as Colombian nationals. Therefore, the mining and environmental authorities may not, within the scope of their competences, demand additional or different requirements, conditions, and formalities, except those expressly indicated in the regulation.

Under the mining concession contract, the concessionaire obtains the right to explore and exploit the minerals found in the subsoil, which is owned by the State. In turn, for the use of the land that is located over the concession area, the Mining Code establishes that the landowner shall bear the constitution of an easement for the use of its property. The easement can be agreed upon conventionally with the landowner or through a judiciary order.



6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? To obtain a mining title (concession agreement), in addition to the solemnities established in the law (execution of the agreement and registration in the National Mining Registry) companies must verify that mining activities are permitted by the land-use plan in the area where the works are projected.

Additionally, companies must conduct a study of the titles on the land that will be acquired or leased in order to verify the ownership of the property upon which the project will be developed and to verify that the property is not involved in a land restitution process (for victims of the internal armed conflict).

On the other hand, pursuant to the 169 ILO Convention and internal regulation, if there are ethnic communities present (mainly indigenous and Afro-descendant) and in the case of projects that have a significant and direct impact on the collective territorial rights of the communities settled in the area, it is mandatory to conduct a prior consultation process.

7.- Additional comments, references or links.

- Law 80 of 1993. Whereby the General Statute of Contracting of the Public Administration is issued. October 28, 1993. DO: 41.094.
- Law 685 of 2001. Whereby the Mining Code is issued and other provisions are dictated. August 15, 2001. DO: 44,545.
- Law 1448 of 2011. Whereby measures of attention, assistance and comprehensive reparation to the victims of the internal armed conflict are issued and other provisions are enacted. June 10, 2011. DO: 48.096.
- Decree 410 of 1971. Whereby the Code of Commerce is issued. March 27, 1971.
- Decree 4134 of 2011 [Ministry of Mines and Energy]. Whereby the National Mining Agency, ANM, is created and its objective and organizational structure are determined. November 3, 2011.
- Decree 1076 of 2015 [Ministry of Environment and Sustainable Development]. Whereby the single regulatory decree of the environment and sustainable development sector is issued. May 26, 2015.
- Decree 2041 of 2014 [Ministry of Environment and Sustainable Development]. Whereby Title VIII of Law 99 of 1993 on environmental licenses is regulated. October 15, 2014.
- Constitutional Court of Colombia. Sentence T-769 of 2009 (M.P. Nilson Pinilla Pinilla; October 29, 2009).
- Constitutional Court of Colombia. Decision T-129 of 2011 (M.P. José Iván Palacio Palacio; March 3, 2011).
- Constitutional Court of Colombia. Decision T-766 of 2015 (M.P. Gabriel Eduardo Mendoza Martelo; December 16, 2015).



1.- **Is lithium open to foreign investment?** Yes. Although there is no regulation in Costa Rica directly addressing lithium exploration, extraction or processing, the Mining Code and its regulations set the overarching rules of all mining operations. Particularly, article 12 of the Mining Code allows foreigners (persons or entities) to be part of any of the phases within the mining supply chain.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** As pointed out in the article cited above, private parties can apply for the exploration and exploitation of mining materials as follows:

- **Exploration permit:** Anyone interested in exploring mining material shall previously obtain an exploration permit pursuant to the rules established in Title III of the Mining Code.
- **Mining concession:** To exploit and process mining reservoirs the authorizing administrative act is a mining concession, whose conditions are regulated by Title IV of the Mining Code.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** The administrative agency that processes and issues both the exploration permit and the mining concession is the “Dirección de Geología y Minas” (Department of Geology and Mines) also known by its acronym “DGM”. For both cases, the permit/concession is issued by the President under the recommendation of the DGM.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** There is no threshold on foreign investment, nor a minimum of local or public equity requirements. However, in the case of companies in which the percentage of Costa Rican shares is less than 50%, the National Banking System shall not finance such companies for an amount greater than ten percent of the total investment made, in accordance with article 70 of the Mining Code.

Among the main conditions of the mining concessions, we can find:

- **Costa Rican Domicile:** Foreign people and firms can request and obtain mining concessions. However, when they are not residents of the country, they must appoint a legal representative with sufficient power to acquire rights and obligations on behalf of their principal, and register the company, so that they can be awarded an exploration permit or a mining exploitation concession.



- **Duration:** Mining concessions may be granted for a term of up to 25 years, which may be extended for an additional 10-year period. Additional terms to those mentioned above require the approval of the Legislative Assembly (Costa Rican National Congress that is part of the Legislative Branch).
- **Renewal of concession** terms is common, and in fact is a right of the concessionaire expressly established in Article 33 of the Mining Code.
- **Mining fees:** Mine concessionaires must pay the following fees:
 - o Surface rights to the DGM: amounting to 3 base salaries per square kilometer of concession. The current base salary in effect until December 31, 2023, is 462,200.00 (equivalent to 857.63 USD).
- **Municipal Mining Taxes:** equivalent to two percent (2%) of the total amount paid monthly for sales tax, arising from the sale of metallic materials.
 - o Any other municipal tax that may be applicable depending on the Municipality where the operations may be located.
- **Other prior approvals:** Any transfer, lease, assignment, joint or indirect exploitation agreement must be previously approved by the DGM before entering effect.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? We are not aware of any lithium mining currently taking place in the country, however the regular structure for industrial mining operations is through the incorporation of a legal entity in Costa Rica that obtains the mining concession or exploring permit. It is possible to obtain a concession to exploit it on third-party land if you have the owner's previous consent and authorization.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? No.

7.- Additional comments, references or links.

Consider that according to article 8 bis of the Mining Code, open-pit metallic mining is prohibited in the country, so no permits or concessions related to this type of activity may be granted.





Law firm: De Camps, Vásquez & Valera
Partner/Associate: Amauris Vásquez Disla

1.- **Is lithium open to foreign investment?** Yes. The only areas excluded from the current regulations on foreign investment (Art. 5 of Law 16-95 and Decree 214-04) are the following: **i)** disposal and waste of toxic, dangerous or radioactive waste not produced in the country; **ii)** activities that affect public health and the balance of the country's environment, according to the regulations that govern in this regard; and **iii)** production of materials and equipment directly linked to national defense and security, unless expressly authorized by the Executive Branch. However, in the Dominican Republic, there is no special regulation on the exploration/exploitation of lithium.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** In the Dominican Republic, there is no special regulation on the exploration/exploitation of lithium. The current law in force on mining (Law 146-71 and Decree 207-98) provides in its articles 1, 2, 3 and 9, that **i)** mineral substances of all kinds found in the soil and subsoil belong to the Dominican State; **ii)** guano, phosphatic substances, marble, travertine, and other ornamental rocks, as well as amber, graphite, coal, lignite, siliceous and metal sands, talc, kaolin and other industrial clays, also salt, gypsum and other similar substances [including any substance for industrial use, not previously indicated or expressly excluded, that requires a labor or benefit of mines, according to Art. 2 of Decree 207-98], are considered as "mineral substances", regardless of their origin or form of deposit; **iii)** the right to explore, exploit or benefit mineral substances is acquired from the State, through a concession or contract granted in accordance with the provisions of Law 146-71; and **iv)** no mining concessions will be granted to foreign governments either directly or through individuals or companies. Regarding the activities that can be developed in this matter, Law 146-71 provides the following:

- Any person [with the exception of those listed in Art. 13 of Law 146-71], has the right to freely carry out superficial reconnaissance throughout the territory, outside the areas on which there are exploration or exploitation concessions [Art. 21 and 22 of Law 146-71].
- Any person may request an exploration concession to carry out work on the soil or subsoil, in order to discover, delineate and define areas that contain deposits of mineral substances, through technical-scientific investigations, up to 30,000 mining hectares [Art. 27, 29 and 32 of Law 146-71].
- Any person may request an exploitation concession for the preparation and extraction of mineral substances from the deposits for their economic use, up to 20,000 mining hectares [Art. 42 and 43 of Law 146-71].



3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? All mining concession filings/applications are submitted before the General Directorate of Mining (Dirección General de Minería), which performs a technical, economic, and legal evaluation and issues its opinion to the Ministry of Energy and Mines (Ministerio de Energía y Minas) [Art. 1, paragraph, of Law 100-13].

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes). In the Dominican Republic, there is no special regulation on the exploration/exploitation of lithium. In the specific case of Law 146-71, its articles 49 and 93 provide that the exploitation concession can be granted for a maximum term of 75 years. However, every 25 years the concessionaire will be obliged to submit to the tax regime set forth by the mining legislation in force at that time. Also, articles 113, 114, 119 and 120 of Law 146-71 set forth that the taxation of the mining industry to the Dominican State consists of a) the annual mining patent; b) the royalty on the export of mineral substances in their natural state or in the form of metal mineral concentrates; and c) the annual income tax. Likewise, they provide that: i) the mining patent is not creditable or deductible, and ii) the royalty on the export of mineral substances in their natural state or in concentrates [5% of the FOB sale price, Dominican port] will constitute the tribulation minimum that the Dominican State shall receive, and therefore it will only be deductible from the income tax to be paid annually.

5.- What are the ordinary structures (contracts and corporate) for the exploitation of lithium? Land- leases, incorporation of an entity in the country? In the Dominican Republic, there is no special regulation on the exploration/exploitation of lithium. In the specific case of Law 146-71, we must explain the following:

- Concessions granted under Law 146-71 are considered adhesion contracts executed with the Dominican State [Art. 101 of Law 146-71 and Art. 27 of Decree 207-98].
- The mining concession constitutes a separate right from ownership of the land on which it is located, even when the former and the latter correspond to the same individual [Art. 6 of Law 146-71].
- The exploration, exploitation and benefit of mineral substances are considered of public utility and national interest and will enjoy preference over any other land use [Art. 7 of Law 146-71].
- The mining concession is considered a land property, including the assets used for its exploitation such as facilities, machinery, artifacts, instruments, vehicles, animals and any others used for the economic purpose of the concession, even if they are located outside its perimeter. On that matter, it is understood that the mining concession is an asset that includes the right that constitutes it and the movable and immovable assets that are accessories to it [Art. 10 of Law 146-71 and Art. 6 of Decree 207-98].
- Foreign companies that apply for exploitation and processing plant concessions must become Dominican companies [Art. 109 of Law 146-71].



- Foreign mining companies that want to explore in the country will have to register their legal existence before the General Directorate of Mining (Dirección General de Minería) [Art. 110 of Law 146-71].
- Any individual or company, either national or foreign, can register a mineral complaint [Art. 11 of Law 146-71 and Art. 11 of Decree 207-98].
- All mining concessionaires are subject to the jurisdiction of the laws and courts of the Dominican Republic, and in the case of foreigners, it will be considered that they have waived/renounced all diplomatic claims on any matter related to the concession [Art. 8 of Law 146-71].
- Agreements between individuals, such as leases, loans, mortgages, pledges, promises of transfers and others whose purpose is the acquisition, trade or enjoyment of concessions, including their related rights, are governed by common DR law, except for the exceptions set forth under Law 146-71 [Art. 28 of Decree 207-98].

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? Article 30 of Law 146-71 provides that "Within the area of populations or where there are cemeteries, parks or public gardens, mining work may not be carried out. These works may not be carried out either in the proximity of buildings, communication routes, motor power, telegraph or telephone lines, irrigation canals, oil pipelines, public works of any kind and historical monuments, nor in the vicinity of fortresses, magazines or arsenals, except with the express authorization of the Executive Branch." On that matter, Article 13 of Decree 207-98 sets forth that "All classified urban or urban expansion lands are included in the prohibition set forth in Article 30 of the Law and for the effectiveness of the limitations imposed by the in-fine part of said article, it is prohibited to carry out mining work less than forty (40) meters from the walls and bases of buildings, communication routes (roads), motor power, telegraph or telephone lines, irrigation canals, oil pipelines and public works of any kind, nor less than one thousand (1,000) meters from fortresses, powder magazines or military arsenals, except with the express authorization of the Executive Branch."

7.- Additional comments, references or links. Please see the following:

<https://mineria.gob.do/index.php/servicios-m/item/433-recomendacion-para-otorgamiento-de-las-solicitudes-de-concesion-para-explotacion-minera>

<https://mem.gob.do/servicios/concesion-de-exploracion-minera-metalica-y-no-metalica/>





Law firm: Lexvalor Abogados

Partner/Associate: Daniela Irigoyen

1.- Is lithium open to foreign investment? In general, all legal and natural persons, whether they be national or foreign, public or private, may hold mining rights in Ecuador. This category is recognized by the Ecuadorian government when a mining right (under a mining title) is granted. The only exception is under the artisanal mining regime, where foreign investment is prohibited. Therefore, there is no restriction in terms of foreign investment for lithium prospection, exploration, exploitation, production or commercialization.

2.- How can private parties apply for explore, exploit and produce lithium? Concession, permit, license? There is no specific legislation for lithium in Ecuador. The Mining Law provides for the granting of mining concessions to explore, exploit, produce, and commercialize metallic mineral resources in general.

Mining concessions are granted by an administrative act by which the State delegates the execution of mining activities to a legal entity. Mining concessions create both rights and obligations for its titleholder; in particular, the ability to carry out mining activities within a specific underground area.

Mining concessions for metallic minerals are obtained only through two types of auctions with a few exceptions. The first auction process applies to new and unexplored areas, and the second type of auction process is applicable to areas that have previously been granted as concessions and then returned to the State.

To participate in the process of obtaining a mining concession, the following must be shown by the interested party:

- Economic solvency, which is proven through the submission of balance sheets, certificates of market, capitalization, asset declaration affidavits, or bank certificates. The amount shown must be at least 5% of the investment pledged in a procedure for medium-scale mining and large scale-mining, or 100% of the investment pledged for a small-mining procedure. For instance, for large-scale mining, if, for example, a company plans to invest USD 1 million during the first 4 years of the mining activity, it must demonstrate economic solvency for at least USD 50,000.00.
- Technical and technology solvency, by describing the overall experience of the bidder, its parent company, or its subsidiaries, as well as the presentation of a work plan for the concession.
- Additionally, before participating in a concession granting procedure, the minimum investment amounts required by the Ministry of Energy and Mines for the year must be considered.



- Note that the process for granting concessions is currently suspended until a new mining cadaster is implemented, which does not preclude entities to acquire existing concessions already granted to other titleholders.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? The Ministry of Energy and Mines and the Agency for the Regulation and Control of Nonrenewable. Natural Resources are the entities in charge of the concession granting procedures. The interested party need to log in to the Mining Management System, which is an online platform where areas of interest can be reserved. New users must registered their personal data and reserve the concessions under one of the available regimes (artisanal, small-, medium- or large-scale mining). Furthermore, the bidding and administrative procedures is managed by the Ministry with the technical support of the Agency.

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes). Currently, Ecuador does not have any conditions or restrictions for investing in lithium.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country? As previously mentioned, Ecuador does not have specific legislation for lithium. Currently, mining concessions are granted as detailed in our answer to question2. Only under the large-scale mining regime a mining exploitation contract must be negotiated and signed with the State. Its negotiations must be requested before the end of the exploration period.

In order for an entity to acquire mining rights or titles in Ecuador, it must be domiciled in Ecuador. A corporation scheme is customary in the market.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? Metallic mining is allowed in all areas of Ecuador's territory in all its phases, with the exception of urban centers, protected areas and areas declares as intangible (i.e., Yasuní National Park).

In accordance with Convention 169 of the International Labor Organization, the Constitution requires that a prior consultation be made with the communities whose environmental and cultural rights may be affected by the exploration and exploitation of non-renewable natural resources. The free and informed prior consultation must be carried out by the State, and the results reflect the communities' consent or rejection, that will not be binding, of such projects.

7.- Additional comments, references or links. [Intentionally left in blank].





EL SALVADOR

Law firm: A.D. Sosa & Soto

Partner/Associate: Daniela Salas Vásquez & Giovanna Menegazzo

1.- **Is lithium open to foreign investment?** For now, and according to the Prohibition Metallic Mining Law ("Law"), passed by the Congress on March 29th,2017, lithium is not open to foreign and/or domestic investing.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** The Law expressly prohibits any kind of application for explore, exploit and produce lithium as well as obtain any kind of concession, permit or license.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** Originally those authorizations were granted by the Ministry of Economics through the Department of Hydrocarbons and Mining currently repealed.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** Please see answers 1 and 2 above.

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country?** Please see answers 1 and 2 above.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** Please see answers 1 and 2 above.

7.- **Additional comments, references or links.** [Intentionally left in blank].





Law firm: Castaldi Partners

Partner/Associate: Thierry Bonnet & Thomas Ramoïno

1.- Is lithium open to foreign investment? Since 2020, lithium has been included in the European Union's "list of critical raw materials". In France and French Guiana, the Mining Code fully applies to lithium (Article L111-1, § 10 of the Mining Code). A critical raw material is a raw material whose supply may be subject to uncertainty and whose shortage can have significant negative industrial or economic impacts. This list notably includes lithium. While being classified as a critical raw material does not appear to prevent foreign investment, such an investment will be subject to more detailed scrutiny due to the very nature of the investment. As a principle, "financial relations between France and foreign countries are free" (Monetary and Financial Code, Article L. 151-1, first paragraph), in accordance with the principle of free movement of capital. However, the defence of national interests justifies, in practice, modalities of declaration, prior authorization, or control. According to Article 65 of the TFEU (Treaty on the Functioning of the European Union), measures restricting these capital movements must be "justified by reasons related to public order or public safety".

French law in force thus currently regulates certain foreign investments in France, but exclusively in sectors that are listed exhaustively. Essentially, this involves investments and operations in sectors of industry and services that are of strategic interest to the State, coming from a third country. Therefore, while lithium is open to foreign investments, it may well be subject to a regime of prior authorization and control, which we will detail later. To determine whether a foreign investment is subject to the control of the ministry in charge of the Economy, a foreign investor can submit a request for an opinion (Article R. 151-4 Monetary and Financial Code). The ministry's response time is set at 2 months. The criterion relating to sensitive activities is assessed on a case-by-case basis, at the time of the investigation and depending on the characteristics of each operation, each investor, and each French entity subject to the investment.

2.- How can private parties apply for explore, exploit and produce lithium? Concession, permit, license? In France, for a foreign investment to be eligible for the prior authorization procedure, it must meet 3 conditions related to the investor, the nature of the operation, and the activity of the company benefiting from the investment. Firstly, for the investment to be considered as foreign, the investor must either be a foreign national individual or a foreign law entity, or a French national individual who is not tax-domiciled in France or a French law entity controlled by one or more persons mentioned above (Article R. 151-1 Monetary and Financial Code). The procedure to obtain authorization is as follows.



3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?**

As explained in responses 1 and 2, the authorization and procedure fall under the French Ministry of Economy. Authorization or opinion requests are sent to the ministry in charge of the economy (Direction Générale du Trésor) by electronic means (iefautorisations@dgtresor.gouv.fr) or by mail in a single copy (139, rue de Bercy, 75572 Paris Cedex 12). This authorization request must be accompanied by a notification to the European network under the European regulation on the screening of foreign direct investments in the European Union. Investors or their advisors must therefore attach to the investment authorization request the notification form available below, in English. It is recommended to accompany this transmission with the sending of the authorization request in English, when it is available, in Word format, specifying if certain information contained in the file should not be shared with the European network (this will need to be duly justified).

The implementation of the European cooperation mechanism for screening foreign investments does not add any additional delay to the national procedure for controlling foreign investments in France. The regulatory timeframe for processing an authorization request, whether or not it is notified to the European network, remains a maximum of 75 working days (30 working days for phase I + 45 additional working days for phase II). All exchanges taking place within the framework of the cooperation mechanism are confidential, and the information is communicated via secure channels according to the current national and European procedures and standards. The European form to complete « Le **formulaire** (.zip) pour la notification d'une opération d'investissement au réseau européen (à compléter en anglais par l'investisseur ou son conseil, et à joindre à la demande d'autorisation) <https://www.tresor.economie.gouv.fr/services-aux-entreprises/investissements-etrangeurs-en-france>.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).**

At the end of these different procedures, it is possible (but not certain) that the competent authorities decide that the investment is free. Investments made in non-sensitive sectors are free. They are subject to a simple administrative declaration when they are made, some investment operations are even expressly exempted from this declaration (creation of a new company or extension of the activity of existing companies or firms, for example).

The exploration permit applies, as its name indicates, to exploration work aimed at discovering deposits of substances from the class of mines. It gives its holder the exclusive right to search within a given geographical sector and the right to dispose of the products extracted during the search work, as well as the exclusive possibility to request a concession on the permit area. It is granted by order of the Minister in charge of mines for a maximum duration of 5 years, renewable up to 2 times. The procedure for extending exclusive exploration permits is set by decree. This procedure includes a local instruction phase led by the Prefect and a synthesis and decision-making phase managed by the Ministry.



5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? Firstly, any foreign entity wishing to invest in the mining sector in France must create a subsidiary on French territory, which is stipulated by the French Commercial Code. If the entity chooses to create a Simplified Joint Stock Company (SAS), it must comply with articles L. 227-1 to L. 227-20 and articles R. 227-1 to R. 227-16 of this Code. These articles describe the process of creating an SAS, including the information required for the status, capital contributions, the appointment of a president, and publication and registration obligations. Next, the French subsidiary will need to obtain a mining title, which can take the form of an exclusive research permit (PER) for the research phase or a mining concession for the exploitation of lithium. This is governed by articles L. 132-1 to L. 132-13 and L. 141-1 to L. 142-2 of the Mining Code respectively. These articles stipulate the conditions of obtaining, the obligations of the holder (such as carrying out works, the annual report), and the renewal modalities of the mining titles. For access to the land necessary for the exploitation, it can be achieved through land leases, which are governed by the Civil Code (articles 1709 and following). These detail the rights and obligations of tenants and owners. The French subsidiary must also respect French environmental and social rules to carry out its operation, including the provisions of the Environment Code and the Labor Code. This includes compliance with environmental impact, worker safety, and social dialogue legislation.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation?

Yes, article L 621-1 of the Mining Code concerns the Departmental Mining Orientation Scheme for French Guiana. This scheme defines the environmental, economic, and social conditions for sustainable terrestrial mining activity in French Guiana, considering the economic interest of the region and the sustainable development of its mineral resources. Article L 621-2 specifies that the project of the Departmental Mining Orientation Scheme is developed jointly by the president of the territorial community of French Guiana and the representative of the State in French Guiana. This project is submitted for an environmental assessment and made available to the public for consultation. The opinions of the various concerned parties are collected, and the scheme is then jointly established by the president of the French Guiana community and the State representative. It is approved by decree in the Council of State.

7.- Additional comments, references or links.

Investment in lithium is possible, although the procedure is complex. The greatest risk lies in the instability of the matter that links European law and French national law, as well as the evolving political and economic stakes. As a reminder of the status of French Guiana, it is one of the five overseas departments (DOM) of France, along with Martinique, Guadeloupe, Réunion, and Mayotte. These DOMs are governed by Article 73 of the French Constitution, which states: "The legislative identity of the overseas departments is ensured. Laws and regulations are applicable to them by default. They may be subject to adaptations taking into account the specific characteristics and constraints of these territories."





Law firm: A.D. Sosa & Soto

Partner/Associate: Daniela Salas Vásquez & Giovanna Menegazzo

1.- Is lithium open to foreign investment? There is no specific provision on the exploitation of lithium by foreign investors and there are no provisions prohibiting it. However, our law recognizes and protects foreign investment, recognizes equal treatment between nationals and foreign investors, and requires foreign investors to comply with the general legal requirements applicable to the economic activity that they will exploit. [Articles 2 and 3 of the Foreign Investment Law Decree 9-98 of the Congress of the Republic of Guatemala.

2.- How can private parties apply for explore, exploit and produce lithium? Concession, permit, license? Yes, Guatemalan private companies may apply for mining rights, recognition, exploration and exploitation licenses granted by the General Directorate for Mines of Ministry of Energy and Mines. [Articles 9,19, 21, 24, 27 and 41 of the Mining Law Decree 48-97].

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? The General Directorate for Mines of Ministry of Energy and Mines. [Article 40 of the Mining Law Decree 48-97].

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).

- According to the Mining Law there is no threshold on private foreign investment nor special foreign investment contracts or concessions. As answered on question 2, the Government grant mining rights and licenses.
- Regarding the terms of the licenses: **i)** the recognition is granted for a period of 6 months, which can be extended for an equal period; **ii)** the exploitation is for a term of 3 years, extended for 2 additional periods of 2 years each; and **iii)** the exploitation is for a term of 25 years, which can be extended for another 25 years. [Articles 21, 25 and 28 of the of the Mining Law Decree 48-97].
- Regarding governmental duties or especial taxes: The Mining Law contemplates two type of duties or especial taxes, the royalty (regalia) and the canon (canon). The royalty (regalia) is a special tax imposed to the holders of the exploitation license on benefit of the Guatemalan Government for the extraction of mining products, and to the local Municipalities of the jurisdiction where the mine is located. The amount is determined by the volume of the mining product, based on the product's listing value on international stock markets. The royalty is paid annually, within 30 days after the end of the year. On the other hand, the canon is a periodic payment that is made for the granting of a mining right, the area granted and the assignment of such rights. The amount will depend on the type of mining right and is set by the Ministry of Energy and Mines. [Articles 6,61 - 64, 66 and 67 of the Mining Law Decree 48-97].



5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? The Mining Law requires that the Guatemalan or foreign company must be registered in the General Commercial Registry of Guatemala to be the holder of a mining right and a license. The Guatemalan State does not lease the land, it grants a mining right over a certain extension where the mine will be located for recognition, exploration and exploitation activity. [Articles 41, 6, and 12-15 of the Mining Law Decree 48-97].

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation?

If the land where the mining activity will be carried out is considered an ancestral land of the indigenous peoples, there is an obligation on the part of the State of Guatemala to carry out the consultation process recognized in Convention 169 of the International Labor Organization. Guatemalan legislation does not provide for an express process, however the Constitutional Court in the structural rulings in the case of the Oxec and Oxec II (hydroelectric projects) established the basic guidelines for government authorities to carry out the consultation process.

7.- Additional comments, references or links. In Guatemala, mining rights and licenses for recognition, exploration and exploitation have not yet been granted.



1.- **Is lithium open to foreign investment?** Yes, it is.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Private external parties are required to apply for a prospecting mining permit in order to explore. Once the mineral is found in commercial quantities they are required to make a declaration to the Guyana Geology and Mines commission who may grant a mining license.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? Guyana Geology and Mines Commission (GGMC).

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** There is no statutory minimum investment level, however external companies which have not entered into joint ventures with Guyanese companies are required to enter in mining agreements for large scale mining. Large scale mining has several compliance, reporting and maintenance obligations which are not applicable to Guyanese or Guyanese companies. The total outgoings inclusive of tax and royalties is 7%. Various concessions and duty-free exemptions can be negotiated as part of the Mining agreement with GGMC.

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country?** A large-scale prospecting permit is typically granted to a corporate entity which can be a locally subsidiary or branch of the external company.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** There are no agrarian restrictions. It is to noted that an exploratory or mining license does not grant exclusive possession to the property. Forestry licenses over the same property can be granted to third parties. Exploratory permits and mining licenses over indigenous lands can only be granted with the permission of the council for the indigenous area over which permission is sought.

7.- **Additional comments, references or links.** [Intentionally left in blank].

Law firm: A.D. Sosa & Soto

Partner/Associate: Daniela Salas Vásquez & Sebastian Soto

1.- **Is lithium open to foreign investment?** Yes, no restrictions or prohibitions have been established in Honduras regarding this chemical element.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Throughout a Concession/Permit/Registration Application, followed by a Legal and Technical Evaluation which include a social, land, economic and environmental studies, if complied to the referred before the adjudication of the mining right is given along with parameter and conditions according to the substance of interest.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** National Institute of Geology and Mines (Instituto Nacional de Geología y Minas) in Honduras

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** Since Lithium has not been invested in Honduras, no conditions or restrictions can be found specifically for this chemical element.

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country?** Incorporation of a legal entity with a specific purpose for mining and exploitation of lithium (not limitative to this activity itself), buyout or leasing of the land, mandatory tax identification ID, authorized tax documents, authorized Operation Permit given by the city hall where the entity will function, Mining Permit, among others.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** No, but restrictions may be found to protected areas and parks.

7.- **Additional comments, references or links.** For more information, please refer to the following link: <https://inhgeomin.gob.hn/>.



Law firm: Ibarra, del Paso y Gallego, S.C.
Partner/Associate: Carlos Ibarra & Luis Leuchter

1.- Is lithium open to foreign investment? The current status is not clear. In 2022, a significant legislative reform to the Mining Law was enacted effectively reclassifying lithium from a mineral to a “strategic mineral”. The implication of this reform is that lithium can no longer be freely concessioned to private entities; instead, the exploration, exploitation, benefit and use of lithium are now exclusively reserved for the Mexican State.

However, the 2022 reform introduced a significant change, leading to the creation of a new state-owned company, Litio para México (“LitioMx”). This entity is now responsible for supervising lithium exploration, exploitation, use and commercialization in Mexico, and it is also allowed to partner with other public or private entities for this purpose. However, the reform lacks clarity on how the private sector will participate in this process, and it remains undefined at this time.

2.- How can private parties apply for explore, exploit and produce lithium? Concession, permit, license? At this time, the specific scheme of how private parties can participate in lithium-related activities is still unclear.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? As mentioned above, the exploration, exploitation, benefit, and use of lithium is a function exclusively reserved for the State and will be undertaken by LitioMx. On the other hand, the exploration of the national territory to identify and quantify Mexico's potential mineral resources must be conducted by the Mexican Geological Service (Servicio Geológico Mexicano).

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes). At this time, the specific scheme of how private parties can participate in lithium-related activities is still unclear. However, it should be noted that mining activities in Mexico are generally subject to the following conditions or restrictions:

- **Mining concessions.** Mining activities in Mexico are regulated by the Mexican Mining Law. According to the law, minerals belong to the state, and private entities must obtain concessions from the state in order to explore or exploit mineral resources. These concessions are granted by the Ministry of Economy and are usually valid for 50 years, renewable under the same terms.



- **Environmental authorizations.** The mining company must obtain environmental permits for the exploration and exploitation of the mining concession. The permits are issued by the Ministry of Environmental and Natural Resources (SEMARNAT), Federal Environmental Protection Agency (PROFEPA) and other state and municipal agencies.
- **Social Impact Assessment.** A relatively new requirement in the Mexican Mining Law is the social impact assessment. Before starting mining operations, the company must evaluate the potential social impacts of the project and implement a plan to mitigate negative impacts.
- **Royalties and taxes.** Mexican law imposes a royalty on mining production, which is paid to the Mexican government (7.5% on the income). In addition, mining companies must pay corporate income tax (30%) and value-added taxes (16%).

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium?**

Land- leases, incorporation of an entity in the country? At this time, the specific scheme of how private parties can participate in lithium-related activities are still unclear. However, please note that for mining operations in Mexico, the basic contractual and corporate operations structures involve:

- **Land rights.** The mining concession only provides the right to extract minerals from the subsurface, not to use the surface land, which must be obtained separately. The mining company usually negotiates an agreement with the landowner for the use of the land (i.e., lease, purchase and sale agreements, easements, rights of ways etc.). If the mining company and the landowner cannot reach an agreement, the company can request a legal easement through the judiciary.
- **Incorporation of a local entity.** Foreign companies can fully own a mining project in Mexico but they have to establish a Mexican entity. Often a Mexican subsidiary is incorporate to hold the mining concessions and other assets. This entity is responsible for complying with all Mexican laws, including environmental, labor and tax laws.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?**

Yes. Pursuant to Convention 169 of the International Labor Organization, a preliminary consultation is required with any indigenous community potentially impacted by the exploration and extraction of non-renewable natural resources, in regard to their environmental and cultural rights. The State is responsible for conducting this free and informed prior consultation. The consultation's outcome should encapsulate the indigenous communities' approval or disapproval of the proposed projects. On the other hand, the agrarian framework in Mexico places certain restrictions on the ownership or possession rights over lands classified as ejido property. For example:



- Common-use lands can be subject to any partnership or use agreements (i.e., lease agreements) with third parties and for limited-term (i.e., 30 years) provided that ejido members' meeting authorized and approved such agreements. Notwithstanding the foregoing, the ejido common-use lands cannot be acquired or transferred to third parties or any other community.
- Regarding the individual parcels, for their use and enjoyment by third parties, the authorization and approval of the ejido members' meeting is not required. However, in case that ejido member decides to sell or transfer his individual parcel to a third party, certain requirements under the Agrarian Law must be complied with in order to release such parcel from the agrarian regime, such as **i)** the approval and authorization of the ejido members' meeting before a notary public and legal representative of the Agrarian National Attorney's Office (Procuraduría Agraria); **ii)** the issuance of an ownership title by the National Agrarian Registry (Registro Agrario Nacional); and **iii)** the registration of the parcel converted into private property in the Public Registry of Property.

7.- Additional comments, references or links. For more information, please refer to the following documents:

- Mining Law.
- Mining Law Regulations.
- Decree amending and adding various provisions of the Mining Law, published in the Federal Official Gazette on April 20th, 2022.
- Decree that amends, adds, and derogates various provisions of the Mining Law, the National Water Law, the General Law of Ecological Balance and Environmental Protection, and the General Law for Prevention and Comprehensive Management of Waste, regarding concessions for mining and water, published in the Federal Official Gazette on May 8th, 2023.
- Lithium Mx's Organic Statute (Estatuto Orgánico de Litio Para México).





Law firm: Nicholson Phillips

Partner/Associate: Manley Nicholson

1.- **Is lithium open to foreign investment?** Yes. The Government of Jamaica (GOJ) considers foreign direct investment (FDI) a key driver for economic growth. Jamaica recently reduced or removed a number of distortionary taxes across a wide range of economic sectors.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Jamaica does not impose limits on foreign ownership or control and local laws do not distinguish between local and foreign investors.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** Jamaica's trade and investment promotion agency (JAMPRO) is the Government of Jamaica (GOJ) agency responsible for promoting business opportunities to local and foreign investors. While JAMPRO does not institute general criteria for FDI, the institution targets specific sectors for investment and promotes Jamaican exports.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** The Jamaica Bauxite Institute (JBI) is actively looking at new methodologies to explore its rare earth elements.

All private entities, foreign and domestic, are entitled to establish and own business enterprises, as well as to engage in all forms of remunerative activity subject to inter alia, labor, registration, and environmental requirements.

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium?** Land- leases, incorporation of an entity in the country? While businesses can be register using a single Business Registration Form for New Companies and Business Names, it is best to engage an attorney.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** Expropriation is generally not an issue in Jamaica, although land may be expropriated for national development under the Land Acquisition Act, it provides for compensation on the basis of market value.

7.- **Additional comments, references or links.**

https://www.state.gov/reports/2019-investment-climate-statements/jamaica_trashed/.





Law firm: A.D. Sosa & Soto

Partner/Associate: Daniela Salas Vásquez & Giovanna Menegazzo

1.- **Is lithium open to foreign investment?** No. The Mining Moratorium the Law 407 of 2023. prohibits the granting of metallic mining concessions in Panama. The extension of concessions is also not permitted.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Unfortunately, no private party is authorized to explore, exploit, and produce lithium in Panama anymore.

The Mining Moratorium the Law 407 of 2023. prohibits the granting of metallic mining concessions in Panama. The extension of concessions is also not permitted.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** The Ministry of Commerce and Industries of Panama is the regulator of the mining industry.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** The Mining Moratorium the Law 407 of 2023. prohibits the granting of metallic mining concessions in Panama. The extension of concessions is also not permitted.

5. What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land-leases, incorporation of an entity in the country? N/A.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** There are some of said situations affecting certain parts of the territory of Panama. For example, in the indigenous gnabe-bugle area of Panama mining developments are prohibited by law. However, in general, there is no different treatment to foreign entities as opposed to local ones.

7.- **Additional comments, references or links.** For major development projects in Panama it has been a common practice to negotiate special development contracts with the government, that are approved through a special law. This grants additional juridical stability and also allows special provisions to be included that are not part of the general legal regime. Important exploration has been done in Panama since the 1960s and these have resulted in finds of major copper reserves, with associated minerals including gold, silver and molybdenum. We have not heard of any Lithium finds, but may have not been the subject of said studies.





Law firm: Stanley

Partner/Associate: Patricia Stanley Zarza

1.- **Is lithium open to foreign investment?** Yes, lithium is open to foreign investment. All minerals are property of the Paraguayan State, which leads prospecting and exploration works through permits granted by the Ministry of Public Works and Communications (“MPWC”), as well as the exploitation granted through a Law.

2.- **How can private parties apply to explore, exploit and produce lithium? Concession, permit, license?** Investment in mining can be made through permits or concessions, which comprise three stages: prospecting, exploration and exploitation:

- The process begins with a Prospecting Permit granted through a Ministerial Resolution of the MPWC.
- Once this stage is approved, the investor may move on to the Exploration stage.
- When the data on the volume of the corresponding mine site is available, the investor shall request to proceed to the Exploitation stage, which is granted by means of a Law. The request is made through the submission of a mining application form before the Vice Ministry of Mines and Energy. (“VMME”)

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** Applications for Prospecting and Exploration Permits are submitted to the VMME, which is part of the organic structure of the MPWC.

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment, contracts, concessions, duration/term governmental, duties or special taxes)?** The submission of mining applications is subject to the fulfillment of certain minimum requirements, among which are: **i)** submission of the project’s file and accreditation of the identity and capacity of the applicant; **ii)** specification of coordinates and presentation of the map of the requested block; **iii)** indication of domicile and designation of legal representative, both within the country; **iv)** submission of investment and work plans; and **v)** prove compliance with tax obligations.

Also, certain additional requirements must be satisfied. Such additional requirements vary depending on whether the applicant is an individual or a legal entity, and they predominantly consist of the submission of sworn declarations and certificates of compliance with administrative, tax, labor and social security obligations; as well as certificates that prove legal capacity, free disposal of assets, financial and technical creditworthiness. Additionally, in the case of legal entities, the submission of the petitioner’s history and the designation of the technical personnel that will provide the corresponding service, as well as the designation of the equipment that will be used in the areas corresponding to the investment, are required.



The legislation in Paraguay provides for tax benefits (exemption from paying taxes) during the Prospecting and Exploration stages. Such tax regime shall not be applicable during the Exploitation stage. Machinery and materials necessary for Prospecting and Exploration stages, and that have not been manufactured within the country, are exempt from taxes.

Finally, concessionaires for the exploitation of metallic minerals are obliged to pay an annual fee, as well as royalties.

5.- What are the ordinary structures (contracts and corporate) for the exploitation of lithium? Land-leases, incorporation of an entity in the country? The agreement that will be entered into, after the granting of the concession or permit by the State, will depend on the project to be developed, and shall be governed by the law regulating the corresponding project, based on Mining legislation and the study of feasibility carried out by the requesting company. The referred agreement will also depend on the arrangement between the corresponding company and the owners of the affected properties. The following figures are usually applied:

- Agreements entered into between holders of mining rights and owners or occupants of the land. The permit holder or concessionaire must notify the affected owner or occupant of the grant of its permit or concession. Both parts may agree on the use, easement or sale of useful land and subsoil, as well as on the corresponding compensation, for the development of mining activities.
- Expropriation. In the event of not reaching an agreement with the owner of the land, the holder of mining rights may request, by means of a note to the MPWC, the notification to the Executive Branch of the need to expropriate the area corresponding to their permit or concession, as well as the surfaces necessary to set the necessary related constructions. If the need for expropriation is considered justified, the project will be sent to the National Congress, and the permit holder/concessionaire must pay the landowner the compensation and corresponding expropriation expenses.

6.- Are there communal or agrarian land restrictions that affect private and/or foreign participation? National parks are protected under Law 352/1994 on "Protected Wild Areas" and are subject to restrictions detailed below. Lands subject to this regime are inalienable and non-transferable, and their use must be limited to the conservation, protection, and improvement of the environment and the natural resources contained therein, regardless of the ownership rights over such lands.

Furthermore, Article 64 of the National Constitution of the Republic of Paraguay recognizes the communal ownership of indigenous peoples with the aim of developing their way of life. This form of ownership is non-seizable, indivisible, non-transferable, and not subject to prescription. Additionally, it cannot be used as collateral for contractual obligations, nor can it be leased, and it is exempt from any taxes.





Law firm: Rodrigo, Elias & Medrano
Partner/Associate: Luis Carlos Rodrigo Prado

1.- **Is lithium open to foreign investment?** Lithium, as exploring for, extracting and processing any mineral in Peru, is open to foreign investment, without any restriction other than having to obtain a special approval through a Supreme Decree (issued by the President and the Cabinet of Ministers (if the mining concessions required for the exploration and extraction of the mineral are located within 50 kilometers of any of the Peruvian borders with other countries.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Any private party that intends to explore for or extract any mineral (including lithium) has to submit before INGEMMET (Instituto Geológico, Minero y Metalúrgico, which is the Peruvian agency that is part of the Mining Sector in charge of granting mining concessions) a pediment (written request following the special format for this purpose) in order to request a Mining Concession (which is the enabling title that allows an investor to explore for or extract minerals within the boundaries of a certain area defined by a polygon of earth below the surface and with indefinite depth, subject to obtaining the additional permits required to actually perform the corresponding mining activity). Since the Mining Concession does not grant any right over the surface land located on top of the polygon of earth obtained through the Mining Concession, one of the essential additional requirements is that the investor needs to obtain a right to use that surface land (either by acquiring it, renting it or entering into some kind of easement or right of use with the corresponding surface land).The owner of the surface land may typically be the State, a private owner or a peasant or indigenous community.

In order to build processing infrastructure and process the extracted mineral, the investor would need to request a Beneficiation Concession before the Ministry of Energy and Mines (a different entity from INGEMMET), for which purpose it would have to submit a technical study showing the feasibility of building and operating the corresponding infrastructure. For this purpose, the investor also needs to have obtained the use of the corresponding surface land in which the infrastructure intended to be built would be located, as well as all the supplementary components for processing), as well as the corresponding Environmental and Social Impact Assessment (which has its own procedure before SENACE -Servicio Nacional de Certificación Ambiental- in order to be approved).

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** As mentioned above, for Mining Concessions it is INGEMMET, for Beneficiation Concessions it is the Ministry of Energy and Mines (specifically the General Direction of Mines within the Ministry) and for the Environmental and Social Impact Assessment it is SENACE.



4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes). As mentioned, there are no specific rules or different treatments for lithium. Therefore, as it happens with any mineral, the only restriction is the one mentioned in answer No. 1 regarding the special Supreme Decree if the Concessions were located within 50 kms. of the Peruvian borders.

Mining Concessions require the investor to reach a minimum production within 10 years of having been granted (which is 1 Tax Referential Unit per hectare per year, now around US\$ 1,400.00) and if this is not achieved, a penalty of 2% of said minimum production needs to be paid per hectare per year for years 11 to 15, if then the minimum production still has not been achieved, the penalty increases to 5% for the years 16 to 20 and, if it still has not been reached, to 10% for years 21 to 30. If the minimum production per hectare per year is not achieved by year 30, the Mining Concession extinguishes and the area returns to the State.

There are no special taxes or fees for the extraction, processing or selling of lithium (so far). Therefore, a company producing lithium would be subject to the same Income Tax, Special Mining Tax and Royalties applicable to any other mineral.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country? Typically, a company is incorporated in Peru, which obtains the Mining Concessions, Beneficiation Concession, land leases, easements or ownership required, as well as the additional environmental and other permits and it operates the mining unit.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? Besides the 50 km restriction mentioned above, there are no formal restrictions. Of course land that is already owned by third parties and destined for other activities is very difficult to be obtained in order to supplement the rights obtained through a Mining Concession and, therefore, difficult to carry out mining activities in said are. The most complex situation in practice is when the land required is owned or possessed by peasant or indigenous communities, because a Prior Consultation Proceeding would be likely to be carried out.

7.- Additional comments, references or links. The most helpful links would be through the webs of the Ministry of Energy and Mines (www.gob.pe/minem), INGEMMET (www.portal.ingemmet.gob.pe) and SENACE (www.gob.pe/senace).

Please note that on July 16, 2021, the Government approved Law No. 31283, through which the exploration, exploitation and industrialization of lithium and its derivatives were declared as a public need, national interest, and as an strategic resource. Although this is a declarative and non-regulatory rule, based on the latter declaration, the MINEM approved the Ministerial Resolution No. 317-2022-MINEM/DM, which created a special workgroup to propose actions



and measures for the Energy and Mines sector, focus on the elaboration of the supporting regulations of Law No. 31283. On March 4, 2024, the National Agency for Technical Standardization, Accreditation, and Metrology - INACAL (for its acronym in Spanish) installed a Lithium Standardization Technical Committee jointly with the INGEMMET (which is the Peruvian agency that is part of the Mining Sector in charge of granting mining concessions), with the objective of start the development of Technical Standards that could serve as a guide for all the key actors involved in the different stages of production of lithium and to promote the integration and incorporation of lithium mining projects.





Law firm: Fitzwilliam, Stone, Furness-Smith & Morgan
Partner/Associate: Jon Paul Mouttet

1.- **Is lithium open to foreign investment?** Lithium is, to an extent, open to foreign investment, but it is subject to certain limitations and regulations. There is no legislation in Trinidad and Tobago ("T&T") that focuses on lithium regulation. That being said, since lithium is a naturally occurring mineral and can be mined from ores (we understand it is a soft silvery white alkali metal) it appears that lithium related activities would be subject to regulation under the Minerals Act, Chap. 61:03 (the "Minerals Act") and the Regulations made thereunder. The Minerals Act was implemented to regulate mining and to provide for matters connected therewith and a "mineral" for the purposes of the Minerals Act means "a naturally occurring substance that can be mined, whether in solid, liquid or gaseous form, in or below the surface of the soil; any ores containing such minerals and any product of such minerals derived by processing and includes peat and salt, but does not include hydrocarbons and water". The Minerals Act also classifies "metallic ores" as forming "Special Minerals".

Under the Minerals Act no person shall explore for, mine, process or import or export minerals except under the authority of a license issued under the said Act. Further, no license to explore for, mine, process import or export any mineral shall be issued to a non-national of T&T or a company, firm or partnership where the shareholding by a national is less than 50%. This represents the primary restriction against foreign investment in lithium. Apart from the above, under the Foreign Investment Act, Chap. 70:07 a foreign investor cannot for business purposes hold an interest in land that exceeds 5 acres in Trinidad without a foreign investment license first being granted by the Minister of Finance pursuant to the Foreign Investment Act, Chap. 70:07. Further, no land in Tobago can be held by a foreign investor without first obtaining a foreign investment license. These restrictions and licensing requirements will therefore need to be considered before a foreign investor can acquire land for lithium-related activities.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** The primary regulator under the Minerals Act is the Minister of Energy and Energy Industries (the "Minister") who is responsible for the general administration of the Minerals Act. He is supported by the Director of Minerals who is responsible for the implementation of the Minerals Act. The statutory right to explore for and exploit minerals is embodied in a license granted pursuant to the Minerals Act. Further, except where the Minister permits same due to special circumstances, no license is to be granted to any person to operate a mine within a specified area unless such mine or mining is located within a mining zone as designated by the Minister pursuant to the Minerals Act.

The first step however would be for the private party to acquire mineral rights or approval from the relevant owner of the mineral rights so as to ground the basis for his/her statutory application for a license. In the case of privately owned land the grant of such rights is normally



provided by way of an outright purchase of the land in question (with its mineral rights) or by way of a mining lease, license or similar agreement from the private owner. The right to carry out exploration for and mining of lithium on State Lands would, among other things, be regulated by the State Lands Act, Chap. 57:01 and would (depending on the terms involved) require approval either by the Commissioner of State Lands or the President.

No license under the Minerals Act to mine from State Lands will be granted without the written consent of the Commissioner of State Lands and further, no license with respect to mining on State Lands will be granted under the Minerals Act except upon a competitive bidding process open to the public and meeting the criteria required by the Minerals Act save in certain limited circumstances where the Minister may grant a license outside of such process. An application for a license under the Minerals Act involving private lands and where the applicant is not the owner also requires evidence of the private owner's consent. The licenses for which regulations have been made thus far under the Minerals Act are as follows: **i)** Exploration Licenses; **ii)** Mining Licenses; and **iii)** Processing Licenses. To date, export and import license requirements have not been prescribed by regulations made under the Minerals Act. Applications for the appropriate license are made to the Minerals Advisory Committee (the "Committee") containing the applicable particulars required by the Mineral (General) Regulations. The Committee must then advertise the application in at least two local newspapers, consider any objections and make a recommendation to the Minister who would then either grant or refuse the license. Where the application is for the exploration or mining of minerals, after the Committee's recommendation the Minister may only grant or reject the license application with the approval of Cabinet.

3.- Who is the public entity or governmental agency with whom the authorization shall be applied for? Please see the answer to Question 2 regarding the application to be made to the Committee who then advises the Minister who may then reject or grant the application. Other regulators may however be involved before the mining activities can be lawfully commenced, see for instance the prior references to the Commissioner of State Lands (re: State Lands) and the Minister of Finance (re: ability of foreign investor to hold interest in land in T&T). Planning and environmental approvals pursuant to the Town and Country Planning Act, Chap. 35:01 and the Environmental Management Act, Chap. 35:05 may also need to be obtained as these requirements (to the extent applicable) are not superseded by a license issued pursuant to the Minerals Act. In fact, under the Minerals Act every application for a license must be accompanied by an Environmental Impact Assessment and a Certificate of Environmental Clearance issued by the Environmental Management Authority and the license holder must comply with the standards and procedures prescribed by the Environmental Management Act.

4.- What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes). Please see the answer to Question 1 regarding thresholds on private/foreign investment. The duration of the licenses depends on the type of license acquired: **i)** an Exploration License shall be valid for two years from the date of issue; **ii)** a Mining License shall be valid for five years from the date of issue; and **iii)** a Processing License shall be valid for five



years from the date of issue. Licenses granted may also be renewed upon application made to the Minister not less than 30 days before expiry of the license. Rehabilitation Bonds and Performance Bonds will also need to be deposited with the Director of Minerals as security for potential environmental impact and non-payment of royalties and other dues.

The Minerals Act sets out a number of requirements which must be included as to the form and conditions of a license granted pursuant to the Minerals Act. These include, but are not limited to, specifying the limits of the area of operation, restrictions on transfer, duty of care requirements, HSE requirements, rehabilitation requirements, obligation to continue activity requirements and requirements relating to the payment of the fees, royalties, rents and other payments in respect of the license. There is no special taxation regime for income generated from a lithium related business and persons involved in such business will be taxed in the normal way under the Income Tax Act, Chap. 75:01 (where an individual) or under the Corporation Tax Act, Chap. 75:02 (where a company). However as noted, the license itself may impose additional fees, royalties, rents or other payments.

5.- What are the ordinary structures (contracts and corporate) for exploitation of lithium?

Land- leases, incorporation of an entity in the country? Apart from the regulatory licenses already discussed under the Minerals Act, the traditional form of contract for the grant of mineral rights would be i) a deed of conveyance in the case of an outright sale; ii) a deed of mining lease (for longer term grants); and iii) mining licenses (for shorter term rights). There is no special corporate structure associated with the lithium business in T&T. The corporate structures traditionally used for mining activities in T&T would tend to be private limited liability for profit companies incorporated under the Companies Act, Chap. 81:01. These corporate entities have a separate legal personality from their owners and the 50% national ownership requirement can be facilitated through the issuance of shares in the appropriate 50/50 proportions between a national and a foreign investor to ensure eligibility for licensing under the Minerals Act. The registration of local branches of foreign companies is also possible in principle, but these would be likely to be less common in the case of lithium concerns due to the 50/50 national vs foreign investor ownership requirement.

6.- Are there communal or agrarian lands restrictions that affect private and/or foreign participation? No. There are no communal or agrarian land systems in T&T. Land is either privately owned or State owned. See the answer to Question 1 above regarding foreign investor participation, the answer to Question 2 on the establishment of mining zones and Question 3 for our prior statements on planning and environmental approvals.

7.- Additional comments, references or links. As far as we are aware, lithium mining in T&T is not being actively pursued as a major industry at this time. There is therefore very little (if any) reference material relating to lithium activities in T&T that can be provided.





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1.- **Is lithium open to foreign investment?** Yes, foreign investments are promoted and protected by Act. N°16.906 and there are no restrictions related to lithium.

2.- **How can private parties apply for explore, exploit and produce lithium? Concession, permit, license?** Uruguay has a specific agency that deals with this matter, the National Direction of Mining and Geology. In order to apply for license, interested party should submit the request with this agency.

Licenses are typically to prospecting and for exploring. To explore a specific territory, interested party must require a concession. As an example, through Notice No 2661/023, the National Direction of Mining and Geology granted a permission to prospecting in order to search for many minerals and metals including lithium.

3.- **Who is the public entity or governmental agency with whom the authorization shall be applied for?** Permissions or concessions must be granted by the National Direction of Mining and Geology (DINAMIGE).

4.- **What are the conditions or restrictions for investing in Lithium? (threshold on private/foreign investment? contracts, concessions, duration/term, governmental duties or special taxes).** Currently, there is no specific regulation on lithium investment.

5.- **What are the ordinary structures (contracts and corporate) for exploitation of lithium? Land- leases, incorporation of an entity in the country?** Typically, international groups structure their projects through Uruguayan companies or branches of international companies of the group. The most common type of business organization in Uruguay is the Corporation, due to the protection it provides to shareholders.

6.- **Are there communal or agrarian lands restrictions that affect private and/or foreign participation?** There are no specific restrictions as it happens with other products.

7.- **Additional comments, references or links.** Lithium is considered as a dangerous commodity to transport.

<https://www.gub.uy/ministerio-transporte-obras-publicas/sites/ministerio-transporte-obras-publicas/files/2020-10/Acuerdo%20facilitaci3n%20transporte%20mercancas%20peligrosa>.



PART E

COUNTRY RISK RATINGS

The following describes a table that indicates the risks of each country according to the ratings of S&P Global, Moody's and Fitch, along with the meaning of each credit rating:

COUNTRY RISK RATING

Country	S&P	Moody's	Fitch	TE
Argentina	CCC-	Ca	C	15
Belize	B-	Caa2		17
Bolivia	B-	Caa1	B-	25
Brazil	BB-	Ba2	BB-	42
Chile	A	A2	A-	75
Colombia	BB+	Baa2	BB+	55
Costa Rica	B+	B2	BB-	31
Dominican Republic	BB	Ba3	BB-	40
Ecuador	B-	Caa2		17
El Salvador	CCC+	Caa3	C	15
French Guiana	N/A	N/A	N/A	N/A
Guatemala	BB	Ba1	BB	45
Guyana	N/A	N/A	N/A	N/A
Haiti	N/A	N/A	N/A	N/A
Honduras	BB-	B1		37
Mexico	BBB	Baa2	BBB-	60
Jamaica	B+	B2	B+	27
Nicaragua	B	B3	B-	25
Panama	BBB	Baa2	BBB-	58
Paraguay	BB	Ba1	BB+	48
Peru	BBB	Baa1	BBB	61
Suriname	CCC	Caa3	C	15
Trinidad & Tobago	BBB	Baa2	BBB-	58
Uruguay	BBB+	Baa2	BBB-	60



CREDIT RATING MEANING

TE	S&P	Moody's	Fitch	Description
100	AAA	<u>Aaa</u>	AAA	Prime
95	AA+	Aa1	AA+	High grade
90	AA	Aa2	AA	
85	AA-	Aa3	AA-	
80	A+	A1	A+	
75	A	A2	A	Upper medium grade
70	A-	A3	A-	
65	BBB+	Baa1	BBB+	
60	BBB	Baa2	BBB	Lower medium grade
55	BBB-	Baa3	BBB-	
50	BB+	Ba1	BB+	
45	BB	Ba2	BB	Non-investment grade speculative
40	BB-	Ba3	BB-	
35	B+	B1	B+	
30	B	B2	B	Highly speculative
25	B-	B3	B-	
20	CCC+	Caa1	CCC	
15	CCC	Caa2	CCC	Substantial risks
10	CCC-	Caa3	CCC (low)	Extremely speculative
5	C	C	C	
0	D	/	DDD	
				In default with little prospect for recovery
				In default



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