



PERU
MINING
INVESTMENT
HANDBOOK

MINING INVESTMENT HANDBOOK

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MINING CONCESSION: MINERALS EXPLORATION AND EXPLOITATION

Mining concessions grant their holder the right to explore and exploit minerals resources found at an indefinite depth limited by the vertical planes corresponding to the sides of a square, rectangle or closed polygon, whose vertices are referred to in Universal Transverse Mercator (UTM) coordinates. The mining concession is a distinct, separate and independent right from property rights where it is located, in other words, it does not grant surface rights.

The basic unit of surface measurement of the mining concession is equivalent to a minimum area of 100 hectares and a maximum area of 1,000 hectares, according to the Grid System made official by the Ministry of Energy and Mines (MEM).

Concessions are irrevocable as long as the holder complies with the obligations required by mining law to keep them in force. Such obligations include the payment of an annual Mining Good Standing Fee as from the year in which the claim had been made and as long as the concession is in force, which amounts to USD 3.00 per year per hectare; except for the PPM (USD 1.00) and PMA (USD 0.50). This payment shall be made before June 30 each year.

Likewise, the Unique Organized Text (TUO) of the General Mining Act (LGM) establishes the obligation to obtain an Annual Minimum Production per hectare¹ before the expiration of the tenth year counted as from the year following that in which the concession would have been granted. If this obligation is not met, an Annual Penalty² shall be paid per hectare as from the eleventh year until the year in which such production is met. If this is not achieved until the fifteenth year of the granting of the mining concession, the corresponding concession will be considered as expired.

However, the aforementioned ground for expiration shall not be effective for up to five non-extendable years, if the failure to comply with the Annual Minimum Production is due to acts of God or force majeure or to any non-imputable fact to the mining holder duly supported and approved by the General Directorate of Mining of the MEM (DGM).

Likewise, the expiration cause shall not be met for up to five non-extendable years provided that the payment of the Annual Penalty is complied with, and investments are proved for an amount equivalent to and no less than 10 times the amount of the corresponding Annual Penalty. Investments that are intended for mining activities or infrastructure for public use may be accredited.

In this regard, if the non-compliance with the Annual Minimum Production continues until the end of the

¹ The Annual Minimum Production for all metallic concessionaires, except for PPM and PMA is equivalent to an UIT (the UIT for 2017 amounts to S/. 4,050, equivalent to approximately USD 1,202 - Exchange Rate: S/. 3.368 per USD 1). For non-metallic concessionaires, the Annual Minimum Production is equivalent to 10% of an UIT except for PPM and PMA. The Annual Minimum Production shall be accredited by the corresponding sale settlements of the ore.

² The Annual Penalty equals to 10% of the Annual Minimum Production required per year and per hectare. In this regard, the Annual Penalty for concessionaires of metallic substances shall amount to 10% of an UIT while for concessionaires of non-metallic substances shall be equivalent to 1% of an UIT; except in cases of PPM and PMA.

twentieth year counted as from the year following that in which the concession was granted, the expiration thereof shall be invariably declared³.

Considering the foregoing, it is suggested that for requesting the granting of mining concessions, to make the corresponding consultation to INGEMMET. In this way, one can obtain information in real time about the free areas that can be requested (free denouncement) and about any other aspect related to the granting of concessions, the national mining registry, the registry of lands restricted to mining activities or the payment of the Mining Good Standing Fee and the Penalty.

I. MINING CONCESSION APPLICATION (KNOWN AS PETITORIO IN PERU)

The applicant subjected to the general regime shall submit its mining concession application (claim) for mining concession to any of the Front Desks of INGEMMET or of the relevant Regional Government in the case of PPM or PMA, attaching the proof of payment of Mining Good Standing of the first year and the proof of payment Transaction Fee equivalent to 10% of a UIT. This application shall also comply with the requirements set forth in Articles 14-B° and 17° of the Regulations for Mining Procedures.

II. GEOLOGICAL, MINING AND METALLURGICAL INSTITUTE - INGEMMET

INGEMMET and the Regional Governments shall have a Record of Claims in the Mining Rights and Lands System - SIDEMCAT for the purpose of determining the priority in the filing of claims.

Upon receipt of claims, the officials responsible for the Front Desks must generate the Unique Code of Mining Claim, even in cases where from the reading of the request or the review of documentation, it is revealed that any of the requirements of Arts. 14-B° and 17° of the Regulations for Mining Procedures have been omitted unless the unfulfilled requirements are those set out in Article 14-A° of the aforementioned regulations⁴, in which case the request shall be rejected.

³ Regime amended by Legislative Decree No. 1321, which shall enter into force on January 01, 2019. The aforementioned regulation establishes that: (i) Failure to comply with the minimum production, as of the first semester of the calculated eleventh year following the one in which the mining concession was granted, the concessionaire shall pay a penalty of 2 % of the minimum annual production demandable per year and per effective hectare granted, until the year in which it complies with the minimum annual production, (ii) Failure to obtain a minimum production as to due date of the fifteenth year of the concession, the concessionaire shall pay a penalty equal to 5 % of the minimum annual production demandable per year and per effective hectare granted, until it meets the minimum annual production or investment, (iii) Failure to obtain a minimum production as to due date of the twentieth year of the concession, the concessionaire shall pay a penalty equal to 10 % of the minimum annual production demandable per year and per effective hectare granted, until it meets the minimum annual production or investment (iv) Failure to obtain a minimum production as to due date of the thirtieth year of the concession, the concession expires and (v) It is established that the concessionaire shall not pay a penalty if he / she invests not less than ten times the amount of the penalty per year and per hectare that corresponds to be paid by him / her.

⁴ They shall be the mining claims in which: (a) There is omission of any of the original receipts of the mining good standing fee or the transaction fee, (b) the payment in soles for the mining good standing fee, is less than the lower limit regulated by law; and (c) the payment in US dollars for the mining good standing fee is incomplete. (Art. 14-A° Regulations for Mining Procedures)

III. POSITIVE TECHNICAL AND LEGAL OPINION

It is the previous step to obtain the concession title. The opinion is issued by the Director of the Directorate of Mining Concessions of INGEMMET or of the Regional Directorate of Energy and Mines of the Regional Government - DREM, as appropriate, after having verified and evaluated the claim and in the absence of any opposition. The Technical and Legal Opinion shall be issued within no more than 30 business days following the receipt of the publication of the notices.

IV. GRANTING OF THE CONCESSION TITLE

Within 5 business days after the issuance of the opinions under the responsibility of the Director of the Directorate of Mining Concessions of INGEMMET or the Regional Government, as appropriate, the dossier shall be submitted to the Chairman of the Board of Directors of INGEMMET or to the Director of the DREM of the Regional Government, respectively, to issue the corresponding Resolution. Through the concession title, the Government recognizes the right of the concessionaire to exclusively exercise the rights attached to the concession, which are set out in Art. 37° of the TUO of the LGM.

OTHER CONCESSIONS: PROCESSING, GENERAL WORK AND MINING TRANSPORT

I. PROCESSING CONCESSION

Processing is a combination of physical, chemical or physical-chemical processes that are carried out to extract or to concentrate the valuable ore from minerals, and to purify, smelt or refine metals, including the following stages: (i) mechanical preparation, (ii) metallurgy and (iii) refining. A processing concession grants its holder the right to undertake the aforementioned activities.

1. APPLICATION

The applicant for a processing concession shall submit a request to the DGM with basic information on the company and the project, attaching a copy of the proof of delivery of submission of the Environmental Impact Study (EIA) to the DGAAM, an Authorization for Water Use, an Affidavit of Prior Commitment, agreements evidencing that the applicant has surface rights on the project area and proofs of payment of the Mining Good Standing Fee for the first year and of the Transaction Fee, equivalent to 20% of an UIT.

The applicant shall pay an amount for the Mining Good Standing Fee, computed according to the following scale:

RANGE	AMOUNT OF THE CONCESSION FEE
Up to 350 MT/day	0.0014 of an UIT per each MT/day
350 to 1,000 MT/day	1 UIT
1,000 to 5,000 MT/day	1.5 UIT
Each additional 5,000 MT/day	2 UIT

The MT / day refers to the installed treatment capacity and, in case of extensions, the payment shall only be made on the additional capacity.

2. TECHNICAL INFORMATION

The processing concession application shall include the technical information on the project required under Art. 35 of the Regulations for Mining Procedures. The applicant for a processing concession shall submit a request to the DGM including:

- a) Brief specifications of the plant and its main, auxiliary and complementary facilities according to format established by the DGM;
- b) A copy of the submittal proof of the EIA to the DGAAM, made by any of the entities listed in the Registry of the DGAAM according to the regulations stated in the Ministerial Order No. 143-92-EM/VMM;
- c) Authorization for water use issued by the ANA.

3. VERIFICATION, NOTIFICATION AND PUBLICATION

If the application meets the requirements, the DGM shall notify the interested party so that he / she can collect the notices for publication. Publication shall contain a summary of the information required by Art. 35° of the Regulations for Mining Procedures.

4. RECEIPT OF NOTICES

Once notified, the interested party shall collect the notices within the following 15 business days.

5. NOTICES OF COMPLETION OF CONSTRUCTION

After the construction and installation of the processing plant, the interested party shall notify the DGM to carry out an inspection in order to verify that this is completed in accordance to the original project, in relation to mining hygiene and safety, and environmental impact. This shall be accompanied by the corresponding industrial waste disposal.

6. INSPECTION

The inspection shall take place within 60 calendar days after the date it was requested. If the inspection is positive, the DGM shall grant the concession title.

7. CONCESSION TITLE

The Resolution granting the processing concession title authorizes the operation of the plant as well as the requested use of water and the industrial and domestic liquids disposal system. The Resolution shall be submitted to INGEMMET for its registration in the corresponding entry.

Arts. 17°, 18° and 46° of the TUO of the LGM.

Arts. 17°, 35° to 38° of the Regulations for Mining Procedures.

Procedure #CM01 of the TUPA of the MEM.

II. GENERAL WORK AND MINING TRANSPORT CONCESSIONS

“General work” is any mining activity that provide auxiliary services such as ventilation, drainage, lifting or extraction at two or more concessions granted to various concessionaires. The general work concession grants the provision of the auxiliary services mentioned above.

“Mining transport” is any system used for continuous mass transportation of ore products, through unconventional methods. The systems to be used may be: conveyor belts, pipes or rail cables. The mining transport concession grants its holder the right to install and operate the aforementioned systems.

The procedure for obtaining the general work and mining transport concessions is detailed below:

1. APPLICATION

The applicant for general work or transportation concession shall submit a request to the DGM with basic information on the company, along with an Affidavit of Prior Commitment, a copy of the proofs

of payment of the Mining Good Standing Fee corresponding to the first year and of a transaction fee equivalent to 15% of an UIT. Likewise, the requirements provided for in Art. 40° of the Regulations for Mining Procedures shall be met. The application is submitted to the DGM with as many copies as holders are to be benefited by the concession.

2. PAYMENT OF THE MINING GOOD STANDING FEE

When applying for the concession, the applicant shall pay a Mining Good Standing Fee that equals 0.003% of one UIT per linear meter of estimated labor.

3. CONCESSION TITLE

After approves the execution of the work, the DGM shall grant the concession title and shall submit the resolution to INGEMMET to proceed with the registration of the general work concession or the mining transport concession.

Arts. 19°, 20°, 22°, 23° and 47° of the TUO of the LGM.
Arts. 40° to 42° of the Regulations for Mining Procedures.
Procedure #CM02 of the TUPA of the MEM.

GUARANTEES TO FOREIGN INVESTMENT AND LEGAL STABILITY

I. GUARANTEES FOR FOREIGN INVESTMENT

Foreign investors and the companies in which they participate, have the same rights and obligations as domestic investors and companies. The national legal system, under no circumstances, discriminates between domestic or international investors or companies.

Domestic and foreign investors enjoy the same rights with regards to the properties they acquire within national territory; however, the National Constitution establishes that foreign investors cannot directly or indirectly acquire, or own by any title, mines, lands, forests, bodies of water, fuel or energy sources, within 50 km. from the borders, excluding those particular cases expressly authorized by a Supreme Decree approved by Presidential Cabinet of Peru.

In the case of foreign investments, the national legal framework provides that they are automatically authorized and, once they are made, they shall be registered before PROINVERSION (mainly for statistical purposes).

On the other hand, foreign investors have the right to transfer abroad –after paying taxes– in freely convertible currency, using the most favorable exchange rate at the time of the exchange transaction, and without prior approval of any authority or public entity, the following: (i) the total amount of capital from investments made; and (ii) the total dividends or profits from their investment.

Arts. 2° to 5°, 7° and 9° of Legislative Decree No. 662.
Art. 71° of the Peruvian Political Constitution.

II. LEGAL AND TAX STABILITY OF INVESTMENTS

In Peru there are two kinds of contracts that can be signed by mining investors to obtain a legal stability scheme for their investments. On one hand, we have the Legal Stability Agreements (generally applicable to all private investors, including investors in mining activities); and on the other, those called Stability Contracts under the General Mining Law (applicable only to investors in mining activities). The law allows the parallel signing of both types of contracts and the combined possession of the benefits granted by them, as long as they meet the requirements established to access to each of them.

1. LEGAL STABILITY AGREEMENTS

The Legal Stability Agreements grant certain guarantees to foreign and domestic investors who intend to carry out economic activities related to any sector in order to provide a stability scheme. Such agreements are managed by PROINVERSION, which also signs them in representation of the Peruvian Government.

The Legal Stability Agreements may be executed before or within twelve (12) months after obtaining an authorizing title. The signing thereof gives the holder the invariability guarantee of the legal regulations detailed below for a term of 10 years from their signing.

In mining, foreign investors or Peruvian companies with foreign investment may benefit from the legal stability scheme, provided that they commit to carry out at least and within a period not exceeding 2 years as from the date of execution of the Agreement: (i) cash contributions channeled through the National Financial System, to the capital of a company incorporated or to be incorporated; or (ii) to make risk investments formalized with third parties; for an amount of no less than USD 10 million.

The mentioned Agreements guarantee the following:

1.1. To foreign investors

- a) Stability of the Income Tax scheme that was valid when signing the Agreement so that the amounts that would apply to investors shall not be affected by a higher tax burden (stability of investments, dividends, profits and fund remittance).
- b) Free disposition of currency.
- c) Free remittance of profits, dividends, capital and other income.
- d) Use of the most favorable exchange rate in the market.
- e) No discrimination in treatment between foreign and domestic investors.

1.2. To Peruvian companies with foreign investment

- a) (i) Stability of the Income Tax scheme that was in effect when signing the Agreement, so that it shall not be affected by the amendments enacted subsequently, (ii) stability of export schemes, (iii) stability of the scheme of Advanced Recovery of the General Sales Tax (IGV); and (iv) stability of taxes levied on net assets.
- b) Stability of the schemes for hiring workers in any of its forms.

Arts. 10° and 12° of Legislative Decree No. 662

Art. 2° of Law No. 27342

Arts. 14°, 15°, 19°, 23° and 25° of the Regulations for Guarantee Schemes for Private Investment

2. STABILITY CONTRACTS UNDER THE GENERAL MINING LAW

Art. 72° of the TUO of the LGM establishes promotional measures applicable to individuals developing a mining activity, such as tax, exchange and administrative stability. For investors to enjoy this benefit, it is required the execution of a Stability Contract that shall be managed and signed by the MEM, which will sign them on behalf of the State and is obliged to enforce the existing contracts. Unilateral amendments are not allowed.

2.1. 10-year Stability Contracts

If the mining activities holder starts or is performing operations larger than 350 MT/day and up to 5,000 MT/day or has investment programs equivalent to USD 20 million, a 10-year period of tax stability as from the fiscal year when the execution of the investment is accredited will be guaranteed. The following aspects shall be granted:

- a) Tax stability (only for taxes): (i) Scheme applicable to the Income Tax (the current rate plus two additional percentage points shall be stabilized), (ii) Export schemes, (iii) Excise Taxes regarding their transferable nature (IGV, ISC, etc.), (iv) Special schemes for tax rebates, temporary admission

and similar; and, (v) Exemptions, incentives and tax benefits related to stabilized taxes (according to the term and conditions established by the current legal regulation as of date of signing of the Contract).

- b) Free disposition of currency generated by exports.
- c) No discrimination in regard to the exchange rate.
- d) Free trade of ore products.
- e) Stability of the special schemes, when they are granted for tax rebates, temporary admission, and similar.
- f) Administrative Stability (rights and obligations of the mining holders).

2.2. 12-year Stability Contracts

In order to promote investment and foster the financing of mining projects with an initial capacity of no less than 5,000 MT/day or extension projects designed to reach a capacity of no less than 5,000 TM/day in one or more concessions or one or more Administrative Economic Units, the mining holders shall enjoy tax stability that shall be guaranteed by a contract signed with the Government for a 12-year period as from the fiscal year in which the execution of the investment or extension is accredited, accordingly.

The mining holders with investment programs of no less than the equivalent in local currency to USD 100'000,000.00, for starting any of the activities of the mining industry, shall be entitled to sign such contract.

In the case of investments in existing mining companies, an investment program of no less than the equivalent in local currency to USD 250'000,000.00 shall be required.

Exceptionally, those investing no less than the equivalent in local currency to USD 250'000,000.00 in state-owned companies subject to the privatization process, according to the Legislative Decree 674 shall be entitled to access these contracts.

The effect of beneficial interest lies exclusively in the activities of the mining company for which the investment is made.

The mining holder executing these contracts may, at his or her option, advance the contractual stabilized scheme to the investment stage, with a maximum of 8 consecutive fiscal years, a period that shall be deducted from the term guaranteed by the contract.

2.3. 15-year Stability Contracts

In order to promote the investment and facilitate the financing of mining projects with an initial capacity of no less than 15,000 MT/day or projects designed to reach a capacity of no less than 20,000 TM/day in one or more concessions or one or more Administrative Economic Units, the mining holders shall enjoy tax stability that shall be guaranteed by contract signed with the Government for a 15-year period as from the fiscal year in which the execution of the investment or extension is accredited, as the case may be.

The holders that are starting or that are carrying out mining activities with investment programs off

no less than the equivalent in local currency to USD 500'000,000.00, shall be entitled to sign this contract.

Exceptionally, those investing no less than the equivalent in local currency to USD 500'000,000.00 in state-owned companies subject to the privatization process, according to the Legislative Decree 674 shall be entitled to access these contracts.

The effect of beneficial interest shall exclusively lie in the activities of the mining company for which the investment is made, whether those are expressly mentioned in the investment program contained in the feasibility study included in the stability contract; or those are additional activities carried out after the implementation of the investment program, provided that such activities are undertaken within one or more concessions or one or more Administrative Economic Units where the project subject of the contract signed with the Government is developed, that they are linked to the purpose of the investment project; that the amount of the additional investment is no less than the equivalent in local currency to USD 25'000,000.00; and they are previously approved by the Ministry of Energy and Mines, notwithstanding a subsequent audit by that entity.

The additional activities referred to in the previous paragraph shall be executed within the term of the guaranteed stability set forth in the Stability Contract, without involving an extension or estimation of a new term of stability.

The mining holder executing these contracts may, at his or her discretion, advance the contractual stabilized scheme to the investment stage, with a maximum of 8 consecutive fiscal years, a period that shall be deducted from the term guaranteed by the contract.

This Contract guarantees the benefits mentioned in paragraph 2.1 (10-year Stability Contracts) and, additionally, it enables the mining holder to increase the annual depreciation rate of machinery, industrial equipment and other fixed assets up to a maximum annual limit of 20% (twenty percent) as a global rate according to the specific characteristics of each project, with the exception of buildings and construction in progress whose maximum annual limit shall be 5% (five percent).

Arts. 72°, 78° to 80° and 82° to 84° of the TUO of the LGM.

MAIN TAX ASPECTS AND OTHER ECONOMIC CHARGES

I. MAIN TAX ASPECTS

In Peru, mining is subject to the same taxes levying other economic sectors. Furthermore, it is obliged to pay the following concepts that are applicable only to mining activities: (a) Special Tax on Mining (IEM) and (b) Special Burden on Mining (GEM). Likewise, it assumes a particular financial burden on behalf of the State (other than taxes) called mining royalties.

1. INCOME TAX (IR)

The Peruvian IR is a tax on the income (profits or benefits) obtained by taxpayers who qualify as domiciled in the country¹ regardless of the nationality of natural persons, the place of the legal incorporation of companies, or the location of the production source of income. In addition, the tax applies to individuals who qualify as taxpayers Non-Domiciled in the country, but only in relation to the income they generate and qualify as “Peruvian source”. This tax is liquidated and paid annually although there is an obligation to make monthly payments on account.

For purposes of this tax, taxable income is classified into the following categories:

- Capital Income:
 - First: Income produced by leasing, subleasing and assignment of property.
 - Second: Income from other capitals.
- Business Income:
 - Third: Income from trade, industry and other expressly considered by law. It is considered that all income generated by companies belong to this category.
- Labor Income:
 - Fourth: Income from independent work.
 - Fifth: Income from dependent work and from other independent activities expressly provided by law.

1.1. Determination of Third-Category Income Tax

1.1.1. Domiciled

In the case of the Third Category (companies), the tax on domiciled entities is applied to the Net Income that the company has obtained in the fiscal year. In order to establish the

¹ The following are considered as domiciled in the country:

- Natural Persons: (i) Peruvian nationals domiciled in the country, (ii) foreigners who have resided or stayed in the country more than one hundred eighty three (183) calendar days, for any period of twelve (12) months; and (iii) those who perform abroad representation functions or official charges.
- Legal Persons: (i) Companies incorporated in the country, (ii) branches, agencies or other permanent establishments in Peru of non-domiciled natural or legal persons, (iii) succession, if the deceased, at the time of his / her death, would have the status of domiciled, (iv) multinational banks regarding the income of their operations in the domestic market; and (v) sole proprietorships, partnerships and other entities incorporated or established in the country.

Net Income, it shall be deducted from Gross Income (all the income that has been earned in the fiscal year): (i) the costs necessary to produce it and maintain such income generating source, while the deduction is not expressly prohibited by law; and (ii) the total net losses from previous fiscal years².

The tax payable by domiciled companies shall be determined by applying the rate of 29.5% on Net Income from taxable year 2017.

However, domiciled or non-domiciled natural persons and non-domiciled companies receiving dividends and other forms of distribution of profits from companies shall pay a rate of 6.8% in the taxable years 2015-2016 and 5% from taxable year 2017 onward³.

It is noted that the mining legislation and the legislation of the IR establish some variables regarding the general Tax treatment. Indeed, it is envisaged: (i) the amortization of the purchase value of mining concessions (including the price paid by them or expenses of the claim, costs of prospecting and exploration) in a term that the concessionaire shall determine according to the probable life of the deposit (proven and probable reserves), (ii) the deduction in one fiscal year of the exploration expenses incurred in once the production of the mine has begun or its amortization in several fiscal years, at the discretion of the concessionaire, (iii) the deduction in one fiscal year of the expenses of mine preparation and development or its amortization in a maximum of 3 fiscal years, at the discretion of the concessionaire, (iv) the possibility of deduction from Net Income the infrastructure investments made by the holders of mining activities constituting a public service, (v) the possibility of applying a higher rate of depreciation for machinery and equipment used for mining over other uses; and (vi) other.

1.1.2. Non-Domiciled

In this case, the IR is determined by applying various fees (depending on the type of operation or activity whose realization has generated income: interest from foreign loans, royalties, technical assistance, other income, among others) on all income paid or credited, except as indicated in Art. 48° and paragraph g) of Art. 76° of the TUO of Income Tax Law (LIR).

TUO of LIR.
Regulations of LIR.

1.2. Agreements to avoid double taxation

In order to determine the Income Tax to be paid and the economic impact of this on foreign investment, it is essential to take into account the agreements to avoid double taxation that Peru has signed with several countries. The agreements that to date, are in effect, are those signed with: (i)

2 Taxpayers domiciled in the country may offset their losses from Peruvian third-category income of a fiscal year, according to any of the following systems:

- To offset the total net loss recorded in a fiscal year attributing it every year, until running out its amount to net income earned in the four (4) subsequent fiscal years, losing the balance that is not offset in such period.
- To offset the total net loss recorded in a fiscal year attributing it every year, until running out its amount, to fifty percent (50%) of net income earned in the subsequent fiscal years.

3 Legislative Decree 1261: In order to benefit from the provisions of this legislative decree, see its second supplementary final provision.

the Andean Community (Peru, Colombia, Ecuador and Bolivia), (ii) Chile, (iii) Canada, (iv) Brazil, (v) Mexico, (vi) South Korea (vii) Switzerland and (viii) Portugal. An agreement has been signed with the Kingdom of Spain, which is in the process of ratification by the Peruvian Congress and therefore it is not yet applicable. A new agreement with Sweden and with the governments of France, Italy, United Kingdom, Switzerland and Thailand are also in process of negotiation.

2. GENERAL SALES TAX (IGV)

The IGV is a tax levying a value added at each transaction at different stages of the economic cycle, using a scheme of debits and credits (that is netted monthly). This tax operates as follows: the tax payable is monthly determined by deducting from the Gross Tax (amount resulting from applying the tax rate on the taxable base⁴) the tax credit (IGV paid for all purchases of goods and services), so that the difference between these two amounts is only what is actually paid to the Treasury.

2.1. Determination of IGV

This tax specifically levies the following operations: (i) the sale in the country of movable property, (ii) the provision or use of services in the country, (iii) the construction contracts, (iv) the first sale of real estate property made by the builders; and (v) the importation of goods.

As of March 01, 2011, the applicable rate is 16 %, to which it shall be added a 2 % rate of the Municipal Promotion Tax (2 %), totaling 18 %⁵.

The Tax structure envisages some non-affected items (assumptions in which it may not be applied), such as: (i) the export of goods, (ii) the export of some services contemplated by law, (iii) the transfer of goods to be carried as a result of the reorganization of companies, (iv) others.

Art. 1°, 2°, 17° and 33° of TUO of the Law on IGV.
Regulations of the Law on IGV.

2.2. Refund of IGV

2.2.1. General Scheme

- Balance on Behalf of the Exporter
Exporters are entitled to claim the refund of the IGV levied on the purchase of goods or services used as inputs for use in the production of goods that are exported, after deducting it from Gross Tax upon charge, if any, and from other tax debts upon charge.

Art. 33° of TUO of the Law on IGV.
Art. 9° of the Regulations of the Law on IGV.

⁴ The Taxable Base is constituted by:

- a) Sale of goods: Sales Value.
- b) Provision or use of services: Total of retribution.
- c) Construction contracts: Value of construction.
- d) Sale of properties: Earned income.
- e) Imports: Customs Value plus the corresponding duties and taxes.

⁵ Legislative Decree No. 1347: It amends the IGV (General Sales Tax) rate to 15% (plus 2 % of IPM). The legislative decree shall enter into force on July 1, 2017 provided that the annualized collection, as of May 31, 2017, of the total net IGV of its internal returns reaches 7.2 % of GDP.

- Recovery of IGV
Refund of IGV paid on local imports or purchases of capital goods made by individuals who are engaged in the production activities of goods and services in the country and that are intended to export or which sale is levied with IGV, and that they have not started yet its business activities.

Art. 78° of TUO of the Law on IGV.
Arts. 2° to 5° of S.D. 046-96-EF.

2.2.2. Special Schemes

- Advanced Recovery of IGV
It consists of the refund of IGV taxed on local imports or purchases of new capital goods, new intermediate goods, construction services and contracts carried out in the pre-production stage to be used directly in the execution of projects included in the Investment Agreements that could be signed with the Government as long as they are intended for carrying out transactions levied on IGV or for exports.

Natural or legal persons who invest in any sector of the economy generating third-category income (companies) and, those who commit to investments greater than USD 5 million and that the project requires a pre-production stage equal to or greater than two years can access to the scheme.

Arts. 2° and 3° of the Special Scheme of Advanced Recovery of IGV, Leg. D. No. 973.
Arts. 2° to 4° Regulations of the Special Scheme of Advanced Recovery of IGV, Leg. D. No. 973.

- Final Refund of IGV
It grants the right to the holders of mining concessions to apply for the final refund of IGV paid on import or purchase operations of goods, provision or use of services and construction contracts, provided that they are made for the execution of activities during the exploration stage, i.e., when they still have not started production operations. For these purposes, the signing of an Investment Agreement on exploration with MEM is an essential requirement. This scheme is in force until December 31, 2018.

Art. 1° of Law extending the Term for Tax Relief.
Arts. 1° and 2° of Law on Final Refund of IGV, Law No. 27623, as amended.
Arts. 2° to 6° of the Regulations of the Law on Final Refund of IGV.

II. MINING ROYALTIES

The mining royalty is the economic compensation that holders of mining concessions pay to the State for the exploitation of metallic and non-metallic ore resources.

It will be quarterly determined by applying on the quarterly operating income of individuals of the mining activity an effective rate that, is established according to the operating margin for the quarter. The resulting amount shall be compared to 1% of quarterly sales and the greater shall be paid.

The amount actually paid for mining royalties shall be considered as an expense for purposes of calculating the Income Tax.

III. SPECIAL TAX ON MINING

The Special Tax on Mining (IEM, by its name on Spanish) levies the operating income obtained by the individuals of mining activity, from sales of metallic mineral resources, as well as from self-consumptions and unjustified withdrawals of such goods.

This tax shall be quarterly determined by applying on the quarterly operating income, it is established an effective rate according to the operating margin for the quarter.

The amount actually paid for IEM shall be considered as an expense for purposes of calculating the Income Tax in the fiscal year in which it was paid.

IV. SPECIAL BURDEN ON MINING

The Special Mining Burden (GEM, by its name on Spanish) is a public resource originated on the exploitation of non-renewable natural resources, which is applicable to the individuals of mining activity on merit and from the signing of agreements with the State, regarding projects for which guarantee agreements and measures to promote investment are kept in force.

It is the result of applying on the quarterly operating income of individuals of mining activity, the effective rate established to the operating margin.

For determining the GEM, the amounts to be paid in respect of mining royalty and contractual mining royalty to be due after the signing of the agreement are discounted.

The amount actually paid of GEM shall be considered as an expense for purposes of calculating the Income Tax.

Arts. 1°, 2°, 4° and 5° of the Law on Mining Royalties.

Arts. 4°, 6° and 10° of the Regulations of the Law on Mining Royalties.

Law No. 29788 - Law amending Law No. 28258, Law on Mining Royalties and Supreme Decree amending the Regulations to Law No. 28259 - Law on Mining Royalties.

Law No. 29789 - Law creating the Special Tax to Mining and S.D. No. 181-2011-EF - Regulations of the Law No. 29789.

Law No. 29790 - Law establishing the Legal Framework of Special Burden to Mining and S.D. No. 173-2011-EF - Regulations of the Law No. 29790.

V. PARTICIPATION OF EMPLOYEES IN PROFITS OF MINING COMPANIES

Employees are entitled to participate in the profits of all the companies developing income-generating activities. As a result, mining companies are obliged to distribute 8% of their annual taxable income before taxes on behalf of all their employees, with a maximum limit equivalent to 18 monthly salaries per employee.

If there is a surplus between the amount obtained from the application of 8% of net taxable income obtained by the company and the maximum limit per employee, it shall be delivered up to an amount equivalent to 2,200 UIT to the National Fund for Labor Training and Employment Promotion, which is presided by a representative of the MTPE. If there is still a surplus, it shall be delivered to regional governments for their use in public investment projects.

Arts. 1° to 3° of Legislative Decree No. 892, as amended, Law No. 27564.

MAIN ENVIRONMENTAL ASPECTS APPLICABLE TO MINING ACTIVITIES

I. ENVIRONMENTAL CERTIFICATION TO CARRY OUT MINING EXPLORATION ACTIVITIES

The environmental legislation regulates the mining exploration stage, mainly through the Environmental Regulations for Mining Exploration Activities. This regulation has divided these activities in two different categories (I and II), according to the of magnitude and impacts on the environment that the planned activities may have.

The prior approval of an environmental study is not required to conduct prospecting and exploration activities that will cause no or even a slight alteration to the surface (geological, geophysical or geochemical studies, surveys, collection of small amounts of rock and soil ore samples, among others) provided that the instruments or equipment used can be carried by hand and without causing further alteration than the one caused by the regular transit of people.

This is not the case of Category I¹ activities, which requires an Environmental Impact Statement (DIA, by its name in Spanish) to be submitted and that be considered automatically approved when is delivered to the corresponding authority; except in some exceptional cases detailed in the law that will be subject to evaluation and prior approval of the EIS. This exception applies when the exploration activities are developed in environmentally sensitive or vulnerable areas (at a close distance from: water bodies, glaciers, forests in protected areas, primary forests and areas containing environmental liabilities).

The DIA includes, among other aspects, information related to the mining operations to be carried out, environmental and social aspects of the area where the mining activities will be developed and the plans to mitigate and recover from environmental impacts that may be caused. DIA main contents are detailed in the Ministerial order approving the common Terms of Reference for mining exploration activities.

The concession may request on the DIA a Certificate of Automatic Approval of the document itself which shall be declaratory but not constitutive.

In the case of Class II² activities, a semi-detailed Environmental Impact studies (EIASd) will be submitted in order to be approved by DGAAM prior to the beginning of any activity. The EIASd contains detailed information on environmental and social issues referring to the area where exploration activities will be carried out, information about the project and the works to be performed, as well as control and mitigation measures of the environmental

1 Category I: It includes projects involving any of the following aspects:

- a) A maximum of 20 drilling platforms;
- b) An effective disturbed area smaller than 10 hectares considering as a whole the platforms, ditches, auxiliary facilities and access;
- c) Construction of tunnels up to 50 meters in length, as a whole.

2 Category II: It includes projects involving any of the following aspects:

- a) More than 20 drilling platforms;
- b) An area actually disturbed bigger than 10 hectares considering as a whole the platforms, ditches, auxiliary facilities and access;
- c) The construction of tunnels of more than 50 meters in length.

impacts, among other elements, according to the items listed on the Ministerial order approving the common terms of reference for mining exploration activities.

Art. 8° of the TUO of the LGM.

Art. 19° of Environmental Regulations for Mining Exploration Activities.

Ministerial order approving the common Terms of Reference for Mining Exploration activities.

II. ENVIRONMENTAL CERTIFICATION FOR MINING EXPLOITATION ACTIVITIES, PROCESSING, GENERAL WORK, TRANSPORT AND MINING STORAGE³

Projects that by nature may cause mild environmental impacts are required to have a Semi-detailed Environmental Impact Assessment (EIASd - Category II), while those that can generate significant negative environmental impacts are required to have a Detailed Environmental Impact (EIAd - Category III). According to the Regulations for Environmental Protection and Management for the activities of Exploitation, Processing, General Work, Transport and Mining Storage, these activities, carried as medium or large mining, are required to have an EIASd or EIAd, as appropriate. In the first case, the Ministry of Energy and Mines, through the General Directorate of Mining Environmental Affairs approves the study; while in the second one, it is approved by the National Service of Environmental Certification for Sustainable Investment - SENACE (except some EIAd that are expressly excluded from its jurisdiction by Supreme Decree). Such approval is the Environmental Certification.

The EIA shall be prepared by a consulting company registered and authorized by the environmental authorities, and in accordance with the Terms of Reference approved by them. The EIA contains a Baseline Study presenting the characteristics prior to the development of the mining project, including the diagnosis of the physical, biological, chemical, socioeconomic components and of the landscape, sources of pollution, health of people, social, economic, cultural and anthropological aspects of the population in the areas of influence. Likewise, it includes the project description at feasibility level, the identification and assessment of potential environmental and social impacts of the mining project, and the Environmental Management Strategy.

The assessment procedure of the EIASd and -EIAd is carried out within ninety (90) and one hundred twenty (120) business days respectively, from the day after the admission of the Request for Environmental Certification. The aforementioned terms may be extended by the relevant authorities only once for no more than thirty (30) business days, with the proper technical support submitted by the concession holders according to the needs and particularities of each case.

Regulations related to the Registry of Entities Authorized to elaborate EIA in the Energy and Mines Sector.

Technical Guide for the elaboration of EIA.

Art. 52° Regulations of the Law on EIA.

III. MAXIMUM PERMISSIBLE LIMITS (LMP)

The holder of the mining activity is responsible for emissions, effluents, discharges, solid wastes, noise, vibrations and any other aspect of its operations as well as environmental impacts that may arise during all stages of project development, particularly those impacts and risks exceeding the Maximum Permissible Limits and that affect the Environmental Quality Standards (ECA, by its name in spanish), which apply to them or affect the environment and human health.

³ Arts. 24, 30, 40, 41, 42, 46 of the S.D. 040-2014-EM-Regulations for Environmental Protection and Management for Exploration Activities, Beneficiation, General work, Transportation and Mining Storage.

The LMP is the measure of the concentration or degree of elements, physical, chemical and biological substances or parameters characterizing an effluent or an emission, which when exceeded causes or may cause damage to health, human welfare and the environment.

MINAM is responsible for elaborating and modifying the LMP. The MINAM send its proposal to the PCM to be approved by a Supreme Decree.

For the mining sector, the compliance with the LMP is compulsory, mainly, by MEM in the qualification and approval procedures of environmental studies and requests that are submitted to it; by OEFA, authority responsible for monitoring, control and sanction in environmental terms of mining activities.

Art. 32° and 33° of LGA.

Resolution by Board of Directors No. 003-2010-OEFA.

IV. MINE CLOSURE

The legislation on Mines Closure is aimed at preventing, minimizing and controlling the risks and impacts on health, safety, the environment and the property, that may arise from the stoppage of a mining unit.

Anyone in charge of a mining activity under development or in production stage, or that is included as a case stated on Article 2° of the Regulations for Mines Closure is obliged to elaborate, submit and implement a Mine Closure Plan, consisting of an study to establish and describe the measures to be taken to rehabilitate the area used or disturbed by the mining activity. It will include costs, timing and control and monitoring methods of compliance. The rehabilitation measures shall be carried out, before, during and after the final closure of the operations, as applicable.

This Plan must be submitted to the MEM for approval in a maximum term of 1 year from the approval of the EIA. This Plan must be elaborated for each mining unit by an entity that is registered in the "Registry of Entities Authorized to elaborate Mines Closure Plans in the Energy and Mines sector" for which MEM is responsible for.

On the other hand, there is an obligation established to provide environmental guarantees on behalf of MEM covering the estimated cost of the rehabilitation measures contained in the Mines Closure Plan .

Arts. 1° to 6° of the Law on Mine Closure.

Arts. 2°, 3°, 7° and 8° of the Regulations for Mine Closure.

Technical Guide for the elaboration of Mine Closure Plans.

V. WATER USE FOR MINING PURPOSES

In Peru, the use of water for every activity is regulated by Law No. 29338, Law on Water Resources, its regulations approved by Supreme Decree No. 001-2010-AG, the Regulations of Procedures for Granting Water Use Rights approved by J.R. No. 007-2015-ANA, among other regulations.

The maximum technical authority of the National System of Water Resources Management is the National Water Authority. Within the organizational structure of this entity there are, among other bodies, a Court for Water Dispute Resolution, Water Administrative Authorities and Local Water Authorities (former Technical Administrators of Irrigation Districts).

According to the new legal framework, the use of water is subject to availability, since the productive use of water, such as mining use, is referred to its use in production processes or activities prior to them, and it is made by rights of water use granted by the National Water Authority.

The rights for water use contemplated in the Law on Water Resources are: (i) Water use license: granting the holder the right to use the water for an indefinite term as long as the activity for which it was granted subsists. Block use licenses and provisional licenses are included; (ii) Permit for water use: which is a right of indefinite duration that can be used in stages of water surplus and entitles the holder to use a certain amount of variable water from a natural source; (iii) Authorization for water use: granting its holder the right to use an annual amount of water for a maximum term of two years, extendable, only once for a similar term, in order to cover needs relating to the implementation of studies or works, or soil washing.

With the new legislation, holders of rights for water use are required to pay economic compensations for water use and for the dumping of treated waste water as well as the payment of fees if water distribution services are received, use of water infrastructure, and monitoring and management of groundwater. ANA is responsible for developing the method for determining the value of economic compensations, so by J.R. No. 457-2012-ANA the Methodology to determine the value of economic compensations for the use of water and the dumping of treated waste water was approved.

Arts. 34°, 42°, 47°, 58°, 62°, 90° and First Transitory Supplementary Provision of the Law on Water Resources.

J.R. No. 457-2012-ANA, Methodology for determining the value of economic compensations for the use of water and the discharge of treated waste water.

VI. DUMPING AUTHORIZATION

Any dumping of treated waste water in a natural source of water, continental or sea, requires a dumping authorization granted by the National Water Authority, prior favorable technical opinion by the relevant sectorial or regional environmental authority and of the Health Authority, in compliance with the Environmental Quality Standards for Water (ECA-Water) and Maximum Permissible Limits (LMP).

By Administrative Resolution No. 224-2013-ANA the Regulations of Administrative Procedures for Granting Authorizations for Dumping and Reuses of Treated Waste Water was approved.

Arts. 79° and 80° of Law on Water Resources.

VII. MAIN ENVIRONMENTAL INSTITUTIONALITY FOR MINING ACTIVITIES

MEM is responsible for formulating and promoting policies to encourage and promote mining ensuring the sustainable use of mineral resources. Through DGAAM, MEM is responsible for the review and approval of some instruments of Environmental Management applicable to mining activities.

In May 2008, MINAM was created aimed at designing, establishing, implementing and monitoring national and sector environmental policy. Among other functions, MINAM shall ensure the compliance with the environmental legislation directly by monitoring, assessing and controlling as well as acting as a sanctioning body or otherwise, leading the exercise of these responsibilities by the relevant sector authorities. In addition, MINAM is responsible for the preparation and approval of the Environmental Quality Standards - ECA as well as for the approval of LMP for all productive activities and can also randomly review the Environmental Impact studies - EIA approved by DGAAM.

The transfer of functions from OSINERGMIN to OEFA with regard to monitoring, control and sanction in environmental terms of mining activities was approved in 2010.

Finally, by Law No. 29968, the National Service for Environmental Certification for Sustainable Investment - SENACE was created as a specialized technical body, which from December 28, 2015, took the following functions:

- a) To review and approve the Detailed Environmental Impact Studies (EIAd) and its corresponding updates, modifications, supporting technical reports, requests for qualification and approval of Terms of Reference, support in developing Baseline, Citizen Participation Plan and other actions or procedures related to the actions mentioned above.
- b) To manage the registry of entities authorized to develop Environmental studies.
- c) To manage the public and updated administrative registry of granted or denied environmental certifications.

Art. 6° of the Organic Law of Energy and Mines Sector.

Art. 5° of the Law transferring responsibilities for monitoring and audit of mining activities to OSINERGMIN.

Regulations for Organization and Functions of MEM.

Law on Creation, Organization and functions of the Ministry of Environment.

Amendments to Legislative Decree No. 1013.

LABOR ISSUES AND MAIN HIRING MODALITIES

I. DIRECT HIRING OF EMPLOYEES

The hiring of employees engaged in mining activities shall be carried out according to the legislation of general application, any special or differentiated hiring scheme is not applicable.

The Peruvian law on hiring has as general rule the execution of indefinite employment contracts, so that, at first, any supply of services, paid and subordinate is assumed to be for an indefinite term. Notwithstanding the above, since in some cases the market requires more flexible modalities, it is allowed to agree fixed-term contracts, for such purpose, certain assumptions and formalities considered by law must be complied with.

The different modalities for the hiring of employees is detailed below:

1. INDEFINITE EMPLOYMENT CONTRACT

The indefinite employment contract can be executed in writing or verbally. This type of contract implies that there is a personal provision of services, a payment and a relationship of subordination between the employee and the employer (provision of services under the direction of the employer through orders, guidelines, etc.).

The employer may dismiss an employee provided that there is fair cause related to the capacity or behavior of the employee which, if not properly proven, shall result in the obligation to pay a compensation on behalf of the employee for unfair dismissal.

In the other hand, the legislation has considered within the objective reasons for collective termination of employment contracts, economic, technological, structural or analogue reasons, provided that the appropriate procedure is observed.

Arts. 4°, 5°, 9°, 22°, 46° and 48° of TUO of the Law on Labor Productivity and Competitiveness.

2. MAIN EMPLOYMENT CONTRACTS SUBJECT TO MODALITY

2.1. Temporary Nature Contracts:

- Due to commencement or increase in activity: When the commencement of production occurs, the subsequent installation or opening of new establishments or markets as well as the commencement of new activities or the increase of those already existing within the same company. Maximum duration of 3 years.
- Due to market needs: It is aimed at addressing those circumstantial increases in production caused by substantial changes in demand on the market, even in the case of ordinary tasks that are part of the normal activity of the company that cannot be met with the permanent staff, excluding cyclical or seasonal variations occurring in some productive activities of a seasonal nature. Maximum duration of 5 years.

- Due to corporate restructuring: Executed under the replacement, expansion or modification of the activities developed in the company, and in general, any technological variation in machinery, equipment, facilities, systems, methods and production and administrative procedures. Maximum duration of 2 years.

2.2. Accidental Nature Contracts:

- Occasional: It is executed in order to meet temporary needs, other than the usual need for workplace. Maximum duration of six months a year.
- Substitution: It is executed in order that the employer can substitute a stable employee whose employment relationship is suspended for any justified cause. The duration shall be as necessary, according to the circumstances.
- Emergency: It is aimed at meeting the needs caused by force majeure (unforeseeable, unavoidable and irresistible). The duration shall be equal to the period of the emergency.

2.3. Work or Service Contracts:

- Specific: It is the contract executed between an employer and an employee to perform a work or provide a specific and transient service, requiring an outcome. The duration shall be equivalent to the term necessary to fulfill the object of the contract.
- Intermittent: It is aimed at meeting the needs of the business activities, which by their nature are discontinuous but permanent. The duration of activities is related to the work realized, which is developed in short and discontinuous terms.
- Seasonal: The object is to meet specific needs of the business or company, which occur only at certain times of the year and are subject to be repeated in equivalent periods in each cycle, depending on the nature of production activity. The duration shall be equivalent to the duration of the season or extraordinary need.

Arts. 54° to 71° and 77° of TUO of the Law on Labor Productivity and Competitiveness.

II. LABOR INTERMEDIATION AND OUTSOURCING:

- Labor intermediation can only be provided by companies or cooperatives of employees registered in a special registry that is in charge of MTPE (“intermediary company”) and is aimed at the movement of staff belonging to an “intermediary company” to workplace of a “user company”. Such contracts can only be used in the case of this services: (i) temporary (casual work or substitution), (ii) complementary (auxiliary or ancillary activities which are not related to the main activity of the “user company”); or (iii) specialized (highly specialized, high level of technical or scientific expertise).
- In the case of intermediation contracts for temporary services, the number of employees may not exceed the 20% of total employees of the “user company”. In the case of contracts for specialized or complementary services, there are no limits on the number of employees to be sent, as long as the “intermediary company” assumes full technical autonomy and responsibility in the development of their activities. In the event of failure with these requirements, the judicial authority may consider that there is a direct employment relationship

(Indefinite Employment Contract) between the employee sent and the “user company”.

- Outsourcing: In the case of outsourcing, we have a different figure to labor intermediation, in fact, it is a civil contract for the provision of services. However, in order to prevent misuse of this contractual figure aimed at violating the labor rights of employees, labor law regulates the requirements and characteristic elements of outsourcing.

According to the Law of Outsourcing Services and to the Legislative Decree specifying the scope of the Law of Outsourcing Services, outsourcing shall be understood as the hiring of companies (“outsourcing companies”) to develop specialized activities or works as long as the outsourcing companies assume the services provided by their own cost and risk, have their own financial, technical or material resources, be responsible for the results of its activities and their employees are under their exclusive subordination.

In addition, the legislation states that the characteristic elements of outsourcing activities are, among others, the plurality of clients, having equipment, capital investment and remuneration for work and service. In any case, the single provision of staff is supported. This contract shall be in writing.

The outsourcing contracts which do not meet all the above requirements and that involves a single staff provision, cause that the work relation is considered as a direct working relationship (Indefinite Employment Contract) between the employee of the “outsourcing company” and the “main company”.

Likewise, the “main company” hiring the execution of works or services that considers the movement of staff of the “outsourcing company” shall be jointly liable for the payment of labor liabilities and social security of the “outsourcing company” according to the labor law, and not by the conventional or unilateral laws; that they had accrued for the time the employee was moved.

However, the consideration of the existence of an Indefinite Employment Contract for as well as the joint and several liability referred to in the preceding paragraphs shall operate provided that it is the case of “outsourcing companies” carrying out their activities with continuous movement¹ of staff to the facilities of the “main company” and not in cases of outsourcing without movement or those doing so eventually or sporadically.

Finally, it should be noted that the “outsourcing companies” must be registered with in the National Registry of Outsourcing Companies by the MTPE.

Arts. 3°, 5°, 6°, 9°, 11° and 13° of the Law on Special Service Companies and Employees Cooperatives.

Art. 4° of the Regulations of the Law on Special Service Companies and Employees Cooperatives.

Art. 2°, 5°, 8° and 9° of the Law on Outsourcing Services.

Arts. 2° and 3° of Legislative Decree specifying the scopes of the Law on Outsourcing services.

¹ It is understood that there is continuous movement of an employee when it is done regularly between the “outsourcing company” and the “main company”, which happens when the movement: a) occurs at least for more than a third of the business days of the term agreed in the outsourcing contract; or, b) exceeds 420 hours or 52 days of actual, consecutive work, or not within a semester.

III. SPECIALIZED COMPANIES OF MINING CONTRACTORS

The TUO of LGM expressly regulates that the holders of mining concessions have the power to contract the execution of the exploration, development, exploitation and processing to specialized companies provided that they are registered in the “Registry of Mining Contractor Companies” which is in charge of the DGM, in addition to its registration in the National Registry of Outsourcing Companies by MTPE.

These contractor companies shall have functional autonomy and equity allowing them to act in the activities for which they have been hired, referred to the execution of the exploration, development, exploitation and processing works, and holding the rating as such, issued by the DGM.

Art. 37° TUO of LGM.

Art. 3° of the Registry of Specialized Companies of Mining Contractors, S.D. No. 005-2008-EM.

LEGAL REGULATIONS REFERRED TO THE COMMUNITY RELATIONSHIP

I. CITIZEN PARTICIPATION

According to the General Environmental Law, every person has the right to participate responsibly in the processes of decision-making and in the definition and implementation of policies and measures concerning the environment and its components adopted in each levels of government.

Now, in accordance with the General Law of the Environment, the State with civil society will agree about the decisions and actions related to environmental management. Citizen participation should be encouraged particularly in: (i) the development and dissemination of environmental information, (ii) the design and implementation of policies, regulations and instruments for environmental management, as well as the plans, programs and environmental agendas, (iii) the evaluation and implementation of projects of public and private investment as well as management projects of natural resources; and (iv) surveillance, control and environmental monitoring, including allegations of violations of environmental legislation or by threats or violation of environmental rights.

In this regard, the Regulations of Citizen Participation of the mining sector regulates the responsible participation of every person in the process of defining, implementing measures, actions or decision-making of the relevant authorities relating to the sustainable development of mining activities in the national territory.

Through the application of various mechanisms of citizen participation, it is sought to make available to the population involved timely and suitable information on mining activities planned or existing; to know and channeling the opinions, positions, views, comments or contributions on mining activities; and to promote dialogue, conflict prevention and consensus construction; so that the interests of the populations involved in the scope of mining projects are considered in the design and, if applicable, the execution thereof, as well as for decision-making of the relevant authority in administrative proceedings.

According to the Regulations of Citizen Participation of the mining sector, the mining holders shall propose participation mechanisms¹ whose application is deemed suitable for the mining project and the relevant authority shall determine and select which of the mechanisms proposed by the holder are those that are best suited to the case.

Nonetheless, minimum conditions on public participation processes to be implemented during the various stages of mining activity are set out below:

- i) After the Mining Concession: MEM shall promote or implement activities seeking to inform the populations of the areas with mining concessions (information events, forums, conferences, workshops, etc.). In addition, the mining holder shall provide information about the project to the people who are within the area of influence.
- ii) During the Exploration Stage: the actions of citizen participation should be starting first before to the presentation of the relevant environmental assessments and once they are prepared, they should be made

¹ The mechanisms of citizen participation that may be employed are expressly mentioned in the Mining Regulations for Citizen Participation and the mining Ministerial order on Citizen Participation.

available to the population so that they can make contributions, comments or observations. At least one Information Workshop shall be carried out and dissemination activities shall be conducted through newspapers and radio spots.

- iii) During the Development Stage of the project (before, during the elaboration and in the assessment of EIA): at least three Information Workshops and a Public Hearing shall be carried out. Dissemination activities shall be conducted through newspapers and radio spots.
It is established that the population shall have timely access to an Executive Summary easy to understand of the EIA and the entire content of the assessment for the formulation of contributions. On the other hand, the mining holder shall propose to the relevant authority for approval, a Citizen Participation Plan that detailing and provide the grounds for the mechanisms for citizen participation it will be carried out.
- iv) During Exploitation and Production Stage (implementation of mining project): The mining holder shall implement the Citizen Participation Plan that shall contain the participation mechanisms to be implemented during the development of the project, which shall be assessed and approved by the relevant authority together with the environmental assessment and in accordance with the Community Relations Plan. It should be preferably included the implementation of a Permanent Information Bureau or a Committee of Participatory Environmental Monitoring and Surveillance.
- v) During Mines Closure Stage: The specific environmental regulations for closure activities shall determine the mechanisms for citizen participation to be applied, and the relevant authority may require other mechanisms.

Arts. II, III y 41° to 51° of LGA.

Arts. 14°, 15° and 16° of the Regulations for mining citizen participation.

Ministerial order on mining citizen participation.

II. PRIOR COMMITMENT

The use of natural resources in the framework of sustainable development implies respect for the environment and the social environment, as well as obtaining mechanisms for dialogue and participation. All mining projects shall be related from the beginning with the local populations by promoting an alliance with mining companies under guidelines promoting the hiring and training of local labor, the use of goods and services in the area, and the execution of works of local benefit. For these reasons, the State has deemed convenient to establish a benchmark legal framework in which mining activities, companies and the State are carried out.

According to the Supreme Decree of Prior Commitment, it is essential to submit the Affidavit of Prior Commitment for the purposes of requesting for the granting of a mining concession or a processing concession.

By virtue of the Affidavit of Prior Commitment, the claimer agrees to:

- i) Perform production activities under a policy seeking for environmental excellence.
- ii) Act with respect towards the institutions, authorities, local culture and customs, maintaining a favorable relationship with the population of the area of influence of the mining operation.
- iii) Maintain a continuous and timely dialogue with the regional and local authorities, the population of the area of influence of the mining operation and their representative bodies, giving them information on its mining activities.

- iv) To jointly achieve together with the communities within the mining unit area of influence strongly institutions for local development in case a resource exploitation begins, preparing for such purpose, conducting studies and collaborating in the creation of opportunities for development beyond the life of the activity mining.
- v) Preferably promote local employment, providing training opportunities required.
- vi) Preferably acquire local goods and services for the development of mining activities and the attention of the staff, under reasonable quality, opportunity and price conditions, creating appropriate agreement mechanisms.

In addition, the Supreme Decree of Prior Commitment provides for that all holders of mining activities are obliged to submit to the DGAAM, annually and electronically, an Annual Affidavit of Sustainable Development Activities in which the mining holder shall report on sustainable development activities carried out voluntarily (which do not arise from obligations imposed by legal regulations) in the previous fiscal year and which are delimited within the areas detailed in the Affidavit of Prior Commitment.

OGGS shall monitor the commitments set out in the Annual Affidavit on Sustainable Development Activities. For the purposes of monitoring the information contained in the Annual Affidavit on Sustainable Development Activities, OGGS shall consider the stage of the production cycle in which there are the activities of the holder, the financial capacity and the different strata of the mining holder, having or not rating of PPM or PMA.

Supreme Decree of Prior Commitment and amendment.
Ministerial order approving the format of annual affidavit of sustainable development activities.

III. PRIOR CONSULTATION

The right to prior consultation is set forth in the Convention C169 of the International Labour Organization (ILO), which can be defined as the right of indigenous peoples to be consulted whenever the adoption of legislative or administrative measures that may affect them directly is foreseen. This consultation shall be made in order to reach an agreement with or to obtain consent from the indigenous peoples.

This Agreement is an international treaty on human rights with constitutional status. For its proper implementation, the Law on the Right to Prior Consultation from Indigenous or Native Peoples, Law No. 27985 and its Regulations approved by S.D. No. 001-2012-MC have been developed the principles and procedures for the implementation of the right to consultation.

The consultation is based on the following principles: i) Opportunity, ii) Interculturality, iii) Good faith, iv) Flexibility, v) Reasonable term, vi) Absence of coercion or conditioning and vii) Timely information.

Neither the ILO Convention C169 nor the internal regulations have provided a definition of indigenous peoples; however they do establish objective criteria and a subjective criteria to identify indigenous peoples.

According to the law, the objective criteria are:

1. Direct descendants of original populations within the national territory.
2. Lifestyles and spiritual and historical ties to the territory that they traditionally use or occupy.
3. Social institutions and own customs.
4. Cultural patterns and lifestyles different to other sectors of the national population.

In addition, the subjective criterion is related to the collective group awareness of having an indigenous or native identity. These criteria should be interpreted and applied within the context of the criteria stated by the Convention C169.

Indigenous peoples participate in the consultation process through their representative institutions and organizations, which shall be registered in the Official Database of Indigenous or Native Peoples under the responsibility of the Vice-Ministry of Interculturality of the Ministry of Culture (Technical Body Specialized in Indigenous matters).

The governmental entity proposing the measure shall identify the indigenous peoples to be consulted and implement the consultation process. For this, a Consultation Plan must be drafted. It is worth to state that the representative organizations of the indigenous peoples may request to be included or to carry out a consultation process regarding an administrative or legislative measure that is likely to directly impact their collective rights.

The consultation process shall comply the following stages:

- a. Identification of the legislative or administrative measure that must be subjected to consultation.
- b. Identification of indigenous or native peoples to be consulted.
- c. Advertising of the legislative or administrative measure by methods and procedures culturally appropriate, taking into account the geography and the environment in which the community live.
- d. Information on the legislative or administrative measure: reasons, implications, impacts and consequences of the legislative or administrative measure.
- e. Internal assessment indigenous or native peoples institutions or organizations on the legislative or administrative measure that affect them directly.
- f. Dialogue process between Government representatives and representatives of indigenous or native peoples.
- g. Ruling.

The relevant authority is responsible for making the final decision on the measures under consultation. The result of the consultation process is not binding, except for those issues where there is an agreement between the parties.

In this regard, it should be noted that neither ILO Convention C169 nor the Law No. 29785 do not grant indigenous peoples the right to veto over any administrative or legislative measures which the State intends to implement; the latter being solely responsible for deciding whether or not to implement the measure.

EXHIBIT

I. GLOSSARY OF TERMS AND ABBREVIATIONS

ANA

NATIONAL WATER AUTHORITY (www.ana.gob.pe)

Public body attached to the Ministry of Agriculture, responsible for enacting the regulations and establishing the procedures for the integrated and sustainable management of water resources. It is also responsible for developing the National Policy and Strategy of Water Resources and the corresponding National Plan and for applying the sanctions that may be appropriate to water resources users in their areas under its responsibility.

CONSEJO DE MINERIA (MINING BOARD) (www.minem.gob.pe)

It is the highest Administrative Court, it rules as a final instance about every mining matter subject to resolutions by the entities belonging to MEM (DGM, General Directorate of Mining Environmental Affairs, INGEMMET, etc.).

PRIOR CONSULTATION

Right regulated by the Convention C169 of the International Labor Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries. Law N° 29785 and its regulations, approved by S.D. No. 001-2012-MC.

The consultation does not grant the involved populations the right to decide whether to develop or not the planned mining activities nor is binding towards the State at the time of adopting its decisions or drafting or amendment of legal regulations. In other words, the final decisions of the State may be taken in agreement or not with the results of the consultation, given that the Convention C169 does not grant indigenous and tribal peoples the right to veto.

AFFIDAVIT OF PRIOR COMMITMENT

This obligation is regulated by the Supreme Decree No. 042-2003-EM (13/12/2003) and is a requirement for concessions . Amended by Supreme Decree No. 052-2010-EM (18/08/10). See Part 7: "Legal provisions with regards to Community Relationships".

DIGESA

GENERAL DIRECTORATE OF ENVIRONMENTAL HEALTH (WWW.DIGESA.SLD.PE)

It is the technical-regulatory body in matters relating to basic sanitation, occupational health, food hygiene, zoonosis and environmental protection. It issues and assesses the process of environmental health in the sector. It is an entity belonging to the Ministry of Health.

DGAAM

GENERAL DIRECTORATE OF MINING ENVIRONMENTAL AFFAIRS (WWW.MINEM.GOB.PE)

Regulatory technical body responsible for proposing and assessing the environmental policy of the Mining Sector, proposing or issuing the necessary legislation as well as promoting activities aimed at the environmental protection in mining activities.

DGM

General Directorate of Mining of MEM (www.minem.gob.pe)

It is the Line Unit of MEM responsible for regulating and promoting mining activities safeguarding the rational use of mining resources in harmony with the environment.

INGEMMET

Geological, Mining and Metallurgical Institute (www.ingemmet.gob.pe)

Public entity responsible for granting titles of mining concessions, managing the national mining registry and processing, managing and disseminating geo-scientific information of the national territory in order to promote investment in the country.

MINAM

Ministry of Environment (www.minam.gob.pe)

Body of the Executive Branch, whose general function is to design, establish, implement and monitor national and sectorial environmental policy, assuming leadership over it. It is aimed at the conservation of the environment, so that the sustainable, responsible, rational and ethical use of natural resources and the environment sustaining them is fostered and ensured, allowing the contribution to the overall social, economic and cultural development of the human individual, in constant harmony with their environment, and thus ensuring for the present and future generations the right to enjoy a balanced and suitable environment for the development of life.

MEM

Ministry of Energy and Mines (www.minem.gob.pe)

Central and governing body of the Energy and Mines sector, part of the Executive Branch. It is aimed at developing and assessing the national policies on sustainable development in mining - energy activities and is the regulatory authority on environmental issues related to mining - energy activities.

MTPE

Ministry of Labor and Employment Promotion (www.mintra.gob.pe)

Institution responsible for labor administration in Peru, with powers necessary to lead the implementation of policies and programs for the creation and improvement of employment and responsible for the control of labor issues.

OEFA

Agency for Environmental Assessment and Control

The Agency for Environmental Assessment and Control - OEFA is a public, specialized, technical body held on the Ministry of Environment. OEFA is the governing body of the National System for Environmental Assessment and Control - SINEFA (according to Law No. 29325.).

It is responsible for verifying the compliance with environmental legislation by all natural and legal persons. It also monitors that the functions of assessment, monitoring, control, supervision, sanctioning powers and implementation of incentive on environmental matters, performed by the various governmental entities, is conducted in an independent, neutral, agile and efficient way, according to legal provisions in the National Environmental Policy.

OGGS

General Bureau of Social Management (www.minem.gob.pe)

The General Bureau of Social Management (OGGS) of the Ministry of Energy and Mines is the advisory body responsible for promoting harmonious relations between energy mining companies and civil society, including

regional and local governments; promoting the management of dialogue and consultation mechanisms in the sector and assisting in the design of Sustainable Development Programs. It hierarchically depends on the Ministry Bureau.

OSINERGMIN

Supervisory Agency of Investment in Energy and Mining (www.osinergmin.gob.pe)

Regulatory, monitoring and controlling agency of the activities carried out by legal persons of internal public or private law, and natural persons, in the subsectors of electricity, hydrocarbons and mining.

PCM

Presidency of the Council of Ministers (www.pcm.gob.pe)

It is the technical - administrative body regulated by the Law of the Executive Branch, whose highest authority is the President of the Council of Ministers. It coordinates and monitors the policies and programs of multi-sector nature of the Executive Branch, coordinates actions with the Legislative Branch, with the Independent Constitutional Agencies, among others.

PMA

Handcrafted Mining Producers

Those who: (i) personally or as a group of natural or legal persons formed by natural persons, or mining cooperatives or mining cooperative centers are usually engaged and as a livelihood, to exploitation or direct processing of minerals, performing activities using manual methods or basic equipment, (ii) have for any title up to 1,000 hectares, between claims and mining concessions or have signed agreements or contracts with the mining holders under the law on the matter, and; (iii) have for any title an installed production or processing capacity lower than 25 mT per day, except for non-metallic minerals and building materials in which the limit is an installed production or processing capacity up to 100 Mt³ per day.

PPM

Small Mining Producers

Those who: (i) personally or as a group of natural or legal persons formed by natural persons, or mining cooperatives or mining cooperative centers are usually engaged to exploitation or direct processing of minerals, (ii) have for any title up to 2,000 hectares, between claims and mining concessions or have signed agreements or contracts with the mining holders under the law on the matter, and; (iii) have for any title an installed production or processing capacity lower than 350 Mt³ per day, except for non-metallic minerals and building materials in which the limit is an installed production or benefit capacity up to 1200 Mt³ per day.

PROINVERSIÓN

Peruvian Agency for Promotion of Private Investment (www.proinversion.gob.pe)

Agency responsible for promoting investment not dependent on the Peruvian government by agents under private scheme, in order to boost Peru's competitiveness and its sustainable development to improve the welfare of the population.

SENACE

National Service of Environmental Certification for Sustainable Investments

Technical agency specialized in environmental issues that shall assume the role of reviewing and approving d-EIA of investment projects for national and multi-regional scope that may generate significant environmental impacts.

SIDEMCAT

Mining Rights and Land Registration System

System under the responsibility of INGEMMET. It gives information on mining rights, the National Mining Land Registration, the pre-land registration, the land registration of areas restricted to mining and due to the information concerning the implementation of payment of the mining good standing fee and the penalty, among other areas. It provides access to information in real time.

SUNAT

National Superintendence of Tax Administration (www.sunat.gob.pe)

Public institution decentralized from the Economy and Finance Sector, which has economic, administrative, functional, technical and financial autonomy. It is the main tax collector agency of the Peruvian economy.

UIT

Tax Unit

Reference value, which is used in various legal regulations and that, is updated annually. By 2017, the value of the Tax Unit (UIT) has been fixed at S/ 4,050, that is, approximately USD 1,202.00 (Exchange rate: S/ 3.368).

II. LEGAL BASIS

C

- **Peruvian Political Constitution**

Enacted on 29/12/1993 and ratified on referendum dated 31/12/1993 as amended.

D

- **Legislative Decree No. 775**

Law on General Sales Tax and Excise Tax (31/12/1993).

- **Supreme Decree No. 046-96-EF**

Regulation setting out terms, amounts, coverage of goods and services, procedures and duration of the Scheme of Advanced Recovery of IGV created by Leg. D. No. 775 (30/04/1996).

- **Legislative Decree No. 662**

Scheme of Legal Stability to Foreign Investment. (02/09/1991).

- **Legislative Decree No. 892**

It standardizes the right of employees to participate in the profits of companies developing third-category income-generating activities. (11/11/1996).

- **Supreme Decree of Prior Commitment**

It establishes prior commitment as a prerequisite for the development of mining activities and complementary regulations: S.D. No. 042-2003-EM (13/12/2003) and its amendment, S.D. No. 052-2010-EM (18/08/10)

G

- **Technical Guide for the elaboration of Environmental Impact Studies**
Guide elaborated by MEM.
- **Technical Guide for the elaboration of Mines Closure Plans**
Guide elaborated by MEM.

L

- **Law No. 27342**
Law regulating Legal Stability Agreements under Legislative Decrees No. 662 and 757. (06/09/2000).
- **Law on Creation, Organization and Functions of the Ministry of Environment**
Legislative Decree approving the Law of creation, organization and functions of the Ministry of the environment: Legislative Decree No. 1013 (14/05/2008).
- **Law on Final Refund of IGV**
Law providing for the refund of the General Sales Tax and Municipal Promotion Tax to holders of mining activities during the exploration stage: Law on. 27623 (08/01/2002), its amendment, Law No. 29493 (05/01/2010) and Law No. 29966 (18/12/2012).
- **Law on Services Special Business and Employees Cooperatives**
Law No. 27626 (09/01/2002)
- **Law on Outsourcing Services**
Law regulating outsourcing services: Law No. 29245 (24/06/2008).
- **Law on Organization and Functions of the Ministry of Agriculture**
Legislative Decree approving the Law on organization and functions of the Ministry of Agriculture: Legislative Decree No. 997 (13/03/2008)
- **LGA**
General Environmental Law: Law No. 28611 (15/10/2005), as amended.
- **Law on Mine Closure**
Law N° 28090 (14/10/2003), as amended.
- **Law on Mining Royalty**
Law No. 28258 (24/06/2004), as amended.
- **Organic Law of Energy and Mines Sector**
Law Decree No. 25962 (18/12/1992), as amended.
- **Law Boosting Regional and Local Public Investment with Participation of the Private Sector**
Law boosting regional and local public investment with participation of the private sector: Law No. 29230 (20/05/2008).
- **Law transferring competencies of Monitoring and Control of Mining Activities to OSINERGMIN**
Law N° 28964 (24/01/2007)
- **Law on Water Resources**
Law No. 29338 (31/01/2009)
- **Law Promoting Upturn**
Law No. 30296 (31/12/2014)

M

- **Amendments to Legislative Decree No. 1013**
Legislative Decree amending provisions of Legislative Decree No. 1013:
Legislative Decree No. 1039 (26/06/2008).

N

- **Regulations referred to the Registry of Entities Authorized to elaborate EIA in the Energy and Mines Sector**
Ministerial order No. 580-98-EM/VMM (27/11/1998)

R

- **Special Scheme of Advanced Recovery of IGV**
Legislative Decree No. 973: (10/03/2007).
- **Environmental Regulations for Mining Exploration Activities**
S.D. No. 020-2008-EM (02/04/2008).
- **Regulations of the Law on Final Refund of IGV**
Regulations of the Law providing for the refund of the General Sales Tax and Municipal Promotion Tax to Holders of Mining Activity during the Exploration Stage:
S.D. No. 082-2002-EF (16/05/2002).
- **Regulations of the Law on Special Service Companies and Employees Cooperatives**
S.D. No. 003-2002-TR (28/04/2002)
- **Regulations of the Law on IGV**
Regulations of the Law on General Sales Tax and Excise Tax, as amended: S.D. No. 29-94-EF (29/03/1994), as amended.
- **Regulations of the Law on Mining Royalty**
S.D. No. 157-2004-EF (15/11/2004), as amended.
- **Regulations of the Guarantee Schemes to Private Investment**
S.D. No. 162-92-EF (12/10/1992), as amended.
- **Regulations of the Special Scheme of Advanced Recovery of IGV**
S.D. No. 084-2007-EF (29/06/2007)
- **Regulations of Environmental Protection and Management for Activities of Exploitation, Beneficiation, General work, Transportation and Mining Storage**
S.D. No. 040-2014-EM (12/11/2014)
- **Regulations of TUO of LIR**
Regulations of the Law on Income Tax, as amended: S.D. No. 122-94-EF (21/09/1994), as amended.
- **Registry of Specialized Companies of Mining Contractors**
S.D. No. 005-2008-EM (19/01/2008)
- **Mining Regulations of Citizen Participation**
Regulations of Citizen Participation in Mining Subsector: S.D. No. 028-2008-EM (27/05/2008)
- **Regulations for Mining Procedures**
S.D. No. 018-92-EM (08/09/1992), as amended.

- **Regulations for Mines Closure**
Exhibit S.D. No. 033-2005-EM (16/08/2005), as amended.
- **Ministerial order on Mining Citizen Participation**
Ministerial order regulating the process of Citizen Participation in the mining sub-sector: Ministerial order No. 304-2008-MEM/DM (26/06/2008).
- **Ministerial order approving the Format of Annual Affidavit on Sustainable Development Activities**
It approves the Format of Annual Affidavit on Sustainable Development Activities referred to in S.D. N° 042-2003-EM and its amendment, S.D. No. 052-2010-EM. Ministerial order No. 192-2008-MEM/DM (25/04/2008).
- **Ministerial order approving the common Terms of Reference for Mining Exploration Activities**
It approves the common Terms of Reference for the mining exploration activities Categories I and II, pursuant to which the mining holders shall submit the Environmental Impact Statement and Semi-detailed Environmental Impact Study as well as Project Summary Sheet and Regulations for the Opening and Management of Ditches and Pits: Ministerial order No. 167-2008-MEM/DM (10/04/2008).
- **Regulations of the Law on Water Resources**
S.D. No. 001-2010-AG (24/03/2010).

T

- **TUO of Law on IGV**
Homologized Text of the Law on General Sales Tax and Excise Tax:
S.D. No. 055-99-EF (15/04/1999), as amended.
- **TUO of Law on Labor Productivity and Competitiveness**
Homologized Text of the Law on Labor Productivity and Competitiveness:
S.D. No. 003-97-TR (27/03/1997), as amended.
- **TUO of LGM**
Homologized Text of the General Mining Law: S.D. No. 014-92-EM (04/06/1992), as amended.
- **TUO of LIR**
Homologized Text of the Law on Income Tax: S.D. No. 179-2004-EF (08/12/2004), as amended.
- **TUPA of INGEMMET**
Single Text of Administrative Procedures of the Geological, Mining and Metallurgical Institute:
S.D. No. 041-2012-EM (14/10/2012).
- **TUPA of MEM**
Single Text of Administrative Procedures of the Ministry of Energy and Mines:
S.D. No. 038-2014-EM (06/11/2014).