

# LEGALINK | LATAM

## MINING



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

Colombian economy has relied on the royalties of the mining sector, mostly from coal, whose international price has dropped lately. In order to compensate such income shortage, Colombia is now looking for other minerals to exploit, whose deposits are located in the Andes Mountains range, which are environmental sensitive areas.

One of the challenges of the mining sector in Colombia is the obtention of the Environmental License required in order to start production activities. Although the environmental regulation sets a relatively simple procedure for the obtention of the environmental license, in many cases it can take as long as two (2) years to reach a final decision.

Lately, environmental NGOs and other opinion groups very active in Colombia, are opposing to mining projects. Even local authorities have initiated legal actions to restrain mining activities in their territories. Due to these opponents, the social impact assessments for mining projects have become more complex and expensive, as well as the compensation programs the mining companies would have to implement. This represents a reputational risk to mining companies.

Furthermore, whenever there is presence of ethnic communities, a previous consultation process must be implemented in order to initiate the environmental license issuance process.

Illegal mining represents another challenge for the formal mining activity in Colombia, as long as illegal miners do not comply with environmental regulations and cause sever impact in sensitive areas such as river basins and tropical rainforests.

### What are the opportunities in this sector?

The National Mining Agency is encouraging exploration activities for mining investment projects with high standards of sustainability and environmental care.

Minerals such as gold, titanium and cooper are available in Colombia for mining companies to explore and produce.

In order to promote the mining activities in Colombia, the National Development Plan (2018-2022) has a chapter dedicated to mining, which seeks to improve the efficiency of the institutions, and to increase the competitiveness and standards of this activity, as long as it represents the 20% of exports of the Country, 13% of the direct foreign investment and approximately USD 5.5 billion in royalties.

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

The National Government, in order to increase the production of minerals in Colombia, is seeking to boost the production of 6 coal complexes, 1 nickel, 4 gold, and 2 copper projects, in a plan to expand the national mining matrix.<sup>1</sup>

Some of those projects are: (i) Cerrejón (coal) in Guajira, La Loma (coal), Calenturías (coal), La Jagua (coal), la Francia (coal) and Hatillo (coal) in Cesar, (ii) Cerromatoso (nickel) in Córdoba, (iii) Buriticá (gold), Gramalote (gold), La Y (gold) and Quebradona (copper) in Antioquia, (iv) Sotonorte (gold) in Santander, and (v) Pegadorcito (gold) in Chocó.

<sup>1</sup> Source: Portafolio newspaper, Los 13 proyectos que reactivarán el sector minero, Julio 15, 2019.

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

The legal and legislative framework is somehow stable. As indicated above, the National Development Plan (Law 1955 of 2019) introduced a chapter aiming to increase mining activities, as well as to increase the development of remote areas. Copper production is looked at as a vital factor for the energy transformation policy of the Ministry of Mining and Energy of Colombia.

The Colombian Mining Code, dated 2001, was reformed in 2010 but the Constitutional Court of Colombia declared unenforceable that reform due to errors in the legislative procedure. In December, 2018, a bill to reform the Mining Code was submitted to the House of Representatives of Colombia; in this regulatory proposal, some key issues are: (i) special regulation for small mining projects; (ii) increase of legal stability of mining projects in front of land development regulations; (iii) management of conflicts for the use and access to freshwater; (iv) peoples participation mechanisms in mining projects, (v) restrictions and (vi) protection of the biodiversity.

There is another legislative initiative running through Congress, aimed to require environmental license for exploration activities. Nowadays, the environmental license for mining projects is only required for production activities, and the exploration activities are excepted of such requirement; the proponents of this bill, would like to remove the aforementioned exception and therefore they want that the environmental license for a mining project would be required from the early stages of the projects. This legislative initiative would have a high impact in the sector, because it would cause a delay in the start of new projects.

## COLOMBIA

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

The firm has advised several companies in the mining sector, especially coal producing projects and construction materials projects, necessary for the development of ambitious schemes for the Colombian economy, such as the construction of highways and other transportation infrastructure.

Our advice has been directed to the study and subscription of mining contracts, advice on environmental procedures for mining projects, litigation regarding conflicts between mining projects and environmentally protected areas, and revisions of due diligences processes and analysis of the potential acquisition of the Colombian mining assets.

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

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