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DIGGING WEALTH – THE ARGENTINE MINING FRAMEWORK

Since the 1990s, Argentina's mining industry has experienced a fast-paced development and become one of the leading business sectors in the country. Argentina's mining reserves are comparable to those of Chile, Bolivia and Peru, and offer opportunities in minerals such as gold, silver, copper, molybdenum, uranium, lithium and rare earths. This document summarizes the key aspects of the industry's legal framework, including mining exploration permits and tax incentives.

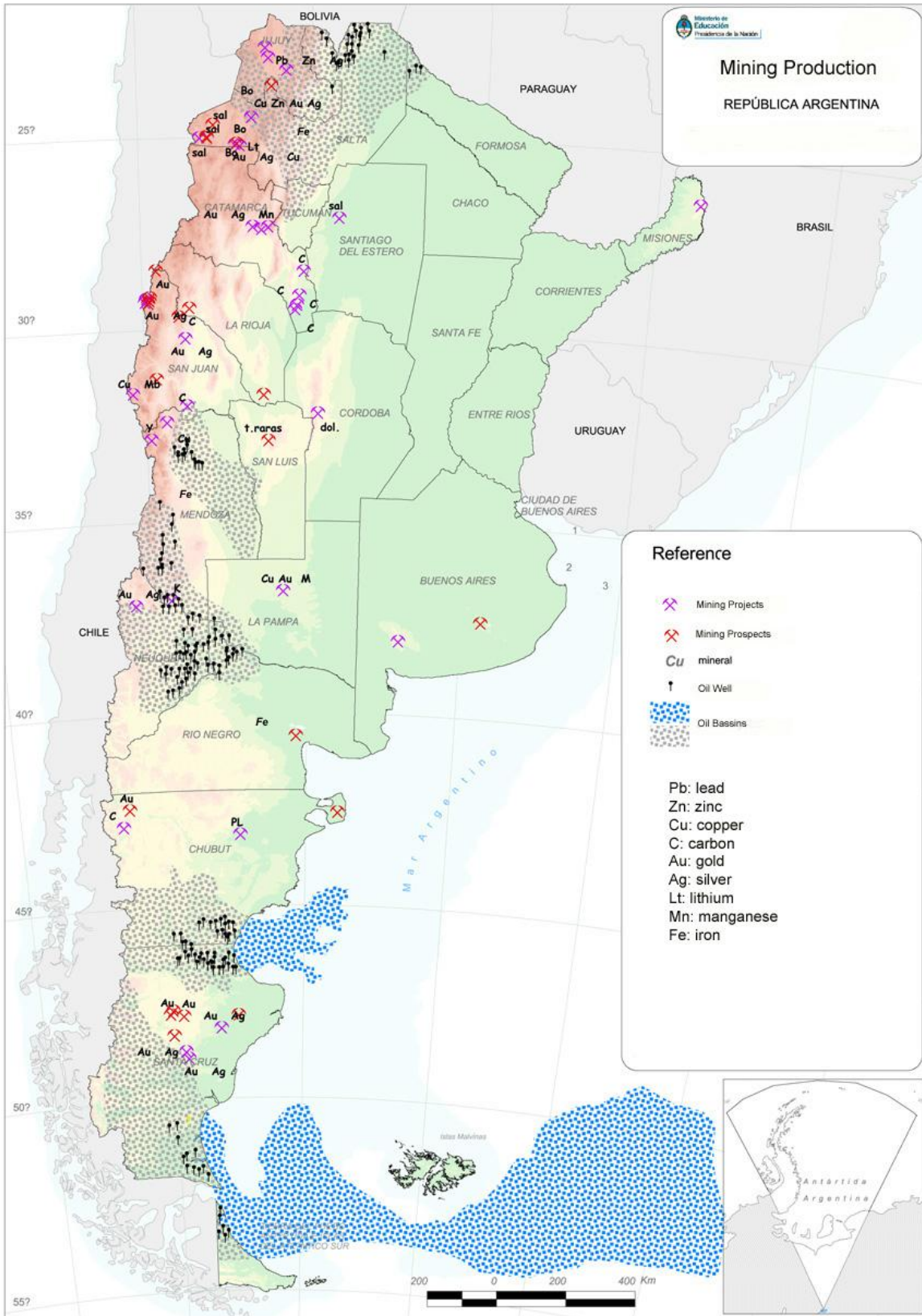
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ARGENTINA: LEGAL FRAMEWORK FOR MINING PROSPECTING AND EXPLORATION

I. PRELIMINARY COMMENT

Argentina is a country with great potential for development in the mining sector. It has abundant mineral resources reserves, with similar geological composition to other countries in the Andes such as Chile and Peru, which to this point have been relatively unexploited. Opportunities exist particularly in relation to gold, silver, copper, lithium and uranium.

Mining in Argentina is growing enormously:

- Between 2003 and 2010, mineral exports increased by over 300%.
- In the same period, projects increased from 18 to 572.
- Employees in the sector expanded dramatically from under 100,000 to approximately 450,000, an increase of over 350%.

There is room for substantially more growth in the sector as well. It is estimated that in Argentina there is approximately 2.3 million square kilometres of terrain which is appropriate for mining.

Argentine mining has also expanded to the world stage:

- Mineral products from Argentina are exported to approximately 80 countries.
- The Argentine mining sector has also been invested in by investors from more than 30 countries spread across the world.

Argentina also has considerable competitive advantages over many other resource-rich countries:

- Argentina has a highly educated population. It has large numbers of geologists, engineers and geophysicists. It also has a literacy level of over 97%, which is among the highest in the world. Argentina's highly educated workforce is relatively inexpensive.
- Argentina has first-class infrastructure. With over 39,000 kilometres of national highways, one of the largest rail networks in the world and 43 ports, Argentina has all of the infrastructure necessary to become a mining powerhouse.

Argentina's competitive advantages, unexploited mineral resources and favourable mining investment laws (which are expanded upon below) arguably make it the country with the greatest potential for mining development and foreign investment ("FI") in Latin America.

II. ESSENTIAL ADVANTAGES AND CHALLENGES TO MINING IN ARGENTINA

Advantages:

- Filings for mining prospecting and exploration rights are simple and inexpensive; moreover there are no significant requirements for keeping such rights in good standing.
- There are no limitations for mining prospecting and exploration of particular minerals.
- Material and promotional regulations are tested and provide particular benefits for mining prospecting and exploration purposes.
- Foreign exchange limitations, mainly the mandatory 30% one-year term non payable deposit, do not apply provided that certain proceedings are carried out.

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Challenges:

- Each Argentine province has particular regulations, regulatory bodies and environmental controls. This situation demands efforts in understanding and dealing appropriately with the local business environment.

III. MINING EXPLORATION JURISDICTION & MAIN REGULATIONS

(A) MINING JURISDICTION

In Argentina material mining regulations are given by the Federal Congress¹ and are contained in the Mining Code 1884 (the “Mining Code”),² as amended and complemented.

However, property in and to mining natural resources belongs to the provinces.⁵ Accordingly, provinces (i) appoint mining authorities and (ii) provide procedural mining regulations that individuals and legal entities must follow in order to be awarded mining rights and property. Exploration permits granted are subject to specific terms, but resulting exploitation concessions, provided that certain requirements are met, are perpetual.

Although provincial laws and regulations cannot alter, in any way, the rights and obligations established by the Mining Code, as the provincial regulations are not identical, the process for obtaining and maintaining exploration permits varies slightly from one province to another.

Notwithstanding efforts to do so in the 1990’s, Argentina still has not harmonized procedural provincial regulations and jurisdiction and, as a result, foreign investors will have to consider that:

- Procedures differ in each province; and
- Mining authorities have different jurisdiction in each province.

Provincial mining authorities might be either placed with the administrative or judicial branch of the province. The chart in [Annex A](#) hereto identifies the corresponding mining jurisdiction of each province.

Understanding the local extent of such difference between provincial administrative and judicial practices entails challenges for FI. Hereunder, we refer to the most relevant ones:

	Administrative Mining Procedures	Judicial Mining Procedures
Ruling Principle	Informality in favour of the requesting party. ³	Fatal effects on elapsed terms.

¹ Federal Constitution, Section No. 74, Subsection 12.

² Federal Mining Code, enacted in 1884 by Federal Act No. 1919, as amended and complemented, recently reordered by Federal Decree No. 457/97.

³ It is important to point out that there are certain requirements given by the Mining Code that, in case of not been fulfilled, may cause the expiration of concessions and informality principle will not prevent or mitigate this consequence.

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	Administrative Mining Procedures	Judicial Mining Procedures
Resolution Effect	Final resolutions can be revised in favor or against the interest of the requesting party.	Final judgment cannot be repealed.
Appeals	Will not suspend the execution of appealed resolutions.	Will suspend the execution of appealed resolutions.

In practical terms, the abovementioned means that, when acting before administrative bodies, filings and requirements are more flexible than when dealt by judicial authorities. However, the enforceability of the resolution issued by judicial bodies is stronger than the permit granted under administrative resolution.

Also, appeals before judicial bodies, in most cases, will suspend the execution of decisions, while administrative decisions are deemed to be legitimate and, therefore, can be immediately executed irrespective of being appealed or not. This effect will be particularly relevant (i) in case the permit procedure is challenged by landowners or other interested parties or (ii) in the event that permits give rise to compensation or bonds obligations and quantification is being argued by the requesting party.

In general terms, procedures before judicial bodies might be slower than administrative ones since they also require the intervention of administrative offices (for cadastre, environmental and field control purposes, among others).

(B) MAIN REGULATIONS

(i) Relevant Federal Regulations

As set out above, the Mining Code is the principal federal legislation to be considered for conducting mining activities. As regards prospecting and exploration, the Mining Code contains regulations in connection with general extent of permits, technical requirements, permit-holder obligations as well as permit limitations.

The Mining Code also sets forth the guidelines to identify the limits of the rights and relationships between exploration and mining concessionaries, landowners and the community; providing specific material regulations in connection with (i) easements; (ii) guarantee bonds; (iii) indemnifications and (iv) environmental control of the mining prospecting and exploration activities.

Additionally, foreign investors should also consider federal regulations in connection with natural reserve areas, since such regulations might entail a particular inability to conduct mining prospecting and exploration activities in different parts of the country.

Federal Law No. 24,196, as amended and complemented, which created the Mining Investment Promotional Regime (see further comments on Section V below) ("Mining Investment Law"), should also be taken into account.

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(ii) Provincial Regulations

Each province has its own mining procedural law, which depending on the administrative or judicial structure of the mining authority will be either a mining administrative proceedings law or a mining procedural code (see [Annex B](#)).

Foreign investors should also bear in mind that there are particular provincial regulations that regulate the procedures for complying with the Mining Code environmental control requirements for mining prospecting and exploration activities.

Like in the case of federal laws and regulations, provincial regulations in connection with natural reserve areas should be considered. In this sense, the best practice to follow will be to identify and, if possible, avoid targeting such areas. This precaution will help to prevent both claims against permits and potential undesired media negative exposure.

IV. TITLE TO MINING EXPLORATION RIGHTS

In legal terms, mining prospecting and exploration rights can be granted to individuals or legal entities through administrative or judicial permits ("Exploration Permits").⁴ Any mineral discovery performed either by the permit-holder or third parties, provided they take place in the area and term of the permit, grants the permit-holder the right to turn such discovery into a mine.

There are three types of Exploration Permits: (i) the ground survey —*Concesión de Exploración y Cateo*—, (ii) the air survey permit and (iii) the underground survey. However, the last two types are generally considered expensive and ineffective and therefore they have not been broadly used in Argentina. Thus, our comments below are limited to ground survey permits.

(A) TITLE MAIN FEATURES

The most important feature of Exploration Permits is that they are granted in connection with a limited ground area and for a limited period of time.

(i) Permit Area

The area of each permit is divided in surface units and each unit has a size of 500 hectares. Each permit can have up to 20 surface units and therefore the largest permit might cover an area of 10,000 hectares. However, as the permit term runs, its size should be gradually reduced by the permit-holder.

⁴ "Derechos Reales en Minería" (Mining Real Property Rights), Martinez, Victor H., Depalma, Buenos Aires, Argentina, 1982, page 83.

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(ii) Permit Term

The term of Exploration Permits depends on the size of the granted permit area. The basic 500 hectares permit lasts for 150 days and each surface unit added to such basic permit increases the term by 50 additional days. Therefore, the largest possible permit will last for a 1,100 days term.

(iii) Permit Rights

Holding an Exploration Permit is not a prerequisite for acquiring a mining concession, as the existence of a deposit may also be discovered accidentally. However, when carrying out exploration activities it is advisable to apply for an Exploration Permit, because without it, penalties may be imposed before the granting of a mining concession or the discovering party may not be able to mine the area at all.

Provided that the area of the Exploration Permit is entirely free from mining rights or properties previously granted, the permit-holder has the exclusive right to claim mines in such area from the date of filing the permit request with the corresponding provincial mining authority.

(B) PERMIT OBLIGATIONS

Exploration Permits impose a relatively small number of obligations on the permit-holder. However, they are mandatory to obtain Exploration Permits and keep it in good standing. Below is an outline of such obligations:

- A one-time exploration canon (or fee) payment;⁵
- Identifying the landowners of the requested area and to perform publications of the request with the local official gazette; it is worth to point out that, although, in general terms, landowners are not entitled to file oppositions against Exploration Permits, they can demand a bond from the permit-holder to guarantee potential damages to its property.
- An environmental impact report (or the exploration) to be filed with the appropriate provincial authority, containing a description of any proposed environmental and protection methods to be used, and any actions to be taken.
- Forecasting mining exploration activities and, upon the granting of the permit, performing as forecasted. Failure to fulfill such requirement obliges the corresponding provincial authority to terminate the permit.
- Prior to the execution of any exploration activity, an environmental report in connection should be filed and approved with the mining provincial authority in order to be able to legally initiate mining activities. This report should be filed and approved on bi-annual basis.
- Once the Exploration Permit expires the permit-holder must file with the corresponding provincial mining authority the information and documentation resulting from the exploration activities conducted.

⁵ According to current rates provided by Resolution No. 52/2003 of the National Mining Secretariat, mining exploration canon equals to AR\$ 400 per surface unit (i.e.: the largest possible Exploration Concession must pay an amount of canon equal to AR\$ 8,000).

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(C) PERMIT LIMITATIONS

Argentina has historically supported mining prospecting and exploration activities. In fact, mining activities are considered of public interest, which means that confronted against other rights mining development activities shall prevail.⁶ A direct consequence of this fact is the relatively small number of limitations associated with Exploration Permits. Below we provide a brief outline of the most relevant:

- FI should consider that the largest area that can be simultaneously awarded to a single person or legal entity is 200,000 hectares per province;
- Also there is a limit of 20 Exploration Permits for a single person or legal entity per province;
- Exploration Permits cannot be granted consecutively to the same person or legal entity over the same area; however after a one year term from the termination of the permit, former permit-holder will be allowed again to file a request for such area;
- Conducting prospecting and exploration activities nearby crops, gardens, buildings or other facilities, requires the acceptance of the corresponding landowner;
- Conducting prospecting and exploration activities is forbidden nearby cemeteries, streets, roads, railroads, pipelines, public waters or other public facilities;
- Both residents and non-residents may apply for an Exploration Permit. However, to perform mining activities in Argentina, foreign companies must register a branch in the country or conduct such activities through a local subsidiary.

VI. PROMOTIONAL INCENTIVE REGULATIONS FOR MINING EXPLORATION

Since it was enacted, the Mining Investment Law has generated significant mining prospecting and exploration activities in Argentina as it provides special benefits that reduce the economic burden and risk of those activities.

To become a beneficiary of the Mining Investment Law, individuals or legal entities must file an application with the National Mining Secretariat. The applicant is entitled to the relevant benefits in connection with prospecting and exploration activities on the date of the Mining Secretariat's resolution registering its application.

(A) BENEFITS RELEVANT TO EXPLORATION PERMITS

The benefits of the Mining Investment Act relevant to the prospecting and exploration phase of a project are the following:

- Reimbursement of VAT;
- Exemption from the payment of customs duties and customs fees for capital assets used in mining activities.
- Minimum Presumed Income Tax does not apply to beneficiaries of the Promotional Regime for Mining Investments;⁷ and finally

⁶ Mining Code, Section No. 13; see "Curso de Derecho Minero", Catalano, Edmundo F., Zavalia, Buenos Aires, Argentina, 1999, page 68 to 71.

⁷ Federal Law No. 25,063, as amended.

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- Research, prospecting and exploration expenses were exempted from the imposition of the mandatory one-year deposit of 30% of funds transferred into Argentina.⁸

Additionally, the Mining Investment Law provides other benefits that are practical and specially foreseen for the exploitation stage:

- Fiscal, foreign exchange and custom-duties stability for the mining project for a 30-year term, as from the filing date of the feasibility study, exception made of VAT ("Fiscal Stability").
- Income Tax benefits such as (i) double deduction of prospecting and exploration expenses in the assessment of the Income Tax; (ii) option to choose an accelerated depreciation system of fixed assets and property, land and equipment; and (iii) exemption on profits from mines and mining rights contributed in consideration for participations in the relevant company's equity.
- Option to capitalize 50% of proved mining reserves.
- Royalty cap at 3% of the mine-mouth value of extracted minerals.

Notwithstanding these benefits, the Argentine Executive Branch ("AEB") recently issued Executive Order No. 1722/2011 setting forth that all mining and oil & gas companies must transfer to Argentina and settle in the Argentine Foreign Exchange Market 100% of its export proceeds.

(B) OBLIGATIONS OF THE PROMOTIONAL REGIME FOR MINING INVESTMENTS

The Mining Investment Law sets forth the following obligations and formalities to be observed by its beneficiaries:

- Filing of corporate, tax and mining information and documents with the application to become a beneficiary, and filing of annual updates thereafter.
- Filing of annual affidavits on forecasted investments; investments made in the concluded term; use of double deduction of expenses and accelerated depreciation for the assessment of the Income Tax.
- Creation of a special accounting provision for the prevention and mitigation of environmental damages and the filing of an annual affidavit reporting this provision.
- Use of the equipment subject to any of the above benefits only for mining purposes (*i.e.*: goods exempted from custom duties when imported, assets over which income-tax double deduction or accelerated depreciation was applied, etc.) However, with the authorization of the National Mining Secretariat, such goods can be transferred to other individuals and legal entities registered in the promotional regime.

V. EXPLOITATION CONCESSIONS

According to the Mining Code, not only is it possible to obtain a mining concession on discoveries, but also on mines that are vacant on account of expired concessions.⁹

⁸ Resolution No. 365/05 of the Federal Ministry of Economy and Resolution "C" No. 42884 and "C" No. 44670 of the Argentine Central Bank.

⁹ Mining Code, § 44.

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The first step in the process to obtain a mining concession is to submit a “statement of discovery”.¹⁰ The discoverer must also include a sample of the mineral found in order to determine its class or type.¹¹

If all requirements are met, the discovery will be registered by a mining notary public and published in the provincial Official Gazette at the discoverer’s expense.¹²

Within 20 days from the last publication in the Official Gazette, the land owner or anyone who might have the right to oppose, may do so in writing.¹³ If no opposition is filed, or the opposition is solved, the concession is awarded by the mining authority. The concession allows its holders to prevent third parties or the State from exploring the area involved.

Once the statement of discovery has been registered, the discoverer is able to start with the works. Within 100 days of registration, the discoverer must perform what is known as *labor legal*, which consists of works evidencing an in-place deposit, so that the direction, slope and thickness of the deposit may be recognized and the existence and type of minerals discovered may be verified. It must survey the deposit within 30 days of the expiration of the 100-day term.¹⁴

The proposed *mensura* must be advertised in a newspaper indicated by the mining authority over a 15-day period. If no objections are raised, or if such objections are determined to be unwarranted, the authority will commence the *mensura*. Once the survey has been conducted, the mining authority will order the applicant’s definitive entitlement to the title to the mine.

VII. FINAL COMMENTS

Important efforts are being carried to harmonize regulations in the region, especially with Chile. These efforts resulted in bi-national treaties and protocols to support exploration projects¹⁵ the may soon enter in production stage (such is the case of the gold and silver world-class deposit “Lama-Pascua”). This fact reveals that Argentina’s policies are active and evolving towards regional integration. Other important sign of such development is the local presence of many of the most important major mining companies and a large number of junior exploration companies.

During the 1990’s, the Latin American mining sector, in general and particularly Argentina, radically changed its policy in order to become a target of mid-sized and large scale FI for both medium and long term projects.¹⁶ According to the trends of investment in mining prospecting and exploration activities ever since, the Argentine mining sector expects to continue to grow into the type model seen in Chile, Brazil and Peru.

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If you have any question or comment regarding the foregoing, do not hesitate to contact us by calling at (54-11) 4326-7386, via fax to (54-11) 4326-7396 or via e-mail addressed to godoy@berettagodoy.com.

¹⁰ Mining Code, § 46.

¹¹ Mining Code, § 46.

¹² Mining Code, § 53

¹³ Mining Code, § 27

¹⁴ Mining Code, § 71

¹⁵ See National Mining Secretariat Press Release, dated January 6, 2006 in connection with the “Amos Andrés” and “Vicuña” projects (www.mineria.gov.ar).

¹⁶ See “Mining Investment and Policy Developments: Argentina, Chile and Perú”, Bastida, Elizabeth, Irrázabal, Ricardo and Labó Ricardo, Article No. 16, Volume No. 10, CEPMLP On-line journal, 2002 (www.dundee.ac.uk/cepmlp).

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ANNEX A

PROVINCIAL MINING REGULATORY BODIES

PROVINCE	JURISDICTION	AUTHORITY
Buenos Aires	Administrative	Provincial Mining Office <i>("Dirección Provincial de Minería")</i>
Catamarca	Judicial	Provincial Mining & Electoral Court <i>("Juzgado Electoral y de Minas de la Provincia de Catamarca")</i>
Córdoba	Administrative	Provincial Mining Secretariat <i>("Secretaría de Minería")</i>
Corrientes	Administrative	Provincial Institute of Water and Environment <i>("Instituto Correntino del Agua y el Ambiente")</i>
Chaco	Administrative	Provincial Industry & Mining Office <i>("Dirección de Industria y Minería")</i>
Chubut	Administrative	Provincial Mining & Geology Office <i>("Dirección General de Minas y Geología")</i>
Entre Ríos	Administrative	Provincial Mining & Water Resources Office <i>("Dirección de Minería y Recursos Hídricos")</i>
Formosa	Administrative	Provincial Industry, Hydrocarbons and Mining Office <i>("Dirección de Industrias, Hidrocarburos y Minería")</i>
Jujuy	Administrative	Administrative Mining Court <i>("Juzgado Administrativo de Minas")</i>
La Pampa	Administrative	Provincial Mining Office <i>("Dirección Provincial de Minería")</i>

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PROVINCE	JURISDICTION	AUTHORITY
La Rioja	Administrative	Provincial Mining Office (<i>"Dirección General de Minería"</i>)
Mendoza	Administrative	Provincial Mining Council (<i>"Honorable Consejo de Minería"</i>)
Misiones	Administrative	Provincial Mining Office (<i>"Dirección General de Minería"</i>)
Neuquén	Administrative	Provincial Mining Office (<i>"Dirección General de Minería"</i>)
Rio Negro	Administrative	Provincial Mining Office (<i>"Dirección General de Minería"</i>)
Salta	Judicial	Provincial Mining Court (<i>"Juzgado de Minas de la Provincia de Salta"</i>)
San Juan	Administrative	Provincial Mining Secretariat (<i>"Secretaría de Minería"</i>)
San Luis	Administrative	Provincial Mining Office (<i>"Dirección General de Minería"</i>)
Santa Cruz	Administrative	Provincial Mining Office (<i>"Dirección Provincial de Minería"</i>)
Santa Fe	Administrative	Provincial Industry Office (<i>"Dirección General de Industria"</i>)
Santiago del Estero	Administrative	Provincial Mining and Geology Office (<i>"Dirección General de Minería, Geología y Suelos"</i>)
Tierra del Fuego	Administrative	Provincial Mineral Resources Office (<i>"Dirección de Recursos Mineros"</i>)

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PROVINCE	JURISDICTION	AUTHORITY
Tucumán	Administrative	Provincial Mining Office ("Dirección Provincial de Minería")

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ANNEX B

ARGENTINE MINING PROCEDURAL REGULATIONS

PROVINCE	PROCEDURAL LAW
Buenos Aires	Provincial Decree No. 14.700
Catamarca	Provincial Law No. 2233
Cordoba	Provincial Law No. 5436
Corrientes	Provincial Law No. 3805; and Provincial Decree No. 155/83
Chaco	Provincial Law No. 4889
Chubut	Provincial Decree No. 3166/71
Entre Rios	Provincial Law No. 5005
Formosa	Provincial Decree No. 2196/88
Jujuy	Provincial Law No. 5186
La Pampa	Provincial Decree No. 2242/58
La Rioja	Provincial Law No. 7277
Mendoza	Provincial Decree No. 299/45
Misiones	Provincial Laws No. 1572 and 1673; and Provincial Decrees No. 235/75 and 2113/83
Neuquén	Provincial Laws No. 604 and 902
Rio Negro	Provincial Law No. 3673
Salta	Provincial Law No. 7141
San Juan	Provincial Law No. 7199
San Luis	Provincial Law No. 5186
Santa Cruz	Provincial Law No. 990
Santa Fe	Provincial Laws No. 4831,6382 and 6705; and Provincial Decrees No. 3257/57 and 4795/57
Santiago del Estero	Provincial Law No. 2738
Tierra del Fuego	Provincial Resolution No. 10/04
Tucumán	Federal Mining Code