DOING LITHIUM BUSINESS IN ARGENTINA

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I. SCOPE AND DISCLAIMERS

The purpose of this report is to summarize the key legal aspects of Argentine law related to lithium mining, and to provide additional information on certain business, social and administrative aspects related to this industry. This report must not be relied on as legal advice applicable to a specific legal issue.

II. ARGENTINA'S CONSTITUTIONAL SYSTEM

Argentina is a republic with three branches of government: Executive (President and Cabinet of Ministries), Legislative (Congress, comprised of the House of Representatives and Senate) and Judiciary (Supreme and lower courts). Argentina is a federal state, divided into provinces.

Lawmaking in Argentina can be done at different levels, as follows:

Federal: the national level — i.e., Argentina. The Argentine government is the federal government and makes laws and regulations that apply nationwide.

Provincial: Argentina has 23 provinces and the autonomous City of Buenos Aires. Provinces are subject to federal laws and regulations. They also have the power to legislate on all matters that have not been delegated to the federal government under the Federal Constitution, which includes, importantly, matters related to natural resources and the environment.

Provinces have their own constitutions and executive, legislative and judicial branches of government. In addition, each province is divided into administrative units (i.e., municipalities) which are not autonomous but have their own budgets and administrative structures.

Municipal: the most local level — including cities, towns, and villages. Municipalities are responsible for property taxes, property standards, zoning, business licenses, and local by-laws. They are subject to relevant federal and provincial laws and regulations.

The National Congress has the exclusive power to enact federal laws, including for international and inter-provincial trade, immigration and citizenship, patents, and trademarks.

The Argentine Constitution also entitles the Argentine Congress to enact codes, which are applicable nationwide concerning civil, commercial, criminal, labor, and mining. Procedural codes are enacted by each province.

III. MINING RIGHTS

1. The Argentine Mining Code

In Argentina material mining laws are issued by the National Congress and are contained in the National Mining Code (the “Mining Code”), as amended and complemented.

However, the property of natural resources belongs to the provinces or, only to the extent the resource is in a federal territory, to the federal government. Also, as mentioned, legislating on procedural rules falls within the provincial jurisdiction, so each province has its own code of mining procedure. Accordingly, provinces (i) appoint mining authorities and (ii) provide procedural mining regulations that individuals and legal entities must follow 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.

The Mining Code contains regulations covering the general extent of permits, technical requirements, permit-holder obligations as well as permit limitations.

The Mining Code also identifies 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.

Mines are classified in three categories based on the type of mineral discovered, Lithium (together with gold, silver, platinum, mercury, copper, iron, lead, tin, zinc, nickel, cobalt, bismuth, manganese, antimony, wolframite, aluminum, beryllium, vanadium, cadmium, tantalum, molybdenum, and potassium, among others) belongs to the first category of mines, in which the soil is an accessory, that belongs to the provincial state in which it lies and can only be exploited given a legal grant though a concession by the relevant mining authority. The landowner, based solely on this condition, is not entitled to exploit these minerals.

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

2. Exploration permits

a. Title to mining exploration rights

In legal terms, mining prospecting and exploration rights can be granted to individuals or legal entities through exploration permits ("Exploration Permits"). Any person can request an exploration permit on a first-come, first-served basis, provided that the land is available for mining (meaning, that it is an urban area, or not affected to infrastructure uses such as railroads, roads, or power lines, and that is not in an environmentally protected zones). Any mineral discovery performed either by the permit-holder or third parties, provided they take place within the area and term of the permit, grants the permit-holder the right to turn such discovery into a mine (see the next chapter on exploitation concessions).

Those who obtain an exploration permit will have exclusivity rights to apply and obtain a mining concession for the same area in which minerals were found.

b. Main Features of exploration permits

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

(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 (although as detailed in (v) below, a single person can hold more than one permit). However, as the permit term runs, its size should be gradually reduced by the permit-holder.

(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 conducting exploration activities without an Exploration Permit or the consent of the surface landowner may lead to liabilities for damages caused as well as very substantial penalties ranging from 10 to 100 times of the exploration canon corresponding to one unit of measurement. Moreover, the Exploration Permit is enforceable against third parties. Holders of an Exploration Permit will have exclusivity rights to apply for and obtain a mining concession within the area covered by such permit. 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.

(iv) Obligations associated with an exploration permit: Exploration Permits impose a relatively small number of obligations on the permit-holder. However, once obtained, it is mandatory to keep the Exploration Permit in good standing. Below is an outline of such obligations:

- A one-time exploration canon (or fee) payment, regardless of the term of the permit The amount of this canon is set forth by law of the National Congress.
- Identifying the landowners of the requested area and performing publications of the request with the local official gazette; it is worth pointing 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 their property.
- An environmental impact report ("EIR") 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.

- To legally initiate mining activities, an EIR must be filed and be assessed through a technical, scientific, and legal administrative process. Then, the enforcement authority shall issue an environmental impact statement ("EIS"). The EIR should be filed and approved on a bi-annual basis.
- Forecasting mining exploration activities and, upon the granting of the permit, performing as forecasted. Failure to fulfill such requirements obliges the corresponding provincial authority to terminate the permit.
- 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.

(v) Restrictions associated with exploration permits: 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. A direct consequence of this is the relatively small number of limitations associated with Exploration Permits. Below we provide a brief outline of the most relevant limitations:

- 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 near crops, gardens, buildings, or other facilities requires the consent of the corresponding landowner.
- It is forbidden to conduct prospecting and exploration activities near cemeteries, streets, roads, railroads, pipelines, public domain waters, or other public facilities.
- Both residents and non-residents may apply for an Exploration Permit. However, to own mining rights, foreign companies must register a branch in the country or conduct such activities through a local subsidiary.
- Mining activity is prohibited within protected areas in Argentina as determined by National Parks Law No. 22,351;
- Additionally, the Minimum Standards for the Preservation of Glaciers and Periglacial Environments prohibits the development of industrial activities (specifically mining) that negatively affect the natural environmental condition of glaciers.

3. Exploitation concessions

a. Definitions

For reference purposes, we provide a brief description of the defined terms used in this chapter. The terms kept in Spanish are in italics.

Canon	It is an annual or six-monthly payment that concession holders must make to the state (either national or provincial) to keep the concession in good standing. This payment is usually divided into two equal amounts.
Environmental Impact Report or "EIR"	Environmental report for exploration or exploitation purposes filed with the Mining Authority, required by Section 256 of the Mining Code. It must be updated every two (2) years.
Environmental Impact Assessment or "DIA"	Environmental impact assessment issued by the Mining Authority for exploration or exploitation purposes through which the EIR is approved.
Environmental file	Environmental matters of a given mining property or rights are controlled and followed up in an administrative file kept at the Mining Authority.
Labor Legal	The initial prospection work that should be conducted on the mine surface to determine its potential for exploitation and the location of the property's mineralization. Its timely execution is mandatory to keep the title in good standing.
Mensura	The final mine survey procedure, which consists of the measurement of the area requested by the concessionaire for the *Pertenencias* of a given mine. The approval of the *mensura* creates the final title to a mine.
Mining Investment Plan	Legal requirement set forth by Section 217 of the Mining Code that must be complied with by the titleholders of mining concessions to keep titles to the mining properties in good standing. The Mining Investment Plan comprises minimum investments that must be performed in the mining concession within a term of five (5) years. The titleholders must submit annual affidavits to the Mining Authority to evidence compliance with the Mining Investment Plan.
Mining Authority	The provincial mining authorities in charge of awarding mining titles and verifying their good standing. In Catamarca the Mining Authority is an administrative agency, in Jujuy is an administrative court and in Salta it is a judicial court.
Pertenencia	The surface unit into which a mine can be divided. In the case of vein minerals, each *pertenencia* has a surface of 6 hectares. In the case of disseminated minerals, borates, and lithium, each *pertenencia* has a surface of 100 hectares.
Title File	The file under which title to a given mining property is granted.
Statement of Discovery or "SD"	It is the filing made before the Mining Authority, stating the finding of mineral resources in a particular area of land. This filing is mandatory and is the first step in the process to obtain the concession of a mine.

b. Main features and steps for the grant of an exploitation concession

Mining exploitation concessions are granted to the discoverer of a mineral deposit on first-time, first-served basis and they are perpetual, subject to complying with basic good-standing requirements described below.

The key steps for the grant of a mining exploitation concession are the following:

a. Filing of a Statement of Discovery: The first step in the process to obtain a mining concession is to submit a "Statement of Discovery". The discoverer must also submit a sample of the mineral found to determine its class or type. The discoverer can preliminarily request an area that is twice the maximum concession area for that kind of mineral (If the application exceeds the maximum concession area, the applicant must reduce at the time of requesting the mensura. For lithium, the maximum concession area is 1,500 hectares if for an individual application, 2,500 hectares if the application is jointly made by 2 or 3 persons, or 3,500 hectares if it is jointly made by 4 persons or more.).[1] If all requirements are met, the discovery will be registered by the Mining Authority and published in the provincial Official Gazette at the discoverer's expense. Within 20 days from the last publication in the Official Gazette, landowners or anyone who might have a right to oppose to the Statement of Discovery may do so in writing (for example, the owner of an overlapping and prior Statement of Discovery). If no opposition is filed, or the opposition is solved, the statement of discovery must be registered by the Mining Authority. In the province of Jujuy, the Statement of Discovery is not registered until the discoverer obtains an environmental impact statement ("EIS") approving the property's first exploration program. The registration of a Statement of Discovery allows the discoverer to conduct works in the properties (subject to obtaining environmental permits and any other applicable permits and licenses). No works whatsoever can be performed before the registration.

b. *Labor legal*: After the statement of discovery has been registered, the discoverer is able to start working on the property. Within 100 days of registration of the declaration of discovery, the discoverer must perform what is known as *Labor Legal*, which consists of a preliminary prospection work to determine the location of the mineralization in the area. This term can be extended for another 100-day term if the discoverer justifies that there were obstacles to perform the *Labor Legal* in time. The discoverer can request additional 50-day term if additional works are needed to locate the property's mineralization after performing the labor legal. In some provinces, such as Catamarca, the first 100-day term start to run after the grant of the EIS for performing the works needed for the *Labor Legal*.

c. *Mensura*: Within 30 days after the expiration of the terms for performing the *Labor Legal* , the discoverer must request the *Mensura* (land survey) to the mining authority.

[1]

In the request for the mensura, the discoverer must chart the final location and extension of the mining concession, which is divided in Pertenencias (work units). The extension of a Pertenencia depends on the mineral and type of mineralization of the deposit. The proposed Mensura must be advertised in a newspaper indicated by the Mining Authority over a 15-day period. If no objections are raised (a possible objection could be that the area being requested is already occupied by another mining property, or that mining is not allowed in the area being requested, or that the extension of the concession exceeds the legal maximum for that mineral.), or if such objections are determined to be unwarranted, the authority will conduct the *mensura*. The *Mensura* is conducted at the property's site. A representative of the Mining Authority must verify the discovery point, the performance of the *Labor Legal*, and must mark the property's boundaries. Landowners and neighboring concessionaries are entitled to participate in the *Mensura*. Once the *Mensura* has been conducted, the Mining Authority will order its approval and registration with the mining cadaster, and the discoverer will obtain a final title over the mine. Under Argentine law, a mining property is called a "mine" (that is, a final mining concession) after the approval of the *Mensura,* hence forming a Title File.

Discoverers and mining concessionaires must comply with the following obligations:

(i) Pay a *Canon* on a semi-annual basis, starting three years after the registration of the application for a mining concession.

(ii) Within a year after the filing of File a Mining Investment Plan in respect of each Title File shall be submitted to the Mining Authority, obtain its approval by the Mining Authority, and file annual affidavits during a 5-year term proving compliance with the Mining Investment Plan.

(iii) File an EIR for each stage of a mining project (prospection, exploration, and exploitation). Each mining property requires the filing of an individual environmental report. However, it is common for the Mining Authority to accept the filing of a single environmental report for a group of mining properties in those cases where geological and technical reasons support such unification. Environmental reports must be updated every 2 years.

(iv) Work in the mine: If the mine is inactive for more than four years, the Mining Authority can request the concessionaire to produce a reactivation plan within 6 months. The reactivation plan must not exceed five years, must be divided in stages, and failure to comply with a stage will lead to the termination of the mining concession.

If requirements (i) and (ii) are not complied with, the Mining Authority must notify the concessionaire and demand it to remedy such failures. Failure to do so by the concessionaire allows the Mining Authority to declare the vacancy of the mining property. In case of non-payment

of the mining *canon*, the concessionaire may recover the mine if, within a term of forty-five (45) days, it pays the *canon* due plus a 20% penalty.

If requirement (iii) is not complied with, the Mining Authority may impose – at its own discretion and according to the degree of seriousness of the breach – the following sanctions on the concessionaire: a) the temporary suspension of mining activities; b) the additional imposition of: 1) warning notices, 2) fines, or 3) the temporary or permanent prohibition to conduct mining activities within the province.

In addition, mining concessionaires must pay a royalty based on the minerals extracted from the mine, which according to the Mining Investments Law No. 24,196 cannot exceed 3% of the minerals' mine-mouth value.

All days are calendar days unless stated otherwise.

IV. KEY ENVIRONMENTAL AND REGULATORY ASPECTS

1. Local sourcing requirements

Provinces with mining operations have enacted laws and regulations to regulate the percentage for sourcing of works, services, goods and/or other supplies that must be hired within the relevant Province to promote local employment and economic activity.

Some regulations treat localization rules as part of the obligations contained in an EIS.

No compliance may be sanctioned with warnings, fines or expirations of the EIS

2. Environmental protection regulations

Pursuant to the Argentine Constitution, all inhabitants are entitled to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it.

Any damage to the environment shall be primarily remedied according to the applicable laws. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity and shall also provide for environmental information and education.

The Federal Government shall regulate the minimum protection standards, and the provinces those necessary to complement them but are not entitled to lower them.

The entry into the national territory of actual or potentially hazardous wastes and of radioactive materials, is forbidden.

Below are the main federal laws for environmental protection:

a. Environmental rules for Mining Activities

The main environmental rules applicable to mining are set by the Mining Code, pursuant to its Complementary Title "Environmental Protection for Mining Activity", (specifically for the mining industry) and by the Environmental Law - Law 25,675 (for all industries). Both legislations contain similar principles on the environmental conditions that must be met.

These are federal statutes, and their provisions are directly applicable to each of the provincial states, presenting a homogeneous regime and clear rules throughout the national territory.

The Mining code sets forth the following mechanism for environmental management:

- Each company must submit an “Environmental Impact Report” (“EIR”) analyzing the environmental impact of each of its activities. This is applicable at the prospection, exploration, and exploitation stages of any project.
- The EIR is approved by the province by issuing an “Environmental Impact Statement” (“EIS”).

The Environmental Law establishes the minimum standards applicable in all provinces, and each province can in turn set higher standards for its territory. It also provides that whoever causes environmental damage will be strictly liable for its re-establishment to its prior state. If not possible, the judiciary will establish monetary compensation to fund an environmental compensation fund.

The Environmental Law provides for citizen participation mechanisms, assuring all people the right to participate in the procedures of environmental impact assessment through public hearings. Such hearings are mandatory for the issuance of an EIS.

In addition, the Environmental Law sets forth that any person that performs environmentally risky activities must obtain an insurance policy.

Among the most relevant federal laws for environmental protection we find law on:

(i) *Protection of Glaciers*

A glacier is defined as a mass of perennial ice that its stable or that slowly floats, with or without interstitial water, formed of the crystallization of snow, located in different ecosystems, whatever its form, dimension, and state of conservation. The rocky detrital material and the internal and superficial water courses are a constituent part of each glacier. The periglacial environment is defined as the area with frozen soils that acts as a regulator of hydric resources. In the medium and low mountains, the area that functions as a regulator of hydric resources with ice saturated soils.

This Law prohibits activities that may affect the natural condition or function of glaciers, those that imply their destruction of transfer of interfere with their movement, particularly mining and hydrocarbon exploration and exploitation, which are also prohibited in the periglacial

environment.

(ii) *Laws on Industrial Waste, Hazardous Waste, Prevention of Atmospheric Pollution, Prevention of Atmospheric Pollution and Protection of native Woods*

There exists registries for generators, carriers, operators and other different activities that imply a threat to the environment. These laws also establish the minimum environmental standards to be complied with

There is a Management Manual for the administrative procedures substantiated within the scope of the Hazardous Waste Registry Unit of the Secretary of the Environment and Sustainable Development of the Nation regulated by Resolution 737/01.

(iii) *Free access to environmental public information*

This Law guarantees free and public access to environmental information. This includes the federal entities, provinces, municipalities, the City of Buenos Aires, autarchic entities, and utility companies (whether public or private). Access to the information could be denied in cases of protection of trade secrets, intellectual property, personal data, security reasons, or cases of confidential information.

(iv) *Escazú Agreement*

Argentina is a party to the "Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean".

It contains provisions on access to environmental information with maximum disclosure, public participation in the environmental decision-making process, public participation from the early stages in the environmental decision-making process based on domestic and international normative framework, access to justice in environmental matters, and guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters.

(v) *ILO Convention No. 169 on Indigenous and Tribal Peoples*

The International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries is an international treaty approved by Argentina through National Law No. 24,071 ("Convention 169")

The main purpose of Convention 169 is to protect the right of the indigenous people to keep and strengthen their own culture and institutions; and their right to effectively participate in the decisions that affect them.

Article 6 of Convention 169 grants indigenous people the right of consultation. This consultation right of the communities is a compulsory process for all levels of the State. It includes the Executive, Legislative and Judicial branches. The consultation process with indigenous

peoples shall be performed whenever consideration is being given to legislative or administrative measures which may affect them directly.

Although Convention 169 is not part of the Inter-American Human Rights system and it does not provide for the jurisdiction of Inter American Court of Human Rights ("IACHR") as its enforcement body, the IACH has applied the rules of Convention 169 by interpreting that they are embodied in the principles of the Inter-American Human Rights Convention and created standards for the protection of indigenous peoples.

In the precedent "*Pueblo Indígena Kichwa de Sarayaku vs. Ecuador*"[2] the IACHR analyzed a contract of exploration and exploitation of hydrocarbons within a surface where associations of indigenous communities (such as the native people of Kichwa of Sarayaku) lived. In its ruling, the IACHR understood that there was a violation of the rights of the community and that the right of consultation of the affected communities (that must occur before any action potentially affecting the rights of the community is taken) was not respected due to the impact by the militarization of its territory, the cultural deterioration of its environment and their sacred elements.

In this case, the IACHR highlighted that the right of consultation of the communities is not exhausted in a formal proceeding, but it is a true mechanism of participation. The consultations shall be made in good faith, through procedures culturally adequate for the community and which allow to reach an agreement.

The IACHR repeated in this case the same standard considered in the case "Saramaka vs. Surinam" (as detailed below), where it sustained that in cases of big scale development or investment plans with high impact in the territory, the State must secure the previous, free, and informed consent of the relevant indigenous communities, according to their customs and traditions.

In the case "*Saramaka vs. Surinam*",[3] the IACHR ruled that native communities must be informed about investment or development plans affecting their territory, as well as about the environmental and health risks entailed. In its decision, the IACHR established that this duty shall be fulfilled from the first stages of a plan of development and investment, and which cannot be fulfilled for the sole purpose of securing the approval of the community when it constitutes an administrative requirement or a requirement of any other nature.

Article 15 of Convention 169 provides that "[t]*he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include*

[2] Inter-American Court of Human Rights, "Pueblo Indígena Kichwa de Sarayaku vs Ecuador" (Fund and Repairs) 27/06/2012.

[3] Inter-American Court of Human Rights, "Pueblo Saramaka vs. Surinam", Decision dated November 28, 2007, page 133

the right of these peoples to participate in the use, management, and conservation of these resources".

Section 16 of Convention 169 provides that "1. [Indigenous] *peoples* […] *shall not be removed from the lands which they occupy.* […] *2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned*".

3. Overview of a mining project's licensing

A project's licensing depends on the mineral being mined and the product being processed, the technology being used, and most importantly, the province and municipality where they are located. That being said, these are some common features for the licensing of mining projects:

a. *Consultation:* In Jujuy, an indigenous consultation process is required before performing any mining activity, including the registration of a statement of discovery. In other words, a mining right cannot even be secured without a consultation process, if there are indigenous peoples in the area. In general, there are several indigenous communities in the areas where lithium is produced. This process can take several months and even years. This is not required by the authorities in Catamarca and Salta.

b. *Environmental Impact Assessment:* The most important aspect of any mining project is its environmental impact assessment. As mentioned, an EIR is needed for each stage of the mining project. Each province has its own on an EIR's content and its approval process but, in general, an EIR should include a general description of the project; a general description of the environment or a baseline study; a description of the project's environmental impacts and an environmental management plan describing how the impacts will be prevented, managed and/or remediated. An EIR is approved through the issuance of an EIS. EISs must be updated every two years. EISs are limited to the activities contained in each of them. For example, a project may require one prospection EIS, several exploration and/or advanced exploration EISs, and a construction/operation EIS. The time and complexity of their approval increases with each stage.

c. *Mine closure:* Catamarca demands that a mine closure plan is presented and approved for each mining activity, before commencing such activity. Closure must be progressive, meaning that the company must not wait until the project ceases its operations, but it must close the project's components as they come out of use. It

must also include progressive liquid guarantees that will increase as the project advances. The closure plan will be monitored on a bi-annual basis.[4]

d. *Easements:* The Argentine Mining Code provides that miners are entitled to easements for the use of surface land. This typically includes land use, water use, pipeline and road easements. Administrative easements are needed for the transport of electricity.

e. *Hazardous substances and waste:* Typically, a project would need licenses for the use and transport of hazardous substances, waste, and effluents. Depending on the project's jurisdictional reach, federal licenses on the same aspects may be required (most commonly, transport of hazardous substances).

f. *Fuel transport and storage:* A project would normally require a federal license for fuel transport and storage.

g. *Permits for the use of explosives:* If the project's construction or operation requires the use of explosive, federal permits are needed in order use and store them. Storage facilities must be licensed and audited by authorities.

h. *Administrative permits for the use of surface water:* Some provinces may require an administrative permit for the use of surface water, in addition to obtaining a water easement.

i. *Archeological heritage:* Depending on the area and work to be done, a provincial archaeological heritage permit may be needed for mining activities or infrastructure work.

j. *Provincial and municipal permits on plants and facilities:* Provinces and municipalities inspect and approve camps, facilities and other project sites. This typically include the analysis and approval of structural and architectural construction plans, plans for water, gas, firewater distribution and electrical systems, and the approval of the facilities after its construction. Provincial authorities require the filing and approval of a health and safety plan. All these aspects are periodically monitored by local authorities.

V. ESG ASPECTS

1. EIS as an ESG tool

At the time of analyzing an EIR, provinces typically demand mining companies to include several social responsibility actions as a condition for its approval (some examples of these conditions include the construction of an airport and the creation of a business hub). Roads, electric lines and other infrastructure, and social actions are usual items that a province may wish to include in an exploitation EIS. These kind of requests are not common for exploration EIS, but only for the latest stages of a project's development (i.e., exploitation). Also, a mine closure plan

[4] Catamarca's Mining Ministry Resolution 396/2016.

must include social actions to mitigate the impact of the mine closure on the community, which includes developing other work sources during the mine life.

2. Social Balance Sheet.

Companies employing more than three hundred (300) employees must produce, on an annual basis, a "social balance sheet" containing systematized information on working and employment conditions, labor costs and social benefits for which the company is responsible. This document must be reported to the workers' union with trade union status (signatory of the collective bargaining agreement applicable to the unionized workers). A copy of the "social balance sheet" shall be deposited at the Ministry of Labor, Employment and Social Security, which shall be considered strictly confidential. (Article 25 of law 25,877).

VI. CORPORATE LEGAL FRAMEWORK

1. Foreign Companies doing Business in Argentina.

As a general rule, foreign companies can carry out isolated acts in Argentina and appear in court without being registered in Argentina. An "isolated" act means an act that starts and simultaneously ends with parties' fulfillment of their obligations under an agreement, and is not deemed by the Parties as continuing in time (i.e. "sporadic and accidental" acts).

Foreign companies that: (i) conduct regular business in Argentina, (ii) are headquartered in the country, or (iii) participate in Argentine companies as shareholders, must be registered before the Public Corporate Registrar of the jurisdiction of choice. Please note that Corporate Public Registrars in Argentina are local, which means that each province and the City of Buenos Aires have their own Registrar. Companies should file for registration in the jurisdiction of their business center; nonetheless, many companies file for registration before the City of Buenos Aires Corporate Public Registrar ¬Inspección General de Justicia- (hereinafter referred to as the "IGJ").

Depending on the activity that the foreign company will conduct in Argentina, it can file for registration under Section 118 of the Argentina Corporate Act N° 19.550 -Ley de Sociedades Comerciales- (hereinafter referred to as the "Corporate Act"), or under Section 123 of said Act. The former allows for companies to open and register a local branch of the company and perform acts directly, while the latter regulates the registration the foreign company as a foreign shareholder as a prerequisite to participating in a local subsidiary. Timing for registration in both cases is around one month (since all required documents are filed).

The most important requirements a foreign company must fulfill are as follows:

- Evidence the existence of the company in its place of incorporation;
- Evidence that it has its main business center outside of Argentina, and that it has substantial business operations abroad (if the company is a holding/SPV company, this requirement shall be met by its shareholder, and no more than one SPV can be present

in the chain of control).

- Set up a legal domicile in Argentina and comply with registration and publication requirements under Argentine law;
- Justify its decision to create such representation and appoint a legal representative.

2. Types of local Business Entities.

a. The corporate types under Argentine law are: Sociedad Anónima (SA, similar to a corporation), Sociedad de Responsabilidad Limitada (SRL, similar to a limited liability company), Sociedad por Acciones Simplificada (SAS), or Sociedad Anónima Unipersonal (SAU). From a tax standpoint there are almost no difference between the legal entity chosen. SA's and SRL's require at least two shareholders, SAS allows for one or more shareholders and SAU only provides a sole shareholder. We do not recommend forming a SAS since the IGJ is publicly opposed to such corporate type.

VII. FOREIGN EXCHANGE AND TRADE

1. Foreign Exchange Controls

In general, the purpose of Argentina's foreign exchange control is to allow the government to appropriate the most important sources of foreign currencies, such as exports of goods and services; and to restrict the public's access to foreign currency to specified transactions. The payment of dividends and intercompany debt is severely restricted, and other transactions that involve the access to foreign currency are heavily regulated. The most relevant foreign exchange regulations in effect to date (the "Foreign Exchange Framework") are published by the Central Bank of Argentina (the "CBA") at the following web site: http://www.bcra.gov.ar/Pdfs/Texord/t-excbio.pdf. Please find below a summary of the most important aspects of Argentina's foreign exchange framework.

a. Inflow of foreign currency

(i) Exports of goods

Exporters must surrender and settle in the Argentine Foreign Exchange Market the foreign currency obtained from the collection of their exports. The terms for doing so (i) are counted as from the date on which the shipment is made, and (ii) range between 15 and 365 calendar days depending on the type of good exported.

The term to surrender the currency obtained out of the export of lithium carbonate (NCM 28369100) is 60 days for operations between affiliates and 180 days otherwise, counted as from the date of issuance of the export authorization.

(ii) Exports *of services*

Pursuant to the CBA, the exports of services comprise all services rendered by residents

to non-residents. The obligation to settle the foreign currency in the Argentine Foreign Exchange Market corresponding to 100% of the amount collected, net of withholdings or discounts made abroad by the client, is also applicable. The settlement term is 5 business days as from the date of collection of the funds.

(iii) Realization of Non-Produced Non-Financial Assets

The amounts collected by Argentine residents arising from the disposition of non-financial non-produced assets (intangible assets such as mineral rights, athlete passes, patents, trademarks, copyrights, websites, commercial concessions, and leases) must be surrendered and settled in the Argentine Foreign Exchange Market within 5 calendar days from the date of collection of the funds.

(iv) External Financing

Foreign financial indebtedness must be surrendered and settled in the Argentine Foreign Exchange Market as a requirement to access this market to repay principal and interest of such debt.

The repayment of principal between related parties needs prior approval from the CBA.

b. Outflow of Foreign Currency

(i) Imports of goods

Through Communication A 7466[5] the CBA classifies imports in "Class A" or "Class B", as follows:

Class A imports: Class A comprises goods not included in Class B (see below). Class A goods are mainly those benefited from an automatic import license. Imports of Class A goods are subject to an annual cap proportionally distributed on a monthly accumulative basis.

Class B imports: Class B imports are not subject to the cap applicable to the Class A imports. Class B imports comprise the following three categories:

- "Non-restricted imports", which comprise:
  - ✓ Capital goods, provided that the capital goods represent at least 90% of the shipment's FOB value;
  - ✓ Import of COVID kits or products required for the COVID-19 emergency;
  - ✓ Imports of goods subject to non-automatic import licenses; and
  - ✓ Imports made by the national public sector (the national government or any entity controlled by the national government).
  - ✓ Import of petroleum or bituminous mineral oils, their preparations, and their

[5] Communication "A" 7466 of the Central Bank of Argentina.

residues.

- Imports that do not require accessing the Argentine Foreign Exchange Market (for instance, because the importer already owns freely available foreign currency to pay the import).
- Imports that are paid 180 days after clearing Argentina's customs.

Depending on the kind of good and commercial terms of the operation other requirements or exceptions may apply.

(ii) Imports of services

Access to the Argentine Foreign Exchange Market is permitted for the payment abroad of services rendered by non-residents provided they meet certain requirements, such as filing with the local bank the supporting documents, the declaration of the operation with the Federal Tax Authority and declared with the CBA. Otherwise, prior approval of the CBA is required.

Payment to related parties requires the prior approval of the CBA (certain exceptions may apply; for instance, if the local company has a certificate of increasement of exports or payments of more than 180 as from the due date).

(iii) Payment of financial debt

Access to the Argentine Foreign Exchange Market is permitted for the payment abroad of financial debts with non-residents provided they meet certain requirements such as filing with the local bank the supporting documents, the declaration of the debt with the CBA and proof that the loan was submitted and settled through the Argentine Foreign Exchange Market (other special exceptions may apply). Otherwise, prior approval of the CBA is required.

Access to the Argentine Foreign Exchange Market requires prior approval of the Central Bank for the payment of principal with related parties (unless certain requirements are met such as the funds were inflowed through the Foreign Exchange Market and the average life of the loan exceeds 2 years).

Please note that to perform an advanced payment of interest on a commercial debt (payment prior to its due date) prior approval of the CBA is required.

(iv) Distribution of profits and dividends

Prior approval of the CBA is needed for the distribution of dividends unless certain requirements are met, such as having closed and audited financial statements, a certificate of increase of exports and proof that the capital contribution was inflowed through the foreign exchange market 2 years prior to the request of the outflow of funds.

(v) General requirements to access the Argentine Foreign Exchange Market

A company may only access the Argentine Foreign Exchange Market in the cases

described above (items -i- to -iv-) if all the following requirements are met:

i) The company does not own more than USD 100,000 in liquid external assets (e.g., funds and bonds deposited abroad);

ii) The company does not own any foreign currency in Argentina outside of the banking local system. For instance, it must not own bank notes.

iii) The local company must show that it complied with its reporting requirements to the CBA, including reporting all the company's debts owed to foreign entities or individuals;

iv) The company must not have performed an operation to take funds out of Argentina through the Stock Exchange during the 90 days prior to its access to the Argentine Foreign Exchange Market, and must not perform such an operation during the following 90 days; and

v) After the company has accessed the Argentine Foreign Exchange Market to transfer funds out of Argentina, it must surrender and settle in the Argentine Foreign Exchange Market the foreign exchange obtained from the collection of loans, sale of assets and fixed term deposits.

2. Regulations on import and export of equipment, raw materials, and chemical products

a. Licenses

Importers and exporters must be registered with Argentine Customs to perform international trade transactions.

b. Trade

Argentina is a member of the World Trade Organization (WTO) and a party to the General Agreement on Tariffs and Trade (GATT). Thus, WTO regulations on customs valuation, labeling, and fair-trade practices (e.g., anti-dumping actions, safeguard measures and countervailing duties) are applicable to Argentina. It is because of these agreements that Argentina applies all international regulations related to exports and imports (from the valuation of merchandise to the Incoterms used to report payments).

The main regional trade agreement to which Argentina is a party is Mercosur, which is a customs union and economic integration agreement between Argentina, Brazil, Paraguay, and Uruguay. Other south American countries are associate members.

In case a good enters or leaves through a Mercosur member country, it will have tax benefits over other countries. For example, it might not be affected by export duties.

According to the Customs Code there are two ways to export / import: (i) it can be for local consumption (this is known as final export / import), or (ii) it can be exported / imported temporarily (this is known as temporary entry). In this case, it must be considered that certain taxes will not

be paid because it is a good that enters / leaves the country for a certain time and purpose.

c. Reference Export Prices

General Resolution N° 4.710 from the Federal Tax Authority grants the Argentine Customs Office the legal capacity to establish the reference export values for several exportable products. In exercise of said capacity, the Customs Office issued General Resolution 5197/2022, under which the reference export value for each kilogram of lithium carbonate (99.5% purity or more) at USD 53 (US dollars fifty-three), only for exports to the following countries: United States of America, Canada, South Korea, North Korea, China, Philippines, Taiwan, Japan, Thailand, Hong Kong.

d. Chemical Precursors

Pursuant to Argentina's anti-narcotics law, all users of chemical precursors, which are substances and chemical products that may be used in the manufacturing of narcotics, are subject to control measures, including their registration with the National Registry of Chemical Precursors. The violation of these obligations is a criminal offense.

Law 26,045 established the Secretariat of Planning for the Prevention of Drug Addiction and Drug Trafficking ("Drug Agency") as its enforcement authority. Thus, the Drug Agency in charge of controlling every matter regarding chemical precursors and other relevant chemicals. It requires that all manufacturers, importers or exporters, transporters, and distributors of these chemicals be registered with the Drug Agency. Argentine law prohibits the transport of nonregistered chemical precursors.

The Drug Agency ensures the enforcement of the precursor chemical control system: In addition to the registration all entities must submit quarterly reports regarding the status/movement of registered chemicals, and all registered chemicals are subject to audits.

The Federal Council of Chemical Precursors was created by Law No. 27,283. The Council must analyze any issues related to substances listed in the anti-narcotics Law; assess chemical precursors to be controlled; maintain a national map of production, commercialization, and distribution of chemical precursors; and propose new policies and improve control mechanisms on their production, commercialization, and distribution.

VIII. RESTRICTIONS ON FOREIGN INVESTMENT

There are no prohibitions for foreign investors specifically referred to lithium. In this chapter, we will summarize Law No. 26,737 (the "Rural Lands Law"), which sets forth that no more than 15% of the total amount of rural land in the country may be owned or possessed by foreign entities. In addition, foreign investors pertaining to the same nationality are not entitled to hold or possess more than 30% of the 15% nationwide. Finally, each foreign investor is not entitled to have more than 1,000 hectares or equivalent area as determined by the authorities.

The Rural Lands Law prohibits direct purchases in excess of the limit as well as indirect purchases through the change of control of the company that owns the land. The change of control of foreign companies that own rural land must be reported to the National Registry of Rural Land for validation of adjustment of percentage in case it exceeds the threshold.

The Rural Lands Law applies to the ownership of surface land. It does not apply to the ownership of mining permits or concessions.

IX. KEY TAX ASPECTS APPLICABLE TO THE MINING INDUSTRIES

1. General situation of Argentine taxes

The Argentine tax system has three different levels of taxation (federal, provincial, and municipal) which generally tax the corporate presence and businesses in Argentina.

To carry business in Argentina, taxpayers must be registered with the Federal Tax Authority ("FTA") and before the provincial and municipal authorities to get their number of tax identification and to register under the tax and reporting regimes applicable to their activities. Below you will find a summary of the key tax aspects applicable to mining companies in Argentina. Note that we are not including general information about the most common Argentine taxes such as Income Tax, Value Added Tax, Turnover Tax, etc.

2. Special taxes: taxes and fees related to mineral rights, resource taxes, customs duties, etc.

a. Export taxes

This tax is applied on final exports of goods at a tax rate that varies between 4% and 30%, depending on the product. It is collected by the customs office at the moment of officializing the exit of the goods. The rate applicable to lithium carbonate exports is 4.5%.[6]

b. Tax incentives for mining

In Argentina, the government seeks to foster the mining industry by providing fiscal benefits, which all together compose the "Promotional Incentive Regulation." Its main regulation comes from Law No. 24,196 on the Mining Investment Law, which provides its beneficiaries a reduction of the economic burden on their projects.

To become a beneficiary under the Mining Investment Law, persons and/or legal entities must be registered before the Mining Investment Office and file a report explaining the project, geology, resources estimations, and the tax benefits requested according to the type and location

[6] Certain refunds may apply depending on the province from which the exports are made.

of the project.

Mining projects within the Mining Investment Law regime shall enjoy fiscal stability for a period of thirty years from the date of the filing of the feasibility study.

The Promotional Investment Regime provides various benefits to projects included in the Mining Investment Law. Those benefits include the following:

- Fiscal, foreign exchange and customs duty stability for the mining project for a 30-year term, as from the filing date of the feasibility study, except for VAT.
- Reimbursement of Value Added Tax ("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.
- 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.
- Option to import capital goods, equipment to be used in the furtherance of mining activities without having to pay any import tax (0-35%), statistics duty (0.5%), or special import tax.
- Some provinces allow exemption or reduced gross income tax rates, tax on export of minerals, and stamp tax exemptions.

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

- Register before the Mining Investment Office to be considered under the Promotional Incentive Regulation.
- Filing of corporate, geological, logistic, tax and mineral processing information along with local companies' incentives plan and other information regarding the mining project executed by duly licensed professionals.
- 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.).

In February 2019 the Mining Secretary and the Federal Tax Authority issued a joint resolution introducing the repayment mechanism for companies registered and applying the benefit under the Mining Investment Law. The new mechanism allows companies that have been subject to (i) incorrect taxes and/or retention; (ii) modification of the tax rate calculation mechanism; and/or (iii) new taxes and/or retention to request for reimbursement. The basics of the procedure involve making an annual filing per project as an affidavit, evidencing the taxation over the benefit obtained.

Catamarca, Salta, and Jujuy have adhered to this law.

c. Provincial incentives for mining

There are certain provincial regulations that seek to promote mining activity. Please find below the most important provincial benefits:

Catamarca: Stamp tax on sales of mines is exempted.

Jujuy: The Province of Jujuy has in its Tax Code certain benefits related to mining, for example, its article 263 establishes that agreements related to mining activity are exempt from stamp tax.

Salta: The Province has enacted Law 8,164 on Promotion of Mining. This law aims at fostering infrastructure work, promoting mining activities, and encouraging the development of local suppliers and employees. It also adheres to Mining Investment Law 24,196. Investments in infrastructure related to communications, roads, railroad, and energy are entitled to set off its investments, subject to approval by the authorities, against 50% its quarterly royalty payment obligations.

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