The Mining Law Review

Fifth Edition

Editor
Erik Richer La Flèche

Law Business Research

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EDITOR'S PREFACE

I am pleased to have participated in the preparation of the fifth edition of *The Mining Law Review*. The *Review* is designed to be a practical, business-focused 'year in review' analysis of recent changes and developments, their effects and a look forward at expected trends.

This book gathers the views of leading mining practitioners from around the world and I warmly thank all the authors for their work and insights.

The first part of the book is divided into 21 country chapters, each dealing with mining in a particular jurisdiction. Countries were selected because of the importance of mining to their economies and to ensure broad geographical representation. Mining is global but the business of financing mining exploration, development and – to a lesser extent – production is concentrated in a few countries, Canada and the United Kingdom being dominant. As a result, the second part of this book includes six country chapters focused on financing.

The advantage of a comparative work is that knowledge of the law and developments and trends in one jurisdiction may assist those in other jurisdictions. Although the chapters are laid out uniformly for ease of comparison, each author had complete discretion as to content and emphasis.

The mining sector continues to face challenging and uncertain times. The current down-cycle is longer than most and shows no sign of abating for most minerals. Stockpiles are high and production capacity has yet to be curtailed in a meaningful manner. Projections are for prices to remain generally soft until such time as supply and demand is rebalanced.

While times are tough, we know that mining is cyclical and that continued world population and economic growth as well as the depletion of current resources mean that growth in the mining sector will resume. The question is when.

To compound matters, when growth resumes it is likely to be uneven. Firstly, recovery is unlikely for some minerals. For example, the market for thermal coal is flat or declining as coal is being phased out in many plants and is being replaced by natural gas or renewable energy. Second, the use of rare earths and other 'high-tech metals' will continue to grow at a faster rate as the use of high technology and energy storage products becomes more generalised. Third, demand growth will be more diffused. China is the world's largest consumer of commodities but it will no longer be sufficient to look only at China to understand the

market. China is moving away from mineral intensive infrastructure and export-led growth and moving to a slower, domestic service-led economy. The Indian subcontinent, despite impressive economic and demographic growth and sizeable infrastructure and other needs, is unlikely to replace China. As a result, it will be necessary to look at a selection of markets to understand future demand growth.

The mining world is thus condemned to adapt. To survive, miners must be lean, innovative, able to scale production according to demand and unafraid to close higher-cost facilities. This state of affairs has become the new normal.

As you consult this book you will find more on topics apposite to jurisdictions of specific interest to you, and I hope that you will find this book useful and responsive.

Erik Richer La Flèche
Stikeman Elliott LLP
Montreal
September 2016

Chapter 6

COLOMBIA

José Vicente Zapata and Daniel Fajardo Villada[1]

I OVERVIEW

Colombia is a country with a strong mining tradition, inasmuch as indigenous and afro-descendant communities located in rural areas depend on small-scale mining. The Colombian mining industry goes from simple stone and gravel extraction, to sophisticated coal, emerald nickel and gold. In total, the Colombian mining industry extracts around 211 minerals throughout the national territory, ranking as one of the most important producers of nickel in South America, of coal in Latin America and the second largest producer of emeralds in the world. According to the National Mining Agency, in 2015,[2] Colombia produced approximately 85.547 million tons of coal, mostly in the departments of Guajira, Cesar, Cundinamarca, Boyacá and Norte de Santander.

The amount of coal produced in 2015, which represents a drop in relation to the 2014 amount, can mainly be attributed to the devaluation of the Colombian peso in relation to the US dollar, the steady and sharp fall of coal prices and the closing of the Colombian-Venezuelan border. Nevertheless, the overall production of coal in Colombia has significantly increased in the past decade.

Mining in Colombia is developed at different levels, with different production and environmental management standards. Small-scale mining, for example, is the largest when it comes to production units, and – although still deficient in relation to overall performance – it is still significant in terms of employment generation and in some cases in terms of its capacity to add value to the extracted mineral. Medium-scale production projects are characterised by their higher knowledge of the resources and reserves, their planning strategies and their higher level of compliance with labour and mining health and safety standards.

1 José Vicente Zapata is a partner and Daniel Fajardo Villada is an associate at Holland & Knight.

2 See Agencia Nacional de Minería https://www.anm.gov.co/?q=anm_revela_cifras_oficiales_de_produccion_en_2015_.

On the other hand, large-scale projects are executed under the best technical, economic, environmental and social conditions, which are very important for the country's economy not only for their capacity to generate income, but also for their social and regional impact (i.e., opencast mining projects).

No less important and problematic is the illicit extraction activity in many regions, which represents harmful effects to the environment, society and the economy, mainly deriving from the fact that such projects do not pay taxes or royalties and usually ignore basic legal prohibitions by employing minors, financing criminal groups, polluting the environment and destroying ecosystems by failing to comply with environmental standards, exploiting deposits anti technically and sterilising minerals.

Although the growth and promotion of the mining industry has been controversial from the onset, the mining sector has grown at an average rate of 4.5 per cent annually over the past decade and its GDP share is 6.7 per cent.[3] Notwithstanding the foregoing, the new needs of a changing mining sector come along with some challenges and issues of coordination between mining and environmental authorities, as well as the recent fall in mineral prices, lower levels of foreign investment, high levels of informality, multiple denominations for mining, illegal mining, judicial decisions that create legal instability, social unrest in the regions and the delay in mining and environmental proceedings, among others, which pose a challenge to the state's ability to strengthen and grow the industry.

II LEGAL FRAMEWORK

The regulatory framework for mining in Colombia comprises different regulations corresponding to different categories ranging from constitutional to mainly technical norms, which regulate the day-to-day mining operations.

The Colombian Constitution of 1991[4] provides that the subsoil and the non-renewable resources are state property, while at the same time allowing for individuals to acquire rights over those resources. Additionally, in accordance with Article 334 of the Constitution, it is the state's responsibility to intervene in the use, production, operation, exploitation and distribution of the minerals obtained from the Colombian soil and subsoil, which directly translates into a specific regulation for the mining industry, which allows individuals to develop these activities.

Undoubtedly, the main regulation in force is the Mining Code issued through Law 685 of 2001 (Mining Code), which seeks to regulate the legal relationships between the state and individuals at all stages of mining (i.e., exploration, construction and assembly, exploitation, processing and transport of minerals in the soil or subsoil).

Aside from the existing regulations, the Ministry of Mining and Energy, through its Vice Ministry of Mines, issues government policies in relation to the management of the mining sector, which seek to formulate, adopt, articulate and coordinate policies and plans for the sector. Other relevant functions intended to improve the overall performance of the sector are developed by other entities subscribed to the ministry as follows.

3 Ministerio de Minas y Energía 2014. '*Análisis y comportamiento del PIB Minero*', 2014. https://www.minminas.gov.co/documents/10180/558364/PibIVTrimestre2014.pdf/2e08741f-fa27-4e0f-81f4-fcb136886eb4.

4 Articles 332 and 334, Colombian Political Constitution.

The National Mining Agency (ANM), created through Decree 4134 of 2011, is the entity in charge of executing the title and registration processes, technically assisting the different projects and promoting and observing the obligations arising from the mining concessions.

On the other hand, the Mining-Energetic Planning Unit is the entity in charge of the comprehensive and permanent planning of the sector, of providing indexes of the development of the sector and responsible, and for the production and circulation of information required by the different stakeholders of the sector and by the entities in developing new policies for the sector.

The Colombian Geological Service is the entity in charge of scientific research for the potential resources of the Colombian subsoil in accordance with the policies of the Ministry of Mines and Energy.

III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS

i Title

Mining regulations in Colombia follow the principle that, notwithstanding grandfathered rights, the subsoil and all mineral resources located therein are owned by the state and as a result may only be exploited with prior authorisation in the form of a mining title issued by the competent authority (to date, the ANM).

The Mining Code defines mining titles as concession agreements that grant the licensee a personal, exclusive and temporary right to explore and exploit minerals in the subsoil and within the contracted area. In addition, the concession agreement grants the licensee the right to acquire ownership rights of the extracted minerals in exchange for royalties. Mining titles are granted for a period of 30 years, counted from the date of registration of the mining title before the National Mining Registry. The Mining Code is emphatic on the fact that mining titles grant rights only for the exploration and exploitation of minerals in the subsoil and thus, any right or title of the surface where mining operations are to be conducted must be negotiated and acquired by the licensee.

Pursuant to the Mining Code, duly registered mining titles (i.e., the rights and obligations under the concession contract) at the National Mining Registry can be totally or partially assigned to a third party. For this purpose, the assignor must file a notice informing the ANM about its intention to transfer its rights, as well as about the corresponding assignment agreement. Upon filing, the ANM has a 45-business-day term to accept or object the assignment. Should the ANM not issue a motivated resolution within this term, the assignment will be understood as accepted and the assignment agreement will be registered in the Mining Register.

The Colombian state, and in particular the ANM, may declare the cancellation of a mining title at any time for any of the following causes:

a the dissolution of the entity holding the title, except for in cases where the entity ceases to exist due to a merger deriving from a takeover;

b a financial inability that seriously affects the performance of contractual obligations;

c the lack of performance of works within the terms established in the Mining Code or the non-authorised suspension of such works for more than six continuous months;

d the non-payment of the complete economic considerations on time;

e the omission of a previous notice to the authority about the assignment of the mining title contract;

f the non-payment of fines or the non-reinstatement of the bonds that that endorse the title;
g the serious and repeated breach of regulations of technical order on mining exploration and exploitation, or of hygiene, security or labour provisions, or the annulment of necessary environmental authorisations for works and installations;
h the infringement of provisions on excluded and restricted areas for mining;
i the serious and repeated breach of any other obligation deriving from the concession contract; and
j when the source of the exploited minerals comes from a place different to that of its extraction, causing the economic considerations related to such title to be destined for a different municipality of its origin.

ii Surface and mining rights

As the regulations stand, mining titles are granted by the ANM to legal entities or individuals, nationals or not, under a 'first come, first served' basis which, in other words, means that the first entity to apply for a free area is entitled to receive a mining title in the form of a mining concession agreement. Prior to awarding a mining title, the ANM must verify the compliance of the tender requirements set forth in the Mining Code which, in addition to the applicant's economic and legal capacity are the following:

a identification of the requested area and extension (including a map of the requested area);
b designation of the relevant mineral or minerals subject to exploration;
c identification of the competent environmental authority;
d identification of the ethnic groups settled within the area of influence of the requested area;
e information about the land use restrictions applicable to the area; and
f indication of the terms of reference and mining guidelines applicable to exploration works, and the economic estimates derived from such terms and guidelines.

Foreign companies and individuals have the same rights as nationals. The main difference is that foreign companies will have to constitute a branch in Colombia, except in cases where their activities do not exceed a year term.[5] According to the External Regulatory Circular Letter DCIN-83 of the Central Bank, the branches of foreign companies are subject to the foreign exchange special regime that includes, among others, the obligation to channel resources by filing the corresponding foreign investment forms.

In addition, pursuant to the Mining Code,[6] mining is considered as a public interest activity, which in practice gives the holder of a mining title the possibility of requesting expropriation over properties that may be indispensable for the development of the mining project. It may also give the mining title-holder the opportunity to request the imposition of easements over properties located outside or inside the area covered by the mining title. Easements can be established for the same term as the concession.

5 Articles 18, 19 and 20, Law 685 of 2001.
6 Article 13 Law 685 of 2001.

iii Additional permits and licences

In addition to the environmental permits and licences explained below, a mining title-holder is required to contract a mining and environmental insurance policy, which must be in force during the entire project. During the exploration phase and construction phase, the insured value must amount to 5 per cent of the planned annual exploration expenditures and 5 per cent of the planned investment for assembly and construction, respectively. For the exploitation phase, the insurance policy must cover 10 per cent of the result of multiplying the estimated annual production by the mine pit price of the extracted mineral, as established by the Colombian government. Such insurance policy shall be in force during the exploitation term, its extensions and three additional years.

Pursuant to the Colombian insurance regulations (Law 1328 of 2009 and Decree 2555 of 2010), only those insurance companies authorised by the Finance Superintendency are allowed to issue insurance policies in Colombia. Thus, any insurance policy issued by a company not authorised in Colombia will not be deemed valid.

iv Closure and remediation of mining projects

Aside from the insurance policy described above, in Colombia, there are no specific regulations in connection with the closure and remediation of mines. Closure and remediation obligations are set out in the environmental licence and on a case-by-case basis, depending on the type of mine, mineral and location.

IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS

i Environmental, health and safety regulations

The Constitution defines Colombia as a social and democratic state and, within this scope, it recognises the environmental protection as a fundamental principle and collective right. The Constitution sets out the key elements that guide the country's environmental management: environmental protection; commitment to sustainability and economic efficiency; fiscal control; citizen participation and respect for culture.

Law 99 of 1993 – the Environmental Law – established the Ministry of Environment (currently the Ministry of Environment and Sustainable Development – MESD) and rearranged the public sector responsible for the environment and the natural resources.

The MESD, together with the President of Colombia, is the entity responsible for formulating environmental policy, considering this element as a central focus for economic and social development, growth and sustainability of the country.

Policies issued by the MESD aim, among other things, for self-sustainable development. The following are the main guidelines:

a planning and efficient administration by the environmental authorities;
b national and regional vision for sustainable development; and
c consolidation of participation of stakeholders.

The Colombian legal and institutional framework for environmental management supports global trends of sustainable development, a concept formalised in the Rio Declaration of 1992 and in numerous treaties to which the country has adhered, in particular the following:

a Law 164 of 1994, which recognises and ratifies the Framework Convention of the United Nations on Climate Change;

b Law 629 of 2000, which recognises and ratifies the Kyoto Protocol of the Framework Convention of the United Nations Climate Change;

c Law 29 of 1992, which recognises and ratifies the Montreal Protocol on Substances that Deplete the Ozone Layer (executed in Montreal on 16 September 1987);

d Law 306 of 1996, which recognises and ratifies the Copenhagen Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (executed in Copenhagen on 25 November 1992);

e Law 960 of 2005, which ratifies the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Beijing, China, on 3 December 1999;

f Law 30 of 5 March 1990, which ratifies the Vienna Convention for the protection of the ozone layer, which seeks to avoid the potentially harmful impacts of changes in ozone on human health and the environment and aims for further research in order to increase the level of scientific knowledge;

g Law 253 of 9 January 1996, which ratifies the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;

h Law 1159 of 2009, which ratifies the Rotterdam Convention for the implementation of a prior informed consent procedure for certain hazardous pesticides and chemicals in international trade;

i Law 165 of 1994, which ratifies the United Nations Convention on Biological Diversity;

j Law 17 of 22 January 1981, which ratifies the Convention on International Trade in Endangered Species of Wild Fauna and Flora, executed in Washington, DC on 3 March 1973; and

k Law 45 of 1983, which ratifies the United Nations Convention for the Protection of the World Cultural and Natural Heritage.

ii Environmental compliance

Projects and activities that may severely affect natural resources require environmental authorisation in the form of an environmental licence. In addition, any project or activity that requires the use or access to natural resources must obtain a specific environmental permit. In the case of mining, an environmental licence must be granted either by the Environmental Licence Agency or by a Regional Environmental Authority, which are independent and autonomous organisations working in the different regions of the country and in charge of enforcing environmental regulation to mining projects within their zones. Furthermore, when it comes to environmental authorisations, the main regulation is Decree 1076 of 2015, which, among other things, defines the environmental authority in charge of granting the environmental licence for mining projects based on the projected production.

Moreover, pursuant to Decree 1076 of 2015,[7] the environmental licence in mining is only required during the construction and installation and exploitation phases, which means that in the exploration phase the mining operator must obtain the necessary and individual environmental permits depending on the natural resources to be used or affected.

7 Articles 2.2.2.3.2.2 and 2.2.2.3.2.3, Decree 1076 of 2015.

iii Third-party rights

As a rule of constitutional and international recognition, projects and activities that may potentially affect cultural diversity must consult with all ethnic communities located within the area of influence prior to their execution. Prior consultation is a fundamental right that seeks to protect the cultural, social and economic integrity of ethnic groups and provide them with the right to participate in the decision-making process; in other words, ethnic groups have the right to be able to decide on measures or projects, works and activities to be carried out in their territories.

The process for prior consultation, regulated through Presidential Directive 10 of 2013 and Decree 2613 of 2013, is a joint activity to carried out between the representatives of the projects and the Ministry of the Interior whenever the latter certifies the presence of ethnic communities located in the area of influence of a project or activity. In brief, the consultation process must follow these steps:

a certification of the existence of ethnic communities in the specific territory – issued by the Ministry of Interior;
b participation of the ethnic communities in the production of the environmental studies;
c summons to the previous consultation hearing, that is presided by the pertinent environmental authority;
d consultation hearing;
e declaration of agreement or disagreement regarding the impact assessment and protection measures proposed in the management plan;
f making the decision public; and
g monitoring of the decision.

If no agreement is reached, the existing regulation provides for an extended deadline for discussion. Should the parties not enter into an agreement after the extension, the disagreement will be formally stated as the result of the process, and the pertinent environmental authority will decide whether or not to issue an approval.

It is of outmost importance that the Constitutional Court, when deciding the *tutela*[8] constitutional actions, has ruled that failure to undertake the consultation process results in the violation of fundamental rights and, as a result, has ordered the temporary suspension of the project or activity.[9]

iv Additional considerations

In addition to the foregoing, two particular considerations must be indicated.

On the one hand, under Colombian law, given that the environment is subject to a special protection by the Colombian Constitution, both the legislator and the government are legally authorised to broaden existing regulations so as to protect the environment and guarantee the fundamental rights related to it, to the extent that acquired rights are not protected in relation to environmental issues.

8 The '*Acción de Tutela*' is a constitutional action with a special procedure that seeks for the protection of fundamental rights.

9 See www.urosario.edu.co/getattachment/340e1f11-842c-49d4-8341-6a6a0349dd27/Corte-Constitucional-ordena-suspension-del-proyect/.

The Constitutional Court ruled that, regarding environmental matters, there are no acquired rights,[10] and declared the referred article to be unconstitutional. In 2011, the Colombian Congress established that mining activities could not be developed in the *páramos* (high, treeless plateaux).

Article 34 of the Mining Code established that it is not possible to carry out mining activities in areas declared by the Colombian government as areas of protection and development of renewable natural resources and environmentally protected areas (exclusion areas), such as the areas included in the national parks system, regional natural parks and forest reserves.[11] Article 34 does not specifically mention *páramo* areas as exclusion areas. Article 34 of the Mining Code was later modified by Article 3 of Law 1382 of 2010, expressly including *páramo* areas among the areas protected by such Law. Law 1382 of 2010 was later declared to be unconstitutional.

The National Development Plan of 2011, which initially sought to protect acquired rights before February of 2010 and established that the protection and environmental authorisation could continue, but with no possibility of extension,[12] was later also declared to be unconstitutional. As of the issuance of Decision C-035 of 2016, the Constitutional Court formally banned all mining activities within *páramo* areas, regardless of grandfathered rights existent prior to February 2010.

On the other hand, in May 2016, the Constitutional Court ruled that Article 37 of the Mining Code, which stated a prohibition for regional entities to restrict mining activities in their territory, is unconstitutional. In other words, this means that, to date, regional entities (e.g., the municipalities) are legally allowed and entitled to restrict or simply ban mining activities in their territory.[13]

V OPERATIONS PROCESSING AND SALE OF MINERALS

i Processing and operations

Pursuant to the Mining Code and applicable regulations, a typical mining project is divided in three main stages that take place upon completion of the previous stage as follows:

a Exploration for a period of three years from the registration of the mining title before the National Mining Registry, with a possible extension of two additional years. As indicated above, at this stage no environmental licence is required; however, activities must be conducted under certain specific parameters set out in in the Environmental Guidelines issued by the Ministry of Mines and Energy. Should the title-holder decide to continue to the next stage and prior to the end of the exploration phase, it must submit to the ANM a work programme, which must contain detailed information about the prospectively of the area as well as the works and economic expenditures committed for the next stage.

10 Constitutional Court of Colombia, Decision C-035 of 2016.

11 Article 34, Law 685 of 2001.

12 Article 173, Law 1753 of 2015.

13 Constitutional Court of Colombia, Decision C-237 of 2016.

b Construction and assembly for a period of three years, which comprises the necessary works and infrastructure in order to initiate the exploitation of minerals. Prior to initiating construction and exploitation operations, the title-holder must obtain an environmental licence.

c Exploitation stage, which commences upon completion of the construction and assembly stage with a duration equivalent to the remainder of the initial term minus the two previous phases.

As the regulation stands, each of the phases of the mining project must take place continuously and therefore production may begin at the second stage only exceptionally.

ii Sale, import and export of extracted or processed minerals

Colombian regulations do not provide restrictions in connection with the sale, commercialisation or export of minerals that were extracted under a duly-issued mining title.

iii Foreign investment

Foreign nationals are granted the same civil rights granted to any Colombian.[14] Other than limitations under the Constitution or other laws, foreign nationals in Colombian territory are granted the same guarantees that Colombians have.[15]

Foreign investors can undertake their investment, either personally or by the incorporation of a branch of a foreign company or by incorporating a Colombian company. The timing required for the incorporation of a subsidiary or a branch office is generally similar and is usually a two-to-three-week process.

In order to attract foreign investment, Colombia has implemented a policy of negotiation and ratification of international investment agreements, which includes bilateral investment treaties (BITs), as well as free trade agreements with chapters on investment and double taxation agreements.

In order to protect foreign investment, Colombia is party to various international agreements: the Multilateral Investment Guarantee Agency; the International Centre for Settlement of Investment Disputes (ICSID); the Overseas Private Investment Corporation; and the Agreement of Cooperation for Emerging Markets. Colombia has entered into BITs with the following countries: Belgium; Chile; China; India; Japan; Peru; Switzerland; Spain and the United Kingdom.

14 Article 100 Colombian Political Constitution.

15 Ibidem.

VI CHARGES

i Royalties

Companies committed to any production of renewable natural resources shall entail a royalty in favour of the state. In accordance with the last report issued by the Ministry of Mines and Energy, the contribution represents 9.7 billion Colombian pesos of the Colombian economy.[16]

Royalties must be paid over mine-head production based on the production volume and the type of extracted mineral. Royalties are independent from any tax payments.

Mineral	*Percentage (%)*
Construction minerals, limestone, plaster, clay and gravel	1%
Non-metallic minerals	3%
Metallic minerals	5%
Radioactive minerals	10%
Salt	12%
Platinum	5%
Alluvial gold	6%
Gold and silver	4%
Iron and copper	5%
Nickel	12%
Coal (exploitation of less than 3 million tons/year)	5%;
Coal (exploitation of more than 3 million tons/year)	10%

ii Taxes

In Colombia, the mining industry is taxed under the general taxation regime at both a national and regional level (i.e., there are no special taxes, deductions or incentives dedicated exclusively to the mining sector). While at the national level taxes apply to all residents and with the same tariff, the tariff for regional taxes ranges from one region to another.

The applicable Colombian fiscal regime consists of a combination of the following taxes:

a corporate income tax (25 per cent tariff);
b corporate income tax for inequality (CREE) (9 per cent tariff);
c the CREE surtax (6 per cent tariff);
d industry and commerce tax; and
e royalties.

In addition, all goods and services purchased locally are subject to 16 per cent VAT.

16 Ministry of Mines and Energy, 18 April 2016, 'Política minera de Colombia – Bases para la minería del futuro': https://www.minminas.gov.co/documents/10180/698204/Pol%C3%ADtica+Minera+de+Colombia+final.pdf/c7b3fcad-76da-41ca-8b11-2b82c0671320.

Tax	*Definition – scope*	*Level*	*Tariff*
Income tax (2016)	The remuneration of the factors of production, all net income, that increase the equity.*	National	25%
CREE	Since 2013, this tax is a contribution of companies to the benefit of employment generation and social investment.	National	9%
CREE surtax	Established in 2014, the CREE surtax is a tax surcharge for the CREE.	National	6%
Industry and commerce	The remuneration generated from service, industrial and commercial activities carried out in the municipality.	Regional	Between 0.2% and 1.4%

* Foreign companies that do not have a permanent establishment in Colombia should pay income tax of 40 per cent. These companies are not taxpayers of CREE or CREE surtax.

iii Duties

Depending on the stage of the project (exploration, construction or assembling), concessionaires must obtain a licence to pay fees over the entire area. This fees must be calculated on an annual basis before the execution of the contract, and are equivalent to one minimum legal daily wage per hectare. The requested area should not exceed 2,000 hectares, because if it between 2,000 and 5,000 hectares the ground fees will be two minimum legal daily wages per hectare. If the area is larger than 5,000 hectares, but smaller than 10,000, the ground fees will be three minimum legal daily wages per hectare.

iv Other fees

In addition, if a party establishes an easement for exploration or exploitation of mining activities, it must pay the owner of the land a compensation for the lien created in its land. Similarly, if a party needs to expropriate a land in order to carry mining exploitation activities under a concession contract, it must pay a prior and fair compensation to the owner.

Finally, after the settlement of the concession contract, the holder of the mining rights must pay all the incurred costs in order to adapt the land for those activities. It is important to note that the mining environmental policy will secure the relevant obligations during the contract performance.

Under Law 685 of 2001 and Resolution 388 of 2014, the title-holder must furnish a mining and environmental insurance policy. During the exploration phase, the insured amount must be 5 per cent of the value of the planned annual exploration expenditures. For the construction phase, the insured value must be 5 per cent of the planned investment for assembly and construction. During the exploitation phase, the insurance policy will have to cover 10 per cent of the result of multiplying the estimated annual production by the mine pit price of the extracted mineral, as established by the Colombian government.

VII OUTLOOK AND TRENDS

According to the Report of the Ministry of Mines and Energy of April 2016, between 2010 and 2014, the exploration and exploitation of nickel, gold and coal grew because of rising international mineral prices and changes to the mining legislation. Additionally, between 2010 and 2015 this industry contributed an average of 2.2 per cent to the GDP: 19.6 per cent of the exportations and 16 per cent of the foreign investment. The aforementioned, demonstrates the significant contribution to the public finances.

Notwithstanding the above, as of the issuance of Decision C-035 of 2016, which formally banned all mining activities within *páramo* areas, and Decision C-192 of 2016, which restated the view of the Constitutional Court according to which there are no acquired rights in environmental matters, the outlook for mining in Colombia is still uncertain. In addition, with the announcement of one mining company's intention to enter into a dispute resolution mechanism at the ICSID with Colombia, the prospect for foreign investment is also uncertain.

Appendix 1

ABOUT THE AUTHORS

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Equity partner at Holland & Knight in Bogotá, Mr Zapata has been recognised as one of the lawyers with the highest level of expertise in oil and gas, mining and environmental matters in Colombia. Similarly, he is one of the most recognised lawyers in projects and negotiations in the mining and oil and gas sectors, both upstream and downstream, throughout Latin America. With over 20 years' experience in natural resources, he has been officer and legal representative of various oil and gas, mining and environmental corporations, as well as serving as president of Columbus Energy Sucursal Colombia, a leading venture company successfully set up in Colombia with 11 blocks in the Llanos and Putumayo basins in Colombia covering nearly 1 million acres of gross acreage. Similarly, Mr Zapata has been legal counsel in the structuring of foreign investment transactions, mergers and acquisitions, as well as reorganisation of corporations in Colombia. Mr Zapata has been member of various boards of directors of multinational corporations in the automotive, energy, telecommunications, industrial and food sectors. He is a professor at the Javeriana, Rosario and Externado de Colombia Universities for environmental, oil and gas, corporate responsibility, environmental liability and sustainable development. Mr Zapata graduated from Universidad Javeriana and holds an LLM from McGill University.

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Daniel Fajardo Villada is an associate in Holland & Knight's Bogotá office. He practises in the area of oil and gas and mining law, as well as litigation and dispute resolution. Mr Fajardo Villada primarily represents oil and gas and mining companies, as well as other types of corporations. He advises clients in contracting, due diligence, and mergers and acquisition matters, and also has experience with both litigation and arbitration. Mr Fajardo graduated from Universidad del Rosario and holds an LLM in oil and gas law and policy from Dundee University.

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