

COVID-19 | Latin America Energy, Mining and Infrastructure Podcast Series

Latin America Mining amid COVID-19

April 27, 2020

COVID-19 has put Latin America in a challenging situation. The energy, mining and infrastructure sectors, which are facing new government regulations, amending private and public contracts, and reshaping their strategy and continuity plans due to this outbreak.

Now that we are dealing with this crisis, can we anticipate what would be the new normal in our sectors? We invite you to listen to our Latin America Energy, Mining and Infrastructure Podcast Series in which we aim to explain and facilitate discussions about what we are seeing in each sector and what trends we can anticipate for the steadiness of our businesses.

What is the current regulatory landscape in Latin America in the Mining sector? (i.e., governmental measures)

ARGENTINA



On March 19, 2020, the Argentine government set forth a mandatory isolation regime, which is still in force. The Isolation Regime prohibits the circulation of individuals on routes, roads and public spaces, but individuals related to "essential" activities are exempted from this regime. Only as of April 3, 2020, mining production, distribution and commercialization activities were considered essential and individuals related to such activities were exempted from the Isolation Regime.

The national government, some provincial governments and the CAEM (Mining Companies Argentine Chamber) have issued COVID-19 prevention protocols.

Although no other specific regulations were issued in relation to mining activities, the national government has issued some labor and employment benefits that could be accessed by mining companies (in practice, the benefits are minor). It is important to remark that lay-offs and suspensions were prohibited for 60 days. Therefore, mining companies are discussing with labor unions the possibility of reducing wages.

BRAZIL



In Brazil, Law No. 13.979/20 was enacted in February in response to the public health emergency due to the COVID-19 crisis. Among other measures, the law provides for the possibility of competent authorities implementing social isolation, business closures and quarantine at national level. Presidential Decree No. 10,282, issued on March 20, 2020, defined the public services and essential activities which, due to their relevance to the immediate needs of the community, could not be suspended. The decree also provides that activities related to the supply chain for public services are considered essential activities per se and should remain uninterrupted.

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Decree No. 10,282/20 does not expressly mention mining activities. However, Ordinance No. 135 of the Ministry of Mines and Energy of March 28, 2020, which regulated such decree as essential to the energy sector, considered essential the following mining activities:

- research and mining of mineral resources;
- processing of mineral goods;
- mineral transformation;
- commercialization and disposal of products generated in the mineral productive chain; and
- Transportation and delivery of supply chain loads.

Even though federal legislation authorized the above mining activities to continue operating, depending on the location of the projects local laws and regulations are imposing specific rules such as staff reductions, restrictions on public transportation, and mandatory HSE equipment, which impact mining operations. The uncertainty as to the duration of the crisis and the decrease in demand worldwide also puts pressure on the sector.

CHILE



The arrival of COVID-19 in Chile has prompted the government to adopt certain measures, specifically:

- The Copper Price Support shall be implemented to keep the copper pound at a price of USD 2.86 for small copper producers, with the objective of protecting small copper producers from the international price drop of the copper pound.
- The National Mining Company ("ENAMI" for its acronym in Spanish) is offering small copper producers the possibility of renegotiating their debts with ENAMI. Additionally, ENAMI is developing a plan that will allow them to pay small miners by electronic transfer or voucher issuance.
- A package of measures has been implemented to grant automatic renewal of the rolls and giving advances for resources, which, according to the minister, are very important to keep the industry from sinking, avoid having to fire workers, and continue production.

On March 18, 2020, the president of the Republic of Chile declared a state of constitutional emergency and catastrophe, due to public calamity, in the territory of Chile, by virtue of Decree No. 104 of 2020 of the Ministry of the Interior. Article 5 of this decree establishes that for the exercise of the faculties that are delivered there, "the Heads of the National Defense must take into consideration the sanitary measures arranged to avoid the propagation of the COVID-19, in administrative acts dictated by the Minister of Health". The state of emergency will last for 90 days (i.e., until June 19, 2020)

- No lockdowns have been ordered for the mining regions (e.g., Antofagasta). Still, most mining companies have headquarters in counties that are on lockdown (e.g., Vitacura, Las Condes).
- Mining companies have adopted measures to avoid contagion among workers, given that many of them travel by airplane on a weekly basis.

COLOMBIA



Most governments have issued decrees and regulations ordering nationwide lockdowns. The mining sector has been exempted from the lockdown in some countries, which means that mining operations could carry on.

- Despite mining operations being able to continue under the lockdown measures, most



mining companies have taken steps to either reduce their workforce (and thus, reduce production) or place their operations in care and maintenance.

- Some countries, like Colombia, do not provide for a "care and maintenance" regime and so are seeking alternatives to curtail operations without breaching the mining concessions.
- Mining companies in Colombia have pledged over half a billion pesos for the fight against Covid-19. Particular examples are:
 - Cerrejon giving away more than 25.000 groceries to 359 local communities in La Guajira department and has contributed more than \$6 billion pesos to hospitals and healthcare providers
 - Cerro Matoso (South 32) has distributed around 12.000 groceries to local communities and 65.000 medical supplies
 - Gran Colombia Gold donated 120.000 groceries to local communities and contributed over \$1 billion pesos to hospitals and healthcare providers
 - Zijin-Continental Gold announced a US\$ 100.000 contribution for hospitals, clinics and healthcare in Antioquia department, including other healthcare and medical supplies
 - Minesa donated 2.000 groceries to local communities and contributed over \$1 billion pesos to hospitals and healthcare providers
 - Drummond has provided more than 1.4 million liters of water to their communities, groceries for 13.000 families and more than 3.000 medical supplies
 - AngloGold Ashanti donated 2,000 groceries to local communities, 5 laser thermometers, 3,500 medical kits and \$350 million pesos

MEXICO



- The Federal Government declared on March 30 2020 as national sanitary emergency for reasons of force majeure, to the epidemic generated by the COVID 19 virus.
 - The Ministry of Health published the Federal Official Gazette the extraordinary actions to address the sanitary emergency.
 - Among such actions, the Ministry of Health instructed the immediate suspension from March 30 to April 30 (this last date was extended until May 18 to municipalities with low or null virus transmission and May 30 for the rest of the municipalities) of all the non-essential activities.
 - The Ministry of Health published a list of the activities considered as essential which may continue operating. Nevertheless, all of the essential activities must follow certain sanitary regulations/recommendations.
 - The mining sector was not considered as essential activity; therefore, all the mining activities have been locked down, except for those activities conducted by mining companies considered as essential.
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- On May 15, 2020, the Peruvian government declared a national state of emergency due to the COVID-19 spread, ordering citizens to comply with mandatory social isolation (quarantine) and a curfew from 6 pm to 4 am for Lima and most of Peru. Quarantine measures and border closures will continue through April 26.
- Peruvian quarantine movement restrictions stipulate that from Monday to Saturday, only one person per family may conduct limited routine business such as grocery shopping, pharmacy visits, and banking.
- In the case of the mining sector, the transport of mineral output and "critical activities" have been expressly excluded from the restriction rules.
- Since there is no formal definition as to what "critical activities" in the mining industry are, each mining company has interpreted this term in consideration of the particularities of its operations.
- In general, mining activities have been reduced in most of the mining sites, while non-critical personnel have been evacuated.
- Some mines have temporarily suspended operations, while others have demobilized non-critical personnel but continue operating with ore from existing stockpiles.
- In the case of mines with isolated mining camps, activities have continued, but operations have been ramped down.
- On April 14, the Peruvian government exceptionally authorized mining companies to transport personnel from and to mining camps.

VENEZUELA Mining Activities remain active.



How are companies facing the issues related to public and private contracts and relationships with suppliers particularly in terms of force majeure, business delays, and other contractual and legal considerations?

ARGENTINA Mining rights are not based on contracts but on exploration permits or exploitation concessions. No announcement on the payment of exploration fees or exploitation concession or other obligation has been issued. In the case of suspended projects, all supply chains have either been suspended or terminated, and any difference shall be negotiated at a later stage.

BRAZIL



Many suppliers are claiming either force majeure to suspend payments or hardship to renegotiate contracts. Force majeure applies to long-term contracts or to contracts with any deferred obligation. Debtors cannot be in default at the time of the event.

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CHILE



Mining companies in Chile have announced a series of measures, such as the suspension of agreements with contractors, in response to the COVID-19 crisis. This is the case with the National Copper Association of Chile ("CODELCO" for its acronym in Spanish). CODELCO decided to partially or totally suspend agreements with its suppliers, third-party service providers, and operation support services for at least 30 days.

Another example is the total suspension of Quebrada Blanca, a Teck Resources Limited construction project, which implies an absolute business delay since the project stopped on March 18.

In contrast to the above cases, BHP, which operates Minera Escondida and Spence, announced a USD 25 million support plan for contractors that had to suspend their activities due to the coronavirus epidemic and work on their sites.

- Anglo American created a USD 25 million fund to support contractors and suppliers that are not performing services, i.e., small suppliers will be paid voluntarily 70%-90% of workers salary.
- Antofagasta Mineral announced that it is operating with "half" their personnel.

COLOMBIA



Supply chains have been disrupted and production on most mines has been reduced. This poses different challenges for mining companies, such as fewer revenues and potentially higher supply costs.

- Force majeure has been invoked by many companies arguing unforeseen and inevitable circumstances, and contracts have been suspended.
- The greater challenge is that most FM clauses provide for a time limit, after which the contract is terminated. What happens after those suspensions are over remains a critical question.

MEXICO



Affected companies, which are not able to comply with their respective obligations, are trying to invoke act of God or force majeure under their contracts.

PERU



- Although mining activities have been carried out to some extent during the national state of emergency, the limitations on complementary activities, transit restrictions, and risk of workers catching C-19 represent serious challenges to mining companies' regular operations.
- Given the aforementioned, and to the extent that there is a causal link between a contractual breach and the national state of emergency, force majeure invocation has become a legal ground for partial/full suspension of contractual obligations.
- In the administrative field, all procedures and deadlines are on hold by decree until May 6.

VENEZUELA



No special measures have been taken. General rules on force majeure could apply to delays in contract performance



What are the continuity plans amid service interruptions? How are companies in the Mining sector dealing with COVID-19?

ARGENTINA



Mining companies are introducing preventive measures into their mining projects, such as: (i) temperature control in transport to mining projects; (ii) issuance of preventive health protocols; (iii) identification of employees who have been abroad or at risk due to age or pre-existing medical conditions; (iv) reinforcement of the medical workforce; (v) preparation of isolated spaces in case of general infection or quarantine scenario; (vi) including lunch breaks in shifts; (vii) increase in cleaning shifts; and (viii) remote working for the administrative workforce. To avoid interjurisdictional transport and potential COVID-19 spread, some mining companies that employ staff from different provinces have decided to allow access to mining projects only to employees from within the province where the project is located in order.

Importation of parts essential to production is not prohibited but is being delayed in practice.

BRAZIL



Most mining companies have suspended both the distribution of dividends and the implementation of future investments. It is also not unusual to draw on revolving credit to keep working capital.

CHILE



In the fight to continue mining production despite service interruptions, other companies have continued working by groups and avoided moving people in and out of mining sites.

These efforts have required strict health measures to enable continued production and ensure the safety of workers.

For example, Anglo American has reduced the number of workers present at its mining sites Los Bronces y El Soldado from 6,000 to no more than 2,600 people and applied very strict health control measures.

As mentioned in question number II above, other companies such as CODELCO and Quebrada Blanca have suspended services for an indefinite term. Meanwhile, some companies have announced funding in order to help the fight against COVID-19. Teck Resources, for example, has released a USD 1 million grant to increase the capacity of Iquique Regional Hospital and provide health equipment and supplies to complement current government efforts.

On the other hand, some companies have reported continued growth. A concrete example is the purchase agreement announced last Friday by Rio2 of the Compañía Minera Paso San Francisco S.A.. This agreement is for the acquisition of strategic mining infrastructure and facilities adjacent to Rio2's Fenix Gold Project in Chile.

Moreover, Southern Hemisphere Mining has started working on a new exploration project named "El Rincón" in the Coquimbo Region. This project is located very close to Minera los Pelambres and represents a major copper find and envisages a preliminary investment of USD 5 million.

Another company that has decided to push through with its annual plan is SCM Minera Lumina Copper Chile. The company announced that for its Caserones Project, it will carry out, the programmed maintenance of its concentrator plant as planned. This reinforces the Internal Protocol for the Prevention and Control of COVID-19, with the aim of contributing to the greater safety of people and communities around its worksite. In addition to complying with current regulations and health and safety instructions, the company has made known its plans for



scheduled maintenance to the technical bodies in the Atacama region as well as to the local authorities involved in its operation.

COLOMBIA



Large-scale coal companies in Colombia, which employ thousands of workers, are reducing their shifts and workforce to mitigate a potential spread of the virus and comply with government-imposed general lockdown measures.

- Mining operations have largely continued in Colombia since they are exempted from the national lockdown. However, some workers are unwilling to attend their jobs for fear that they may get the virus. Companies have found it very challenging to simply carry on business as usual.
- Other mining companies have implemented registries of potential contaminations and made significant donations to their nearby communities in the form of protective equipment, face masks, and respirators, amongst others.

Mining companies in Colombia have pledged over half a billion pesos for the fight against COVID-19. Particular examples are as follows:

- Cerrejon gave away more than 25,000 groceries to 359 local communities in La Guajira department and more than COP 6 billion to hospitals and healthcare providers.
- Cerro Matoso (South 32) distributed around 12,000 groceries and 65,000 medical supplies to local communities.
- Gran Colombia Gold donated 120,000 groceries to local communities and contributed over COP 1 billion to hospitals and healthcare providers.
- Zijin-Continental Gold announced a USD 100,000 contribution for hospitals, clinics and healthcare in Antioquia department, including other healthcare and medical supplies.
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MEXICO



- a) Some companies are trying to push the Federal Government to amend the extraordinary actions list published to address the national sanitary emergency and the mining sector among the essential activities.
- b) Recently, a Senator formally requested to include the mining sector on the essential activity list.
- c) Given the location of some mines, certain mining companies are arguing that they should return to its activities on May 18, since they are located in remote communities with low or null transmission.

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PERU



- There is no uniform approach to dealing with the restrictions imposed during the national state of emergency.
- To avoid the consequences of transit restrictions, some mining companies and their workers in isolated mining camps have agreed on work regime continuity solutions such as special bonuses or workday compensation.
- Most mining companies have ramped down their operations and entered into care and maintenance, including site disinfection, to enable operations to restart when it is deemed appropriate.
- Work from home is currently a useful tool for keeping office workers productive. Still, its nature will change from a complementary tool to a permanent working condition for some within the organization.
- Mining companies have reinforced their health departments, instituted new HSE protocols, and ensured the supply of new C-19 security equipment for workers as standard measures.

VENEZUELA



No special continuity plans are known to the public.

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