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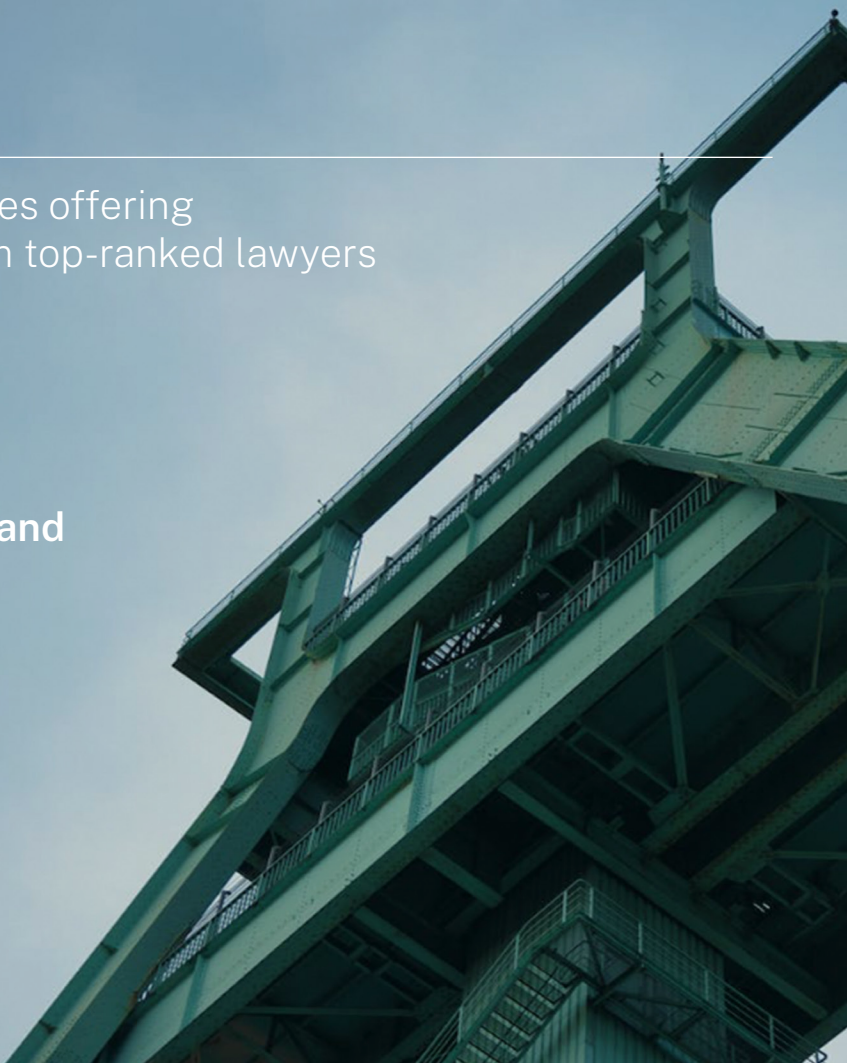
Mining 2025

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**Panama: Law & Practice and
Trends & Developments**

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Arias, Fábrega & Fábrega has more than 40 attorneys ready to assist clients in all areas of the law. The mining and environmental team is comprised of three attorneys who work closely with mining, environmental and other regulatory entities related to the mining sector. The firm has acted for major world mining players, such as advising Rio Tinto in the negotiations of the

concession agreement for the Cerro Colorado copper mine. It has also represented Deutsche Bank in a prepaid forward gold purchase agreement and full security package over company assets in Panama, which involved the granting of a first priority mortgage over a fully operational mining concession in Panama.

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1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Panama does not have a developed mining industry, even though geological surveys carried out in the early to mid-20th century suggest that it has large deposits of copper, gold, manganese, silver and other minerals. For the greater part of its history as an independent nation, mining activity in Panama has been practically restricted to the extraction of materials needed for the construction industry.

The above geological surveys indicated that some of the mineral deposits in Panama might be regarded as being world class. Since the late 1960s, international mining companies and other multinational organisations (such as the United Nations) have sponsored further geological surveys and exploration activities that have confirmed Panama's mining potential.

There are at least two significant copper deposits in Panama: Cerro Colorado and Cerro Petaquilla. Cerro Colorado is located on the western part of Panama (formerly part of the Chiriqui and Veraguas provinces, but now part of the Ngäbe-Buglé autonomous region) and is considered one of the largest copper deposits in the world. In the 1980s, Rio Tinto conducted significant exploration activities in Cerro Colorado, but opposition by local residents and environmental groups prevented the further development of the project, which remains unexploited.

Cerro Petaquilla (also known as “Cobre Panama”) is another world-class copper deposit. In the past ten years, First Quantum Minerals Ltd., of Canada, through its Panamanian subsidiary Minera Panama, S.A., has invested more than USD6 billion in the construction of mining infrastructure for the exploitation of Cobre Pan-

ama, which started production in 2019 (the first exports of copper took place in June 2019). The Cobre Panama mine is one of the ten largest mining operations in the world.

Despite these developments, on 27 November 2023, the Panama Supreme Court unanimously held that the Cobre Panama concession was unconstitutional. With no legal basis to continue operations, Minera Panama, S.A. proceeded to halt mining activities, and the Cobre Panama site is now in care and maintenance.

Panama also has important gold deposits. In the 1990s, two gold mines were in operation in the Veraguas province: Mina Santa Rosa and Remance. Between 2010 and 2014, Petaquilla Gold (an affiliate of Petaquilla Minerals Ltd., of Canada) developed the Molejon gold deposit in Cerro Petaquilla (adjoining the copper deposit). There are other untapped gold deposits in Panama, such as the Cerro Quema gold deposit in the Azuero region.

Despite all the promising deposits in the country, as a result of the public clamour and protests against metal mining, the government of Panama approved Law 407 of 2023, which established a ban on new metal mining concessions. As a result of this law, except for some minor metal mining operations in Panama, no further metal mining concessions are to be issued.

1.2 Legal System and Sources of Mining Law

The legal system in Panama is based on European civil law. Spanish and French laws have had great influence in the development of the Panamanian legal system.

Legislation in Panama (including laws applicable to mining activities) is enacted by the National

Assembly (the legislative body of the government of Panama), sanctioned by the President and published in the Official Gazette.

The Code of Mineral Resources of Panama (adopted by means of Law Decree No 23 of 1963, as amended) (CMR) is the legal body governing most activities relating to Panama's mineral deposits (other than hydrocarbons). The CMR sets up a regime for the granting of concessions to private individuals for the exploration and/or extraction of mineral deposits. In the case of minerals used in the construction industry (sand, gravel, clay, etc), the CMR has been supplemented by Laws 55 and 109 of 1973, and Law 32 of 1996, to create a separate regime for the granting of concessions relating to those minerals.

Panama has resorted to enacting legislation creating a special legal regime for large-scale projects such as Cerro Petaquilla, depending on the particularities of the project and the investment required. For example, in 1997, the original concession contract between Minera Panama, S.A. (formerly known as Minera Petaquilla, S.A.) and the Republic of Panama, represented by the Minister of Commerce and Industries, was approved by the National Assembly of Panama by means of Law No 9 of 1997 (the "Original Petaquilla Law"). In December 2017, the Supreme Court of Panama declared the Original Petaquilla Law to be unconstitutional. A new concession contract for Cerro Petaquilla was entered into in 2023 (approved by Law 406 of 2023) to replace the Original Petaquilla Law, however, the Supreme Court of Panama, in a unanimous decision, held the law enacting such contract to be also unconstitutional. (See **6.1 Two-Year Forecast for the Mining Sector**).

The special regimes described above may include exceptions to the CMR and benefits that are supplementary to those included in the general law. However, the granting of mining concessions by means of special legislation is rare.

1.3 Ownership of Mineral Resources

Article 257 of the Political Constitution of Panama declares that all mineral deposits belong to the state. The CMR further develops and regulates the constitutional provision, and provides for the granting of concessions to private individuals for the purposes of exploring and/or extracting minerals. Before being extracted, such minerals belong to the state, but the concession holder will own them upon their extraction, subject to the terms of the concession.

Surface rights (ie, ownership of land) may be owned by private individuals or the state. However, the mineral riches underneath such lands belong to the state regardless of the ownership of the lands. In practice, the government awards concessions to explore or extract minerals from deposits located underneath lands owned by parties other than the concession holder.

The law grants holders of concessions reasonable rights of access to, and use of, water, timber and soil within the areas covered by their concessions, subject to permission from the owner of the surface lands and/or the Ministry of the Environment.

Holders of concessions will have unimpeded access to state lands, provided they are free from possessory claims. In the case of titled lands or lands that are subject to possessory rights, if the owner and the holder of the concession fail to come to an agreement, the CMR establishes a procedure for the expropriation of all lands necessary for mining or the creation of appropriate

easements necessary for the project, upon the payment of fair compensation and costs to the affected party. In such instances, title to all surface land so taken will vest in the government of Panama, with all necessary rights being granted to the concession holder. Such rights of use will terminate when the concession ends.

Concession holders are obviously free to purchase lands within and outside the areas of their concessions. These acquisitions will be made on the basis of privately negotiated agreements, without intervention from the government or the need to notify it. These lands will be owned outright by the concession holder.

1.4 Role of the State in Mining Law and Regulations

The Panamanian government has the role of grantor-regulator. In light of the economic policies followed by various governments during the past 25 years, the government is unlikely to assume a different role.

In the case of the Cerro Colorado deposit, until recently the state maintained the possibility of eventually becoming an owner-operator in association with an experienced mining company (which would manage the project). However, this position was abandoned in 2012 as a result of opposition to the project by local and environmental groups, which led to the enactment of legislation banning all types of mining within the Ngäbe-Buglé autonomous region, where Cerro Colorado is located.

1.5 Nature of Mineral Rights

According to the Panamanian Constitution, the state owns all mineral deposits in Panama. However, based on the Constitution and the CMR, the government may grant concessions to private individuals for the exploration and extraction of

minerals. In effect, such concessions constitute mineral rights granted to private individuals.

The holders of such concessions acquire exclusive rights to explore and extract minerals within certain defined areas. The minerals extracted become the property of the concession holders, subject to the payment to the state of royalties, taxes and other duties, as stated in the concession agreements and the law.

1.6 Granting of Mineral Rights

The National Directorate of Mineral Resources (NDMR) is a directorate within the Ministry of Commerce and Industries and is the governmental entity in charge of overseeing mining activities throughout the Republic of Panama. According to the CMR, the NDMR handles the granting of mining concessions to private persons and certain governmental entities, and ensures that mining is carried out in accordance with the law. The actual granting of a mining concession is done pursuant to a concession contract entered into by the Minister of Commerce and Industries, in representation of the Republic of Panama, and the concession holder.

The granting, regulation and overseeing of mining activities in Panama is centralised, with the NDMR and the Ministry of the Environment regulating mining activities in all parts of the country. Even though the law does not seem to accord much weight to provincial and municipal authorities in the regulation of mining activities, in practice, the NDMR and the Ministry of the Environment consult them, and their voice and opinions significantly influence final decisions.

The CMR and related laws provide a general framework for the granting of mining concessions, which is applicable to all projects and investors. The vast majority of mining conces-

sions have been granted pursuant to the CMR and related legislation.

Mining concessions may be granted to private persons (regardless of their nationality) and local governmental entities (for example, the Ministry of Public Works). The CMR prohibits the granting of mining concessions to foreign governments and their dependencies, although these entities may own shares or participations in private companies that hold mining concessions. Most mining concessions are currently granted to private entities.

The NDMR receives and reviews applications for mineral concessions and recommends their acceptance or rejection. The application process for mining concessions involves the submission to the NDMR of information on the legal, financial and technical status of the applicant; maps; mining plans and budgets for at least four years; a nominal application fee; and environmental impact studies.

The type and scope of the environmental impact study will depend on the degree of intrusiveness of the intended mining activities. Applicants must present their plans to the Ministry of the Environment for their review. The Ministry will then decide on the type of environmental impact study required for the concession.

Since concessions are granted on an exclusive basis for a certain type of mineral in a particular area, applicants are prevented from applying for the same type of minerals and areas that are currently the subject of another concession.

Once the concession applications have been approved by the NDMR, the concession will be granted by means of a concession contract entered into by the concessionaire and the Min-

ister of Commerce and Industries, representing the state of Panama. The applicant will have to submit performance bonds to the governmental authorities, which will secure the obligations of the applicant during the time of the concession. For a concession contract to be legally valid, it must be countersigned by the Office of the Comptroller General of the Republic and published in the Official Gazette of the Republic of Panama.

The Ministry of the Environment is the Panamanian government entity in charge of reviewing and approving environmental impact studies filed by applicants of mining concessions, and of overseeing concession holders' compliance with the approved studies and remediation plans.

Contract-Laws

In addition to mineral concessions granted pursuant to the CMR, some concessions have been granted by means of contracts between the concession holder and the state of Panama. Once signed by the concession holder and the Minister of Commerce and Industries in representation of the state of Panama, these contracts are presented to the Office of the Comptroller General of the Republic to be countersigned, and are subsequently presented to the National Assembly of Panama for approval by means of a special law. Concessions granted pursuant to this method are commonly referred to as contract-laws.

Concessions for some of the largest infrastructure projects in Panama have been granted pursuant to contract-laws or special legislation. For example, Texaco's former oil refinery (built in the early 1960s and refurbished in the early 1990s) and Northville's trans-Isthmian pipeline (built in the late 1970s and refurbished in the 1990s and at the start of the 21st century) were both

granted by means of contract-laws. In the case of mining, there are at least two examples of concessions granted pursuant to contract-laws: the Original Petaquilla Law and the Concession Contract between Vera Gold Corporation and the Ministry of Commerce and Industries, which was approved by means of Law 92 of 2013 (the concession corresponds to the Santa Rosa gold mine and adjoining deposits).

The Cerro Colorado concession was originally granted by means of a special law, Law 41 of 1975, to a government-owned company called Corporación De Desarrollo Minero Cerro Colorado (CODEMIN). Law 41 of 1975 was repealed by means of Law 11 of 2012. It is important to note that the indirect holder of the Cerro Colorado concession was the Republic of Panama.

Contract-laws provide for certain flexibility because, for example:

- the terms of the concession can be tailor-made to the project;
- investors may secure some tax relief;
- special protections can be provided to lenders and financiers (for example, allowing lenders to step in in certain circumstances); and
- there is greater certainty as to the enforcement of security arrangements.

Recent decisions by our Supreme Court in the case of the Petaquilla concession (decisions rendered in 2017 and 2023) have cast doubts on the use of contract-laws for mining projects and, in general, for other types of industries.

1.7 Mining: Security of Tenure

The CMR and related laws set forth two principal types of mining concessions: the exploration concession and the extraction concession. In addition, the CMR provides for the granting of

prospecting permits and processing and transportation concessions.

Features of Concessions and Permits

Exploration concessions grant their holders three key rights:

- the right to engage in preliminary geological work (as would also be conferred by a prospecting permit);
- the exclusive right to engage in all necessary exploration and related activities with respect to specific types of minerals within the zone constituting the concession; and
- the exclusive right to be awarded an extraction concession over the relevant area if minerals in commercial quantities are discovered during exploration activities.

Exploration concessions are available for initial periods of four years, subject to two discretionary extension periods of two years each.

A holder of a valid exploration concession benefits from the exclusive right to apply for an extraction concession in the same area. The CMR also provides for the award of extraction concessions over minerals not currently subject to exploration activities. Extraction concessions are granted for:

- an initial period of 25 years and a maximum area of 5,000 hectares for base metals;
- an initial period of 20 years and a maximum area of 5,000 hectares for alluvial precious metals; and
- an initial period of ten years and a maximum area of 3,000 hectares for non-alluvial precious metals.

Extraction concessions may be extended, at the discretion of the NDMR, for three periods, the

first one of ten years and the last two of five years each. In the case of construction materials, such concessions are granted for an initial period of ten years and a maximum area of 500 hectares, and their term may be extended for an additional ten-year period.

Prospecting permits are granted to individuals (not companies), and allow their holders to engage in preliminary geological surveying on a non-exclusive basis for an initial period of six years.

Transportation and processing concessions enable the holders thereof to transport and process minerals on behalf of a mining operator legally entitled to extract those minerals. Each such concession may be granted for an initial period of 25 years, subject to three renewal periods, the first one of ten years and the last two of five years each. Holders of extraction concessions engaged in the ordinary course of extracting and selling mineral products are not required to obtain these supplemental concessions.

Issues During Concessions

Concessions may be cancelled if the holders thereof breach their obligations under their concession contracts or relevant legal provisions under the CMR and other applicable laws. A mineral concession may also be cancelled if the holder is declared bankrupt or insolvent. The concession contract may include concession-specific events of default that give rise to the cancellation of the contract.

The CMR allows a grace period of one year for payment defaults by concession holders, and provides that the concession will not be cancelled in the absence of repeated refusals or failures to submit required reports or comply with inspection requests from government offi-

cial. Moreover, a concession will be considered abandoned if mining operations cease for an entire year, in the absence of any force majeure event.

The cancellation of the concession will be decreed by the Minister of Commerce and Industries in an official document that will list the reasons for such cancellation.

By law, the government of Panama has the right to terminate a concession agreement for reasons of public interest (ie, without the existence of defaults) and upon the payment of fair compensation. This principle applies to all the concessions that may be granted to a mining company for the development of a mining project (mining, water, power, road building, etc). The details of what constitutes public interest and fair compensation depend on the type of concession. Typically, the reasons of public interest will be explained in the decree that declares the termination of the concession.

In the absence of special dispute resolution provisions in the applicable concession contracts, an affected holder may have to resort first to the Administrative Tribunal of Public Contracts and ultimately to the Third Chamber of the Supreme Court of Panama to challenge any unjustified termination of its rights. It may be possible to negotiate with the government for the inclusion of an arbitration clause in the concession contract to address the resolution of potential disputes, but generally the government is reticent about the inclusion of such clauses.

In addition, if any holder hails from any country that has entered into a bilateral investment treaty (BIT) with Panama, it may use the remedy and protection mechanisms provided in such treaty.

2. Impact of Environmental Protection and Community Relations on Mining Projects

2.1 Environmental Protection and Licensing of Mining Projects

The protection of the environment and natural resources in Panama is overseen by the Ministry of the Environment, which has many responsibilities, such as evaluating environmental impact studies, including those related to mining activities. It is also the authority responsible for the conservation, protection and restoration of the environment. It is the designated authority that may impose sanctions and fines, and direct and supervise the execution of environmental policies.

The Ministry of the Environment may impose administrative fines for the following:

- violations of the environmental quality regulations;
- environmental management plans or resolutions;
- sustainability and environmental management programmes; and
- violations of laws or complementary regulations.

Such violations shall be sanctioned by the Ministry of the Environment by way of a written admonishment, or with a temporary or definitive suspension of the activities, and/or with a fine according to the situation and the severity of the violations. These fines are without prejudice to further principal and accessory fines that may be imposed on the infringing party according to the law and to its liability to third parties who have been affected by acts or omissions of the infringing party.

The fines imposed by the Ministry of the Environment will be proportionate to the severity of the risk and/or the environmental damage generated by the breach, regardless of the economic capacity of the infringing party and whether or not the damage is recurrent. The Ministry of the Environment may also order the infringing party to pay the cost of clean-up, mitigation or compensation for the environmental damage, without prejudice to any additional civil and criminal liabilities.

Environmental Impact Studies

Activities and projects – whether private or public – that may create environmental risks must undergo an environmental impact study prior to the start of the project (particularly mining activities). These studies are reviewed and approved by the Ministry of the Environment. The purpose of an environmental impact study is to ensure compliance with environmental regulations while also enabling continuous oversight by the Ministry of the Environment. As a result, any individual may report violations if a project is found to be operating in a manner inconsistent with its approved environmental impact study.

The Ministry of the Environment has issued an extensive list of activities that require an environmental impact study. The studies are divided into three categories, as follows:

- Category I – applicable to projects that do not generate significant negative environmental impact or do not carry a significant risk of environmental damage;
- Category II – applicable to projects that may cause significant environmental damage but where that damage can be eliminated or mitigated through well-known and easily applied means; and

- Category III – applicable to projects whose execution could cause large-scale environmental damage, and therefore require a more comprehensive analysis.

A project is considered to produce a significant, adverse environmental impact if it meets one or more of the following criteria:

- it poses a risk to public and environmental health;
- it may affect the quantity or quality of natural resources;
- it may cause significant changes to a protected area;
- it involves the disruption and resettlement of human populations; or
- it may cause changes to areas that have been declared to be of anthropological, archaeological, historical or cultural value.

Environmental impact studies must be carried out by qualified professionals, who may be either natural or legal persons, independent from the developer of the project, who are duly certified by the Ministry of the Environment for such work.

A resolution by the Ministry of the Environment approving an environmental impact study is valid for two years, and can be extended for justified reasons. The execution of the project must begin during this time; otherwise, a new filing must be made.

Environmental impact studies must also include environmental management plans. These plans are documents that establish in detail and in chronological order the activities that the company must carry out to prevent, mitigate, control and compensate for possible environmental damage, or increase the positive environmental impact of the activity. An environmental manage-

ment plan must also include plans for follow-up and monitoring, and for contingencies. Companies are required to comply with these plans, and such compliance is monitored by the Ministry of the Environment. The resolution approving an environmental impact study also establishes the frequency with which periodic reports must be submitted to the Ministry of the Environment. These reports must be drawn up by certified environmental auditors.

In the case of mining concessions, applicants must contact the Ministry of the Environment and present their project plans. These plans are also included in the filings to be made with the NDMR for the granting of a concession. Depending on the activities, the Ministry of the Environment may request a certain type of environmental impact study. The approval process for an environmental impact study involves a process of consultation with the communities surrounding the mining concession.

2.2 Impact of Environmentally Protected Areas on Mining

There are environmentally protected areas in Panama, where, generally, no mining concessions may be granted. The law seems to provide for the possibility of granting mining concessions in such areas, subject to a process of public hearings and the performance of satisfactory technical and environmental analyses. However, from a practical point of view, it remains very challenging for mining concessions or other types of activities to be permitted in environmentally protected areas.

The law established a National System of Protected Areas (SINAP) under the oversight of the Ministry of the Environment and the Directorate of Protected Areas and Biodiversity.

The Republic of Panama has 104 protected areas that are under the custody of the Ministry of the Environment, which must develop a management plan for each protected area determining its purpose, usage, restrictions and management.

2.3 Impact of Community Relations on Mining Projects

Communities near a project may express their opinion as part of the review and approval process of environmental impact studies (Law 6 of 2002). Even though the CMR does not provide for a procedure for incorporating or listening to the comments from communities at the time of granting a mining concession, Law 6 of 2002 requires the government to consult the public regarding administrative acts that may impact their interests and rights.

Law 262 of 2021 requires companies that have been awarded governmental concessions to adopt and execute corporate social responsibility programmes (CSR). These companies must approve an annual budget allocated to CSR programmes. Before the enactment of Law 262 of 2021, mining companies in Panama had already adopted and implemented social responsibility projects and policies for communities located near their mining projects.

The Ministry of the Environment may convene public consultations on environmental problems or issues that might be important to, or affect, communities. These public hearings are generally part of the review and approval process of environmental impact studies. As part of these public hearings, officials from the Ministry of the Environment inform the community about projects that may have an adverse effect on the environment or communities in order to obtain the opinion of the public and suggestions

regarding the planned activities and, in general, to get an idea of the effects of the proposed activity and the manner in which to mitigate any potentially adverse effects.

The National Environmental Advisory Committee was created by law to allow citizen participation in the review of national and inter-sectoral environmental issues, and to make observations, recommendations and proposals to the Ministry of the Environment. This committee is made up of 15 members, including citizens, government officials and representatives from the indigenous regions.

In addition, the law provides for the sharing between the central government and local communities of the amounts collected as surface taxes and royalties from companies engaged in exploration and extraction activities.

The CMR states that 20% of such amounts will be allocated to communities surrounding the mining project, 95% of which will correspond to the municipalities where the projects are located, while the remaining 5% will be delivered to the towns and communities adjoining such municipalities (even if no direct mining activity takes place in them). These funds must be used exclusively for development programmes in education, health and socio-environmental projects. Towns and communities adjoining the municipalities where the projects are located may also use these funds to fund electrification projects in their communities.

The CMR also states that, in the case of projects that pay 5% or more in royalties, 2% of the amounts collected by the government as royalties will be used in the construction of infrastructure and for social development programmes in the communities adjoining the mining project,

and 1% of such amounts will be delivered to the Social Security Administration to become part of the funds belonging to pension and retirement plans managed by such governmental institution.

2.4 Prior and Informed Consultation on Mining Projects

Law No 6 of 2002 requires the government to engage in a process of consultation with the public in the case of administrative actions that may affect rights and interests of citizens. Pursuant to this procedure, the government will provide general information on the terms of the concession to citizens and non-governmental organisations and request their “opinions, proposals or recommendations”. Law No 6 of 2002 applies to any administrative action and, hence, it should apply to the granting of mineral concessions. It is not clear whether the government is applying this provision and, if it is applying it, in what instances: exploration, extraction, transport or beneficiation concessions.

In addition to the consultations provided for by Law No 6 of 2002, public consultations are part of the process for reviewing and approving environmental impact studies, and are carried out by the Ministry of the Environment.

2.5 Impact of Specially Protected Communities on Mining Projects

There are indeed specially protected communities made up of indigenous peoples, some of whom have their own autonomous regions with their own government bodies.

The main autonomous regions are the Guna Yala and the Ngäbe-Buglé autonomous regions. In the Ngäbe-Buglé autonomous region, the law (Law No 11 of 2012) prohibits the granting of mining concessions within the region (except for

concessions relating to construction materials to be used in social projects for the benefit of the autonomous region).

It is important to mention that the Cerro Colorado copper deposit is located within the area of the Ngäbe-Buglé autonomous region. Therefore, because of Law No 11 of 2012, no mining concession of any nature may be granted with respect to the Cerro Colorado copper deposit. In effect, by means of the enactment of Law No 11 of 2012, the Cerro Colorado concession (approved by means of Law 41 of 1975) was repealed.

Indigenous communities have the right and obligation to assist the Ministry of the Environment in the conservation and protection of their territories, seeking sustainable use, management and exploitation of natural resources.

2.6 Community Development Agreement for Mining Projects

Law 262 of 2021 requires companies that have been awarded governmental concessions to adopt and execute CSRs.

Law 262 of 2021 promotes the establishment of CSR programmes by companies that have been granted governmental concessions (which includes mineral concessions). Concession contracts must stipulate the obligation on the part of the concessionaire to present to the government what its social responsibility programme will be. Concessionaires will have to present their plans within the 30 working days after they start operations. Such plans must include the amount that will be invested and the works/activities that will benefit the communities where the concessions are located. Concessionaires are required to submit each December an annual report on

their activities and will be fined if they breach their obligations.

2.7 Environmental, Social and Governance (ESG) Guidelines and Regulations

ESG guidelines are not new in Panama. The financial sector has been following them for some years already. In the case of mining, Minera Panama, S.A. has adhered to the [guidelines](#) of its holding company, First Quantum Minerals Ltd.

2.8 Illegal Mining

Illegal mining has become a problem in the last few years. Panamanian newspapers have reported that, as of August 2024, there had been 250 instances of illegal mining. In 2023, 60 cases had been reported. Most of the reported cases are in the area surrounding Cobre Panama.

The majority of the instances are in the form of rudimentary placer gold mining in the rivers surrounding the Cobre Panama area and others that flow into the Caribbean Sea. These illegal activities are affecting national parks and sources of water.

Our environmental authorities and police are trying to prevent illegal mining. Our law provides for the possibility of criminal sanctions if the illegal mining causes harm to the environment. In addition, the CMR punishes these activities with fines of up to USD250,000.

2.9 Good and Bad Examples of Community Relations/Consultation Impacting Mining Projects

Until recently, the Cobre Panama project had been regarded as a success story in terms of its environmental and community relations, as well as its consultation efforts. However, as a result

of the Supreme Court of Panama's ruling that the Cobre Panama concession was unconstitutional, Cobre Panama had to close its operations. It is important to emphasise that this outcome was not due to poor community relations.

Minera Panama, S.A. (the holder of the Petaquilla copper concession, also known as Cobre Panama) entered into agreements with the communities surrounding its project providing for investment in facilities and infrastructure. According to information posted on its website, Minera Panama, S.A. had invested at least USD44 million over the past ten years in infrastructure projects benefitting 22 communities surrounding the Cobre Panama mine. Due to the termination of its operations in Panama, it is anticipated that CSR efforts on the part of Minera Panama, S.A. will end.

On the other side of the spectrum, the Cerro Colorado project was not successful in its community relations. Until 2012, the state held title to the concession to the Cerro Colorado deposit, when a law (Law No 11 of 2012) was passed cancelling the concession and prohibiting further mining activities in the area.

From the 1970s, the government sought the co-operation of international mining companies for the purpose of conducting exploration activities in Cerro Colorado. In the 1980s, the project faced opposition from environmentalists and local indigenous communities. The opposition did not abate even though the mining activities in the area ceased or were reduced. The government continued to seek the assistance of international mining companies in the 1990s and into the early years of the 21st century, but the opposition from local indigenous communities continued until 2012, when the government had to adopt Law No 11 of 2012, which effectively

banned all mining activities within the Ngäbe-Buglé autonomous region, where the Cerro Colorado project is located.

3. Climate Change, Energy Transition and Sustainable Development in Mining

3.1 Climate Change Effects

Climate change initiatives have had a limited effect on the mining industry in Panama.

Currently, Panama has a limited number of initiatives aimed at addressing climate change, and the few in place have little bearing on mining activities.

However, the Ministry of the Environment has been specifically empowered by Law No 8 of 2015 to foster initiatives to address and counter climate change in Panama, which may include the adoption of rules applicable to the mining sector.

3.2 Climate Change Legislation and Proposals Related to Mining

Thus far, no climate change legislation specifically related to mining has been passed or is being discussed. However, the Ministry of the Environment has been entrusted with the fostering of initiatives aimed at countering climate change, and it is likely that the future may see legislation and regulations applicable to the mining sector as part of a comprehensive effort by the state to address this global problem.

3.3 Sustainable Development Initiatives Related to Mining

There are sustainable development initiatives in Panama. In 2016, the government made the decision to bring together all social and politi-

cal forces to work towards a plan for sustainable development, entitled “Panama 2030”. The stated aim is for Panama to reach the goals of sustainable development provided by the United Nations by 2030.

3.4 Energy-Transition Minerals

There are no direct initiatives toward increasing demand for so-called energy transition minerals; however, the Panamanian government is adopting regulations and legislation aimed at incentivising the use of electric vehicles, which use batteries that depend on lithium and nickel.

The government enacted Law No 295 of 2022, which provides tax incentives for the purchase of electric automobiles and means of transportation (electric vehicles will be exempted from import taxes until 2030). The government’s aim is for 10% of government vehicles to be electric by 2025, rising to at least 40% by 2030. For public transport, the target is for at least 33% of vehicles to be electric by 2030. In addition, Law No 295 establishes the framework for the establishment of power charging stations for electric vehicles in both residential and commercial buildings.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

Foreign and national investors are treated equally under the laws of Panama. Therefore, there are no distinctions in the taxing of foreign and national investors with respect to their mining operations or otherwise.

Since the enactment of the CMR in 1963, concessionaires have been expected to contribute the following to the government:

- a fixed annual duty for the area comprising mining concessions; and
- royalties for the product extracted.

Law 13 of 2012 introduced a set of amendments to the CMR, which, inter alia, included a new regime regarding duties and royalties applicable to mining concessions.

- In the case of exploration concessions, there is a fixed annual surface tax, ranging from USD1 to USD3 per hectare, with the amount increasing progressively during the term of the concession.
- In the case of extraction concessions, the surface tax and royalties will depend on the type of mineral – the surface tax will range from USD1.50 to USD8 per hectare, and the royalties will range from 4% to 8%. Royalties are calculated as percentages of the “gross negotiable production”, which is defined as follows:
 - (a) if royalties are to be paid in kind, the gross mineral production minus production losses and other minerals extracted that have no commercial value, etc; or
 - (b) in the case of royalties paid in cash, the gross sales receipts minus transportation and other expenses, calculated in accordance with the International Financial Reporting Standards.

Holders of concessions are also required to post performance bonds. The 2012 amendments to the CMR state that these bonds would range from USD0.10 per hectare for exploration concessions to USD0.25 per hectare for extraction concessions.

Performance bonds may be posted in cash or through the delivery of bonds issued by the government of Panama or surety bonds issued by insurance companies qualified to do business in Panama.

Any payments to the government may be made in US dollars.

Failure to pay the government the amounts due under the concession contracts and the law will trigger defaults under the concession contracts, and will give the government the right to terminate concessions. The CMR allows a grace period of one year for payment defaults. In practice, third parties (such as creditors) may step in and pay the duties owed to the government.

4.2 Tax Incentives for Mining Investors and Projects

In general terms, mining investors do not enjoy tax incentives or benefits that are not otherwise available to investors in other economic activities. However, the CMR exempts equipment and vehicles used in mining operations from import duties.

Mining companies that have invested USD2 million or more may apply for a legal and tax stability regime pursuant to Law 54 of 1998. The stability regime has a ten-year duration.

In the case of large and complex projects, it may be worth considering requesting the government to grant the mining concession by means of special legislation (ie, by means of a contract-law). As explained in **1.6 Granting of Mineral Rights**, the advantages of such special legislation include the following:

- the terms of the concession can be tailored to the project;

- there is tax relief from some taxes (withholding and stamp taxes and registration duties for mortgages and other security arrangements); and
- there is specific recognition of lenders' rights to step in, greater certainty regarding the enforcement of security arrangements, etc.

However, past government administrations have not been sympathetic to the concept of contract-laws and recent Supreme Court decisions have cast doubts on the power of the government to enter into these agreements.

4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects

Mining concessions may be transferred, but the assignment or transfer requires government approval, to ensure that the assignee or transferee has the same technical and financial capacity as the holder or transferor.

In order to process the transfer approval, the parties will have to pay a USD100 duty to the NDMR. Once approved, the transfer will have to be entered into the mining registry, which is also kept by the NDMR.

Any income generated from the transfer of a mining concession is subject to income taxes, which will be calculated at the income tax rates of general application (which, in the case of companies, are currently set at a flat rate of 25% of net taxable income). There is no special capital gains tax regime for mining concessions.

At present, there are no transfer taxes on the transfer of mining concessions. The transfer or sales agreement relating to the transfer may be subject to the payment of stamp taxes (which are calculated at the rate of USD1 per each

USD1,000 or fraction thereof of the face value expressed in the agreement – ie, the sales price).

Transfers by Shares

Another way of transferring mining concessions is by transferring the shares of the company that holds the concession. Even though the law does not seem to formally require such transfers to be notified to, or approved by, the NDMR, in practice such transfers have been notified to the NDMR.

The capital gains generated from a transfer or sale of shares in Panama are subject to income tax at a rate of 10%. The law obligates the purchaser to withhold 5% of the total consideration payable to the seller, and to tender such amount to the tax authorities within ten business days of the transfer, as an advance on the seller's capital gains tax. The seller has the option to consider the amount so withheld by the purchaser as its definitive capital gains tax. Alternatively, if the amount exceeds 10% of the capital gain actually realised on the sale, the seller has the option to file, within the same fiscal year in which the transaction occurred, a sworn declaration with the tax authorities claiming either a non-assignable tax credit for the amounts paid in excess, or the return of the amounts.

If the transfer takes place through transfers or sales of shares of corporate structures located outside of Panama, capital gains taxes will also apply. In such cases, the capital gains tax will apply to the portion of the total sales price that corresponds to the value of the Panama operation in the foreign corporate structure. In other words, if the shares of a mining company with operations in several countries (including Panama) are transferred, capital gains taxes will apply to the portion of the price that corresponds to the Panama operation. The percentage of the

sales price applicable to the Panama operation will be the higher of:

- the percentage corresponding to the value of patrimony of the Panamanian operation as part of the total patrimony of the entire foreign structure to be sold; or
- the percentage of the value of the assets of the Panamanian operation as part of the value of all of the assets of the entire foreign structure.

There are no transfer taxes on the transfer of shares of concession holders. The transfer or sales agreement relating to the transfer of shares may be subject to the payment of stamp taxes (which are calculated at the rate of USD1 per each USD1,000 or fraction thereof of the face value expressed in the agreement – ie, the sales price).

Double Taxation Treaties

Panama has entered into a number of treaties aimed at preventing double taxation, which, depending on the nationalities/domiciles of the parties involved and the terms of the treaties, may provide for more favourable results than the ones described above.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

The CMR contains the general investment regime applicable to mining companies, which applies equally to foreign and local companies, without differentiating between Panamanian and non-Panamanian nationals. However, the CMR prohibits foreign governments, nations or entities from holding mineral concessions.

The official currency of Panama is the balboa, which exists only in coins. Since 1904, in accordance with the laws of Panama and diplomatic agreements with the United States, the US dollar is on a par with the balboa and, in practice, has been the currency used for all commercial and financial transactions. The US dollar is legal tender for all transactions, including the payment of obligations owing to the Panamanian government. Since there are no balboa banknotes, in practice US dollar banknotes and coins circulate freely and are the accepted medium of exchange. Businesses in Panama may keep their financial books and records in US dollars.

There are no exchange controls of any kind in Panama. Consequently, funds of any denomination and in any amounts may move freely in and out of the country at any time, may be deposited in local or foreign banks, and may be held by any domestic or foreign natural or legal person. It is also lawful to hold funds in any currencies.

There are no export limits on mineral products currently in effect. By law, the government may compel mining companies to deliver a portion of their production for internal use in Panama. The government will have to pay for such product, with the price to be set at production prices (which are deemed to be the prices that a third party in Panama pays for the mineral). Thus far, the government has not made use of this right.

The above investment regime has been in place in Panama for several decades. As explained above, companies wishing to obtain further assurances may seek to register under Law 54 of 1998, which provides for a legal and tax stability regime for companies investing USD2 million or more in Panama. The stability regime has a ten-year duration.

5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors

As discussed in 5.1 Attracting Investment for Mining, the rules applicable to investments in mining ventures in Panama apply equally to foreign and local companies, without restrictions on account of nationality, but the CMR prohibits foreign governments, nations or entities from holding mineral concessions. This restriction does not prevent foreign governments from owning participations in companies that hold mining concessions.

5.3 International Treaties Related to Exploration and Mining

The Republic of Panama has entered into several treaties concerning the treatment and protection of investment (including BITs with the United States, Canada, Chile, the Czech Republic, the United Kingdom, France, the Netherlands, South Korea, Singapore and Spain, to name but a few). These treaties provide for a general protection regime, and generally provide for the possibility of resorting to international arbitration in the event of disputes.

5.4 Sources of Finance for Exploration, Development and Mining

Most exploration and extraction activities in Panama are carried out by foreign companies, which in most cases fund their operations from sources outside of Panama.

In the case of exploration activities, companies typically fund their operations from their working capital. These companies, in turn, fund their operations through the issue of securities in foreign securities markets.

In the case of extraction projects, companies seek financing from a variety of sources: project

financing extended by private lenders, government-owned financial entities and/or multilateral agencies, and/or issuing securities in foreign securities markets, etc.

5.5 Role of Domestic and International Securities Markets in the Financing of Exploration, Development and Mining

The local securities market has little bearing on the financing of mining activities in Panama. Mining companies with operations in Panama have almost always resorted to international securities markets.

5.6 Security over Mining Tenements and Related Assets

The following collateral security arrangements, among others, are available to creditors in mining projects:

- Mining concessions may be mortgaged (which will require the prior approval of the Ministry of Commerce and Industries).
- Surface rights may be mortgaged.
- Minerals, once extracted, may be subject to security arrangements.
- Shares and bank deposits may be pledged.
- Movable assets may be either pledged or mortgaged.

The type of security arrangement will depend on the type of collateral. Mortgages may turn out to be expensive security arrangements.

Registration duties applicable to real estate mortgages are based on the principal amount secured, at the rate of USD3 for each USD1,000 or fraction thereof secured by the mortgage. In the case of chattel mortgages, the applicable duties are USD42 for the first USD20,000 and USD30 for each USD10,000 or fraction thereof secured by the mortgage. In addition, their regis-

tration requires their text to be typed on notarial paper (which has a cost of USD8 per page). If an agreement is in English, it will have to be translated into Spanish by an official interpreter.

Stamp taxes also apply to agreements expressing obligations to pay, including security agreements, at the rate of USD0.10 for each USD100 or fraction thereof of the face value of the obligation expressed in the document. Amounts paid in notarial paper and in registration duties for the documents that have to be registered are deducted from the applicable stamp tax.

Mortgages on mining concessions have to be registered at the Mining Register and, as indicated above, require the prior approval of the Ministry of Commerce and Industries. The applicable registration duty is USD100 (regardless of the amounts secured by the mortgage). The law is somewhat unclear on whether such mortgages must also be registered at the Public Registry of Panama (wherein real estate and chattel mortgages are registered) in order to be effective against third parties. If the latter conclusion also applies, the registration duties applicable to real estate mortgages will also apply to mortgages on mining concessions.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

With the start of production and export by the Cobre Panama project, mining had become the largest export activity in Panama (in terms of both volume and value). Cobre Panama possibly represented the largest private investment in the history of Panama, second only to the Panama Canal (which was originally funded by the United States and its recent expansion by the Repub-

lic of Panama). In addition, Cobre Panama had become an important contributing factor to the reduction of unemployment in Panama.

Unfortunately, due to the events described in the following section, the future of metal mining does not seem promising.

Mining Issues to Be Addressed in Panama

As a result of two Supreme Court rulings (2017 and 2023) and the enactment of Law 407 of 2023, the future of metal mining in Panama does not look promising. In effect, except for a few concessions, metal mining in Panama has been banned.

A decision rendered by the Supreme Court in late 2017, but made public in mid-2018, ruled that the Original Petaquilla Law was unconstitutional and declared it to be void in its totality. The ruling of the Supreme Court was in the context of claims filed by environmental NGOs questioning the constitutional validity of the Original Petaquilla Law. Procedural filings were made before the Supreme Court, which suspended the effects of the ruling. However, on 28 June 2021, the Supreme Court dismissed all the filings and confirmed its decision on the unconstitutionality of the Original Petaquilla Law.

In August 2023, after almost two years of negotiations, the government presented to the National Assembly a new concession contract to replace the Original Petaquilla Law. On 20 October 2023, the National Assembly approved the contract-law by means of Law 406 of 2023 ("Law 406"). On the same day, the President of the Republic signed the law that approved the contract, which was subsequently published in the Official Gazette.

Several complaints were filed with the Supreme Court challenging the constitutionality of Law 406. On 27 November 2023, the Supreme Court unanimously held that Law 406 was unconstitutional because it had breached not less than 25 articles in the Constitution. As a result of this decision, the Cobre Panama project ceased mining operations. First Quantum Minerals Ltd. (through its Panamanian subsidiary, Minera Panama, S.A.) claims to be spending at least USD13 million per month on the care and maintenance of the site.

In addition, whilst the new contract-law was being considered by the National Assembly, the country was shaken by protests against Cobre Panama and the proposed contract-law. To try to calm the protests, the government was compelled to introduce a ban on new metal concessions (Law 407 of 2023), which also extends to applications for mining concessions that were in the process of review.

As a consequence of the 27 November 2023 Supreme Court ruling and Law 407 of 2023, some of the affected companies (including First Quantum Minerals Ltd.) have either taken or threatened to take Panama to international arbitration. Some of the claims by these companies are in the billions of dollars.

On 1 July 2024, Jose Raul Mulino was sworn in as President of Panama. On that date, a new National Assembly was also installed.

The new government has indicated that Cobre Panama cannot be left unattended because of the risk of severe environmental damage to the area. The President has suggested the possibility of temporarily restarting mining operations at Cobre Panama to generate sufficient revenue for the proper closure of the project. The government has indicated that the issues relating to the Cobre Panama project will be revisited in 2025.

We will have to wait until 2025 to find out how the new government will address the consequences of the termination of the Cobre Panama project and the ban on metal mining concessions.

Trends and Developments

Contributed by:

Roy C Durling

Arias, Fábrega & Fábrega

Arias, Fábrega & Fábrega has more than 40 attorneys ready to assist clients in all areas of the law. The mining and environmental team is comprised of three attorneys who work closely with mining, environmental and other regulatory entities related to the mining sector. The firm has acted for major world mining players, such as advising Rio Tinto in the negotiations of the

concession agreement for the Cerro Colorado copper mine. It has also represented Deutsche Bank in a prepaid forward gold purchase agreement and full security package over company assets in Panama, which involved the granting of a first priority mortgage over a fully operational mining concession in Panama.

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The Status of Cobre Panama and Metal Mining

Introduction

In 2019, the Cobre Panama project, operated by Minera Panama, S.A. (MPSA), a subsidiary of First Quantum Minerals Ltd., of Canada, started mining operations and the export of copper. Between 2019 and 2023, MPSA's copper exports accounted for 80% of Panama's total exports. Around 7,000 persons worked directly for MPSA and 40,000 workers indirectly depended on the project. In 2022-2023, the copper production represented 1% of the total world production of copper and 3% of the gross domestic product of Panama. Cobre Panama was one of the largest copper mines in the world.

The Republic of Panama and MPSA had entered into a contract in 1996 pursuant to which MPSA was granted a concession for the development of a mining project in the Cerro Petaquilla area. This contract was subsequently enacted into law by the National Assembly in 1997 (Law No 9 of 1997, "Law 9"). In a decision by the Supreme Court of Panama, which became effective in late 2021, Law 9 was declared unconstitutional.

To fill the void created by the unconstitutionality of Law 9, in October 2023, a new contract was signed and approved by the National Assembly by means of Law No 406 of 2023 ("Law 406"). Demonstrations against Law 406, metal mining in general, and the government rocked Panama in the months of October and November 2023. On 28 November 2023, the Supreme Court of Panama held Law 406 to be unconstitutional. Since then, operations at Cobre Panama have ceased.

To further appease protesters, the National Assembly also enacted Law No 407 of 2023 ("Law 407"), which prohibited the granting,

renewing, or extending of concessions for the exploration, extraction, or exploitation of metal mining.

Law 9: the first Cobre Panama concession

In 1996, the government of Panama, represented by the Ministry of Commerce and Industries, and MPSA signed a contract pursuant to which MPSA was granted exclusive rights for the extraction of copper and other minerals in Cerro Petaquilla for an initial period of 20 years (subject to two 20-year extensions). The concession was approved by the National Assembly of Panama by means of Law No 9 of 1997.

Law 9 was a special type of contract known in Panama as a contract-law. Contract-laws are special agreements designed to grant protection to private investors in the case of projects that require substantial investment, such as ports, oil refineries, and pipelines. Contract-laws provide (i) juridical stability and certainty for the duration of the contract to private investors, and (ii) special benefits (usually, but not exclusively, tax benefits), which are not otherwise available pursuant to the general law.

In essence, a contract-law is a law that approves a contract entered into by the nation and private investors. The contract is signed by a government representative, duly authorised by the executive branch (the President and all cabinet ministers), and the private company. The contract is subsequently countersigned by the Comptroller General of the Republic. The same terms of the contract stipulate that it will be presented to the National Assembly for approval. The National Assembly may simply approve or reject the contract. Upon its approval, the terms of the contract are embodied in a law (hence the name contract-law). The law is signed by the President and Secretary of the National Assem-

bly and by the President of the Republic and a cabinet minister. The law becomes effective upon its publication in the Official Gazette of Panama.

In 2011, after the approval of the environmental impact study, construction of the project started. In December 2016, the Ministry of Commerce and Industries extended the term of Law No 9 for an additional 20-year period. Prior to the start of mining operations, MPSA had invested more than USD6 billion. In 2019, MPSA began exporting copper. In the ensuing years, MPSA's copper exports accounted for 80% of Panama's total exports (approximately USD2 billion).

The first Cobre Panama concession is declared unconstitutional

The Supreme Court of Panama, in a decision rendered in late 2017, held that Law 9 was unconstitutional, which called into question the validity of MPSA's concession. The ruling became fully binding in late 2021.

The Supreme Court's ruling was in response to complaints filed by an environmental group and an individual. The Court held that Law 9 was unconstitutional because, in granting the concession, the government had obviated the procedures established by Cabinet Decree No 267 of 1969, which required a public bidding process. In addition, the Court held that the government had ignored the potential environmental risks associated with the project.

Until the ruling became final, Law 9 continued to be effective, and the Panamanian government honoured its terms.

The second Cobre Panama concession

While the Supreme Court decision was in the process of becoming final, in September 2021,

the government of Panama and MPSA started to negotiate a new contract to replace Law 9.

The principal aims of the Panamanian government were to ensure that the mining operation continued, increase revenue to the Panamanian government, and incorporate protections for mine workers and the environment.

In March 2023, the terms of the new concession were agreed. It provided for the following financial terms:

- MPSA would pay a variable royalty rate ranging from 12 to 16% of gross earnings (earnings from the sale of minerals minus direct costs). The applicable royalty percentage would depend on the level of gross earnings. Law 9 established some fixed royalties ranging from 2 to 4%.
- MPSA would pay Panama withholding taxes on payments to foreign lenders and parties as provided by law. Law 9 exempted MPSA and its affiliates from the payment of any withholding taxes.
- MPSA would no longer benefit from any tax holiday and would pay income taxes as provided by law. Law 9 exempted MPSA and its affiliates from all taxes that might arise in relation to the development of the mining project, except for municipal taxes and surface canons and royalties, until these entities had repaid all debt acquired for the construction and development of the mining project.
- MPSA would make a yearly, minimum guaranteed payment to Panama of USD375 million adjusted for inflation ("Minimum Guaranteed Payment"), comprising the sum of royalty payments and payments of withholding and income taxes. This Minimum Guaranteed Payment was aimed at ensuring that a minimum payment of royalties and taxes

would be paid to Panama. It was expected that, under certain circumstances (eg, the low price of copper in international markets), MPSA might be exempted from having to pay the Minimum Guaranteed Payment.

In the case of labour matters, the percentage of foreign labour was reduced from 25% (as provided in Law 9) to between 15% and 10% of the total labour force, aligning with the limits set by general legislation.

With respect to environmental issues, MPSA agreed to comply with general environmental laws and regulations, including those applicable to the eventual closure of the mine, in accordance with the environmental impact study and modern mining practices.

MPSA also agreed to replace its power generation plant based on carbon with an ecologically friendlier plant. It also undertook to strive to use renewable energy sources throughout the project.

New contract approved by the National Assembly

On 3 August 2023, the Minister of Commerce and Industries submitted to the National Assembly the draft bill, which called for the approval of the new contract-law.

The first reading of the draft bill started at the Commerce Committee of the National Assembly on 21 August 2023. At the Committee, members heard opinions and comments from the public. On 28 September 2023, the first reading was suspended, and the Committee, in an unusual move, resolved to return the draft bill to the executive branch with their comments and recommendations.

As a result of the comments of the Commerce Committee, the executive branch and MPSA had to renegotiate some of the terms of the contract-law. The new contract-law was presented to the National Assembly on 16 October 2023.

On 20 October 2023, the National Assembly approved the contract-law by means of Law No 406 of 20 October 2023 ("Law 406"). On the same day, the President of the Republic signed the law that approved the contract, which was subsequently published in the Official Gazette.

The second Cobre Panama concession is declared unconstitutional and a general ban on metal mining concessions is enacted into law

Whilst the contract-law was under review at the National Assembly, the country was shaken by demonstrations against the proposed contract-law. There were several reasons for these protests, including:

- the general perception that the negotiation and approval of Law 406 had been possibly tainted by corruption;
- concerns regarding the effects of mining on the environment, coupled with an unusual and harsh drought that was affecting the Panama Canal operations and other sources of drinking water for the country;
- general frustration with the government; and
- the perception that Law 406 established a semi-colonial enclave in the area of the concession.

In addition, several complaints were filed with the Supreme Court challenging the constitutionality of Law 406.

The severity of the protests and the public clamour prompted the executive branch on 30

October 2023 to present two bills to the National Assembly: one calling for a referendum on the validity of Law 406 (so voters could vote in favour of the abrogation of Law 406) and the other a prohibition on new metal mining concessions.

The National Assembly discarded the idea of a referendum on Law 406 and opted for allowing the Supreme Court to review its constitutionality.

The other initiative (calling for a prohibition on new metal mining concessions) succeeded. Law 407 of 3 November 2023 (“Law 407”) provided for a prohibition on the granting, renewing, or extending of concessions for the exploration, extraction, or exploitation of metal mining. This prohibition also extended to applications for metal mining concessions that were in the process of review.

Notwithstanding the above moves by the government, the protests continued unabated. Simultaneously, the Supreme Court was reviewing the challenges filed against Law 406.

On 27 November 2023, the Supreme Court unanimously held that Law 406 was unconstitutional because it had breached not less than 25 articles in the Constitution. In particular, the Court indicated that the granting of the concession should have been the result of a public bidding process (and not by means of a direct contract with MPSA) and that the contract had not taken into consideration environmental safeguards. The Court’s decision was made public on 28 November 2023 and published in the Official Gazette on 2 December 2023.

Consequences

As a result of the Supreme Court ruling, MPSA was left without a legal basis for continuing to operate the Cobre Panama project. It switched

its operations to care and maintenance of the site. In the weeks ensuing the ruling, its labour force was reduced to 1,000 employees. MPSA claims that it is spending USD13 million per month on the site, particularly in addressing environmental matters. At the time of the ruling, there were 120,000 tonnes of copper ore that could not be exported, and which remain at the site.

First Quantum has announced that it has started arbitration proceedings against Panama before the International Chamber of Commerce in Paris pursuant to the arbitration clause in the contract-law approved by Law 406. It is reported to be claiming USD30 billion in damages. It has also threatened to start arbitration proceedings against Panama under the Canada-Panama Free Trade Agreement (the “Canada-Panama FTA”).

Korea Mine Rehabilitation and Mineral Resources Corp. (KOMIR), a Korean state-owned company and holder of 10% of equity in MPSA, has also started arbitration proceedings against Panama pursuant to the South Korea Panama FTA. Komir is seeking damages of approximately USD1 billion.

Franco Nevada Corporation, a Canadian royalty and streaming company, has also taken Panama to arbitration under the Canada-Panama FTA. It is seeking up to USD5 billion in damages.

Liebherr Mining, a multinational company supplying mining equipment, has also sent notices to Panama of its intention to start arbitration proceedings under the France-Panama FTA. Liebherr is seeking more than USD100 million in damages resulting from its investments in Panama to serve the Cobre Panama project.

Although unrelated to the Cobre Panama project, Orla Mining Ltd., a Canadian company (“Orla”), has also filed a request for arbitration under the Canada-Panama FTA. Orla, through a Panamanian subsidiary, was in the process of renewing three gold concessions in Cerro Quema, Panama. As a result of Law 407, the government of Panama rejected its applications to renew the concessions. Orla is seeking USD400 million in damages.

In 2024, the Panamanian economy is expected to slow down, due in part to the closure of the Cobre Panama project. In the first months of 2023, the GDP grew at a rate of 8.2%, whilst in the same period in 2024, the rate of growth was 2.2%. In March 2024, Fitch Ratings downgraded Panama’s sovereign debt to junk status in part as a consequence of the closure of Cobre Panama.

Conclusion

In the meantime, José Raúl Mulino was elected President on 5 May 2024. A new National Assembly was also elected. The new President was inaugurated on 1 July 2024.

The new government has said that it will address the Cobre Panama problem in 2025. The government is currently addressing the economic problems of the Social Security Administration.

Mr Mulino has indicated that, if left unattended, the mine could be an environmental disaster. He has also suggested the possibility of temporarily restarting mining operations at Cobre Panama to generate sufficient revenue for the proper closure of the project. The President has indicated that his government will move carefully, respecting the decision of the Supreme Court, while avoiding environmental damage and public unrest.

The government is currently assessing the value of the copper ore left in the mine (estimated at 120,000 tonnes) and the possibility of exporting it. It is also anticipated that the government will request an environmental audit of the project.

We will have to wait until 2025 to find out how the new government will address the consequences of the termination of the Cobre Panama project and the ban on metal mining concessions.

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