



**Mining and Commodities Trading
Business opportunities and legal
framework 2012**

GOODRICH



RIQUELME



ASOCIADOS

FIRM PROFILE

Goodrich, Riquelme y Asociados is one of the oldest, largest and most prestigious law firms in Mexico City. From its inception (1934) to the present, the firm has specialized in representing companies doing business in Mexico in all legal aspects at every level. The vast majority of its clients are medium and large companies, many of which are in the Fortune 500 category. Aside from providing our clients with complete legal services, we also help them achieve their business objectives in today's growing globalized business world and within the parameters of the various new multilateral and bilateral trade and investment agreements such as NAFTA, WTO, MEUFTA, Mercosur and others. Today the firm has a professional and administrative staff of over 200. As creative problems solvers, we help our clients address their changing needs so they can prosper in the Mexican business environment, which itself is continually changing.

MINING AND COMMODITIES TRADING PRACTICE

Our firm is a leader in the provision of comprehensive legal services to international mining and commodities trading companies with operations in Mexico. Our lawyers have highly specialized expertise in the following areas:

- Mergers and acquisitions in the mining industry.
- Secured financing of mining projects in Mexico for the exploration and exploitation of metallic and non-metallic mineral concentrates, as well as for the trading of commodities.
- Equipment and working capital financing in connection with mining projects.
- Drafting, negotiating and advising on contracts, including exploration, development, lease, offtake, beneficiation, warehousing, supply, sale, freight, insurance and services contracts.
- Public procurement.
- Obtaining and renewing mining concessions.
- Bankruptcy.
- Climate change.
- Greenfields.
- Social responsibility.
- Labor matters.
- Export permits.
- Advising on liability, environmental, tax, customs, transportation, agrarian and other regulatory matters associated with mining projects and commodities trading.
- Registering companies in the IMMEX program in order to obtain tax and duty exemptions.
- Dispute resolution and sophisticated litigation matters. Our clients include leading international trading, mining, energy and shipping companies, as well as banks and financial institutions.

The information in this document may not be relied upon as legal advice. Should you require legal advice on the matters discussed herein, we strongly recommend you to contact a partner of our firm.

INTRODUCTION



The mining industry has a 500 years history in Mexico. During the colonial period, the mining industry was the main economic activity of Mexico. In recent years, mining has experienced a resurgence in our country due to an increased demand for mining products in industrialized countries, in particular China, and the consequent international rise of their price.

This trend has turned mining into the third largest source of foreign currency for Mexico, only behind automotive and oil exports.

Only in 2010, mining production grew by 69% and was valued at almost

USD 15 billion. In the same year, exports of mining products rose by 27% to reach USD 22 billion. Due to this growth, the mining sector currently accounts to 4.9% of Mexico's GDP, whereas in 2000 it accounted for only 1%.

According to the Silver Institute, worldwide silver mine production increased by 2.5 percent to 735.9 Moz in 2010 due to new projects in Mexico and Argentina. In 2010, Mexico overtook Peru and regained its position as the world's largest silver producing country.

*Top 5 Silver Producing countries in 2010
(millions of ounces)*

Mexico	128.6
Peru	116.1
China	99.2
Australia	59.9
Chile	41.0
Source: The Silver Institute.	

Gold has also been plentiful in Mexico since the Spanish conquest. During the last five years gold production in Mexico has doubled, placing Mexico as the second top producer in Latin America, only after Peru. Mexico holds

as well the second place among Latin American countries when it comes to gold reserves and resources.

Copper, iron, molybdenum, titanium, lead and zinc are other important minerals produced by Mexico.

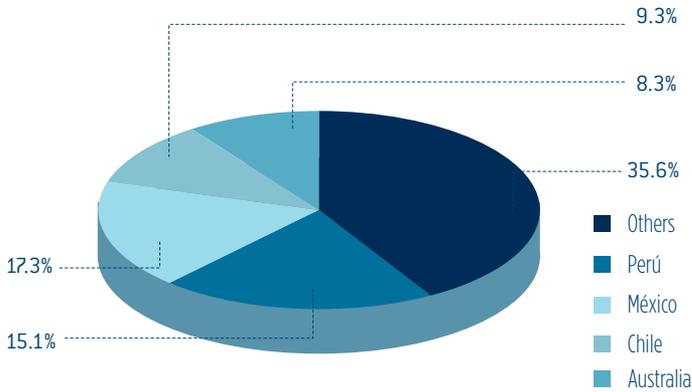


Table 1
World production of silver



Source: The Silver Institute

In 2010 annual mining and metallurgical exports from Mexico grew by 53% as compared to 2009 to reach USD 15.6 billion in value and a positive trade balance of USD 7.6 billion. During the first half of 2011, the same exports reached USD 10.7 billion – a 52% growth in comparison to the first semester of 2010. The trade balance for

those products registered a USD 5.9 billion surplus in the first half of 2011.

The mining industry in Mexico is poised to grow by 2% through 2014. With over 75 years of sound experience assisting entrepreneurs from numerous countries, our firm is prepared to assist you towards a success story in the Mexican mining sector.

FOREIGN INVESTMENT

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Mexico is the 4th best large-population country in Latin America for doing business according to the World Bank 2012 Doing Business Report. The numerous free trade agreements (FTAs) Mexico has signed provide it with privileged access to over 40 countries and a billion consumers. Mexico has also entered into 28 investment and promotion agreements (IPPAs) and double taxation treaties (DTTs) with more than 40 countries.

In addition, Mexico is regarded as a top destination for mining investment. Mexico is the No. 1 attractor of mining investment in Latin America and the No. 4 worldwide. This is a consequence of, among other factors, its strong and regulatory-friendly economy, its attractive geological prospectivity, its favorable tax regime, its strategic location and its availability of skilled personnel.

Mexico's favorable mining investment climate is attested by internationally renowned indexes and rankings. For example, according to the Current Mineral Potential index contained in the Fraser Institute's 2010/2011 Survey of Mining Companies, Mexico's mineral potential, considering its current policy environment, is the second most attractive among Latin American countries. The same survey places Mexico at the top ten, out of 75, in the Best Practices Mineral

CANADIAN INVESTMENT IN THE MEXICAN MINING SECTOR – A SUCCESS STORY

Canadian success in the Mexican mining sector is associated to the success of the Toronto Stock and Toronto Ventures Exchanges (TSX) in financing of projects in the region. Today, there are over 200 companies on the TSX with projects and assets in Mexico.

Most of these companies may be categorized as junior companies with market capitalizations ranging from USD 10 million to USD 200 million. The ownership structure of those junior companies is generally divided between management (around 10% to 25%) with the remaining shares held by North American institutional investors and global specialist mining funds.

It is noteworthy that the market capitalization of the 40 companies which form the Mexican Mining Task Force (an initiative sponsored by the Canadian Government) exceeds USD 58 billion. Further, there is several billions of additional capital in the 160 remaining companies listed on the TSX with assets in Mexico.

Potential index, which evaluates how the mineral potential of jurisdictions alone encourages investment. Also, Mexico took the fifth position in the Behre Dolbear Group's 2011 Ranking of Countries for Mining Investment (which considers economic, political and social factors, including corruption, financial stability and tax structure) and the fourth position in the Metals Economics Group's list of exploration budgets by country.

The Mexican Ministry of Economy reported that the investment in the mining sector in Mexico between 2007 and 2011 has already reached USD 16.7 billion, which accounts to a 132% as compared to the USD 5.1 billion received over the previous federal administration (2000-2006). Only in 2011, FDI in the mining industry grew by 42.7% as against the previous year to reach USD 4.7 billion. A similar amount is expected to be invested this year.

Nowadays Mexico is the fourth largest receiver of mining investment in the world, just behind Australia, Canada and Chile.

Foreign investment represents 70% of Mexico's mining exploration budget. 75% of such investment originates in Canada, whereas barely 15% hails from the U.S. Conversely, 60% of Mexico's mining production is still held by domestic enterprises. Most of the remaining 40% is produced by Canadian-owned companies.

It is noteworthy that, according to the Mexican Geological Service, 210 out of the 286 foreign-owned companies reported to have mining projects in Mexico are funded with Canadian capital.

The Mexican Geological Service has also reported that foreign-owned companies are currently conducting 615 exploration projects in Mexico.

From a legal standpoint, it is important to mention that foreign investors are given equal treatment as Mexican investors and thus are allowed 100 percent participation in Mexican mining companies engaged in exploration, extraction and beneficiation of mineral deposits.

INVESTMENT OPPORTUNITIES

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Mexico is the world's largest producer of silver and remains one of the largest producers of gold (9th), lead (5th), bismuth (3rd) and copper (11th). The

states of Zacatecas and Chihuahua are the best producers of lead in our country. When it comes to zinc, the ranks are equivalent.

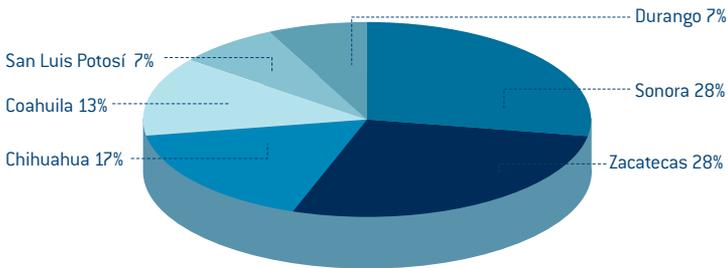


Table 2
México's Mining Production by State



Source: Ministry of Economy,
 Mining situation report 2011

Currently, there are mining operations in 22 of the 32 states of the country. The mining production is divided into gold (21%), silver (29%), copper (14%), zinc (8%) sand (5%), gravel (4%), iron (4%) and others (24%). The main producing states are Sonora (28%), Zacatecas (28%), Chihuahua (14%), Coahuila (11%), San Luis Potosí (6%) and Durango (6%).

Most of the national silver production originates in the states of Zacatecas, Durango and Chihuahua. The largest silver mine in the world is located in the state of Zacatecas, Mexico. It is called 'Fresnillo' and, according to the Mexican Mining Chamber's (*Cámara Minera de México*—CAMIMEX) Annual Report for 2011 it represents 28% of Mexico's total silver output.

MINING AND COMMODITIES TRADING

BUSINESS OPPORTUNITIES AND LEGAL FRAMEWORK 2012

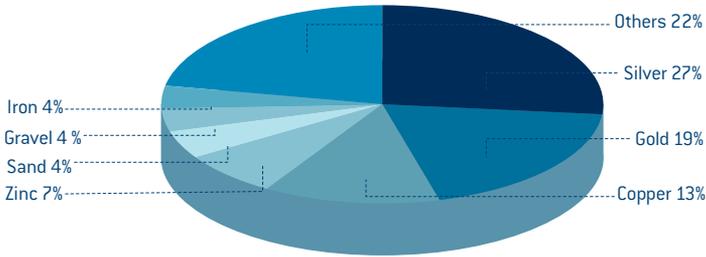


Table 3
México's Mining Production



Source: Ministry of Economy,
Mining situation report 2011

The states of Chihuahua, Durango and Sonora are ranked 1st to 3rd in gold production in Mexico.

Copper production rose again in 2010. The main copper deposits in Mexico are located in the Metallogenic Province of the Sierra Madre Occidental mountain range. The state of Sonora came first by producing 75.3% of the national output in 2010.

Mexico's deposits of iron are distributed along two main belts, namely: the

North East iron belt and the South West iron belt. The North East belt includes the famous deposits of La Perla, in Chihuahua; Cerro del Mercado, in Durango; and Hercules, in Coahuila. The South West runs parallel to the Pacific margin, which includes the deposits of Aquila, Las Truchas, El Encino, Cerro Nahuatl and Peña Colorada. In addition, several great potential areas have been identified in the states of Guerrero and Oaxaca.

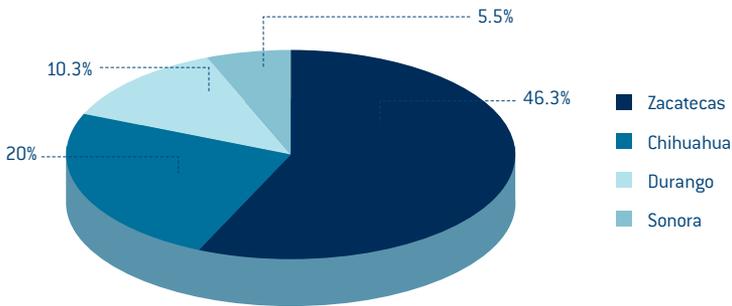


Table 4
National Silver Producers



Source: INEGI

LEGAL FRAMEWORK

4

MINING

According to article 27 of the Mexican Constitution, the direct ownership of natural resources in the continental shelf lies with the Nation. However, the use or exploitation of these resources may be carried out by individuals or legal entities through concessions issued by the federal government.

The Mexican Mining Law regulates article 27 of the Mexican Constitution regarding the mining sector, and establishes the requirements that must be complied with in order to obtain a concession for exploitation and/or exploration of minerals and substances listed in that law.

The Mining Law also provides that concessions may be granted by the Ministry of Economy to Mexican individuals, companies and agrarian communities.

Concessions for exploration and/or exploitation are given on 'free land' to the first applicant if the conditions and requirements of the Mining Law are fulfilled.

Applicants offering the technical or economic conditions for the public interest have preference over other applicants.

Mining concessions grant the holder of the concession rights to explore and exploit all minerals and substances covered by the concession, and grant the right to sell the minerals.

Exploration concessions are granted for a period of six years and are non-renewable. However, they can be replaced by a new concession.

Extraction concessions are given on a 'first-come, first-served' for a 50 year period, which may be renewed for an equivalent period. The term of each concession commences upon registration of the concession in the Public Registry of Mines.

Mining concessions can be totally or partially pledged or transferred to third parties. Minerals can be freely sold between private entities.

Since 2006, holders of coal mine concessions are allowed to recover and

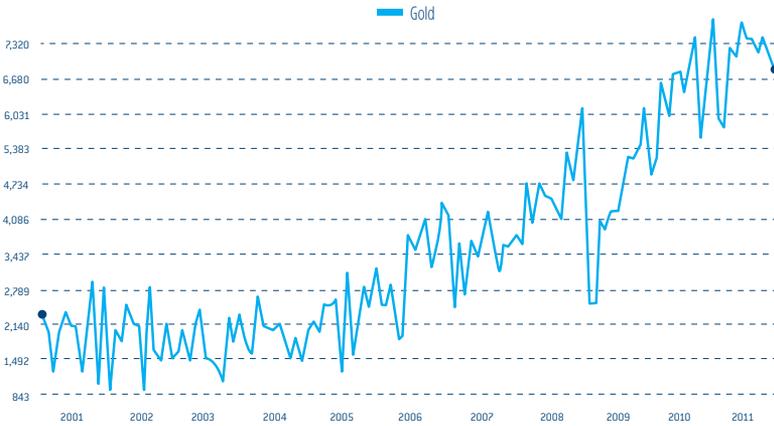


Table 5
Gold Production in Mexico from 2001 to 2011



Unit: Kilograms
Source: INEGI.

utilize methane released in the process of coal extraction. After obtaining the authorization of the Ministry of Energy, concession holders may either use the recovered methane as fuel in their own activities or sell it to PEMEX.

ROYALTIES AND GOVERNMENTAL FEES

Being one of the oldest activities in our country, mining has been subject to different tax regimes over time.

During the first half of the twentieth century, the Mexican government established the obligation for concessionaires to pay tax surface rights by means of the Tax and Governmental Fees Law (*Ley de Impuestos y Derechos*) and the Tax and

Mining Promotion Law (*Ley de Impuestos y Fomento a la Minería*), both of which have been repealed.

Today, the Federal Law on Governmental Fees is the only applicable body of legislation containing a special tax on mine production.

Under the current legislation (last amendment effective as of January 1st, 2012), miners pay symbolic fees twice a year on land concessions that range from 5.70 and 124.74 pesos per hectare depending on the duration of their concession.

ENVIRONMENTAL REGULATION

In order to comply with the Mexican environmental legislation, a mining project must fulfill the following:

- Obtain an environmental impact assessment statement.
- Carry out an environmental risk assessment.
- Obtain a concession for the exploration and/or exploitation of national or subsoil water.
- Register the company as a hazardous waste generator.
- Obtain a land use permission or license.
- Register the company as a special generator and manager of waste.
- Obtain licenses for the use of federal zones (if necessary).

AGRARIAN LAW

In Mexico, *ejido* properties are communal farm land possessed by an unlimited number of individuals and which possession may only be transferred, in principle, between members of an agrarian community. *Ejidors* are allowed to obtain mining concession.

Since 1992 members of agrarian communities are allowed to buy, sell or lease land, hire labor and to associate with other producers and third parties. They may enter into any type of association or contract including joint-venture schemes, with domestic or foreign private investors, through renewable contracts with a 30-year maximum term. Upon a resolution of an *ejido* assembly, the *ejido* may offer the use of their land as guarantee to credit insti-

tutions or third parties. After an *ejido* privatization procedure is completed, its members may sell the land.

BONDED WAREHOUSES

The English term “bonded warehouse” is sometimes used to refer to a General Deposit Warehouse (*Almacén General de Depósito*) authorized to operate under the Fiscal Deposit Customs Regime, sometimes to refer to a Fiscal Precinct, and sometimes to refer to a Strategic Bonded Warehouse.

General Deposit Warehouses are storage providers authorized to issue Deposit Certificates (*Certificados de Depósito*) that are deemed as negotiable instruments and which may be pledged under Mexican law. General Deposit Warehouses may apply for an authorization to operate under the Fiscal Deposit Customs Regime. General Deposit Warehouses, when authorized to operate under the Fiscal Deposit Customs Regime, may handle merchandise after customs clearance (imports) under an import regime that puts the collection of the import duties on hold.

Fiscal Precincts (*Recintos Fiscalizados*) are the zones or areas where goods are stored before customs clearance in the case of imports or after customs clearance in the case of exports.

The new Strategic Bonded Warehouse (*Recinto Fiscalizado Estratégico*) is intended to operate as a Customs Trade Zone. A few Strategic Bonded Warehouses have already been authorized.

SECURING TRANSACTIONS

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Many types of security measures are available in Mexico to foreign or local lenders. The following are some of the most prominent types of guarantees available to financial institutions when financing a mining or commodities trading project.

PLEDGE

A pledge, generally, conveys upon the creditor an in rem, pre-emptive right to foreclose on the pledged goods and either have them auctioned off by the court or the pledgee in order to receive payment with the proceeds of such sale, or to have the pledged goods adjudicated to the creditor.

There are two sorts of pledge under Mexican law: (i) a possessory pledge, wherein possession over the pledged goods is conveyed onto the beneficiary, and wherein foreclosure must be made through the action of the courts and (ii) a non-possessory pledge where the pledgor maintains possession over the pledged Goods and wherein foreclosure may be agreed to be made privately, without having to resort to the courts.

Under a non-possessory pledge, the pledgor retains possession of the goods and the ability to put them to use in its business, so that, for example, the goods may be transformed into other goods to be sold subsequently, provided that the transformation process does not diminish their value or worth.

Non-possessory pledges may be registered with the new centralized Registry of Movable Property Collateral in order to be effective against third parties (Registro Único de *Garantías Mobiliarias* or ‘RUG’). Filing for registration is made electronically and has immediate effects.

Mining concessions can be totally or partially pledged. The said pledges have to be registered at the Public Mining Registry to have legal effects against third parties.

MORTGAGE

The most widely used security device in Mexico is the mortgage. Mortgages may be placed on real estate, vessels, aircraft, or on complete production –industrial– facilities if granted to a bank.

Industrial mortgages are created in favor of Mexican credit institutions over the complete industrial, agricultural, ranching, or service units of the mortgagor, and include all assets, movable and immovable, that are used for exploitation of said unit. This mortgage includes any concession or permission granted, as well as moneys and credits in favor of the mortgagor.

The mortgagor retains possession of the mortgaged assets and continues to use and exploit the industrial unit. The mortgagee must consent to a sale of any of the mortgaged assets, or to any merger, except when made or replaced within the scope of its normal operations, unless otherwise agreed.

TRUSTS

Although trusts are widely used for many different purposes and in a wide variety of transactions (such as to manage assets, to transfer properties, to invest in shares and other securities and to create a business concern), trusts may be used as a vehicle to guarantee debts when the security involves a substantial amount of property.

A trust is created through an agreement between the grantor and the trustee. Only Mexican credit institutions, insurance and bonding companies, brokerage houses and warehouses, and special purpose financial entities, may be trustees of this new kind of trust.

A beneficiary or beneficiaries are also named, and are entitled to the benefits of the trust agreement. Grantors may also be designated as beneficiaries. The trustee will perform its duties through its agents which may accomplish the purposes of the trust by instructions from a technical committee designated by the grantors.

WAREHOUSE CERTIFICATES

Mexican storage providers authorized under Mexican law to act as *almacenes generales de depósito* ('General Depository Warehouses') in Mexico are able to issue *certificados de depósito* ('Warehouse Certificates'), which are negotiable securities as per the Mexican law (similar to holding certificates in other jurisdictions).

A Warehouse Certificate provides to its holder, by operation of law, title to



Table 6
Silver Production in Mexico from 2001 to 2011



Unit: Kilograms
 Source: INEGI.

the goods described therein (stored at or in transit to or from a General Depository Warehouse). Title to the goods covered by a Warehouse Certificate may be transferred by endorsement of the certificate, unless the same states that is non-negotiable.

General Depository Warehouses may also issue *bonos de prenda* ('Pledge Bonds') creating a security interest over a Warehouse Certificate, provided the Warehouse Certificate is not a non-negotiable one. Pledge Bonds are negotiable instruments that serve the purpose of pledging the goods covered by a Warehouse Certificate in favor of the beneficiary of the bond.

Pledge Bonds must be issued at the same time as the relevant Deposit Certificate; however, Pledge Bonds may be traded separately from the relevant Deposit Cer-

tificate (vg. between financial institutions).

If the secured debt is not paid on the maturity date, the holder of a Pledge Bonds may request the General Deposit Warehouse to proceed to the sale of the goods at a public auction.

REPO STRUCTURES

Repo structures are another means to finance inventories of minerals. Under these structures a bank would purchase title to Warehouse Certificates from the repurchaser undertaking to transfer said title back to the repurchaser within a given time frame at an agreed price plus a premium.

When *repo* transactions are carried out in respect of securities representing commodities that are traded in acknowledged



Table 7
Copper Production in Mexico from 2001 to 2011



Units: Tons
 Source: INEGI.

markets, the repo becomes a hedging transaction. Financial institutions may command different ratios of underlying assets vis-à-vis the amount of the financing. The price of the derivative transaction is generally a function of said ratio multiplied by the face value of the Deposit Certificates, or the reference value of the product as provided by a quotation service. The premium to be collected by the purchaser at the maturity of the operation turns on the price and is determined by multiplying said price by the interest rate and then by the days effectively encompassed by the transaction, and then divided by 360 days.

ASSIGNMENT OF RECEIVABLES

As receivables are not negotiable instruments under Mexican law, they cannot be transferred by endorsement. However, any credit may be transferred to a third party by means of an assignment agreement.

The assignment of credit would become effective for debtors situated in Mexico as soon as they receive a written notice in the presence of two witnesses or a Notary Public informing the debtor about the assignment. Alternatively, a written acknowledgement from an authorized signatory of the debtor would be sufficient, and render the requirement for two witnesses or a Notary Public unnecessary.

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