



# Bolivia

Prepared by Lex Mundi member firm,  
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## **COUNTRY OVERVIEW**

The Plurinational State of Bolivia is a landlocked country located in the middle of South America. Bolivia has an area of 1,098,581 square kilometers<sup>i</sup> and shares its borders with Brazil, Paraguay, Argentina, Chile, and Peru.

Bolivia can be divided into the following regions: altiplano—or the highlands, valleys, and lowland tropic. The Bolivian departments of La Paz, Oruro, and Potosi are located in the altiplano western part of the country and have an average altitude of 3,500 meters above sea level. The Bolivian departments of Cochabamba, Chuquisaca, and Tarija are located in the valleys and have an altitude of 1,000 meters to 3,000 meters above sea level. The Bolivian departments of Pando, Beni, and Santa Cruz are located near 400 meters above sea level and have a tropical climate.<sup>ii</sup>

Bolivia has 10,027,254 inhabitants, according to the National Statistics Institute. The major cities in Bolivia that account for 70 percent of its population are La Paz, Santa Cruz, and Cochabamba. La Paz is where the government is located, but Sucre is the official capital where the supreme and constitutional court sits.<sup>iii</sup>

Bolivia is a democracy divided into nine decentralized and autonomous departments. The Bolivian State is organized and structures its jurisdiction through the legislative, executive, judicial, and electoral branches.<sup>iv</sup>

Bolivia is a civil-law country. The Bolivian Constitution also recognizes indigenous-community justice as part of its judicial system.

## **ESTABLISHING A BUSINESS PRESENCE**

### **Permanent Structures<sup>v</sup>**

The most common business enterprises incorporated under Bolivian law are corporations and limited liability partnerships (LLPs). These business entities share common aspects but differ in complexity of structure and methods of ownership.

The organizational structure of a corporation consists of the following tiers: directors/officers, a comptroller, and three or more shareholders.

Shares represent ownership interests in a corporation. They are freely transferable by endorsement, and such transfers are tax exempt.

The ownership and management structure for an LLP requires a minimum of two partners. A board of directors is optional, and no comptroller or bylaws are required.

Capital quotas represent ownership interests in an LLP. Transfers of capital quotas must be approved by all partners and are tax exempt. Each time partners transfer capital quotas, the articles of incorporation must be amended.

For the incorporation of a corporation or LLP, the following information is required:

- name, age, marital status, nationality, profession, domicile, and identification number of those people who will become partners or shareholders and/ or name, nature, nationality, and domicile of those entities that will become partners or shareholders
- there are no limitations or special restrictions for foreign partners or shareholders; in the case of a foreign entity, a certificate of good standing is required

- name and domicile
- purpose
- paid-in capital

A minimum of three directors is required for corporations. Board members may be of any nationality and may reside outside Bolivia. Corporations also require a comptroller and alternate who must be domiciled in Bolivia. The mentioned corporate bodies are not required for an LLP.

The nearest Bolivian consulate must legalize the incorporation documents. Furthermore, said documents must be submitted in Spanish. Documents translated into Spanish may be filed provided a court-appointed translator in Bolivia has translated them.

A special power of attorney may be granted for purposes of incorporating a Bolivian entity. As with all other documents, said power of attorney must be in Spanish and legalized by a Bolivian consulate.

### **Subsidiaries and Branches**

According to the Bolivian Commerce Code, a subsidiary is any company formed in Bolivia and whose main shareholder or main partner is a foreign entity. Subsidiaries enjoy the same tax treatment as any other Bolivian entity.

Any foreign company may also incorporate branch offices in Bolivia without limitation. In order to establish a branch office, the following documents are required:

- articles of incorporation
- bylaws
- certificate of good standing
- board resolution approving the establishment of a branch

The above documents must also be legalized by a Bolivian consulate. If said documents are in English, a translation must be obtained from a court-appointed translator in Bolivia.

The board resolution approving the establishment of the branch must include the following:

- Domicile of the branch. The domicile of the branch may be in any Bolivian city.
- Amount of capital assigned to the branch. There is no minimum capital requirement, but it must be deposited in a Bolivian bank.
- A power of attorney for the establishment of the branch.
- A power of attorney for the manager of the branch.

The incorporation branches may take up to two weeks from the date on which all documents are in order and ready to be submitted to the Bolivian Commerce Registry.

### **Companies Incorporated Abroad**

Foreign companies or individuals may carry out isolated or occasional acts in Bolivia without having to register or incorporate. If, however, said acts are habitual, registration or incorporation is mandatory.

There is no precise definition or single measure that can establish whether an act is considered habitual. Certain basic parameters, however, may be identified in order to establish

whether an act is habitual. Habitual acts do not necessarily correspond to quantitative criteria but to criteria such as the opening of a branch office or the registration of a company before a governmental or regulatory authority.

### **Joint Ventures**

Law 1182 explicitly permits joint ventures between domestic and foreign investors. According to the law, foreign investors entering into joint venture contracts must establish a legal domicile in Bolivia. Under Bolivian law joint venture agreements do not have legal status, and must be notarized and registered before the Commerce Registry.

Foreign companies investing in certain regulated industries are required to enter into joint venture agreements. Said agreements are typically entered between local or foreign investors and the Bolivian State-owned companies such as YPFB (hydrocarbons), COMIBOL (mining), ENTEL (telecommunications), and ENDE (electricity).

### **Investment in Mergers with Existing Entities**

In general terms, the Bolivian Commerce Code, Tax Code, and their regulations regulate mergers and acquisitions in Bolivia. In regulated industries such as electricity, banking (financial services), hydrocarbons, telecommunications, securities, and insurance, specific regulations are administered and enforced by sector-specific supervisory and control authorities. The main requirement for any merger is a merger agreement between the parties. Additionally, all mergers require notice of a proposed transaction to creditors and shareholders who may lodge objections through judicial process before a civil judge.

There are market-share filing thresholds for mergers in the electricity sector. A merger or acquisition in this sector market is reportable if it grants an electric-generation company a market share of more than 36 percent.

Other regulated sectors do not have filing thresholds. Parties, however, must contact the relevant regulatory authorities prior to a merger in these sectors.

### **Agency and Distribution Agreements<sup>vi</sup>**

The Bolivian Commerce Code regulates agency and distribution agreements. Bolivian law does not distinguish between agents and distributors. Agents and distributors are independent persons or entities that promote or exploit businesses in a specific area within the country, as intermediaries of another entity, local or foreign.

Unless the agency agreement provides otherwise, the principal cannot use other agents in the same geographical territory, nor can it sell directly. The principal must pay the agent the remuneration indicated in the agreement and reimburse expenses as provided in the agreement. If no term has been fixed for payment of such remuneration, it should be paid within 30 days of conclusion of the business. Bolivian law is silent as to maintenance of inventory. Said matter should be contemplated in the contract.

An agent does not acquire additional rights as an employee. If, however, the agent is on the payroll of the principal and receiving a fixed commission, the agent shall be considered an employee.

Appointment of a local agent by a foreign principal does not subject the principal to payment of Bolivian income tax. There are no limitations on the amount that may be paid to agents.

The principal can terminate agency agreements without cause, provided such provision is inserted in the agreement. It is permissible under Bolivian law for the contracting parties to agree to allow the principal to terminate the agreement without cause. Notice of termination under agency agreements depends on what the parties have agreed to in the agreement.

There are no specific franchise laws. Franchise agreements, however, must be registered before the Commerce Registry. The only limitation with regard to franchise agreements is tax related, in that royalties remitted abroad are subject to a 12.5 percent withholding tax.

### **Approvals and Registrations**

The last step in forming a local entity is the filing of articles of incorporation or bylaws, tax identification, and all other documents required by law. Said filing is done before the Bolivian Commerce Registry. Provided all documents are in good standing, the Bolivian Commerce Registry shall issue a license allowing for the commencement of operations of the new entity. The license is usually issued within three weeks from the moment that all pertinent documentation has been filed.

Agency and distribution agreements must be registered before the Commerce Registry and must be governed by Bolivian law. Notarization of the agency or distribution agreement is also required.

### **Sensitive Economic Sectors/Restrictions on Foreign Ownership**

Local and foreign investors have the same rights and obligations, but they may be subject to special regulations if they are involved in any of the following industries: mining, oil, gas, electricity, transport, and telecommunications.

### **Political Risk and Related Issues**

Investments in Bolivia may be affected by policy changes that may respond to political rather than economic factors. Certain industries such as hydrocarbons, telecommunication, energy, electricity, and transportation that were privatized in 1995 have now been nationalized. The nationalization of industries in Bolivia has generated very high revenues— and many challenges that remain to be resolved. Issues such as weak judicial security, arbitrary regulatory decisions, and corruption need to be dealt with.

## **INVESTMENT ISSUES AND TAX INCENTIVES**

### **Incentives**

Local and foreign investors have the same rights, duties, and guarantees, and no authorization

or prior registration is required for any investment. Right to ownership, as well as free foreign currency exchange, is guaranteed to local and foreign investors.

Investors can freely contract investment's insurance in Bolivia or abroad. Local and foreign investors can enter into joint ventures.

Local and foreign investors can agree to submit their discrepancies to arbitration according to the constitution and international laws. Investors, local or foreign, have equal access to purchase and selling of foreign currency, taxes, right to export capital and profits, and to invest in any commercial or industrial activity, except those activities that belong to the public sector, such as public services. On April 4, 2014, Law 516 (the Investment Law) was enacted. The purpose of the Investment Law is to set forth the general legal and institutional framework, to promote investment within Bolivia, and contribute to the country's social and economic growth and development. The Investment Law is applicable to Bolivian and foreign investments carried out within the national territory.

According to the Investment Law, the Bolivian State directs investment toward economic activities that promote economic and social development, creation of decent jobs and contributes to eliminating poverty and the reduction of economic, social, and regional inequalities. Investments may, however, be carried out in any economic sector.

The Investment Law also provides that the Bolivian State shall manage, control, and regulate the strategic sectors of economy and exercise its right to participate as an investor. Private investors, as well, can carry out limited economic activities in these strategic sectors.

Transfer of technology must consider the following:

- building capacity and skills in the Bolivian personnel
- transfer of Bolivian state-of-the-art equipment and technology for education
- development of applied research within the company

The capital derived from the total or partial liquidation of companies, net profits, revenue settlement, payments to suppliers or creditors domiciled abroad, etc., can be transferred abroad under a freely convertible currency using the banking system, subject to the compliance of tax obligations and other regulations.

#### **Foreign Investment Protection Treaties**

The following bilateral and multilateral trade agreements have been entered into by Bolivia and are in force:

- free-trade agreements: Chile, Cuba, Venezuela, and MERCOSUR
- general system of preferences: the United States, the European Union, Canada, Norway, Switzerland, and Japan
- customs union: Andean Community

#### **Double Tax Treaties**

The Bolivian tax system is income source based; therefore, only income that is of a Bolivian source is taxed regardless of whether the employee resides in Bolivia. Bolivia has double tax treaties with the Andean countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela) and the following other countries: Argentina, France, Spain, Sweden, and the United Kingdom.

#### **Publicly Held Companies**

According to the Bolivian Commerce Code, a corporation can be formed by way of a sole act of its founders or through the public subscription of shares. If the incorporation is through a public subscription of shares, the promoters must prepare a foundation program that must be signed

by them and approved by the Commerce Registry.

Upon obtainment of approval by the Commerce Registry to incorporate a publicly held company, the foundation program must be published in a local newspaper. A bank must thereafter prepare a subscription agreement, and the monies paid for such subscription of shares must be deposited in such bank. As soon as the capital has been subscribed, the promoters must call a shareholders meeting with the participation of representatives from the bank and Commerce Registry and the participation of the majority of the subscribed shareholders. The process of registration before the Commerce Registry concludes the incorporation of a company by public subscription of shares.

## **OPERATIONAL LEGAL ENVIRONMENT**

### **Tips on Negotiation in the Country**

When doing business in Bolivia, it is important to note that Bolivia is a civil-law country, and as such, contracts and transactions executed under Bolivian law tend to be shorter in length and detail than those of common-law countries. All agreements must adhere to the stipulations of codes and statutes whether or not those stipulations are included in an agreement.

Business etiquette in Bolivia is similar to that in its neighboring countries. Accordingly, the approach to business is formal. Professionalism is expected, academic titles with the surname are used, and the shaking of hands when meeting and leaving is customary.

### **Foreign Exchange**

The Central Bank of Bolivia is the supreme authority in matters of currency. The Central Bank of Bolivia controls the entry and discharge of foreign currency through the private banks, which can freely operate in foreign exchange.

There is no foreign exchange control in Bolivia. Foreign currency can be purchased freely at any private bank or the Central Bank of Bolivia, and it can also be remitted abroad with no restrictions. Income of a Bolivian source is, however, taxed with a 12.5 percent withholding tax.

### **Immigration and Visa Requirements<sup>vii</sup>**

The regulation with regard to the movement of people entering and leaving Bolivia falls within the jurisdiction of the Dirección Nacional de Migración. Bolivian law contemplates the following forms of immigration: spontaneous, planned, and selective immigration.

Spontaneous immigration refers to the entrance of foreigners by their own initiative and at their own expense. Planned immigration is that which is oriented by the Bolivian State. Said orientation may be conducted directly by the Bolivian State or through governmental agents or international institutions interested in migratory programs. Selective immigration is that which promotes the immigration of investors, professionals, industrial or farming technicians, and qualified labor.

### **Tourist Visas**

Tourist visas are granted for up to 60 days. One may not work in Bolivia with a tourist visa.

Bolivian consulates, which are located in major capitals, are authorized to grant tourist visas. A valid passport and transportation tickets are required to obtain a tourist visa. Tourist visas for certain nationalities may be obtained upon arrival to Bolivia.

### **Special Purpose**

A special-purpose visa is granted for reasons of work, temporary work, health and family. Special-purpose visas for reasons of work, health and family are granted a stay of 30 days. A special-purpose visa for temporary work is granted a stay of 180 days, and is given to those who carry out remunerated activities.

### **Multiple Entry Visa (Business)**

A Multiple Entry Visa is granted for a stay in Bolivia of 1 year, is renewable for similar periods, and is given to those individuals who carry out investment and business activities in Bolivia.

### **Permanent Visa**

The following permanent visas are granted by Bolivian authorities: fixed period of time visa and indefinite visa.

The fixed period of time visa is granted for one, or two, or three years. It can be obtained in Bolivia and is extended to the family of the visa holder.

The indefinite visa is granted after a stay of 3 years or more. With an indefinite visa, a foreign ID is issued to the beneficiary.

### **Taxation of Business and Cross-Border Transactions<sup>viii</sup>**

#### **Value Added Tax**

According to Law 843, the value added tax (VAT) applies to the following:

- sales of personal property located or placed in Bolivia
- work contracts, provision of services, and any other allowances, whatever their nature, conducted in Bolivia
- final imports

The standard VAT rate is 13 percent.

The following shall be exempt from VAT:

- goods imported by members of the diplomatic corps in the country

- goods introduced bona fide, from trips entering the country, in accordance with the provisions of the customs tariff

### **Company Profit Tax**

Company profit tax is chargeable at 25 percent on the company's net profits. The tax is applied on profit as shown in the audited balance sheets at yearly financial closings of legal entities. For the purposes of this tax, profits are considered as all income, profits, or gains.

### **Withholding Tax**

When income that derives from a Bolivian source is paid to foreign beneficiaries, a 12.5 percent withholding tax is payable, subject to the provisions of any applicable double tax treaty.

### **Transactions Tax**

A transaction tax applies to the transfer of ownership of movable assets or property and rights as a result of the exercise of, among others, a trade, industry, profession, or business. The standard rate for the transaction tax is 3 percent. The purchase of shares, debentures, securities, or any credit documents is exempt from said tax.

The following are considered as taxpayers:

- natural and legal persons
- public and private enterprises and companies with or without legal personality, including sole proprietorships. The purchase of shares, debentures, securities, or any credit documents is exempt from said tax.

### **Financial Transactions Tax**

Financial transactions are taxed at 0.3 percent. The transfer of funds abroad and the transfer of funds to and from Bolivian savings accounts with less than USD 1,000 are exempt from said tax.

### **Complementary VAT Tax**

The complementary tax to the VAT is applied on the income of individuals and estates, originating from capital investment or work or the combination of both. This tax is determined by applying a 13 percent tax on income.

The complementary VAT tax is applied on the totality of income derived from a Bolivian source, not mattering where the taxpayer is domiciled or residing. Payment of dividends to individuals is not subject to this tax.

### **Other Taxes**

All entities or individuals that own real estate, registered vehicles, yachts, or aircraft are also subject to tax. Said tax is determined by the respective municipality in which the mentioned items are located.

Additional taxes also exist in relation to mining and hydrocarbon-related activities.

### **Labor and Employment<sup>ix</sup>**

#### **General Principles**

Specialized labor and social courts adjudicate all employment disputes in Bolivia. There are eight labor courts, four in El Alto, three social courts of appeal, and two social courts in the Supreme Court for cases of annulment.

The main sources of employment law in Bolivia are codified laws, supreme decrees, resolutions, and collective agreements and individual contracts (the Labor Law). Bolivian law applies to people who work for foreign companies within Bolivian territory.

There are no Bolivian long-arm statutes. Accordingly, Bolivian law does not apply to employees of Bolivian companies working in another jurisdiction.

### **Labor Agreement**

For an employment contract to be enforceable under the Labor Law, it does not have to be in writing. The following, however, are essential elements that an employment contract must have: capacity of the parties to contract, acceptance, object, and consideration.

A written employment contract should contain the following: (i) employer's contact details (name, domicile, legal representative, identification number, legal representative's identification number); (ii) name of employee; (iii) identification number, age, nationality, and domicile of employee; (iv) nature of service or task and place where service or task will be performed; (v) amount of salary; (vi) duration; (vii) place and date of employment contract; (viii) and names and ages of spouse and children or other beneficiaries as may be the case

The Labor Law also recognizes collective agreements. Associated employers must enter into collective agreements with the employees, which are considered part of an individual employment contract.

### **Mandatory Labor Requirements**

#### **Trial Period**

A three-month trial period applies only to new employees with indefinite employment contracts. Employees dismissed during the three-month trial period are not entitled to severance or other employment benefits. According to Supreme Decree 17280, dated March 18, 1980, there is no trial period for the following individuals:

- applicants with a university degree
- applicants with certificates from teaching or capacitating entities
- applicants who can demonstrate that they are suitable professionals
- those admitted to work by means of a merit exam or competition
- rehired employees
- those employed on a temporary basis

#### **Hours of Work and Earnings**

The following maximum hours of work are set by statute: eight hours per day and seven hours per night shift (night work is between 8:00 p.m. and 6:00 a.m.); 48 hours per week for men and 40 hours per week for women. Working hours do not apply to those employees who cannot submit themselves to working hours set by statute because of the nature of their work; in this case, an employee may not work for more than 12 hours. Overtime and Sunday work are paid at a 100 percent surcharge.

The working day for adolescents between 14 and 18 years of age may not be more than 8 hours a day and 40 hours a week. The working hours should not exceed 10 pm.

The work activity of adolescents under 14 years of age authorized by the Ombudsman's Office for Children and Adolescents may not be more than 6 hours a day and 30 day hours per week.

Employees may not earn less than the minimum income set by the executive branch of government. Minimum income is currently set at USD 259,33 per month.

### **Holidays/Rest Periods**

Employees are entitled to an annual vacation that varies according to the following length of service:

- 1 year to 5 years' service: 15 days
- 5 to 10 years' service: 20 days
- 10-plus years' service: 30 days

In addition, employees are entitled to various public holidays and Sundays off.

### **Age**

Minimum age for work is 14 years of age, however, exceptionally, the Ombudsman's Office for Children and Adolescents may authorize self-employment activities carried out by girls, boys or adolescents from 10 to 14 years of age, provided that it does not affect their right to education, is not dangerous, unhealthy, harmful to their dignity and integral development, or is expressly prohibited by law. Age limit to work is 65 unless the employer agrees to hire the employee for three more years. The normal retirement age under the social security system is 55 for men and 50 for women. Retirement age in case of pension plan depends on the amount of capital accumulated by the employee.

### **Illness/Disability**

The Caja Nacional de Salud must provide the covered employee with all the necessary medical assistance for any illness, work related or not.

Disability benefits are provided as part of a long-term insurance by the pension funds that cover disability, old age, and death. The benefits are monthly annuities that depend on the years of contribution to such funds by the employee. Employees must contribute to the mentioned fund, up to 12.71 percent of their monthly remuneration.

Disability benefits are paid based on the level of employee's disability as a result of the sickness.

### **Location of Work/Mobility**

When the task or service of the employee takes place over 2 kilometers away from the employee's residence, employers may be obliged to provide transport. When the task or service of the employee takes place over 100 kilometers away from the employee's residence, the employer must pay food and transport expenses.

### **Compulsory Terms**

The following compulsory provisions must be included in employment contracts: (i) employer's contact details (name, domicile, legal representative, identification number, legal representative's identification number); (ii) name of employee; (iii) identification number, age, nationality, and domicile of employee; (iv) nature of service or task and place where service or task will be performed; (v) amount of salary; (vi) duration; (vii) place and date of employment contract; and (viii) names and ages of spouse and children or other beneficiaries as may be the case. Noncompulsory terms in addition to compulsory provisions may be included in an employment contract.

### **Hiring Non-nationals**

A maximum of 15 percent of the total workforce of a company registered and domiciled in Bolivia can comprise expatriates. Also, a company registered and domiciled in Bolivia may hire only qualified expatriates. Expatriates working in Bolivia require a visa.

### **Social Security Contributions and Pension Plans**

The following social security contributions are mandatory by statute:

- employer contribution: 16.71 percent:
- housing: 2 percent
- professional risk: 1.71 percent
- short-term insurance: 10 percent
- Employer solidarity contribution : 3%
- employee contribution: 12.71 percent:

- seniority contribution: 10 percent
- common risk: 1.71 percent
- pension fund commission: 0.5 percent
- Insurer's solidarity contribution: 0.50%

Monthly social security contributions allow employees to retire, in which case a monthly rent is paid. Employees may opt to be paid in one lump sum.

### **Payments for Maternity and Disability Leave**

Disability benefits are provided as part of a long-term insurance by the pension funds that cover disability, old age, and death. Disability benefits are paid based on the level of the employee's disability as a result of the sickness. Accordingly, disability benefits are paid as follows:

- absolute disability: 2 years of salary
- permanent disability: 1 year of salary
- partial disability: 18 months of salary
- temporary disability: salary is paid for duration of disability for a maximum of 6 months

In the case of maternity leave, the employee is entitled to receive the necessary medical attention. Maternity leave begins 45 days prior to the child's birth and ends 45 days after the child's birth. During said period, the employee's salary must be paid.

An employee on maternity leave has a right to receive milk products prior to the birth of a child. The value of the milk products must be equal to at least one month's salary of minimum wage, and the products must be given to the employee starting the fifth month of pregnancy and up to the day of birth.

A postnatal subsidy and a milk subsidy are also provided to the employee on maternity leave after the birth of a child. The postnatal subsidy is given once and must be equal to at least one month's salary of minimum wage. The milk subsidy consists of milk products that must be equal in value to one month's salary of minimum wage, and they must be provided on a monthly basis until the child is one year old.

It is important to note that both father and mother may not be dismissed from their place of work until their child has reached the age of one year except if the following occurs: intentional material damage caused to work instruments, disclosure of industrial secrets, negligent acts that may affect industrial security and hygiene, unjustified absence for more than six days, failure to comply with work agreement, and theft or robbery by the employee.

### **Termination**

#### **Procedures for Terminating the Agreement**

Termination of an employment contract is the result of a dismissal or a voluntary withdrawal. In either of the mentioned cases, the employee is generally entitled to severance and other benefits.

According to the Labor Law, dismissal of an employee proceeds only if the following occurs: intentional material damage caused to work instruments, disclosure of industrial secrets,

negligent acts that may affect industrial security and hygiene, unjustified absence for more than six days, failure to comply with work agreement, and theft or robbery by the employee.

If dismissal is for a reason not contemplated by the Labor Law, the employee may ask to be reinstated in the workplace by the labor authorities or for payment of corresponding social benefits. Upon dismissal or resignation, the employer and employee must file a form (finiquito) before the Bolivian labor authorities.

### **Termination on Notice**

Indefinite employment contracts require a 30-day notice of termination by the employee and a 90-day notice of termination by the employer. Temporary employment contracts and employment contracts for a specific task or service require a one-week termination notice after one month of work, 15-day termination notice after three months of work, and 30-day termination notice after one year of work.

### **Severance Payments**

If the duration of a labor agreement has been left open, upon an unjustified dismissal accepted by the employee, the employee may be entitled to an indemnity for lack of prior notice (three months' severance payment) and an indemnity for length of service. An indemnity for lack of prior notice applies only to those workers who have been working for more than three months. The equivalent of a three-month salary is given as an indemnity for lack of prior notice. An indemnity for length of service applies to those who have been working for more than three months. The equivalent of one month's salary for every year worked is given.

### **Antitrust and Competition Issues**

There is no specific Bolivian set of statutes with regard to competition law. Provisions included in the Bolivian Constitution, Commerce Code, Criminal Code, Law 1600, and resolutions that refer to unfair trade apply when resolving competition issues.

Article 314 of the Bolivian Constitution prohibits private monopolies and oligopolies and all forms of associations that aim for total control and exclusivity in the production and commercialization of goods and services.

Under Bolivian law, certain industries, such as telecommunications, banking, insurance, transportation, electricity, and hydrocarbons, are regulated by a specific set of regulatory statutes known as Law 1600, aimed to regulate competition issues. Title V of Law 1600 applies when resolving competition issues of regulated industries.

Article 68 of the Commerce Code provides as a general rule that the use of trademarks, signs, labels, and drawings that may confuse the public with regard to the quality, origin, or quantity of the goods offered or sold may constitute a crime sanctioned by the Criminal Code. According to article 236 of the Criminal Code, sanctions may include imprisonment of six months to three years.

### **Environmental Issues**

Law 1333 (the Environmental Law) of April 27, 1992, was enacted in order to achieve the protection and preservation of the environment. Activities are considered

likely to degrade the environment when they exceed the permissible limits to the following:

- those who pollute the air, water in all its states, soil, and subsoil
- producing pollutants and climatic changes in the hydrological conditions, soil, or geomorphology
- altering the cultural heritage and landscape protected by law
- the direct or indirect actions that may produce environmental deterioration temporarily or permanently, focusing on the health of the population

According to the Environmental Law, companies involved in activities that may generate an environmental liability must have an environmental impact evaluation (EIE). The EIE consists of a group of administrative procedures, studies, and technical systems that appraise the possible adverse environmental effects resulting from the execution of a determined work, activity, or project.

The works, projects, or activities that, due to their characteristics, may require an EIE must be filed before the competent environmental authorities who, after their approval, shall grant the environmental impact declaration (EID). The EID issued by competent environmental authorities includes studies, technical recommendations, regulations, and limits within which the works can be developed. The EID is valid environmental license. The validity of the EID is 10 years, except in the mining sector, which is indefinite. During the term of the EID, environmental monitoring reports should be submitted to determine who is complying with the implementation plan and environmental monitoring passed through the EID.

The Environmental Law has the following regulations:

- general environmental management
- prevention and environmental control
- responsibility for air pollution
- responsibility for water pollution
- hazardous substances activities
- solid waste management
- hydrocarbon sector
- mining activities
- industrial manufacturing sector

A breach of the Environmental Law and its dispositions will be considered an administrative infraction. In some cases, the mentioned breach may constitute a crime punishable by law.

### **Consumer Protection and Product Liability**

Product liability is regulated by the Bolivian Civil Code. The Civil Code's chapter entitled "Illicit Acts" specifically deals with product liability. Illicit acts are referred

to as extracontractual responsibilities. Article 984 of the Civil Code provides that a person shall be held liable for any willful or negligent act that causes damage. Accordingly, product liability is based on intent and negligence.

According to article 999 of the Civil Code, joint liability shall apply if more than one person is responsible. If one person has indemnified the total amount of damages, that person may thereafter recover from the other wrongdoers. If it is not possible to determine the amount of damages owed by each wrongdoer, the total amount of damages will be divided equally.

Any product that threatens health or life of individuals must be recalled from the market. If damage has been caused as a result of failure to recall a certain product, the affected party may file suit for damages incurred.

The burden of proof lies with the victim who has suffered damages as a result of a willful or negligent act. The existence of causation between a person's acts and the damage caused is necessary for responsibility to arise.

With regard to illicit acts as they would apply to product liability, the following defenses are available: force majeure or acts of God. Compliance with regulatory or statutory requirements may also help prove that no negligence was involved.

Under Bolivian law, damages include both the actual (*damnum emergens*) and future (*lucrum cesans*) loss, detriment, or injury the plaintiff's person, property, or rights suffer. Moreover, damages under Bolivian law must be direct and foreseeable. Accordingly, Bolivian law does not contemplate damages that are punitive, indirect, incidental, or consequential.

Law 453 (the General Law) on the rights of users and consumers, dated December 4, 2013, regulates and determines user and consumer rights, the competent authority to resolve consumer conflicts, and the proceedings pursuant to consumer or user complaints. The General Law is enforceable in the entire Bolivian territory and is applicable to every natural, corporate, private, and public person or entity that performs commercial, importation, and industrial activities destined to consumers and users in Bolivian territory. Any natural or corporate person who acquires or uses services, products, or goods, movable or non-movable, in the condition of final recipient is considered a user or consumer.

The following are some of the most important rights granted by the General Law to users and consumers:

- to have access to truthful, reliable, and timely information regarding price, conditions, and characteristics about the offered products and services
- to obtain instruction regarding optimal and responsible use of the product and/or service
- to receive and/or acquire the products and/or services in the conditions, deadlines, form, and any other circumstances in which the product and/or service has been offered, agreed upon, or advertised
- to return a product and obtain its reparation, or the restitution of the infringed right, in a timely fashion

### **Land Use and Real Estate**

For many reasons—such as a healthy and growing economy, a steady increase in real estate prices, and extensive fertile land—Bolivia can be considered an attractive jurisdiction for foreign investors wishing to operate in the real estate sector. The Bolivian government and the

banking sector have implemented strong financial programs to support medium- and small-scale agricultural projects. However, due to the existing legal uncertainty, lack of regulation, and excessive bureaucracy - particularly regarding landownership rights - many new investments could be considered as possibly high yield but also high risk.

The Bolivian Constitution provides for a special agricultural regime and guarantees individual and collective private property, subject to the fulfillment of an economic and social purpose.

The law limits private properties to 5,000 hectares. Foreign citizens may not acquire land owned by the Bolivian State; thus, they may enter into exploitation joint venture agreements with the Bolivian State or acquire land from private owners.

Bolivia's Constitution recognizes alternative and communitarian modes of production. Several laws have been enacted in this regard, namely:

- Law on Regulation and Promotion of Agricultural and Non-Timber Ecological Forest Production, dated November 21, 2006
- Law on Indigenous Peasant Economic Organizations, and Community Economic Organizations, dated January 26, 2013
- Law on the Agricultural Productive Revolution, dated June 26, 2011
- General Law on the Mother Earth and Integral Development to Live Well, dated October 15, 2012
- Law on the Rights of Mother Earth, dated December 21, 2010

## **Intellectual Property<sup>x</sup>**

### **Patents**

According to Decision 486 of the Andean Pact, the first application for an invention or utility model patent that is validly filed in another member country or with a national, regional, or international authority to which the member country is linked by a treaty establishing an analogous right of priority to that established in this decision shall confer on the applicant or the applicant's assignee the right of priority in filing for a patent or registration on the same subject matter in the member country. The scope and effects of the right of priority shall be those provided in the Paris Convention for the Protection of Industrial Property.

The right of priority may be based on a previous application filed with the competent national office in the same member country, provided that a previous right of priority was not claimed in that application. In that case, filing a subsequent application claiming priority shall mean abandoning the previous application in respect of the subject matter that is common between the two.

In order to qualify for that right, an application claiming priority shall be filed within the following unextendable periods to be counted from the filing date of the application whose priority is claimed:

- 12 months for patents on inventions and utility models

- under Bolivian law, for an invention to be patentable, it must be new, involve an inventive step; and be capable of industrial application

The patent must not be specifically excluded from protection.

Annual fees prescribed by the Bolivian Patent Office shall be paid in advance in order to keep a patent in force or to maintain a pending patent application, as the case may be. The deadline for payment of each annual fee shall be the last day

of the month of presentation of the invoice. Two or more annual fees may be paid in advance.

Annual fees shall be paid within a grace period of six months after the starting date of the corresponding annual period, together with the prescribed surcharge. The patent or pending application shall remain in full force during the grace period. Failure to pay an annual fee as stipulated in this article shall result in the legal lapsing of the patent or the patent application.

The owner has the right to use a patented invention and prevent unauthorized third-party use.<sup>12</sup> In order for a patent to be protected, it must be registered with the Bolivian Patent Office.

The scope of the protection conferred by a patent shall be determined by the wording of the claims. The description and drawings, or the deposit of biological material where applicable, shall be used for the interpretation of the claims. A patent shall confer on its owner the right to prevent third parties not having the owner's consent from the following acts:

If the subject matter of a patent is a product:

- making the product
- offering for sale, selling, or using the product or importing it for these purposes

If the subject matter of a patent is a process:

- using the process
- carrying out any of the acts that are specified with respect to a product (mentioned above) obtained directly by that process

Patent owners can enforce their rights through an action for revindication. An action for revindication means that a patent owner can claim affected rights from the competent national authority and request the following: (i) the transfer of the applications being processed or the rights being granted and (ii) recognition as co-applicant or co-owner of those rights when patents or registration of industrial designs have been applied for or obtained by persons with no right to those patents or registrations.

Compensation for damages can be requested in the same claim, if the domestic legislation of the member country permits this.<sup>13</sup> Patent owners can also enforce their rights through Bolivian criminal courts.<sup>14</sup>

Patents under Bolivian law are protected for 20 years, subject to the payment of renewal fees. An annual maintenance fee must also be paid.

### **Trademarks**

Under Bolivian law a trademark must be capable of graphic representation and of distinguishing the goods or services of one undertaking from those of another undertaking. The owner of a registered trademark has the exclusive right to use the

trademark and prevent all unauthorized third parties from doing any of the following with the trademark: using, removing, and manufacturing.<sup>15</sup>

Trademarks are protected under Bolivian law provided they are registered with the Bolivian Trade Mark Registry. Unregistered trademarks can be protected by means of an action for passing off, but the limitations of this action make registration advisable.

Trademarks are enforced under Bolivian law through an action before the competent authority.<sup>16</sup> Trademark owners can also enforce their rights by article 362 of the Bolivian Penal Code.

Owners of a right protected by virtue of Decision 486 may bring action with the Bolivian Trademark Office against any persons infringing upon their right and also against any persons performing acts that are extremely likely to result in the infringement of that right. The Bolivian Trademark Office may, ex officio, initiate the proceedings for infringement stipulated in Bolivian legislation. In case of the co-ownership of a right, any one of the co-owners may bring action for infringement without need for consent from the other parties, unless there is an agreement to the contrary among the co-owners.

Trademarks under Bolivian law are protected for an initial period of 10 years. That period is renewable indefinitely for 10-year periods.

### **Registered Designs**

Under Bolivian law, a registered design must relate to the appearance of all or part of a product resulting from certain features of the product or its ornamentation. The design must be new and have individual character.

The owner of a registered design has the right to use and prevent unauthorized third parties from using, manufacturing, importing, offering for sale, marketing, or making commercial use of products that incorporate or reproduce the industrial design.<sup>17</sup>

Bolivian law protects designs through their registration with the Patent Office. If the design is already registered, a priority certificate must be enclosed in the application for registration. Protection lasts for an initial period of 10 years and is renewable at 10-year intervals.

### **Unregistered Designs**

Unregistered designs must be original and relate to the shape or configuration of an article. The owner has the right to use and prevent unauthorized third parties from using, manufacturing, importing, offering for sale, marketing, or making commercial use of the design.<sup>18</sup>

Unregistered designs must be registered with the Patent Office. Unregistered designs are protected for a maximum of 10 years, subject to renewal at 10-year intervals.

### **Copyright**

Under Bolivian law, a copyright subsists in original works of literature (including computer software), drama, music, and art, as well as sound recordings, films, broadcasts, cable programs, and the typographical arrangement of published works. The owner of a copyright can oppose any modification of his or her registered work.

A copyright is protected by a resolution issued by the Bolivian Copyright Registry. Protection of a copyright lasts for the life of the author plus 50 years.

### **Confidential Information**

Information that is confidential in nature, and that was initially communicated in circumstances importing an obligation of confidence, can be protected. The protection and enforcement of

this right lasts as long as the information remains confidential and there is a legitimate interest that requires protection.

There are no formalities required for protection of industrial secrets. Employees or managers are prohibited from revealing trade secrets to third parties, and Decision 486 grants express protection to trade secrets. Also, articles 257 and 267 to 269 prohibit disloyal competition.

Article 130 of the Bolivian Constitution further establishes the Privacy Protection Action, an action that may be filed to obtain the removal or correction of the data recorded by any physical, electronic, magnetic, or electronic medium; public or private data; archives or banks or affecting the fundamental right to personal or family privacy, or own image, honor and reputation. This same right to bring the action is stated in Financial Services Law 393, in article 477, which reads the same as article 130 of the constitution.

### **Customs**

The customs brokerage process in Bolivia starts with a commercial invoice and is composed of the following steps: transport of goods to Bolivia (Port of Iquique or Arica), verification of merchandise, hiring of a customs clearance agent, entry of merchandise into customs premises, and validation of documents and merchandise.

A broker/customs clearance agent interacts with the public and private sectors, ensuring that the Bolivian State receives taxes for the import of goods and the importer pays the correct amount of taxes. The broker prepares the paperwork required to remove the merchandise from customs facilities.

Capital goods (that is, raw materials used to produce finished products) are subject to the following import taxes:

- 13 percent VAT
- 3 percent transactions tax

- 0.5 percent warehouse fee
- 1.5 custom house agent's fee

Imports of noncapital goods are subject to the above taxes and a 10 percent import duty.

### **Internet Regulations/E-commerce**

On August 8, 2011, Law 164 (the Telecommunications Law) was enacted and serves the purpose of establishing the new regimen on telecommunications, information technology, communications, postal services, and its regulation system.

Under article 78 of the law, the following are considered legally binding and may be used for evidence purposes in court:

- individuals or legal entities that perform legal acts and/or carry out legal transactions that are reflected in a digital document, which is approved by the parties by using a digital signature and delivered through electronic means
- electronic messages and data
- digital signature

This article bars acts related to family law, that require the physical presence of either party, that require the physical document, and that are agreed by the parties.

With regard to e-commerce, the offer and demand of goods through digital mediums must be handled in a secure technical environment and in compliance with the Commerce Code. Electronic contracts or commercial transactions entered into through digital documents are enforceable between the parties and in accordance to the provisions of the Telecommunications Law.

The legal valuation of a digital document that lacks a digital signature is admissible as evidence or circumstantial evidence. Finally, concerning e-mail, a difference is made between a personal e-mail and a work-related e-mail. Personal e-mails have the same legal treatment as regular post mail regarding privacy issues pursuant to the constitution. Privacy protection includes its creation, delivery, reception, and archive.

### **Secured Transactions**

The Civil Code regulates secured transactions in which the lender acquires a security interest in collateral owned by the borrower and is entitled to foreclose on or repossess the collateral in the event of the borrower's default. Specifically, articles 1360 to 1396 and 1401 to 1408 of the Bolivian Civil Code regulate pledges and mortgages, respectively.

### **Securities Laws Issues**

The Bolivian Commerce Code in general regulates securities in Bolivia. The securities exchange market, however, is not yet fully developed. Currently, only stocks and bonds are traded on the Bolivian Stock Exchange (BSE).

The Financial System Supervisory Authority regulates and supervises the Bolivian securities market. Its role as regulator is set out in Law 393 (the Financial Services Law).

The BSE is the only stock exchange operating in Bolivia. According to the Securities Market Law, the BSE may establish its own internal regulations that govern its activities as well as the activities of its members that include brokerage houses and its shareholders. The BSE's main

functions include registering securities, providing trading facilities to its members, providing information about securities, and supervising brokerage houses.

### **Government Procurement**

Government expenditure in Bolivia is high due to extensive purchases of machinery and other goods and services. Products produced in Bolivia are given preference in government purchases. Priority in government purchases and simpler prerequisites are also granted to small and micro-producers.

Importers of foreign goods can participate in government procurements only when locally manufactured products and service providers are unavailable. In such cases, the government may call for an international tender.

Foreign companies that want to submit a tender must do so by way of a joint venture with a local company. Government procurement is regulated by Supreme Decree 181, dated June 28, 2009. Arbitration clauses are not allowed.

### **Liabilities of Companies Directors and Officers.**

According to article 321 of the Bolivian Commerce Code, the directors of a company have joint and unlimited liability before the company, its shareholders, and third persons in the following cases: failure to carry out functions; noncompliance with laws, bylaws, statutes, regulations, or resolutions; damages that are the result of negligence, intentional negligence, or fraud; and the unlawful distributions of profits.

A claim against a director may proceed only with the authorization of the shareholders, who shall name and appoint the plaintiff. Likewise, a claim against an officer requires the authorization of the board of directors. The statute of limitations to bring a claim against a board member or officer is three years.

### **Litigation/Dispute Resolution Systems**

#### **Law on Conciliation and Arbitration No. 708**

On June 25, 2015, the Law on Conciliation and Arbitration No. 708 (the "Law 708") was promulgated. Main aspects of Law 708 are the following:

- Regulates conciliation and arbitration as alternative dispute resolution mechanisms.
- In accordance with international arbitration conventions, recognizes the validity of arbitration agreements that provide for foreign law and arbitration proceedings among private parties. Such arbitration agreements are referred to as "international commercial arbitration clauses" and are valid so long as no grounds exist at law for the revocation of the general agreement.
- Does not apply to claims related to natural resources, titles granted on fiscal reserves, matters of public interest and state administration, taxes and royalties.
- As a general rule all conciliation and arbitration proceedings against the Bolivian State shall be carried out in Bolivia, and on the basis of Law 708.
- Only foreign entities or companies that do not have a domicile in Bolivia may initiate conciliation and arbitration proceedings against the State based on the respective

contract in place. Said conciliation and arbitration proceedings must be in connection with matters relating to the purchase of goods, works, or services contracted abroad.

- Replaces Law 1770 of 1997 and seeks to generate the institutional development of conciliation and arbitration. Accordingly the Bolivian State through the Ministry of Justice seeks to have more presence on the different private or public centers of conciliation and arbitration of the country, by authorizing their operation and approving there regulations.

### **Enforcement and Foreign Judgments and Awards**

With regard to the enforcement of foreign judgments, article 553 of the Bolivian Civil Procedure Code provides that if there is a treaty between Bolivia and the country where the final judgment was issued, the judgment will be enforced based on such treaty. In the absence of a treaty, article 553 provides that the final judgment of the foreign court may be enforced in Bolivia according to the principle of reciprocity. This term is used to denote the relationship existing between two states in which each state gives the citizens of the other state the same privileges. Where such reciprocity exists, the judgment of the foreign court will be enforceable in the same way as a Bolivian judgment would be in the foreign state.

In the absence of reciprocity, any foreign judgment must comply with the requirements of article 555 of the Bolivian Civil Procedure Code in order to be enforceable in Bolivia. The requirements are as follows: (i) the action that resulted in such judgment was an in personam action or an in rem action relating to a movable good transferred to Bolivia during or after action was initiated in the relevant foreign jurisdiction, (ii) any defendant in the action that resulted in such judgment having a residence in Bolivia has been duly served to appear in court in Bolivia, (iii) the obligation to which such judgment relates is valid under Bolivian law, (iv) such judgment complies with all relevant requirements of the laws of the jurisdiction in which it was rendered so as to be considered authentic under Bolivian law, (v) such judgment has the effect of res judicata, in consistency with the laws of the country where it was rendered, (vi) such judgment would not violate Bolivian law or public policy; and (vii) such judgment would not be incompatible with a prior decision rendered in Bolivia.

The supreme court may take eight or more months until it resolves to accept the foreign judgment. Once such recognition is rendered, the judgment must be delivered to a lower court for its enforcement. This may take at least three additional months.

#### **CONTRACTS AND DOCUMENTS—FORMS AND ENFORCEABILITY**

According to articles 454 and 519 of the Bolivian Civil Code, contracts among parties are mandatory, and the parties are free to determine the content of their agreements. Contractual liberty, however, is subordinated to the limits imposed by law, and the realization of interests worthy of judicial protection.

#### **ENDING/RESTRUCTURING A BUSINESS PRESENCE**

According to the Bolivian Commerce Code, companies may be dissolved and liquidated prior to their expiration date. The partners or shareholders of a company may dissolve and liquidate a company provided an agreement exists. Mandatory dissolution and liquidation exists and is regulated by the Commerce Code if a company's capital is reduced by more than 50 percent or if the company is declared bankrupt.

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<sup>i</sup> <http://countrystudies.us/bolivia/26.htm>

<sup>ii</sup> Ismael Montes de Oca, *Geografía y Clima de Bolivia*, 24 Bull. Inst. Fr. de Estudios Andinos 357 (1995), available at <http://www.ifeanet.org/publicaciones/boletines/24%283%29/357.pdf>

<sup>iii</sup> *2012 Bolivian Census*, Wikipedia, [http://en.wikipedia.org/wiki/2012\\_Bolivian\\_census](http://en.wikipedia.org/wiki/2012_Bolivian_census) (last updated Sept. 23, 2014).

<sup>iv</sup> *Republic of Bolivia*, Ctr. Int'l Earth Sci. Info. Netw., <http://www.ciesin.org/decentralization/English/CaseStudies/Bolivia.html> (last visited Feb. 23, 2015).

<sup>v</sup> Bk. 1, tit. III, chs. 1, 4, 5, Commerce Code (Decree No. 14,379).

<sup>vi</sup> Bk. 3, tit. VI, ch. 4, Commerce Code (Decree No. 14,379).

<sup>vii</sup> Supreme Decree 1923

<sup>viii</sup> Law No. 843, May 28, 1986; Law No. 1606, December 22, 1994.

<sup>ix</sup> General Labor Law, December 8, 1942.

<sup>x</sup> Decision 486, Andean Pact; Bk. 2, tit. I, chs. 3–7, Commerce Code.