

Bolivia

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Times of transition

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After five years of social and political crisis, following the so-called war for water of 2000 (when after social protest a private concession for water distribution in the city of Cochabamba was expropriated), general elections held in December 2005 brought to power a nationalistic socialist movement headed by President Evo Morales, leader of the strong coca growers' unions and a native of the Aymara indigenous peoples. Inaugurated in January 2006, the administration announced its intentions to revert the neo-liberal model of economy. This model included the privatisation of public companies and services, a policy implemented after 1985 when the administration, and ensuing administrations in the nineties, promoted the liberalisation of the economy.

Energy sector reforms

After political and social protest in 2005, the Bolivian Congress passed a new Law of Hydrocarbons reverting prior legislation under which Bolivia developed its natural gas industry, particularly for exports, by attracting large foreign investments. Under the new law private companies were deprived of key contractual rights, mainly those giving them title to production and trading rights. The law also introduced substantial changes in the taxation structure, increasing the government stake.

At the time, foreign oil companies sent the government notices of controversies under applicable Bilateral Investment Treaties (BITs) which Bolivia had signed since the eighties (20 in total). They announced disagreement with the new legislation and probable claims under international arbitration at the International Centre for Settlement of Investment Disputes (Icsid). Bolivia had

adhered to the Icsid Washington Convention in 1994. Those notifications opened a difficult period of negotiations and failed attempts by various previous administrations aimed at introducing substitute contracts.

In May 2006 President Morales passed a decree of nationalization, granting oil companies an additional six months to sign new contracts. It also created an additional interim participation for the state of 32% on production. Forced by the new political scenario, companies signed new substitute contracts in October 2006, after some political controversy over their congressional approval. During 2007 the policy acquired new speed by the signing of an additional natural gas exports agreement with Argentina and new agreements in respect of exports to Brazil. Companies declared new contracts were satisfactory and so the nationalistic policy was considered a political success for the administration. Required future investments, however, remain uncertain. The state oil company, YPFB, is yet to play an important role, particularly in connection with new industrialisation ventures.

Economic planning in other sectors

During 2006 the administration announced its economic plan for the years to come with a clear nationalistic tendency. It includes forms of reversion of privatised companies and, generally, a greater role and intervention of the state in all areas of economic activity and reorganisation of land tenure and forestry. Recovery of state participation in the most important privatised state companies is one objective. This has already succeeded in the hydrocarbons sector when, as part of the new policy, the state oil company recovered title over shares of three capitalised (privatised) companies. Two private administrators of pension funds held and managed the companies through a fund created to benefit a large portion of the population. As a result of this recovery, the state will have to finance short-

falls for payment of the benefit, estimated at around \$50 million for 2007.

2007 witnessed negotiations to similarly revert title of the shares in the until then largest telecommunications operator, where Telecom from Italy had acquired a 50% stake and control of administration. Other capitalised companies to follow reversion were in the electricity and rail transportation sectors. The failed capitalised Bolivian airline was an exception to the policy.

Negotiations had also concluded in 2006 for another controversial reversion of a water concession for El Alto and La Paz. The 2000 war for water controversy, the first Bolivian case before Icsid, had reached an arbitration tribunal under the Bolivia-Netherlands BIT. The tribunal rejected all pre-judgment jurisdictional defences filed by the Bolivian state. The controversy was finally settled. A second Bolivian Icsid case involves a controversy under the BIT with Chile over the reversion of mining concessions of a Bolivian subsidiary of a Chilean company, also after social and political pressure in 2005.

A year of mining

If 2006 was the year of hydrocarbons for the Morales administration, 2007 has been the year of mining. Under its economic plan the intention is to recover the role of the state mining company in all areas of production. Conflicts have arisen between workers of the private sector and of the state company and smaller producers organised in cooperatives, settled in different forms with the state company acquiring a greater role with no small economic challenges.

In February 2007 the government decreed the reversion (an expropriation without compensation) of a tin smelter which had been privatised in 2002, belonging to a Bolivian subsidiary of Glencore from Switzerland. This triggered a complaint by the Swiss government, a controversy under the Swiss BIT and negotiations with the government (an Icsid

arbitration procedure can be opened after a year if negotiations fail). This is a case with high political implications because the smelter had belonged to former President Sanchez de Lozada, a key promoter of the liberalisation policies of the nineties, overthrown from government in October 2003 after another political and social crisis (this time the gas war), and a trial against whom for state responsibility is in process before the Supreme Court of Justice.

In the meantime discussions on a new mining legislation continued, the basic intent being to increase taxation, foster policies of industrialisation and give the state mining company the greater role announced by the economic plan. Private investment, whether national or foreign, is still to play an important role. The mining scenario has been obscured by a ruling of the Constitutional Court which in 2006 declared certain articles of the Mining Code contrary to the constitution, prospectively affecting property rights.

A constitutional challenge

The changing scenario includes the approval of a new political constitution. A Constitutional Assembly, in place since 2006, faces the complex challenge of approving it within a timeframe which has proven to be insufficient, given difficult controversies over a number of issues. These issues include the nature of the Bolivian state itself, autonomous entities, title over natural resources, indigenous peoples' rights and many others. The new constitution is expected to be enacted in 2008, triggering new general electoral processes.

While the mood for economic changes is very strong, mainly in the productive and public service structures and on land tenure, the new administration has been extremely careful in maintaining the fiscal, monetary, foreign exchange and financial/banking policies originated in the reforms of 1985, which has given Bolivia important stability in these areas over the years. Other than giving state entities a new role in the microfinance market, with the intent of reducing interest rates and fuelling funds for popular housing projects, stability in the rules of the financial sector remain. Strong activity is seen in microfinance, with numerous credit facilities from foreign financial entities. Bolivia has found additional external debt relief from the international community.

2006 – and 2007 is to follow, though less spectacularly – proved to be a year of positive economic results: record value of exports, highest historical foreign reserves, fiscal surplus for the first time in many years, reduction of external debt (though with increases in internal debt), positive trade balance, low

inflation, and revaluation of the Bolivian currency against the US dollar. The 2008 internal political scenario will still be a complex one. For foreign investment the country continues to be considered politically risky, despite opportunities opened by good performance, particularly externally, and favourable international market conditions.

Financial and corporate

Recommended firms

Tier 1

Bufete Aguirre
Guevara & Gutiérrez

Tier 2

CR&F Rojas
Estudio Jurídico Gerke
Moreno Baldivieso
Quintanilla Soria & Nishizawa

Tier 3

Criales Urcullo & Antezana
Indacochea & Asociados

Bolivia may be poor, but it sits on a fortune of natural resources. A combination of natural gas and industrial metals - including tin, tungsten and zinc - await an influx of investment. With commodities prices at historic highs on the international markets, Bolivia should be experiencing fantastic growth.

The policies of president Evo Morales, however, are causing uncertainty among foreign investors. Since coming into power in 2006, Morales has aligned Bolivia with the socialist policies of Venezuela and Cuba. He has also started a programme to nationalise the country's production of hydrocarbons. As recently as May 2008, Morales ordered the takeover of the country's main natural-gas pipeline operator.

Bolivia has also been having trouble honouring its export obligations with neighbouring countries like Brazil and Argentina. Some in the market attribute this to the lack of investment from foreign oil companies to spur production.

But it is not all bad news. Many insiders believe that foreign investments in energy exploration and production will soon return. Multinational oil companies are unlikely to resist tapping into Bolivia's vast resources as the global market tightens, especially if prices stay high. After all, emerging global economies like China and India are calling for increased production to satiate their ever-increasing energy demands.

Bolivian lawyers have therefore been forced to quickly adapt to a new legal environment. They are busy negotiating with the government on behalf of foreign clients that are forced to transfer control of their companies to the state. Foreign companies are also turning to external counsel to help sell their Bolivian assets in an attempt to withdraw capital from the country.

One partner describes a sense of schizophrenia from an inability to reconcile the socialist ideology of the government with the realities needed to keep private investors from abandoning the country. This inconsistency is made worse by clumsy or nebulous regulations in the energy industry and other regulated sectors.

The good news for Bolivia's law firms is that there is plenty of work available, as clients demand lawyers that can guide them through this confused market.

Bufete Aguirre

One client of Bufete Aguirre says: "We were expecting to encounter a lot of hiccups in our Bolivian dealings but Bufete Aguirre is always prepared with a solution to any problem."

The firm has earned a reputation for its ability to deal with governmental agencies in a satisfactory manner, where so much of the legal wrangling involves negotiations with the state. For example, it aided the Russian national energy company Gazprom in negotiations with YPFB, Bolivia's state-run petrol company. The contract in place between the two energy companies will facilitate studies for the exploration and development of the Sunchal natural-gas field in southern Bolivia.

Gazprom is well-positioned to help Bolivia meet its international obligations, if these explorations should prove successful. The company's initial investment is for \$250,000 but collateral investments of more than \$2 billion are likely over the coming years.

Aguirre also has experience in the Bolivian mining industry. In 2008, the firm advised Research Capital Corporation Canada on a private placement with Atlas Precious Metals to finance Atlas's takeover of a silver smelter and refinery complex. Through a joint venture with state-run mining company Coimbol, Atlas will own 65% of the plant. The timing of this deal was crucial, as the government has been moving quickly to nationalise the mining sector.

Leading lawyers

Fernando Aguirre
Ignacio Aguirre

Guevara & Gutiérrez

Guevara & Gutiérrez is one of the two most prestigious law firms in Bolivia. Rivals note that Bufete Aguirre is still a family-run firm, while Guevara & Gutiérrez is a more corporate enterprise, due in part to the latter's larger size.

In September 2007 Guevara & Gutiérrez acted as Bolivian counsel to GP Investments in the Brazilian private-equity fund's largest investment to date, the \$1 billion purchase of the Latin American land drilling business of Pride International. GP Investments now has assets in eight Latin American countries. The firm worked with an international team of lawyers including US firm Cravath Swaine & Moore, and Creel y García-Cuéllar from Mexico.

The firm also has strong contacts in the banking community. Four of the five original members of the firm were members of the legal department of Bolivia's central bank.

On the financial side, the firm's clients include Bolivian banks such as Banco Santa Cruz and Banco Unión, as well as international banks and financial entities including Citibank, Franklin Templeton mutual fund, and JP Morgan Chase.

Leading lawyers

Ramiro Guevara
Jorge Inchauste

Moreno Baldivieso

Peers still praise Moreno Baldivieso mainly for its strength in IP work, but the firm has been steadily expanding its financial and corporate practice.

Moreno Baldivieso represented the IMF and the Netherlands Development Finance Company in structuring a \$40 million loan agreement with Telecel, one of Bolivia's largest telecoms providers. Ramiro Moreno, Andres Moreno and Miguel Angel Jemio led the team from Moreno Baldivieso while UK firm Clifford Chance acted as co-counsel on the deal, which was closed in January 2008.

The firm has also had some corporate restructuring work in the past year. A team led by the Morenos and Jemio advised Bolivision on the restructuring of the national television network's corporate assets. The firm is helping to restructure the network's companies in La Paz, Santa Cruz, and Cochabamba, valued at a combined \$29 million.

Leading lawyers

Miguel Angel Jemio Mendoza
Ramiro Moreno Baldivieso
Andés Moreno Gutiérrez