

# Bolivia

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## A constitutional transition

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As a result of a constitutional assembly and further revision by Congress, the text of a new constitution was submitted to the Bolivian population for approval. Thus, by means of a nationwide referendum dated January 25 2009, 61.43% of the electorate approved the New Bolivian Constitution.

This constitutional process had its legal origin in the Constitutional Assembly Law dated March 6 2006 and concluded with the publication of the New Bolivian Constitution on February 7 2009. At present, Bolivia is going through a constitutional transition period focused on the implementation of the new provisions and structural modifications related to the current concept of the state, fundamental rights and the state's dominant role in the Bolivian economy.

The current constitution, as opposed to the former text enacted in 1967, is more extensive and complex: it is comprised of a preface, 411 articles divided into five parts each, 10 transient provisions, a repeal provision and a final provision.

The first part of the constitution refers, at length, to the fundamental basis of the state and the rights, duties and legal guarantees thereof, with an enormous, elaborate catalogue of rights that are now considered fundamental.

The second part deals with the functional structure and organisation of the state in relation to the attributes of all agencies and entities that are part of the state, starting with the legislative branch, going on to the faculties and attributions of the executive and the judicial branches, the plurinational constitutional tribunal and the new electoral branch, which has dropped its status as a simple agency to become one of the public branches.

Furthermore, the abovementioned section refers to matters related to public control and supervision as attributions of the General Comptroller's Office: the defence of citizens to be pursued by the Ombudsman and the defence of the state as the attribution granted to the newly-created State Attorney General.

The third part deals with the territorial organisation of the state, with special emphasis on the departmental, regional, municipal and the highly criticized indigenous and native autonomies.

The fourth part provides for the economic structure and organisation of the state, which is the most analysed and studied part due to the transformation of the economic model and the policies applied by the government. The state has now become a key participant in a centralised, state-oriented model.

The fifth and final part of the constitution relates to the hierarchy of norms and laws, which comprises two articles wherein it is established that all natural persons and legal entities, as well as any and all public agencies, are subject to the constitution. Moreover, it establishes the constitution as the supreme rule and its primacy over any other local or international norm, as well as contemplating the procedure for future constitutional reforms or amendments.

### The economic structure under the new constitution

The fourth part of the constitution lays down the basis of a new economic structure and organisation of the state and comprises 104 articles.

This economic model comprises several different types of economic organisations, which are based on community, state, private, social and co-operative structures. Regarding private enterprise, the constitution establishes the respect and protection to private initiatives and guarantees the freedom of commerce.

Additionally, this part establishes a change from a regulatory system, which was the result of the capitalisation process in the nineties, to a new, much more state-driven system of control and direct participation in the economy. However, the economic activities of the different sectors will still be performed by private companies either directly, in partnership with the state, through agreements or by means of administrative licences and/or authorisations.

The constitution guarantees the full exercise of fundamental rights both for Bolivian and foreign nationals, establishing that Bolivian investment will be prioritised and that all investments are subject to Bolivian jurisdiction, laws and authorities.

Any economic relations with states or companies must be performed within a framework of independence, mutual respect and equality. It also establishes that Bolivia rejects any type of imposition on economic policies.

Regarding financial policies, the constitution establishes precedence to the demand of financial services from micro and small entrepreneurs: it creates a public bank for all operations of the public sector, as well as a financial restructuring fund in the event of bank insolvencies, which will be established based on the contributions made by the private banks and financial institutions themselves. In addition, bank secrecy or confidentiality is contemplated, which can only be lifted in the event of alleged financial crimes or the investigation of fortunes.

Monopolies and oligopolies are prohibited, as well as any agreements between private parties seeking to exclusively control the production or commercialisation of goods or services.

### Abolishment of the regulatory system

In order to implement constitutional modifications, Supreme Decree 29894 of February 7 2009 provides for the abolishment of the regulatory system, which is to be replaced by

state-controlled agencies and authorities created to this effect.

Within the financial regulatory system, the Bank and Financial Entities Superintendence has become the Financial System Supervising Authority, also absorbing all of the attributes formerly granted to the Securities and Insurance Superintendence.

The regulatory attributions related to pensions were transferred to another state authority called the Supervising and Social Controlling Authority of Pensions, and the Companies Superintendence functions have been given to the Ministry of Productive Development and Plural Economy.

The Sectoral Regulatory System and that of Renewable Natural Resources have also been eliminated, and their responsibilities have been passed to the corresponding ministries or new agencies. Likewise, the former Hydrocarbons Superintendence is now the Plurinational Hydrocarbons Agency.

The General Mining Superintendence, along with the regional superintendencies, will now be under the umbrella of the Ministry of Mining, now called the General Direction of Mines, along with its corresponding regional directorates.

Finally, the General Tax Superintendence and the Regional Tax Superintendencies are now the General Tax Authority and the Regional Tax Authorities.

## Financial and corporate

### Recommended firms

#### Tier 1

Bufete Aguirre

#### Tier 2

CR&F Rojas

Estudio Jurídico Gerke

Guevara & Gutiérrez

Moreno Baldivieso

Quintanilla Soria & Nishizawa

#### Tier 3

Criales Urcullo & Antezana

Indacochea & Asociados

Mendieta Romero & Asociados

With the January 2009 passage of a new constitution – Bolivia's 117th in 184 years – President Evo Morales won a crucial referendum on his ambitious social agenda. The new constitution protects key rights of the indigenous majority, calls for the equality of women, takes into consideration the environment and even mentions stem-cell research. Naturally,

there is a clause allowing the president to seek another term in office in December 2009.

While the constitution puts ownership of Bolivia's precious resources in the hands of the local populations, it does little to explain how the rights to these resources will be dispersed, and much legislation is required to create an effective means for agricultural and mining operations to make use of them. Until this takes place, the temptation Bolivia's vast mineral wealth holds to industrial operators will be tempered by the risks involved with the uncertain legal landscape.

This year, financial lawyers will be kept busy transferring existing government concessions over to the new regime and predicting what consequences future legislation will have for their clients. While companies with existing concessions will see little effect on their operations, new contracts will not be made until after the governing laws are put in place. When the market opens, lawyers believe there will be many opportunities for investment and new projects.

The re-nationalisation aims of the Morales regime may effectively keep foreign investors away from Bolivia for some time. The government maintains its control of the oil and gas industry with last May's nationalisation of BP's aviation products and services division (Air BP). And in 2008 the regime turned its attention to the telecoms sector, with a move for Telecom Italia's shares in Entel. The transaction is still deadlocked in arbitration at the time of writing.

In the mining industry, the government may be less eager to disrupt the steady flow of international financing with its nationalising efforts. Along with longstanding mineral projects in tin, zinc, silver and gold, Bolivia contains half the world's known reserves of lithium in the vast salt fields of Salar de Uyuni. But the government is hesitant to exploit this resource, and existing operations already cover current global demands.

Lawyers foresee a venture between private companies and the government that goes beyond the mere extraction of the metal, and will keep the lithium-ion battery production process within the country. Given the potential of this resource, the lithium question may prove to be the crucible in which the new constitution is tested.

### Bufete Aguirre

Over three generations, the Aguirre family has established an international presence while maintaining a traditional family-business structure. As one competitor puts it: "They are well respected, and they have gained that respect rightfully throughout the years." With a client list that spans the country's industries,

Bufete Aguirre has a background in nearly all aspects of Bolivian business, but rivals point to the firm's family-oriented structure as limiting its capabilities.

Even in the ever-shifting Bolivian political landscape, the firm retains a reputation for being able to negotiate with the government, an increasingly important trait for lawyers here. One client was impressed by how the firm was able to cover all the various angles of a complex transaction, including time sensitivities, family sensitivities and multiple language barriers. "It was something that looked like a nightmare," the client says, "[But] it just worked out perfectly with Aguirre in charge".

It is practically a prerequisite for all law firms in Bolivia to have a solid practice in mining and Aguirre took part in the biggest mining deals of 2009. Fernando Aguirre and his son Ignacio represented Japanese company Sumitomo Corporation throughout its incremental acquisition of the San Cristóbal mine – the largest mining operation in Bolivia – from Apex Silver Mines. Last March, Sumitomo acquired the remaining 65% of the American mining company's interests in the operation as part of Apex's Chapter 11 reorganisation.

### Leading lawyers

Fernando Aguirre

Ignacio Aguirre

### CR&F Rojas

As the oldest firm in Bolivia, the Rojas family is now in its fourth generation, with Pablo, Fernando and Diego Rojas operating the firm's offices in La Paz and Santa Cruz. In addition to the family members, the firm also has a well-respected financial lawyer in Carlos Ferreira. As one competitor says, "From my experience with them, Carlos is the lawyer I would consider capable and [who is] definitely leading."

CR&F Rojas is the Bolivian counsel for SABMiller as it focuses increasingly on its core brewing operations. The firm advised the South African brewer in its \$25 million sale of the Bolivian Pepsi bottling operation to Quilmes Industrial, which already handles Pepsi's bottling in Argentina and Uruguay. The deal required the merger of several soft drink operations in Bolivia and Peru into one new company, Bebidas y Aguas Gaseosa Occidente, prior to the sale.

From the firm's base in agriculturally-rich Santa Cruz, Diego Rojas led the team that advised Venezuelan fertiliser company Monomeros Colombo Venezolano's acquisition of soy producer Gravetal for \$57 million. The office also added several lawyers to its local litigation team.

**Leading lawyers**

Carlos Ferriera  
Diego Rojas  
Pablo Rojas

**Moreno Baldivieso**

Long known for its intellectual property practice, Moreno Baldivieso has recently been engaged in an aggressive campaign to establish itself in the commercial transactions market. As a result, in the words of one competitor: "I think it has begun to show fruit. They have gained some interesting clients and you see their name more often."

The firm has represented Pan American Silver Corp throughout its expanding operations in the San Vicente mining project, including an increase of \$20 million in capital to complete its facility that started producing silver and zinc in March of last year. Andrés Moreno led the team that acted as Bolivian counsel to the Canadian silver-mining company for the public offering that netted \$98 million to fund various mining operations.

Moreno Baldivieso also showed prowess in cross-border markets, advising Pactel International on the telecom company's expansion in Ecuador and Peru.

**Leading lawyers**

Ramiro Moreno Baldivieso  
Andrés Moreno Gutierrez

**Quintanilla Soria & Nishizawa**

Quintanilla Soria & Nishizawa enters its 35th year of operation in 2010. Despite being relatively young, the firm has built a leading practice in international corporate and commercial transactions, as well as in mining and energy matters. The firm has been involved in the development of the San Cristóbal mining project and represented Apex Silver Mines in last year's transfer of its interests in the mine to Sumitomo Corporation.

Having incorporated South America's first microfinance bank in 1991, Quintanilla has a long-standing position in one of Bolivia's most dynamic financial markets. Last year Quintanilla was involved in the negotiation of loan agreements with private financial entities on behalf of microfinance provider LocFund totalling \$1.5 million. Other microfinance institutions on Quintanilla's client list include Banco Mercantil Santa Cruz, Banco Bisa and Banco de Crédito.

At the corporate level, Quintanilla represents many international companies in Bolivia, including Coca-Cola, General Electric and Ford Motor Company.

**Leading lawyers**

Santiago Nishizawa Takano  
Eduardo Quintanilla Ybarnegaray

**Criales Urcullo & Antezana**

Partner José Criales worked as a consultant to Bolivia's previous administration in its privatisation process, so, as one competitor puts it, "the current climate may not be the sunniest for Criales". The firm is finding some success regionally through clients in neighbouring countries, engaging clients in the more active markets of Chile and Peru. In August 2008 Criales advised Italian industrial processing company Inprotec Group in negotiating an EPC (design and build) agreement with Chicago Bridge & Iron Company (CB&I) for \$16 million. Under the agreement Inprotec will provide electrical and telecom support for CB&I in its development of a regasification complex in Quintero Bay, Chile.

**Leading lawyers**

José Criales  
Javier Urcullo

**Mendieta Romero & Asociados**

From its start in 2002, Mendieta has opted not to offer litigation services in order to focus on its financial transactions practice. The firm is led by Gonzalo Mendieta Romero, whom one competitor characterises as "one of the promising lawyers of the generation".

This sentiment is echoed by clients, who praise his abilities as a negotiator. As one interviewee says: "He was instrumental in keeping all the parties at the bargaining table." Last year Mendieta advised multilateral lender CAF (Andean Development Corporation) in a \$700,000 loan to Ecofuturo, a Bolivian microfinance company, to fund small and medium-sized businesses in Bolivia.

**Leading lawyers**

Gonzalo Mendieta Romero