

LITHIUM M&A PROJECTS IN ARGENTINA

Not so many years ago, lithium was a niche mineral mainly used to produce glass, ceramics, drugs (Prozac) and lubricants and most part of the global demand was sourced from well-established mines and brine lakes in Chile, Australia, China, and an isolated project in northwestern Catamarca, Argentina.

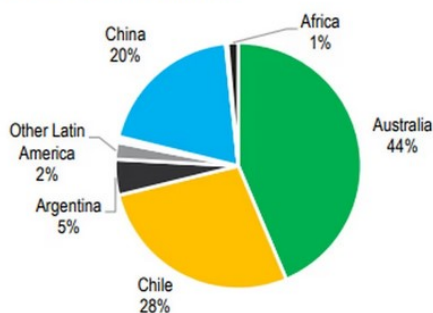
A new scenario

Clean energy transition is driving a significant increase in the global demand for minerals (not only lithium but also cobalt, nickel, copper and other rare earths elements). The recent \$10.6 billion merger between Allkem Ltd. And Livent (that includes the *Salar del Hombre Muerto* lithium projects in the province of Catamarca, Argentina) not only sparked a surge in Australian-listed lithium mining stocks but also triggered the expectation for **increased activity in the global M&A market** involving mining assets (including through the consolidation of relevant industry players to achieve more efficient supply chains).

Nearly 80% of the world's known lithium deposits are found in four countries: Argentina, Bolivia and Chile (the so called "*South American lithium triangle*"), and Australia.

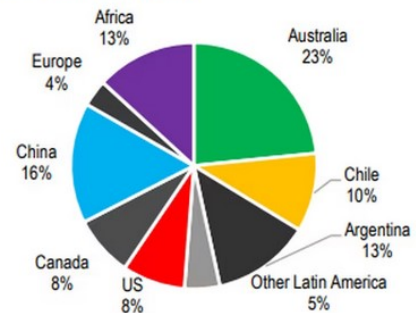
Argentina alone accounts for over 20% of the world's reserves, has the largest lithium project pipeline in the planet, and offers certain competitive advantages from a cost perspective. Argentina's lithium production has increased dramatically, from less than 1% of the global production in 1994 to 5% in 2022. Further, experts believe that Argentina's production will surpass Chile's production by 2026 and represent a **13% of the world market share by 2030 according to JP Morgan.**

Figure 5: Global lithium supply, 2022



Source: J.P. Morgan estimates.

Figure 6: Global lithium supply, 2030



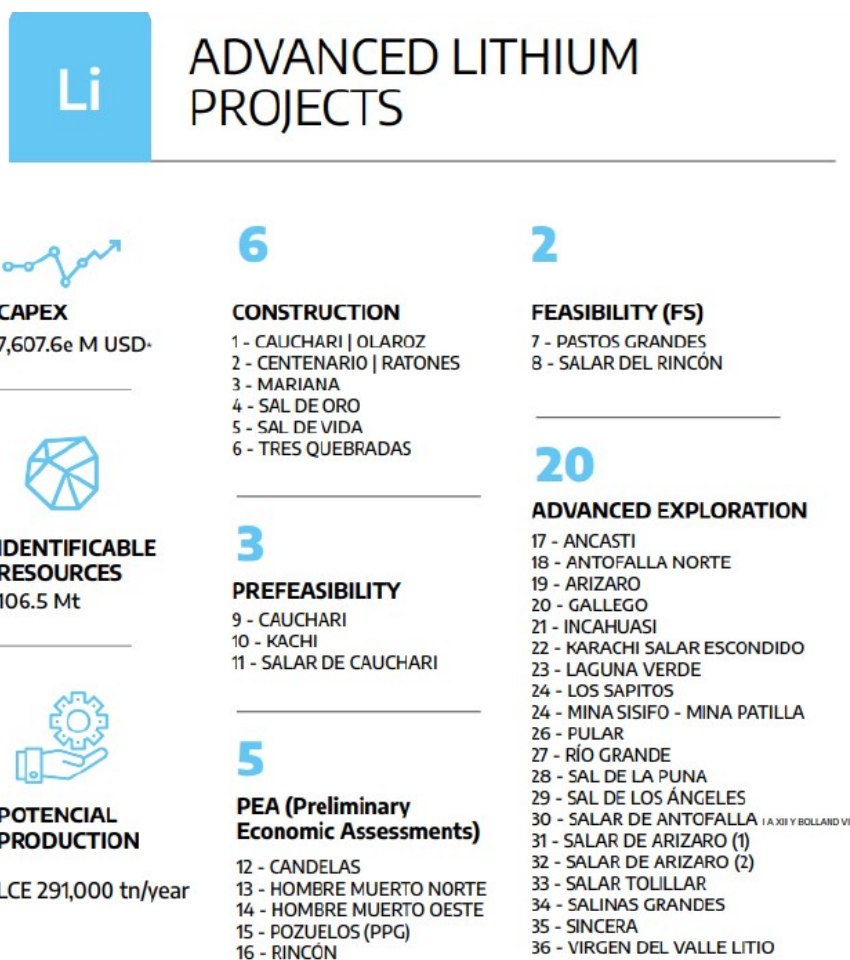
Source: J.P. Morgan estimates.

Lithium investments in Argentina

There are currently world-class international mining companies active in Argentina operating at various points of the resource cycle and many others are actively seeking opportunities in the sector, including through acquisitions or joint ventures.

Unsurprisingly, **the M&A activity in Argentina in (and FDIs of) the last 24 months is largely explained by mining-related deals** such as the Jiangxi Ganfeng Lithium Industry's USD 73.5MM investment in the province of Salta, Canada's Neo Lithium Corp.'s USD 70.1MM plan to expand its lithium production plants in the province of Catamarca, Zijin Mining Group Co. Ltd.'s USD 380MM investment in the province of Catamarca, the Rio Tinto – Rincon Ltd.'s USD 825 million deal, and the USD 962MM acquisition by Gangfeng of a stake in Lithea, among others.

As of March 2023, **Argentina has a pipeline of 38 lithium projects at different stages of development**, distributed between the provinces of Catamarca, Salta, Jujuy and San Juan. Two of the projects are currently in production (47,500 tn) (Fenix (Livent and BMW) and Salar de Olaroz (Orocobre, Toyota and JEMSE)). The status of the other projects is:



Foreign Investors

In Argentina, there are **no restrictions on foreign investments and ownership of companies engaged in the exploration and extraction of mineral resources**. Thus, foreign companies can freely acquire and hold mineral rights in Argentina.

Furthermore, Federal Decree No. 815/1992 establishes a non-discrimination principle regarding the nationality of individuals or entities that own or seek to acquire mineral rights. The non-discrimination principle is also established in Argentina's Mining Policies 2016/2025 issued by the former Ministry of Energy and Mining in 2016.

Key due diligence aspects

As in any M&A, a properly designed and executed due diligence will confirm information provided by the seller to the purchaser and it could have an impact on purchase price and in the allocation of deal risks.

The due diligence must be customized based on the target, industry and jurisdiction(s) involved. From a legal perspective, **the best practices for a due diligence related to a lithium project in Argentina mandate focusing on certain industry-specific topics**, as briefly described below:

- (i) Mining rights. Analysis of the exploration permits and the exploitation concessions: these are one of the basic documents to review during the due diligence to confirm title to the lithium asset(s) and rights in connection thereof. Depending the status of the project, the due diligence may need to cover tasks such as (1) a review of exploration permit ("*permiso de cateo*") issued by the relevant mining regulator and the scope thereof; (2) search for any overlapping mining petitions; (3) confirm exclusive rights, covered minerals, term, etc.; (4) confirm discovery claims and registrations and legal works performed in the area; (5) review/confirm any petition(s) requesting measurement and demarcation of the units of exploitation; (6) check measurement registration and issuance of required public deed (i.e. title to exploitation concession)¹; (7) property land documents; etc.;
- (ii) Off-take agreements, EPC contracts, technology transfer and other material agreements. Review main terms and conditions, including price, parties' rights and obligations, IP rights, change of control provisions, force majeure clauses, term and termination rights, governing law and jurisdiction, etc.;
- (iii) joint ventures and other key agreements with government entities. Confirm if any state-owned company is involved in the project and main terms and conditions in connection thereof;

¹ Once the discoverer's rights are incorporated into public deeds and registered with the Registry of Mines, they provide title to the exploitation concession. This means that exploitation concession titles may be transferred, mortgaged, or subject to usufruct. The mining property is granted in perpetuity.

- (iv) confirm compliance with federal and provincial environmental laws, including the required so called “cumulative impact assessment”, environmental permits, potential remediation obligations, environmental insurance policies, indemnity agreements, issues related to indigenous communities’ rights, etc.
- (v) depending on the location of mine, confirm compliance with local regulations regarding infrastructure trusts, CSR and local content requirements (as some Argentine provinces implemented regulations giving precedence to the hiring and contracting of local workforce, services and materials. For example, in the province of Salta, Provincial Law No. 8,164 requires hiring local work force as a condition to access certain tax benefits);
- (vi) on-site review of local courts, agencies and registries’ mining records (online materials are limited), including site visits to the applicable mining regulator to check the mining files/dockets;
- (vii) registration of the relevant project with the Mining Secretariat to enjoy the tax benefits pursuant to Law No. 24,196 and complementary regulations;
- (viii) FX status of the project and if there are any rights to free use of a certain percentage of the foreign currency obtained from lithium exports (*e.g.*, potential registration of the project under the Promotional Regime of Investments for Exports (Decree No. 234/2021, as supplemented by Decree No. 836/2021, Joint Resolution ME-MDP No. 4/2021 and section 7.10 of the Central Bank FX Regulations).
- (ix) status of investment plan, minimum investment commitments (including annual reports to the applicable regulator); and
- (x) confirm status of royalty and annual mining fee (“*canon*”) payments. Argentine provinces are entitled to collect a royalty which is calculated as a percentage of the pithead value of the mineral extracted. The Federal Mining Investments Law No 24,196 (“FMI”) sets forth a 3% cap on the pithead value of the mineral obtained, and provinces that have adhered to the FMI can set specific rules within such cap (provinces of Jujuy and Salta, for example, have adhered to the FMI). Regarding the *canon*, Federal Law No. 27,111 set forth in respect of first category mines (including lithium) a value of AR\$ 1,900 per exploitation unit (“*pertenencia*”). In the case of lithium, this is equivalent to AR\$ 19,000 (approximately US\$ 90 per 100 hectares as of March 2023).

Final remarks

While the above list does not purport to be comprehensive and there are many other due diligence materials to consider (e.g., corporate, contracts, tax, labor, financing, compliance, litigation, insurance, IP and other customary items), it provides a reasonable kick-off for the parties to start a fruitful exercise.

Generally speaking, the due diligence exercise can be completed fairly quick, as shown in the graphic on the right.

No doubt a potential investment in a lithium project in Argentina will also need to consider other legal issues such as deal structure, tax efficiencies, contractual protections and potential foreign exchange hurdles, among others.

Finally, we suggest a close follow-up on the legal framework applicable to investments in the lithium sector, such as potential regulations on the electric mobiles industry, the supply of lithium to the domestic market, promotion of locally produced lithium batteries, regulation of an export reference price for lithium exports, etc.



Should you want to discuss any issues in connection with lithium or other mining investments or M&As in Argentina, do not hesitate to contact our partners Fernando Zoppi (fernando.zoppi@mhrlegal.com) or Tomas Lanardonne (tomas.lanardonne@mhrlegal.com)