

**BERETTA GODOY**

**CLOSURE OF MINES AND ABANDONMENT OF OIL WELLS IN LATIN AMERICA**

**在拉丁美洲终止矿业和油气项目简介**

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## CLOSURE OF MINES AND ABANDONMENT OF OIL WELLS IN LATIN AMERICA

### 在拉丁美洲终止矿业和油气项目简介

As the world's eyes move to the abundant mineral and hydrocarbon resources available for extraction in Latin America, it is important for natural resources companies to have one eye on the future, from the outset of their projects, and to be mindful of what they have to do to comply with mine and oil well closure requirements. In many Latin American jurisdictions, the industry is not yet matured, which can make complying with the requirements and implementing the most beneficial tax strategies difficult.

随着世界目光转移到拉丁美洲可供开采的丰富的矿产和油气资源，对自然资源公司而言从他们的项目一开始关注未来很重要，并关注他们该如何遵守终止矿山和石油井的需求。在许多拉美地区，该行业还不成熟，这可以使符合需求和实现最有利的税收策略困难。

This paper will address (i) the requirements for submitting, updating and having mine and oil well closure plans approved; (ii) the remediation requirements in the extraction zone; (iii) tax incentives and amortization of closing costs across the life of the resource; (iv) the implications for changing or terminating labor contracts; and (v) potential liabilities upon closure of the resource.

本文将阐述: (i) 申请、更新和终止现有矿山和油井计划被批准的要求;(ii) 提炼区域的修复需求;(iii) 税收激励和在能源寿命期间摊销终止成本;(iv)变更或终止劳动合同的影响;(v)终止该项目的潜在责任。

#### I. REQUIREMENTS FOR SUBMITTING, UPDATING AND HAVING MINE AND OIL WELL CLOSURE PLANS APPROVED

##### 申请、更新和终止现有矿山和油井计划被批准的要求

The requirements for and need for a mine closure plan vary within each jurisdiction. This is due to a range of factors, not least of which is whether it is handled at a national, provincial/state level or a combination of these two. Brazil provides the case in point. Although mine closure and oil well abandonment is principally regulated at the national level through its constitution, the Brazilian Mining Code and the Brazilian Petroleum Law. However, this is also supplemented by regulations at the state level concerning local taxes, environmental matters and soil usage. Moreover, the situation varies between mining on the one hand and hydrocarbons on the other.

每个管辖区有关终止矿井的要求和需求各不相同，这是由于一系列的因素,不仅仅在于它由国家、省/州一级或这两者结合处理。巴西提供了佐证。尽管矿井关闭和油井放弃主要是在国家层面上通过《宪法》、《巴西矿业代码》和《巴西石油法》进行监管。然而，关

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于当地税收、环境问题和土壤的使用也同事辅以州层面的监管。此外,矿石开采和石油开采情况也有所不同。

A mine closure plan must be submitted as part of a series of studies in order to obtain an environmental installation license in Brazil. Specifically, it must cover the minimizing of environmental degradation and negative impacts on the environment generally. The Brazilian National Department of Mineral Production, (“DNPM”) evaluates the plan and issues a report on it. This report must form part of the application to the Ministry of Mines and Energy to close a mine. The application must contain:

矿井关闭计划必须作为一系列的研究的组成部分提交,以在巴西获得环境安装许可证。特别是,它必须包含通常的减少环境恶化和对环境的负面影响。巴西国家矿产生产部门 (“DNPM”)评估该计划并就该问题出具报告。这个报告必须构成向矿业能源部矿山提交的关闭矿井申请的一部分。申请必须包含:

- a report on the work so far performed;
  - characterization of the remaining resources;
  - a topographic and landscape report considering the stability, erosion control and drainage aspects; and
  - a work and financial chronogram of the proposed decommissioning activities.
- 目前为止完成的工作报告;
- 剩余资源的描述;
- 一个考虑稳定性、侵蚀控制和排水方面的地形和景观报告;和
- 申请进行停运活动的工作和财务计时图。

Approval shall only be granted if the decommissioning plan has clear evidence of the compliance with the environmental conditions and the possibility of the area being used for other economic activities. The plan for closure may not be taken into action without the DNPM’s prior approval.

只有停运计划有明确的证据表明符合环境条件和该地区的可能性被用于其他经济活动 , 才可能被批准。这个终止计划在获得 DNPM 的事先批准钱不能实施。

The plan for closure must be updated periodically, although the regularity of such update is not expressly provided. It has to contain all items mentioned in section 20.4.1 of Annex I from Ordinance No. 237/2001.

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这个终止计划必须定期更新,虽然这样的定期更新不是明文规定。它必须包含第 237/2001 号法令附件 1 中第 20.4.4 部分所提到的项目。

For oil well abandonment in Brazil during the exploration and development phases, oil companies must simply notify the Brazilian National Petroleum Agency (“ANP”), and during production phase, oil companies can abandon oil wells only after ANP’s formal authorization is sought. Oil wells cannot be abandoned if the necessary operations for such actions may impact neighboring oil wells, unless the well to be abandoned represents a safety or environmental threat to the environment. There is no requirement for an abandonment plan, since ANP Ordinance No. 25/2002 already sets out in detail the procedure to be followed by oil companies to carry out well abandonment. Nevertheless, ANP Resolution No. 13/2011 provides for a report for the handover of the concession areas, which may be submitted for only part of or the entire area of concession and must encompass all wells abandoned. The content of the report is detailed in the abovementioned Resolution.

在巴西，在勘探和开发阶段废弃油井，石油公司必须通知巴西国家石油管理局(“ANP”),在生产阶段,石油公司油井在得到 ANP 正式授权之后才可以放弃。如果废弃油井的必要的操作行为可能会影响邻近油井，则油井不能放弃,除非该油井构成安全或环境威胁。废弃计划没有要求,因为 ANP 的第 25/2002 号法令已经制定了石油公司废弃油井的详细流程。然而,ANP 第 13/2011 号决议提供移交的特许区域的报告,可提交只是部分或整个地区的特许权，和必须包含所有废弃油井。报告的内容详情在上述决议中。

In cases where there is non-compliance with mine closure and oil well abandonment, sanctions can be applied which range from a fine through to the termination of the license or concession agreements.

如出现不符合矿山关闭和油井废弃的情况,可能适用相应制裁措施,从罚款到终止许可证或特许协议。

Generally, across the region, it could be said that some form of closure or abandonment plan must be submitted to the government at the start of the project. Most jurisdictions require that this plan be updated over the course of the project. In some jurisdictions there are proscribed times for doing this,<sup>1</sup> However, in Colombia, it must be updated only when there are variations in the mining operation and in relation to oil and gas, there are no specific time frames.

一般来说,在整个地区,可以这样说,一些形式的终止或废弃计划必须在项目开始就提交给政府。大多数司法管辖区要求这个计划在项目的过程中进行更新。在某些司法管辖区有

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<sup>1</sup> Argentina, Chile and Peru (mining).

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禁止这样做的时候,然而,在哥伦比亚,它只有当在采矿作业和涉及石油和天然气相关变化时必须被更新,没有特定的时间框架。

Peru also provides an interesting case study on this point. In the case of the abandonment of hydrocarbon areas, license holders can submit a plan for temporary cessation, partial abandonment or abandonment (effectively, total abandonment). Each of the plans mentioned must comply with the following requirements: (i) include actions for remediation, reforestation, decontamination and removal of facilities, and other necessary measures to abandon the area, in compliance with the corresponding timetable, described in the Environmental Impact Assessment, (ii) the compliance of the Plan will be supervised by the Authority of Environmental Supervision (“OEFA”).

秘鲁在这方面也提供了一个有趣的案例研究。对于放弃油气地区,许可证持有人可以提交一个暂时中止计划,部分放弃或放弃(有效、彻底放弃)。提到的每个计划必须符合下列要求:(i)包括补救行为,植树造林,净化和清除设施、及其他必要措施废弃该地区,符合相应的时间表,在环境影响评估中进行描述,(ii)合规的计划将受到环境监管机关的监督(“OEFA”)。

## II. REMEDIATION REQUIREMENTS IN THE EXTRACTION ZONE

### 提炼区域的修复要求

Argentina provides an interesting example of the remediation requirements following the closure of natural resources projects. Argentine mining legislation is silent regarding remediation requirements following the closure of mines. It simply provides that the Environmental Impact Assessment may contain post-closure supervision of the operations. The reality is that this is a relatively new concept in Argentina.

对于终止自然资源项目后的补救措施要求,阿根廷提供了一个有趣的例子。阿根廷矿业立法对于矿产终止后的补救措施要求是保持沉默的。它只是规定,环境影响评估可能包含终止后的操作监督。事实是,在阿根廷这是一个相对较新的概念。

In the last two decades, there have actually only been two mine closures in Argentina. The closure of Mina Angela, in the province of Chubut, which was operated by Cerro Castillo S.A., began in 1998. Closure was carried out in accordance with the environmental impact statement. In the absence of formal requirements, the company adopted best practices which had been implemented in other jurisdictions, to that end, it hired British and Canadian companies to define, design and provide technical supervision of the closure. The closure was successfully completed in 2000.

在过去的二十年里,实际上在阿根廷只有两个有矿山终止。1998年开始, Cerro Castillo S.A. 公司终止位于丘布特省的 Mina Angela 矿。矿山终止时是依照环境影响声明开展的。没有

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正式的要求,公司采取了在其他司法管辖区最佳实践方法,为此,它聘请了英国和加拿大公司进行矿产终止的定义、设计和提供技术监督。2000年成功地完成矿产终止。

The most recent closure was of Mina Martha in the province of Santa Cruz, which was operated by Ceour D'Alene Mines Corporation. The decision to close the mine was announced in 2012 and is expected to take years to be finalized. Again, in the absence of the formal requirement to obtain a closure certificate, as such, the company is expected to implement industry best practices in order to protect itself from potential liabilities in the future. The strict remediation requirements will depend on the environmental impact assessment of the project. As set out above, the Environmental Impact Assessment may include post closure supervision requirements – it doesn't have to.

最近关闭的是由 Ceour D 'Alene 煤矿公司操作的、位于圣克鲁斯省的 Mina Martha 矿产。2012 年宣布决定关闭煤矿,预计将需要几年才能完成。再次,由于尚未获得正式的取得证书的要求,该公司预计将实行业最佳实践来保护自己免受未来潜在责任。严格的补救需求取决于项目的环境影响评估。如上所述,环境影响评估可能包括关闭后监管的要求——并非必须。

In terms of the abandonment of oil wells, the situation is not dissimilar to what was described about Peru in relation to closure plans, in that Argentine legislation foreshadows two types of abandonment – temporary and permanent. In cases of temporary abandonment, there are a series of specific technical requirements that must be observed. However, final abandonment must be treated in different ways, depending on the characteristics of the area where the well is located. If the well is located in a desert, forest or a mountainous area, the abandonment must be done through a legible and durable notice, which must show the position of the well. If the well is located in an urban area or in an area of crops, topographic references must be used from fixed, non-alterable points. Such references must be recorded and filed with the report of abandonment of the well. In all cases, the land must be left free of liquid waste, all constructions must be demolished and auxiliary wells and debris basins must be filled. Finally, oil concessionaires may agree with land owners different methods to perform the final abandonment, as long as the spirit of conservation and preservation of the environment is maintained.

在条款的放弃的油井,情况很相似,对秘鲁与描述,阿根廷关闭计划立法预示着两种类型的放弃——临时和永久性的。在情况下的临时放弃,有一系列的特定技术要求必须遵守。然而,最终放弃必须以不同的方式处理,这取决于其所在地区的特征。如果油井位于沙漠、森林和山区,放弃必须通过一个清晰的和持久的注意,它必须显示良好的位置。如果油井位于一个城市区域或农作物区域,地形引用必须从固定的,不可改变的地点使用。这样的引用必须记录并制作废弃报告。在所有的情况下,土地不得有液体废物,所有的建筑物必须被拆毁

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和辅助井和参与盆地必须填平。最后,石油特许经营者可能与土地所有者就执行该废弃协商不同方案,只要保护和环境保护方面的理念存在。

In the remaining jurisdictions considered, for both mine closure and oil well abandonment the concession or license-holder is generally required to remediate the property in accordance with the relevant closure plan, howsoever termed, in relation to the natural resource. The position in Chile perhaps best encapsulates the general requirements across the region, which is that actions must be taken in accordance with the closure plan in order to ensure the physical and chemical integrity of the area, in compliance with applicable environmental regulations. The implementation of these measures and actions should provide appropriate regard to health, life, the security of people and the environment.

在其他考虑的司法管辖区,对于矿山关闭和油井, 特许或许可证持有人一般需按照有关关闭计划补救自然资源相关的资产,不论采用何种方式关闭。在智利的情况也许最好的集合了整个地区的总体要求,即必须按照关闭计划,符合适用的环境法规的采取行动,以确保该区域物理和化学的完整。这些措施的实施,和行动应该适当考虑到健康、生命、安全的人与环境。

In Brazil, there is a particular focus on health and safety. For the closure of mines, in addition to following the closure or decommissioning plan, companies must submit a health condition report to the DNPM detailing the company's employees health during the mining process. Specific health and safety regulation on the mining industry is provided for in the Mining Regulation No. 22, issued under DNPM Ordinance No. 237/2001, which establishes work health and safety rules that should be observed by mining companies. Such rules establish standards for work procedures and safety conditions, emergency operations and personnel training, among others. Mining companies must also comply with or implement certain work health and safety programs regulated by the Consolidation of the Labor Laws, including the occupational health control program, prevention program for environmental risks, in-house commission for prevention of accidents in mining activities, social security professional profile and risk-management program.

在巴西,人们尤其关注健康和​​安全。对于关闭矿井,除了关闭后或停运计划,公司必须提交一个健康状况报告详细说明公司员工在采矿过程健康状况。在 22 日发布的第 237/2001 号法令提供具体的健康和安全监管在采矿业提供矿业监管规定,设立了矿业公司应当遵守的工作健康和​​安全规则。这样的规则建立标准工作程序和安全条件、应急操作和人员培训等。矿业公司也必须遵守或执行某些工作健康和​​安全程序的监管巩固的劳动法律,包括职业卫生控制程序、预防计划,采矿活动内部环境风险事故预防委员会,社会保障专业简介和风险管理计划。

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## III. TAX INCENTIVES AND AMORTIZATION OF CLOSING COSTS ACROSS THE LIFE OF THE RESOURCE

### 税收激励和在能源寿命期间摊销终止成本

In order to analyze amortization, it is necessary to consider the requirements for guarantees. Guarantees are required in many jurisdictions as a form of insurance for the carrying out of closing works in accordance with the requisite plans. In some form or other, mining companies operating in Argentina, Chile, Colombia and Peru are required to have in place a deposit guaranteeing the closure work, an account allocated to that effect within the company's own funds or an insurance policy covering this event in case the company cannot carry out the works. Argentina is the only one of those states that does not require a guarantee in respect of hydrocarbon reserves and a guarantee is not required for either mining or hydrocarbon reserves in Brazil.

为了分析摊销,必须考虑要求担保。在许多司法管辖区作为按照必要的计划进行关闭工作,保证是必需的。在某种或其他形式,矿业公司在阿根廷,智利,哥伦比亚和秘鲁操作都必须具有适当的保证金储备以保证关闭工作,公司在自有资金上分配一个帐户作为保证金或持有覆盖这一活动的保单,以防止公司不能开展工作。阿根廷是唯一仅在在油气储备方面不需要担保的国家,而在巴西么矿业或油气储备行业不需要担保。

With that background, it is worth looking specifically at the situation in Peru. Holders of mining concessions are bound to grant an Environmental Guarantee in favor of the Ministry of Energy and Mines in order to support the costs associated to the execution of the mine closure plan. according to article 51 of the Peruvian Mining Regulations, the Environmental Guarantee is granted by means of annual contributions. The amount of each annual contribution is the result of dividing the total amount of the Environmental Guarantee by the number of expected remaining years in the lifespan of the mine.

有了这些背景知识,值得特别关注于秘鲁的局势。采矿特许权持有人是一定要批准一个环境保证支持能源和矿业部为了支持相关的成本的执行计划矿井关闭。根据秘鲁矿业法规定第 51 条,环境保证授予通过年度提交的方式授予环境保证。每年提交的数额是把矿井预期剩余寿命保证金总数量进行平分。

According to article 50 of the Peruvian Mining Regulations, the Environmental Guarantee shall be granted one year immediately after the approval or amendment of the mine closure plan, within the first twelve (12) working days of each year. Bear in mind that the holder shall not be able to develop exploitation and/or beneficiate mining activities before the granting of the Environmental Guarantee. Finally according to article 11 of the Peruvian Mining Law, and article 55 of the Peruvian Mining Regulations, the environmental guarantees, may consist in one or more of the following alternatives: (i) Guarantee Trust, (ii) Standby Letter of Credit and other similar instruments, (iii) Corporate Guarantee, (iv) Performance Bonds and other type of insurance coverage, (v) Mortgage, (vi) Warrant, (vii) Security Interests over Personal Property.

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根据秘鲁矿业法第五十条的规定,在矿井关闭计划批准或修改后立即授予环境保障一年,在每年前十二(12)个工作日内。记住,持有人在环境保障批准及发放前不得开发利用和/或增效采矿活动。最后根据秘鲁矿业法律第十一条,秘鲁矿业法规第五十五条、环境保证可能包含在一个或多个下列选择中:(i)保证信任,(ii)备用信用证和其他类似的工具,(iii)公司担保,(iv)性能债券和其他类型的保险,(v)抵押贷款,(vi)保证,(vii)安全利益的个人财产。

In relation to hydrocarbons, the requirements are a little more stringent. The license holder is obliged to submit, along with its abandonment plan, a commitment guarantee (standby letter of credit),<sup>2</sup> supporting the commitments established in the abandonment plan. The standby letter of credit must be extended by a Peruvian financial institution approved by the Ministry of Energy and Mines, for an amount of thirty (30) percent of the total amount of the investment considered in the abandonment plan proposed, for no longer than ninety (90) calendar days after the scheduled date of culmination of the activities considered in the abandonment plan.

对于油气,要求更严格些。许可证持有人须提交,连同其放弃计划,承诺保证(备用信用证),支持放弃计划中规定的承诺。备用信用证必须由秘鲁能源矿业部批准的金融机构签发延期,占放弃计划提出的投资总额的30%,放弃计划顶点活动后不超过90个自然日。

In terms of amortization of closing costs, the holder of a mining concession may require a discount up to a maximum of thirty percent (30%) of the annual amount of the guarantee, provided that such titleholder complies with continuously maintaining, for at least three years, the following conditions: (i) Corporate solvency at a national level, duly qualified with a BBB credit rating or higher; (ii) Good environmental practices credited by a certified environmental management system; and, (iii) compliance of the corresponding progressive measures in the approved terms and conditions. In relation to hydrocarbon activities, the corresponding standby letter of credit cannot be amortized until the Authority of Environmental Supervision informs the Ministry of Energy and Mines about the compliance of the abandonment plan. Once the abandonment plan is completely executed, the holder may request that the Authority of Environmental Supervision communicates to the Ministry of Energy and Mines its conformity, so that it releases the standby letter of credit.

关于关闭成本的摊销,采矿权持有人可以要求年度保证金额最高达到百分之三十(30%)折扣的,假定这样的持有人,至少三年,持续符合下列条件:(i)国家级别的企业偿债能力,达到BBB信用评级或更高;(ii)得到认证环境管理系统认证的良好环保措施;(iii)在批准的条款和条件下相应的程序措施达到合规标准。在关系到油气活动,相应的备用信用证不能摊销,直到权威的环境监管机关通知能源与矿业部门该放弃计划达到合规标准。一旦放弃计划是

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<sup>2</sup> This only applies to absolute abandonment, not partial or temporary abandonment.  
仅限于全部废弃,不适用于部分或暂时废弃

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完全执行,权利人可以请求环境监管机关与能源和矿业部门沟通其合规事宜,以便其发放备用信用证。

Across the region, amortization requirements vary significantly. In Argentina, the general rule is that expenses can be deducted only when they accrue. When deductions exceed income, the income can be carried forward. However, section 23 of the Mining Investment Law establishes that in order to remedy potential damages to the environment derived from mining, mining companies must annually do a provision in their financial statements. This amount shall be determined by the company and can be deducted for Income Tax purposes in each fiscal year up to the limit of 5% of the operative extraction costs and profits. Regarding oil well closure, Argentine Federal Tax Administration Advice N° 1079/79 provides that the deduction of the expenses incurred shall be conducted only after permanent abandonment occurs.

在整个地区,要求有很大不同。摊销在阿根廷的一般的规则是,费用只有在实际发生后可以扣除。当扣除金额超过收入,收入可以结转。然而,矿业投资法第 23 节规定,为了弥补矿业对环境的潜在损失,矿业公司每年都必须做一个财务报表的预算。这个金额应由该公司决定,并可以基于所得税目的扣除,扣除比例最高可达到在每个财政年度有效开采成本和利润的 5%。关于油井关闭,阿根廷联邦税务管理通知第 N°1079/79 号规定,只有在永久性废弃发生之后才能扣除费用。

Nothing in Brazilian law prevents such an amortization in either relation to mining or oil and gas, but it would need to be reviewed on a case by case basis. Chile, by contrast, allows the amortization, but only during the last third of the projected life of the natural resource. Finally, in Colombia, expenses may be treated as deductible when they are incurred.

没有任何巴西法律阻止这种摊销,不论是采矿或石油天然气行业,但它需要根据实际情况进行考察。智利,相比之下,允许摊销,但只有在自然资源最后三分之一的项目寿命期间。最后,在哥伦比亚,费用可能发生时被扣除。

#### **IV. THE IMPLICATIONS FOR CHANGING OR TERMINATING LABOR CONTRACTS**

##### **变更或终止劳动合同的影响**

As a general rule, employment laws in most Latin American jurisdictions are generally skewed in favor of the employee. This reflects the fact that, traditionally, employees are seen to be in a power imbalance vis-à-vis their employers. In addition to looking at the requirements in the various mining and hydrocarbon laws, it is generally the case that the most important laws concerning labor issues at the closure of a mine or a hydrocarbon deposit apply across all industries.

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作为一般规则,就业法律在大多数拉丁美洲国家的管辖区内都一般倾向于支持员工。这反映了一个事实,传统上,员工都被认为是与雇主处在一个权力失衡的状态。除了看不同的采矿业和油气法律的要求,一般的情况下,适用于矿井、油气矿藏关闭的关于劳工问题的重要同时也适用于所有行业。

Compensation for termination of employees can be a significant cost which requires planning at the outset in order to avoid a cost blowout at the time of the closure of the mine or abandonment of the oil well. Colombia provides an interesting case study in this instance. There it is possible to hire people for the length of the project, that is, for a fixed term period. However, if a company decides to unilaterally terminate the agreement without just cause, it could be liable to pay out the unfulfilled portion of the contract. In Colombia, an alternative could be to relocate the worker to another project – provided that the corresponding labor agreement permits this.

赔偿解约员工可以带来大量的成本,为了避免在关闭矿山或废弃油井的时候成本井喷,需要一开始的时候计划。哥伦比亚在这个实务方面,提供了一个有趣的案例研究。有可能根据项目的期限长度雇佣员工,即固定任期期间。然而,如果一个公司没有正当理由单方面决定终止协议,它可以需要对未履行部分的合同支付费用。在哥伦比亚,另一种可能是将雇员迁移到另一个项目——前提是相应的劳动协议允许。

Other jurisdictions go further in protecting employees. Argentina is a prime example. When a labor relationship is terminated without cause, the employer will have to pay compensation based on years of service, in addition to the amounts owed to that point. Even if an employer dismisses an employee because there is no more work, for instance because of the closure of a mine, the employer must go through an administrative procedure with the Ministry of Labor and the representative union in order to obtain a 50% reduction in the payout amount. In practical terms, the mining and hydrocarbon industries are heavily unionized and the unions negotiate favorable collective bargaining agreements which give dismissed employees greater benefits.

其他司法管辖区更进一步保护员工。阿根廷是一个典型的例子。雇主无正当理由终止劳动关系,必须支付基于多年工作的补偿,以及应付工资。即使雇主因为没有工作而解聘一个员工,例如因为关闭矿井,雇主必须与劳动部和工会代表进行行政程序,以获得50%的支付金额减免。实际上,采矿和油气行业的工会高度发达,工会进行谈判有利协议的集体谈判,给被解雇的雇员更大好处。

In almost all jurisdictions it is not as simple as moving an employee from one mine or well to another – even if they are neighboring. Effectively, this becomes a constructive dismissal and the employee is entitled to compensation. There are risks for employers when contracting employees on fixed term and permanent bases. In Argentina, for instance, fixed term

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employees are still entitled to 50% of the severance payment they would otherwise have been entitled to if they had been employed on a permanent basis.

几乎在所有司法管辖区内，把一个员工从一个矿山或到另一个不是个简单的问题——即使他们是邻国。实际上,这变成了一种推定解雇，员工有权要求补偿。与雇员签订固定期限和无固定期限劳动合同对雇主有风险。在阿根廷,例如,固定期限的员工还享有 50%的遣散费,否则它们都有权被设为无固定期限雇员。

In many instances, labor costs cannot be avoided – they can only be limited and the risks minimized. These need to be carefully considered at the outset and factored into the cost of closing the mine or abandoning a well.

在许多情况下,劳动力成本不可避免——风险只能进行控制和最小化。这些必须在开始初期进行仔细考虑，并计入关闭矿山或放弃一个矿井的成本。

## **V. POTENTIAL LIABILITIES UPON CLOSURE OF THE RESOURCE**

### **终止该项目的潜在责任。**

Not all jurisdictions in Latin America issue certificates upon the closure of the resource. Chile, however, provides an interesting example of one that does. In Chile, the Department of Geology and Mining issues partial closure certificates and final closure certificates. Partial closure certificates are implemented once all of the measures toward the closure of one or more facilities have been executed. Final Closing Certificates are issued when the totality of the works comprising the project have been completed. This entitles the company to the return of any surpluses of the closing guarantee. Importantly, the certificate evidences the full and timely compliance by the company with its duties and obligations under the Chilean Mining Law and the Chilean Mining Regulations. Peru's legislation is, in all material respects, very similar to Chile's in respect to certificates issued upon mine closure.

在拉丁美洲并不是所有的司法管辖区核发有关关闭资源的证书。智利,然而,提供了一个有趣的例子,的确。在智利,国务院地质和矿业部签发部分关闭证书和最终关闭证书。部分关闭证书当关闭一个或多个设施的措施已经执行后进行适用。最后关闭证书在项目全部工作已经完成时进行签发。这时公司关闭担保的盈余可以返回公司。重要的是,该证书充分及时的证明公司已经根据智利矿业法律和智利矿业法规履行其职责和义务。秘鲁的立法在矿产关闭证书的签发问题上，在所有实质的方面都与智利相似。

In Brazil, the government approvals for the closure of a mine or abandonment of an oil well do not give the concession holder any form of indemnity in relation to civil liabilities that may have arisen through the closure or during the exploitation of the natural resource. Notably, in Argentina and Colombia, the governments do not issue any form of certificate upon the closure of a mine or abandonment of a well. Generally, it must be said that across all

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jurisdictions, a certificate is not going to provide indemnification or proof generally, other than to the fact that the mine has been closed. Civil liabilities will continue unimpeded.

在巴西,政府批准关闭矿井或废弃的油井并不给特许持有人任何形式民事责任的补偿,可能源自资源关闭或在开发自然资源过程中的。值得注意的是,在阿根廷和哥伦比亚,政府在矿井关闭和废弃方面不出具任何形式的证书。一般来说,必须要指出的是,在所有司法管辖区,证书一般不会提供赔偿或证明,只提供矿产已经关闭的事实。民事责任将继续不受影响。

Generally, any affected third party is able to instigate proceedings against natural resources companies based on environmental damage. However, in terms of implementing strict compliance with the laws, this is typically left to statutory bodies. In Chile, for instance, the Department of Geology and Mining is exclusively responsible for monitoring and supervising compliance with the Chilean Mining Law<sup>3</sup> and the Chilean Mining Regulations, without prejudice to the legal powers of other organs of state administration within the scope of their powers.

一般来说,任何受影响的第三方都能够基于环境破坏理由对自然资源企业提起诉讼。然而,从严格遵守法律的角度而言,这是典型的法定机构的职权。在智利,例如,地质与矿业部是专门负责监测和监督遵守智利矿业法律和智利矿业法规、在其职权范围内不能偏向于其他国家行政机关。

## CONCLUSION

Although there are some similarities across each jurisdiction with respect to certain elements of mine closure or the abandonment of wells, no two jurisdictions is the same. Knowledge can certainly be applied from the experience in neighboring jurisdictions, but it is not something that can be applied blindly. As the mining and hydrocarbon industries develop further in each country, there will undoubtedly be changes to the laws that are currently in place. There may also be increasing similarity between jurisdictions as one country sees best practices occurring in another and attempts to implement similarly successful programs in their country. For now though, it is clear that it is an area of law which is developing and what applies in one jurisdiction cannot be said to necessarily apply in another.

虽然在每个管辖领域内,废弃或关闭矿井和油井的某些因素有相似之处,但没有两个地区是相同的。当然可以从邻近地区的经验中应用相关知识,但这并不是说它可以应用盲目。随着矿业和油气产业在每个国家的进一步发展,无疑要更改现有法律。司法管辖区之间的相似性会不断加强,因为如果一个国家发现另一个国家成功实施最佳实务,则会尝试在

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<sup>3</sup> Law No. 20,551

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其国家实施与该成功实施的项目相似项目。不过就目前来看,很明显,这是一个地区发展的法律和适用不能说一定适用于另一个管辖区域。