Mexico's Mining Law Amendment / Lithium and the Automotive Industry

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WHAT IS LITHIUM?

According to the Royal Society of Chemistry of the United Kingdom, lithium is a metal found mainly in natural brines, oil wells, pegmatites, seawater and geothermal fields, being brines and pegmatites the most profitable for its extraction.

Lithium has become a prized material in the market and is highly valued globally, due to its high value properties, such as its high electrical conductivity, low viscosity, low coefficient of thermal expansion and its long life and energy storage capacity.

It is also the lightest metal known and, thanks to its excellent heat and electricity conduction properties, it is an ideal material for the construction of electric car batteries.

IMPORTANCE IN THE AUTOMOTIVE INDUSTRY:

Within the automotive industry, we find the importance of lithium in the precious battery cells of electric cars, in this sense, lithium will become of more importance in the automotive industry due to the inevitable transition from combustion cars to electric cars, which has as its main objective the reduction of CO2 emissions and counteracting the effects generated by the cars that are currently used.

When talking about lithium in the industry, we will see that it has been called the "white gold", referring to the fact that in the automotive industry lithium will be as precious in the near future as gasoline is today, being key for the daily movement of millions of people and the transportation of goods once the world adopts, to a greater extent, the use of electric vehicles.

As a result of the inevitable transition to electric vehicles and as major automakers such as Volkswagen, Toyota, Nissan-Renault and General Motors make ambitious promises about the transition to an electrified, emission-free future, one thing is becoming clear: within the next few years there will be an increased demand for lithium to meet the production of batteries, which are also present in hybrid and plug-in vehicles that share a combustion engine.

In this regard, according to figures presented by the International Energy Agency (IEA), there was a significant increase in the demand for electric vehicles, reaching sales of 6.6 million units globally.

The figures reached in 2021 are still very high; however, the IEA has calculated that demand could grow significantly by 2030, estimating sales of up to three million units.

WHERE DOES MEXICO STAND IN TERMS OF LITHIUM RESERVES? AND WHY IS IT IMPORTANT FOR OUR COUNTRY?

According to the report made by the U.S. Geological Statistical Center, Mexico currently has a reserve of 1.7 million tons. Mexico's figures are just behind countries like Germany and Canada, close to three million tons, but ahead of countries like Russia and Peru that reach figures of one million tons, although it should be clarified that these numbers only offer an overview of the known exploration. Despite the fact that lithium is an emerging market where Mexico, at present, does not occupy a relevant position, our country has a competitive advantage over other regions thanks to its privileged geographic location in commercial terms and the execution of the T- MEC. The recent renegotiation of the North American countries' trade relationship agreed on a stricter automotive rule of origin, where electric vehicles must comply with 75% regionalcontent value in batteries. That said, Mexico has the opportunity to be the main supplier of this metal in North America and even position itself in the value chain with higher added value.

This being said, the extraction and exploitation of lithium is a great area of opportunity for Mexico, having an advantage in terms of its positioning with respect to other Latin American nations. Lithium is a heavy material to transport, which makes it difficult to transport to the large automotive factories in the world and generates a slow and expensive transportation of the material to its main consumers. Therefore, the privileged geographic location of our country and its proximity to the United States of America, which is home to large automotive groups, would facilitate the transportation of this metal, thus reducing the time and costs of its transportation.

In addition, Mexico is currently the seventh largest vehicle manufacturer in the world and the exploitation of this metal would open a great opportunity to increase the industry by opening a lithium battery production chain, from the extraction of the metal to the production of battery cells.

LEGISLATION AND LEGAL ASPECTS OF LITHIUM IN MEXICO.

As a result of the recent rejection of the constitutional reform on electricity, and in response to the growing demand for lithium in the automotive industry, the Mexican federal governmentsent an initiative to amend the country's Mining Law with respect to the extraction, exploitation and use of lithium. Such initiative was first approved by the Chamber of Deputies and subsequently approved by the Senate of the Republic.

The purpose of the amendment is that the exploration, exploitation and use of lithium will be exclusively the charge of the State and will be carried out by the decentralized public agency determined by the Federal Executive, thus prohibiting private participation and the granting of concessions, licenses, contracts, permits and assignments for the use of the resource.

In view of the above, on August the 23rd of the current year, the Federal Government published a decree announcing the creation of a new decentralized public agency called Lithium for Mexico, whose acronym will be "LitioMx", which will act within the sector coordinated by the Ministry of Energy, and whose objective will be the exploration, exploitation, benefit and use of lithium, located in national territory, as well as the administration and control of the economic value chains of such mineral.

It is estimated that Litio Mx will begin operations no later than 180 days after the publication of the decree, which will be in February 2023.

The Mexican government, through the creation of the public company "LitioMX" has reaffirmed the objective of refusing to grant more concessions and thus prohibiting the participation of private capital in the exploitation and commercialization of the mineral.

However, it is important to take into account that when entering into free trade agreements (FTAs), the countries party to the agreement include an exhibit corresponding to the specification of those activities that each country reserves for itself, i.e., activities that can only be carried out by the State and that restrict investment and trade in services by other countries.

In most of these treaties or trade agreements between countries, there are articles in the treaty that prohibit the parties from modifying their regulatory framework to introduce new restrictions to activities or sectors that were not reserved in the aforementioned annex. Therefore, the incorporation of the exploration, exploitation and use of lithium as a new activity reserved to the State constitutes a possible breach of the commitments acquired in the framework of various treaties and trade instruments entered into by the Mexican State, as is the case of the USMCA.

It is questioned what will happen in case the concessions granted in this matter are revoked or rendered null and void, where Mexico could be obliged to compensate the investors in accordance with the international instruments in force.

We will be watching in the near future the secondary regulations in this regard, the actions of the public agency that already created for such purpose, and specifically how the government in office will handle this issue, especially since "white gold" is a great opportunity for the economic development of the country.