

# Contractually Speaking....

Towards better deals with CONNEX

March 2022

## Panama's renegotiation has generational impact

**about 60 days of financial modelling expertise provided to renegotiate a large copper mine results in US \$375 million more per year in government revenue for 40 years**

Cobre Panama, one of the world's largest copper mines, is located in the Colón province to the west of Panama City. The \$6.5 US billion operation is also the country's largest investment since the Panama Canal. The mine's reserves exceed three billion tons of copper with an expected life of 40 years.

The Panamanian government wanted to secure a better share of income from the project, perceived as low by international standards. Negotiating favourable fiscal terms from the start is crucial for governments - it impacts long-term state revenue from mining projects and has a lasting impact on future generations.

Given Panama's relatively short mining history and the lack of capacity to negotiate such large mining contracts, the government, through the Ministry of Commerce and Industries (MICI), requested CONNEX's support in early 2021.

Our support focused on the contract's fiscal aspects, providing a team of economic and strategic experts to support the high-level negotiation team in reviewing and assessing the contract's fiscal regime. We also deployed expertise to develop a negotiation strategy.

The experts initially developed a financial model with available data, used to produce a preliminary financial analysis of the mine applying the fiscal regime under the contract of 1997. The model estimated the anticipated

investor return and government financial share of benefits and compared to other copper-producing countries.

The analysis showed a substantial financial gap between the contract's fiscal regime and current international standards. The experts provided the government with options to increase the government's income, based on international best practices. This enabled the government to assess options and to negotiate based on strong evidence. During the negotiation which commenced in late 2021, experts assisted the government directly in discussion rounds as part of a designated technical group and helped to bolster the government's leverage.

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*A birdseye view of Cobre Panama - showing the scope and the scale of the operation.*

After intense negotiations, the investor committed to future payments of at least \$375 US million per year in royalties and taxes to the government. Government revenues are expected to increase at least 10-fold. An increase in royalty revenues of up to 16%, depending on external factors such as the global price of copper, is also expected.

Sr. Daniel Esquivel, Senior Advisor at the MICI commented, "Considering that this is the first time that the government of Panama receives support from CONNEX, the experience of working with CONNEX was really successful, accurate and technically of high quality." Mr. Esquivel further commented, "The support provided by the experts was decisive and conducive to the economic-fiscal aspects and vision for the country's mining policy."

Total revenue benefits to the Government of Panama over 40 years will be \$15 billion US.

*Insert photo, His Excellency Ministry of Commerce and Industry Ramon Martinez De La Guardia announces the renegotiation's success to the nation's press. Below, exporting copper to global markets.*



## ***Liberia - closing out two years of support***

### ***CONNEX-sourced experts support government in mining-led infrastructure***

This past September, the Liberian government inked an amended agreement worth \$800 million USD with the international iron ore producer Arcelor Mittal, the country's largest mining investor since the signing of the initial Mineral Development Agreement in 2005.

Starting in September 2019, CONNEX provided advisory support to the country's negotiation team, the Inter-Ministerial Concessions Committee, for the preparation of and throughout the negotiation process. CONNEX made available legal, geological, infrastructure and financial experts to the government. For the legal expertise, CONNEX partnered with the International Seniors Lawyers Project (ISLP).

On the occasion of the agreement's closing, Molewuleh B. Gray, Chairman at National Investment Commission of Liberia said, "I would like to thank CONNEX G7 and the International Senior Lawyers Project (ISLP) for their transaction advisory support to the Government's Inter-Ministerial Concessions Committee during these negotiations."

The newly amended agreement will pave the way for an increase in Arcelor Mittal's annual iron ore production from five to 15 million tons, and potentially up to 30 million tons. Iron ore plays an important role in Liberia's economy, making up close to 50% of total export earnings in 2020. The amendment also sets cornerstones to facilitate future access of rail and port infrastructure by third-party operators from neighboring Guinea. Enabling companies from Guinea to transport ore through Liberia brightens prospects for future regional development, as Guinea also looks to extract its iron ore deposits that have remained largely untapped until today.



*Above, the recent agreement related to infrastructure for iron ore should help facilitate more exports and government revenue.*

## ***Webinar: Team Deutschland to share extensive mine closure experience on 30 March***

Following up its experience in mine closure in Argentina, CONNEX is working with its colleagues in German development cooperation to produce an extended webinar related to the subject. "Team Deutschland" consists of CONNEX, GIZ and BGR's Extractives for Development programme. Besides working on mine closure within development cooperation, the BGR has opened up a Centre of Excellence on Mine Closure at Cottbus Nord, in the German state of Brandenburg.

From CONNEX's side, we intend to highlight our experience in supporting the Argentinian government (in the Catamarca region) with financial guarantees in mine closure. The impact was felt locally in the project, but also led to a national discussion about passing mine closure legislation for the entire country.

Roman Ambuehl and Kaisa Toroskainen of GIZ's Resource Governance's team will share their mine closure experiences in Guinea and Cote d'Ivoire respectively. Both projects were supported through the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), which recently created a mine closure tool. IGF's Clémence Naré will supplement the discussion from Canada.

Dr. Sören Dengg, Department Director of Energy, Infrastructure, Raw Materials and Hydrogen at the German Federal Ministry of Economic Cooperation and Development, will open the webinar. He commented, "I look forward to the webinar in which experience from West Africa, Latin America as well as Germany will be highlighted and shared. I hope that listeners, particularly partner countries, will learn from this experience and be able to apply it in their own countries."

The webinar will take place 30 March at 14:30 – 16:00 CET. The link to join is here:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MDQ0YmY5YzMtZGFkNC00ZjA-zLThhZjAtNGE3ZTUyMzJlZmRm%40thread.v2/0?context=%7b%22Tid%22%3a%225bba-b28c-def3-4604-8822-5e707da8dba8%22%2c%22Oid%22%3a%22bf49c2ad-eeeb-4112-889b-0f1e5a616ed5%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDQ0YmY5YzMtZGFkNC00ZjA-zLThhZjAtNGE3ZTUyMzJlZmRm%40thread.v2/0?context=%7b%22Tid%22%3a%225bba-b28c-def3-4604-8822-5e707da8dba8%22%2c%22Oid%22%3a%22bf49c2ad-eeeb-4112-889b-0f1e5a616ed5%22%7d)

# *CONNEX Investment Contracts Dialogues continue to take shape*

Following our last edition of *Contractually Speaking*, our team has further developed the CONNEX Investment Contracts Dialogues to be held over the course of this year, gathering partner countries, international financial institutions and G7 countries to highlight the role of investment contracts in the post-pandemic world.

In early April, a small group of international experts will gather to discuss and layout the key issues that need to be considered in the context of investment contracts. Climate change, settlement dispute, PPPs, critical minerals and anti-bribery and corruption are all themes which will be considered, all with a lens of clauses. A partial list of participating institutions for the Preparatory Session includes the International Senior Lawyers Project, the Columbia Center on Sustainable Investment, the Natural Resource Governance Institute, the International Growth Center, European Investment Bank and GIZ.

Lou Wells, CONNEX Advisory Committee member and a long-standing advisor to many governments in the mining sector, commented, "With the myriad of challenges in emerging economies, particularly resource rich ones and those with considerable infrastructure needs, the contracts signed today will have a long-term impact. A good contract is only the sum of its clauses. Governments must be vigilant to what the long-term impacts may be."

With the preparatory session findings in tow, the High Level Forum (HLF) will take place on 7 June in Berlin, gathering a senior group to highlight challenges and create a practical way forward.

Directly after the HLF, CONNEX will equally be hosting a technical session on sustainable infrastructure, gathering together leading voices in the space and partner countries for an exchange on not just "talking" sustainable infrastructure, but really "walking" it. Topics will include circularity, infrastructure design post-pandemic, creating a culture of learning. To lock in sustainability over the contract's term, clauses regarding the topics should be included as much as possible.

The session hopes to also highlight a few of Berlin's megaprojects over the years, notably the Central Station (drawn up in about four weeks), as well as Potsdamer Platz, which in the early 1990s was a "no mans land" between East and West Berlin.



*Left, The gap between projected infrastructure investment and need remains large. How can sustainability be incorporated into projects lasting decades? Right, Potsdamer Platz, Berlin - the Berlin wall used to run through it until 1989. One generation later, it is one of Berlin's principle nodes.*

# Leveraging the potential financial boom - "Clause" lays out the nuts and bolts of sliding-scale royalties

In the most recent edition of *"It's just a clause, isn't it?"*, Stefanie Heerwig and Iain Steel provide their analysis regarding sliding-scale royalties, leveraging the boom and cushioning the bust which characterise commodity markets.

Stefanie and Iain take a clause and discuss criteria, including volume and price. The table below shows the potential impact of a sliding-scale royalty by prices compared to a fixed-rate royalty, for a large-scale copper mine at low and high copper prices in 2019 and 2021. In short, a sliding-scale that goes up to 8% could have meant an addition US \$115 million with the export of 400,000 tonnes per year of copper (see table below).

Royalty Rate for Copper	5%	Sliding Scale 3% low, 8% high	Impact on royalties
2019 US \$6,000 / tonne	US \$120 million	US \$70 million	- US \$50 million
2021 US \$9,300 / tonne	US \$185 million	US \$300 million	+ US \$115 million

Our next edition will focus on *force majeure*, and then potentially the relations between capitals, communities and companies.

## Capacity - mapping skills, deploying talent

**Does your government need negotiation support? This short exercise could help provide a quick answer. If you have the expertise already, then fill in the name or tick the box. If, however, some skills sets are missing or you could use more expertise and experience in the coming several weeks or months, contact us and we can begin a dialogue.**

**Project** \_\_\_\_\_

<b>Expertise</b>	Person(s)	Person(s)	Person(s)	Person(s)	Person(s)
Strategic					
Financial / Commercial					
Local economic impact					
Legal					
Environment / Social					

