

**ARE THE CURRENT MINING INVESTMENT CONDITIONS IN PERU AS
ATTRACTIVE AS THEY WERE IN THE 1990s?**

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ABSTRACT: In the 1990s Peru was an attractive venue for investing in mining projects. However, in the 2000s some important conditions have changed. These include: economic stability, certainty about the political environment, increasing social protest against mining, and conflicts with communities regarding mining projects, fostering of public participation and contradictory international relevant markets signs. This paper considers the overall impact of those changes and answers the question of whether Peru remains as attractive for investment in mining projects as it was in the 1990s.

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ABBREVIATIONS

GDP	Gross Domestic Product
INACC	Instituto Nacional de Concesiones y Catastro Minero (National Institute of Mining Titles and Cadastre)
MCL	Mine Closure Law
MINEM	Ministerio de Energia y Minas del Peru (Ministry of Energy and Mines of Peru)
MCP	Mine Closure Plan
MRA	Mining Rights Applications
MRL	Mining Royalty Law
NGO	Non Governmental Organization
SD	Sustainable Development
SNMPE	Sociedad Nacional de Minería, Petróleo y Energía (National Society of Mining, Petroleum and Energy)
USA	United States of America

1. INTRODUCTION

In the 1990s, Peruvian mining policy and investment conditions became more open and increasingly aimed at attracting foreign investment. At the same time, trends in both international mineral prices and investment relevant to Peru favoured increased mining activity. As a result of this, the country witnessed a mining boom and became reputed for the operation of world-class mines like Yanacocha, Pierina, and Antamina. Peru is now one of the world's leading mineral producing countries as shown in Table 1.

TABLE 1
PERU: RANK IN 2004 MINING PRODUCTION

	World	Latin America
Copper	3	2
Gold	5	1
Zinc	3	1
Silver	2	2
Lead	7	1
Tin	3	1
Molibdenum	4	2

Data Source: United States Geological Survey, MINEM

Now, and for the foreseeable future, international conditions for the mining sector are again favourable: mineral prices have reached record levels (having recovered from the 2001 crisis) - and many forecasts say they will remain above long term averages. As a result of this, mining investment is expected to increase. However, in relation to Peru the picture is not so certain. Both Peruvian regulatory framework and investment conditions have changed, so that conditions are not the same as in the 1990s. The question must be asked: Is Peru still an attractive venue for mining investment? This paper answers this question by discussing the changes and assessing whether Peru will be favoured by the current mining boom.

This paper adopts the following structure: following on from this introduction the paper briefly compares the performance of the Peruvian mining sector from the 1990s until the first five years of this century. Chapter two then examines the relevant changes to the Peruvian mining investment framework. Chapter three outlines the issues that may affect mining investment decisions in future years. Finally, chapter four sets out the paper's conclusions.

2. ISSUES RELEVANT TO THE PERUVIAN MINING INVESTMENT FRAMEWORK SINCE THE 1990S

2.1. GENERAL INVESTMENT CONDITIONS

2.1.1. ECONOMY

The main macroeconomic indicators of the Peruvian economy show a better on average performance in the 2000s than in the 1990s. The Peruvian inflation rate has slowed from more than 25% to less than 5% per year, the GDP has grown steadily and the current account balance changed from a deficit to a surplus. The latter contributes to a stable exchange rate. The mining sector has been a leading cause of GDP and export growth in both periods. It is likely that in the near future this trend will continue¹: economic growth is around 5%, there is low stable inflation, a stable exchange rate and general economic stability. Given these factors, it seems that the Peruvian economic conditions are good enough to attract investment. Although no drastic fiscal policy adjustments are foreseen, there is nevertheless some political uncertainty as a result of the fact that there will be a new government elected in July 2006 (see section 2.1.2.).

**TABLE 2
MAIN MACROECONOMIC INDICATORS OF PERU**

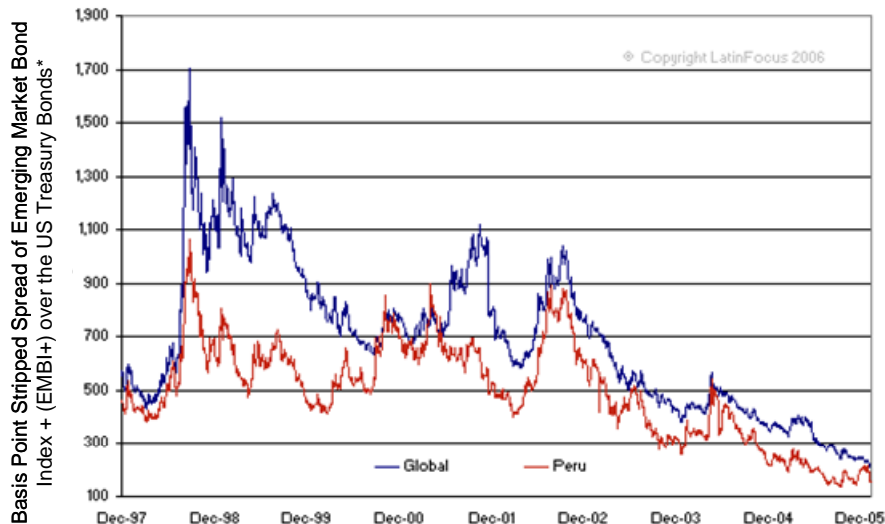
	1991 - 2000	2000 - 2005
Real GDP - average (YoY % chg.)		
Mining	4	4
Global	6	8
Inflation rate - average (%)	29	2
Exchange Rate - average		
S./ per US\$	2.3	3.4
YoY % chg	49	-1
Current account - average (US\$MM)	-1,300	1,700
Exports	5,100	10,700
Mining	2,400	5,600
Others	2,700	5,100
Imports	6,400	9,000

Data Source: Central Reserve Bank of Peru

¹ See, *Marco Macroeconomico Multianual 2006 – 2008*, Ministerio de Economía y Finanzas del Peru, (May, 2005), <http://www.mef.gob.pe/propuesta/ESPEC/MMM2006_2008/MMM_2006_2008.pdf>, (last visited 8 March 2006).

The Peruvian country risk (see Figure 1) shows an overall continuous downward trend since the late 1990s, a trend which is in line with the global average. This reflects the foreseeable favourable behaviour of the Peruvian economy.

**FIGURE 1
COUNTRY RISK**



*Bond stripped spread: difference of one bond yield from another.

Source: LatinFocus 2006

2.1.2. POLITICAL SCENARIO

“Peru [has] unpredictable government policies at all levels.”

—President, exploration company²

Peru is a democratic republic³. However, as a result of the government of Alberto Fujimori, which was in power from 1990 until 2000, it became widely perceived by the public as dictatorial. Mr Fujimori’s successor, Valentin Panigua headed a Transitional Government from 2000 until 2001, the objectives of which were to implement reforms

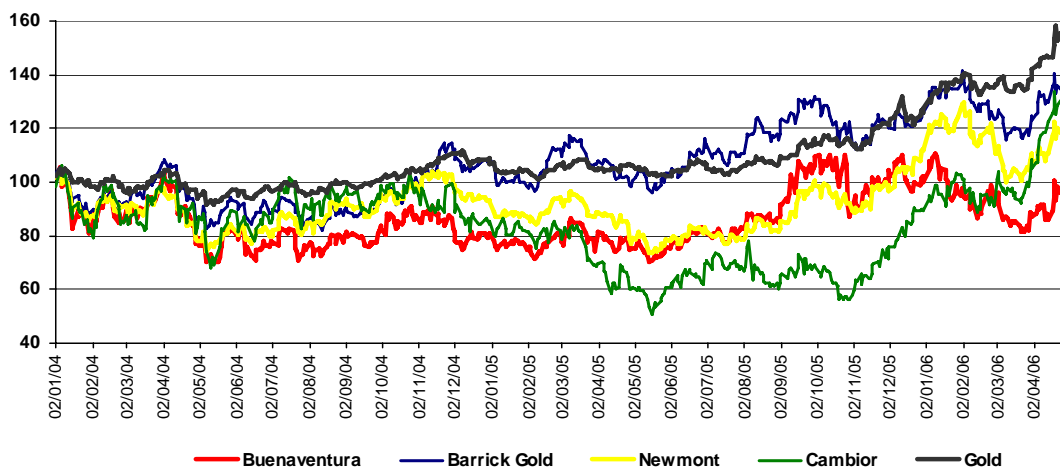
² See McMahon, F. and Cust, M., *Fraser Institute Annual Survey of Mining Companies 2005 / 2006*, The Fraser Institute, Vancouver, Canada (2006), <<http://www.fraserinstitute.ca/>>, (last visited on 3 April 2006).

³ *Constitucion Politica del Peru* at Article 43, Tribunal Constitucional, <<http://www.tc.gob.pe/legconperu/constitucion.html>>, (last visited on 8 March 2006).

which would enable a return to democracy and to organize presidential election. The election was won by Alejandro Toledo, who held power from 2001 – 2006, ‘democracy’ having been one of the central features of his policy. Since then, public participation has been an important policy issue during his government – a fact that is reflected in mining legislation (see section 2.2 below). However, the government of Mr. Toledo also faced political problems due to a perceived lack of leadership; and as a consequence of which many demands arose, especially in rural areas and in some communities close to mining projects. The lack of leadership applies even to government stake and holdings in enterprises, and is buttressed by the worsening performance of the stocks of the Peruvian company, Buenaventura in comparison to other gold producers as shown in Figure 2.

Peru had presidential elections in 2006. [At the time of writing this paper the ballot has not been announced between Ollanta Humala and Alan Garcia. The former candidate has promised a nationalist economy and his tendency is to rule like Hugo Chavez (the current Venezuelan president)]. The latter candidate is a Peruvian former president who has promised to respect and to encourage private investment, but he lacks credibility for his previous tenure. In the author’s opinion, neither candidate yet has investors’ vote of confidence.

FIGURE 2
GOLD COMPANIES STOCK PRICE VS INTERNATIONAL GOLD PRICE
 (Index December 2003 = 100)



Data Source: Yahoo Finance, London Bullion Market

2.1.3. DECENTRALIZATION PROCESS

In the 1980s the government of Alan Garcia started a decentralization process which was unsuccessful and discontinued in 1992 by Fujimori. In the 2001 presidential campaign however, the decentralization issue reappeared and was ranked high on the political agenda of most candidates. The decentralization process has been implemented since 2002 and remains an important objective of Alejandro Toledo's government.

Two of the main aims of decentralization are public participation on public policy issues and the redistribution of power from central to local governments.⁴ As Anida Yupari said, “ [Peruvian decentralization] also aims at promoting autonomous and sustainable regional government and development, fostering citizens' participation in public affairs and control of elected officials, and improving the efficacy of local governments”⁵. This is relevant to mining policy since many government responsibilities that affect the mining sector are being transferred from central to local government. The fact that local governments may be able to change some regulations may increase bureaucracy and costs for mining business. For example, under the *Law to Promote Decentralized Investment* the regional and local governments are given the exclusive powers to promote and develop regulations to attract private investment⁶. Again, a plurality of such regulations by the various local and regional governments will erode the system of uniformity.

2.2. CHANGES IN MINING REGULATION

The mining laws and regulations that were enacted during the 1990s were aimed at encouraging and promoting private foreign investment. This resulted in Peru having one

⁴ See Ley Bases de la Descentralización, Law No 27783.

⁵ See Yupari, A., *Decentralization and Mining: Colombia and Peru*, in Bastida, E., Wälde, T., and Warden-Fernández J. (eds.), *International and Comparative Mineral Law and Policy. Trends and Prospects*, p. 788, (The Hague: Kluwer Law International, 2005).

⁶ See Article 4 of the Ley Marco de Promoción a la Inversión Descentralizada, Law No 28059.

of the most attractive investment frameworks in the world⁷, even though some environmental regulations were included in the framework.

In the period 2001-2005, a number of laws were enacted which reflected the Sustainable Development (SD) trend. Some of these laws may increase investors' costs. On the other hand, many transnational companies say it is part of their long – term business objective to invest in countries with minimal social and environmental standards⁸.

A number of key laws enacted between 2001 and 2005 had substantial impacts on companies' cost structures or caused debate beyond the mining sector (see Table 3). It is relevant to discuss both the Mining Royalty Law (MRL) and the Mine Closure Law (MCL) in this context.

⁷ See Williams, J. *The Latin America Mining Law Model*, in Bastida, E., Wälde, T., and Warden-Fernández J. (eds.), International and Comparative Mineral Law and Policy. Trends and Prospects, p. 741, (The Hague: Kluwer Law International, 2005).

⁸ See Mining, Minerals and Sustainable Development (MMSD) Breaking New Ground 179 (London, United Kingdom: Earthscan Publications, 2002).

**TABLE 3
MAIN MINING NORMS ENACTED IN THE PERIOD 2001 - 2005**

Law	Year	Brief Name	Main Features
Law 27343	2000	Elimination of an investment allowance	Eliminated the reinvestment of profits free from Income Tax
Law 28077	2001	Modification to the Law of Canon	The mining Canon norms the distribution of 50% of the payed Income Tax by mining companies. This law improves the distribution of the canon among the regional and local where the mines are located.
Law 27623	2002	VAT exploration refund	Value Added Tax (19%) refund paid on goods and services during the exploration activities. This allowance is available until 2008.
Law 27651	2002	Small Scale Mining	Law that formalizes and promotes small scale and artisanal mining.
RM 596 - 2002 EM	2002	Citizens's Consultation and Participation in the Approval of EIA	Enhancement of public participation hearings and consultation prior to the EIA approval.
DS 042 - 2003 EM	2003	Prior Commitments	Submission of a sworn declaration to commit behaviour under a Sustainable Development framework. This is a requirement to obtain mining concessions.
Law 28258	2004	Royalty	The royalty is based on the value of the concentrate or equivalent. The monthly rate increases according to the cumulative value of the concentrate or equivalent of the current year. The rate range is: a) until US\$60 million: 1% b) from US\$60 million to US\$120 million: 2% c) over US\$120 million: 3% It has its own distribution scheme among local and regional governments, municipalities and universities. As well, it states in what they can invest the royalty funds.
Law 28090 DS 033-2005-EM	2003 2005	Mine Closure Regulation of the Mine Closure Law	The Mine Closure Law introduces the requirement of a mining closure plan to the set of environmental regulations. The main features of it an its regulation are: a) submit as a requirement to start exploitation b) public participation c) estimated costs of the plan d) constitute financial guarantees equal to the total budget of the Final Closure and Post Closure stages

Data source: MINEM

2.2.1. MINING ROYALTY LAW

In 2004 the Peruvian government imposed an *ad-valorem* royalty based on the value of the mineral concentrate as a “*compensacion*” that title holders must pay to the State in reward for them exploiting mineral resource⁹. The rate varies in a sliding scale range of 1% to 3%. The royalty is distributed among local and regional governments, municipalities and also for higher education purposes¹⁰. The application and use of these funds is regulated in the MRL which must be put towards SD aims¹¹.

However, many large-scale ongoing operations at the moment are unaffected by the royalty if they have concluded an applicable stabilization contract with the government¹². Stabilisation contracts generally have a term of 10 or 15 years depending on the size of the investment, and many current contracts were signed during the second half of the 1990s and will thus expire between 2015 to 2025. New stabilization contracts include the royalty payment.

Companies reacted negatively to MRL. The National Society of Mining, Petroleum and Energy (SNMPE by its Spanish acronym)¹³ which has a reasonably wide membership, sued the Peruvian Congress arguing that the MRL was unconstitutional. This argument was however rejected by the Court.¹⁴

2.2.2. MINE CLOSURE LAW

The MCL¹⁵ filled an important gap in Peruvian environmental mining legislation. It sets out the obligations and procedures that title holders must follow to design their Mine Closure Plan (MCP) as well as requiring them to establish financial guarantees to ensure

⁹ See Ley de la Regalia Minera, Law 28258. at Article 2 (entered into force on 24 June 2004).

¹⁰ See Ley de la Regalia Minera, *supra* note 9, at Article 8.

¹¹ See Ley de la Regalia Minera, *supra* note 9, at Article 9.

¹² In Peru the stabilization contracts that miners can sign with the government have contract-law status. There are two types: Juridical and Fiscal. The royalty is not defined as a tax so is covered by the former contracts.

¹³ SNMPE is Peru's main mining companies' society.

¹⁴ See Tribunal Constitucional del Peru, <<http://www.tc.gob.pe/jurisprudencia/2005/00048-2004-AI.html>>, (last visited on 3 of April 2006).

¹⁵ See Ley que Regula el Cierre de Minas, Law No. 28090 (entered into force on 10 October 2003).

an MCP's fulfilment¹⁶. The MCP has to be implemented progressively from the beginning of the operation to the Final Closure and Post Closure stages of a mine¹⁷, in much the same way as many other mine closure laws around the world.

The financial guarantee required by the MCP must be constituted within 12 months after the MCP has been approved, and yearly financial contributions must be made by companies, the amount of which is determined by reference to the costs of the Final Closure and Post Closure stages¹⁸. Those resources must only be used to execute the Final Closure and Post Closure stages of a mine. Interestingly, the regulations with respect to the MCL do not mention the fiscal treatment of the guarantee, such as what happens to the interest that a guarantee may earn (for example, if it were a savings account) or if guarantees will be considered a cost or not (there is no carry back allowance). These may represent an increase of a project's costs, or at least generate uncertainty until the MCL is accordingly amended.

2.3. INVESTMENT OPPORTUNITIES

The mining projects that were developed in the 1990s resulted from either the privatization process or the increasing exploration by mining companies. In the 2000s, there have been fewer instances of either. However, this trend has not stopped Peru from holding the top ranking for Mineral Potential ranking in the Annual Survey of Mining Companies published by the Fraser Institute. In particular, in the 2005/2006 edition of the Fraser Institute Survey Peru was ranked first on the "Policy/Mineral Potential: Assuming No Land Use Restrictions in Place and Assuming Industry 'Best Practices'" category¹⁹.

¹⁶ See Ley que Regula el Cierre de Minas, *supra* note 15, at Articles 1 and 2.

¹⁷ See Ley que Regula el Cierre de Minas, *supra* note 15, at Articles 3, 5 and 8.

¹⁸ See Aprueban el Reglamento para el Cierre de Minas, Suprem Decree No 033-2005-EM, Articles 46 to 64, (enacted on 14 August 2005).

¹⁹ See McMahon, F. and Cust, *supra* note 2.

2.3.1. PRIVATIZATIONS

The privatization process of state – owned mining projects started in the 1990s and has now almost been concluded. Among the bigger projects, 22 had been privatized by 1997 and 10 were in the portfolio (see table 4). By 2005 only one project had not yet been privatized and this was scheduled to occur in 2006. Thus, soon privatization should not be a source of new projects for private companies.

TABLE 4
PORTOFOLIO OF MINING PROJECTS PRIVATIZATIONS: 1997 VS 2005

Project Comercial Name	Main Mineral	Portfolio		Current Title Holder	Current Situati
		1997	2005		
<i>Privatized in the 1990s</i>					
Mahr Tunel	Zinc	x		Cia Minera Volcan	Exploitation
Yauricocha	Polymetallic	x		Minera Corona	Exploitation
Cobriza	Copper	x		Doe Run Peru	Exploitation
Puy Puy	Copper / gold	x		n.a.	n.a.
Morococha	Copper / zinc/ lead	x		Minera Corona	Exploitation
Cerro de Pasco	Zinc / lead	x		Cia Minera Volcan	Exploitation
<i>Privatized in the 2000s</i>					
Toromocho	Copper	x		Peru Copper Inc.	Feasibility
Las Bambas	Copper	x		Xstrata	Exploration
Bayovar	Phosphates	x		Vale Do Rio Doce	Exploration
La Granja 1/	Copper	x		Rio Tinto	Exploration
Michiquillay	Copper / gold	x	x	State	Exploration

n.a. Not Available

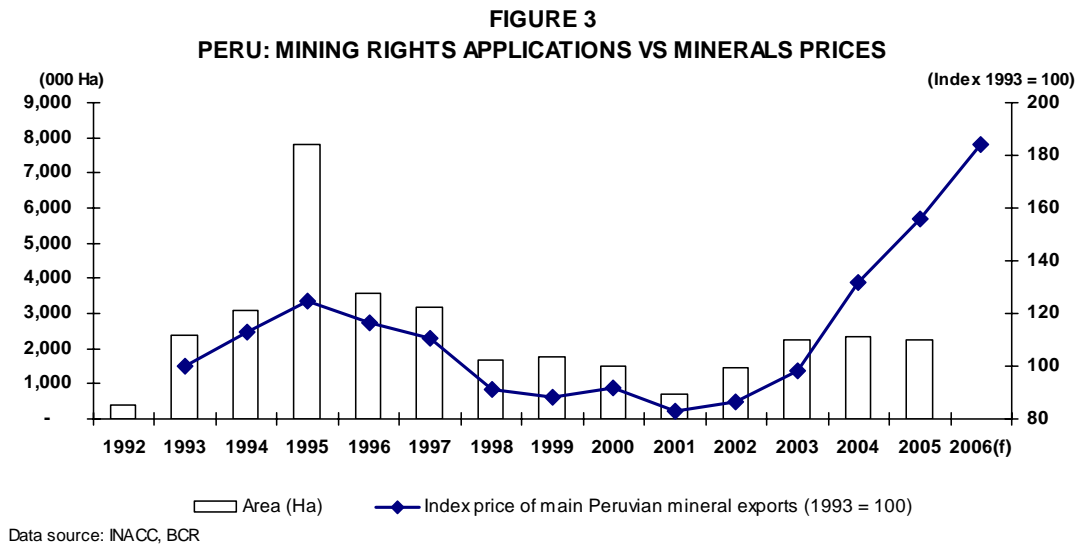
1/ Privatized in 1994, but then returned to the state.

Data Source: APOYO Consultoria, MINEM, ProInversion

2.3.2. EXPLORATION

The Mining Rights Applications (MRA) is an indicator that is used by the government to reflect the mineral exploration interest in Peru. After the capture of the leader of the terrorism group Shining Path in 1992 and the opening of the mining sector to international investment in the early 1990s, interest in mining exploration in Peru grew in line with the mining prices trend. Since the end of the crisis of 2001, interest in exploration has recovered somewhat. However, the total area of MRA is below the levels

that it reached the 1990s, albeit that mineral prices are much higher today (see Figure 3). Since 2004 the relationship between mining exploration and international minerals prices has been less obvious. It can be inferred that there are factors - such as social conflicts, regulatory changes or a decreased participation of Latin America in the global exploration expenditure - in existence which have unduly obstructed investment



2.4. SUSTAINABLE DEVELOPMENT

In recent years there has been increasing awareness of SD in Peru, mainly because of increasing international concern about the fact that:

“all the players in the international mining industry have interests in ‘sustainability’ issues, that is, environmental and socio-economics matters”²⁰.

Peruvian environmental legislation for the mining industry was mainly developed in the 1900s and was almost completed in the early 2000s. Accordingly, the forthcoming objectives should be enforcement of environmental obligations. Accompanying

²⁰ See Ostensson, O., *Players in the Mineral Industry*, in Bastida, E., Wälde, T., and Warden-Fernández J. (eds.), *International and Comparative Mineral Law and Policy. Trends and Prospects*, p. 429 (The Hague: Kluwer Law International, 2005).

environmental legislation is legislation regarding socio-economic issues. Social regulation fosters public participation,²¹ thus empowering mining stakeholders other than companies and governments to participate in the decision making processes regarding mining projects. However, this remains at an early stage, having mainly been developed in the 2000s.

2.5. MINING STAKEHOLDERS

Peruvian mining stakeholders have traditionally been viewed as being mining companies, the State and sometimes the population surrounding a mine site. However, in recent years there has been an active and increasing presence of new actors fostered by global trends (for example, SD, globalization and transparency) and a changing national context like the Peruvian political situation, decentralization process, and social conflicts. In this regard, it has been stated that:

“Stakeholders are persons or groups who are affected by or can affect the outcome of a project. Stakeholders may be individuals, interest groups, government agencies, or corporate organizations.”²²

2.5.1. COMPANIES

During the privatization process within Peru of the 1990s many of the world’s biggest mining companies started to invest in mineral exploration or exploitation in Peru. Among them were Newmont (USA), Barrick Gold (Canada), BHP, Cambior (Canada), Cyprus Amax Minerals (USA; acquired by Phelps Dodge in 1999), Rio Tinto (UK), and Southern Peru Copper Corporation (USA). The participation of foreign, as opposed to domestic, companies in Peru can be measured by production ownership. For the three main minerals extracted in Peru different patterns can be observed (see Figure 4). In gold

²¹ See Establece Compromiso Previo Como Requisito Para El Desarrollo De Actividades Mineras Y Normas Complementarias ,at Article 1, Decreto Supremo 042-2003-EM, (enacted on 13 December 2003),

²² See ICMM, The World Bank, and ESMAP, *Community Development Toolkit*, Toolkit 1, International Council of Minerals and Mining (2005), <<http://www.icmm.com/publications/839Tool1.pdf>>, (last visited on 7 January 2006).

and copper the share of production owned by foreign companies increased until 1999 and has remained relatively stable since then. In gold this recent stability has arisen because of the maturity of large-scale projects such as Yanacocha (of which Newmont owns around 50%) and Pierina (which is wholly owned by Barrick Gold). In the case of copper three companies which produced around 85% of the total output were owned by foreign investors, this share grew with the start up of the foreign owned Antamina²³ in 2001. In the case of zinc, until 2000 more than 90% of zinc was produced by medium-scale mines that were granted to domestic investors during the privatization process. However, the start up of Antamina has also changed the picture in the case of zinc (see figure 4).

It is difficult to measure international interest in investing in the Peruvian mining sector in the 2000s. On one hand, as is seen in Table 4, many mining projects privatized in the 2000s were granted to foreign companies and this reflects a continuing interest in Peru. However, these projects are currently only being explored and there is not yet a guarantee that they will be developed. On the other hand, leading international players have been decreasing the extent of their investments in Peru. Among the main ones: BHP-Billiton has started negotiations in order to sell Tintaya,²⁴ in 2006, Anglo American has stopped investing in Peru altogether, and La Granja does not seem to be a short-run priority for Rio Tinto since *“The project is technically challenging and has modest copper grades, but the deposit contains significant resources that Rio Tinto believes could be capable of supporting a large, long life copper mining operation. ... privatisation contract allow for a period of up to five years during which the testwork and evaluations can take place prior to a development decision being taken...”*²⁵.

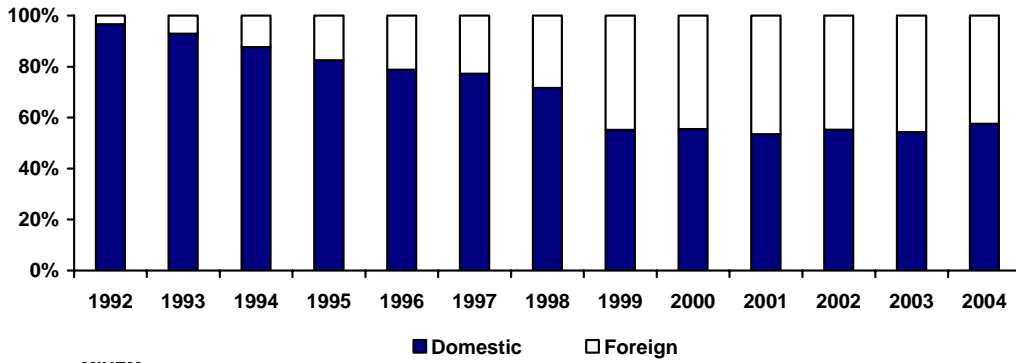
²³ The main extracted minerals in Antamina are copper and zinc. Its four shareholders are: Falconbridge (33,75%), BHP Billiton Plc. (33,75%), Teck – Cominco Limited (22,5%), and Mitsubishi Corporation (10%). See Compania Minera Antamina, <http://www.antamina.com.pe/01_antamina/En_empresa.html>, (last visited on 5 April 2006).

²⁴ Tintaya is the only mine that BHP-Billiton operates on its own in Peru. See <<http://www.bhpbilliton.com/>>, (last visited on 5 April 2006).

²⁵ See Rio Tinto's News Release No PR450g, < <http://www.riotinto.com/investor/media.aspx?id=935> >, (last visited on 5 April 2006).

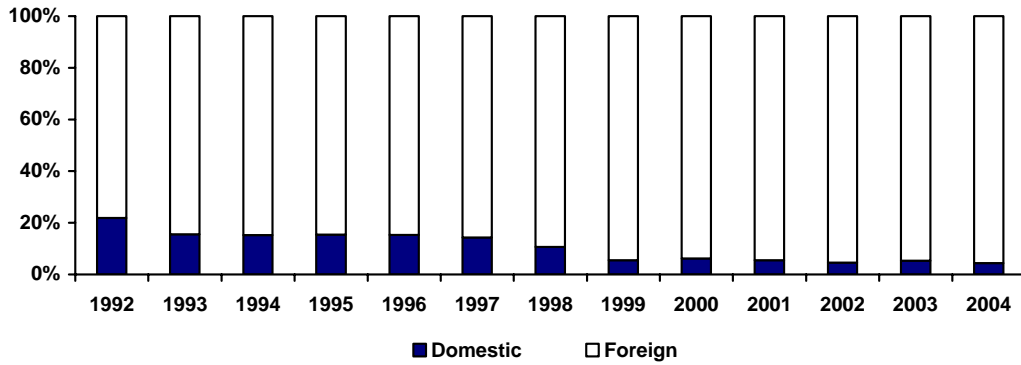
FIGURE 4
MINERALS PRODUCTION EVOLUTION IN PERU REGARDING MINES' OWNERSHIP:
DOMESTIC VS FOREIGN

GOLD



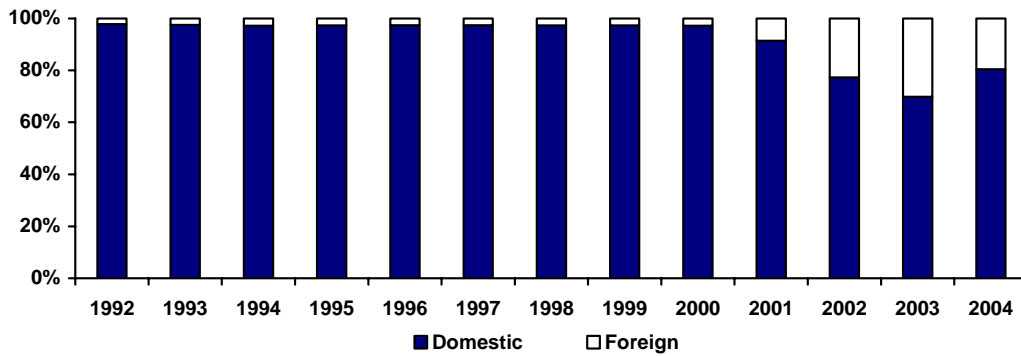
Data source: MINEM

COPPER



Data source: MINEM

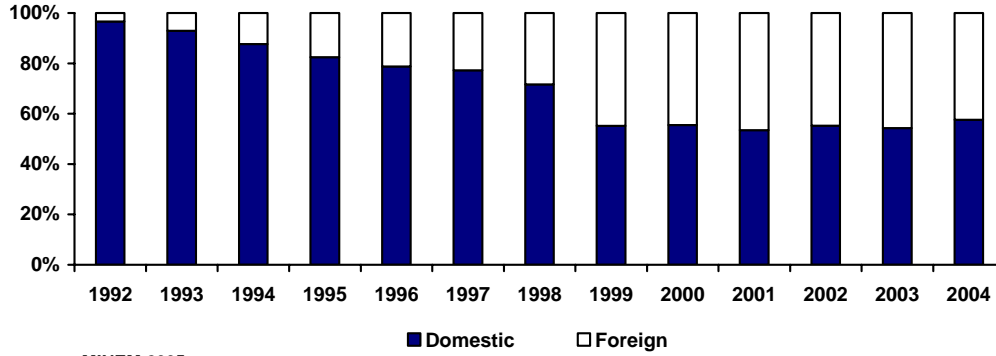
ZINC



Data source: MINEM

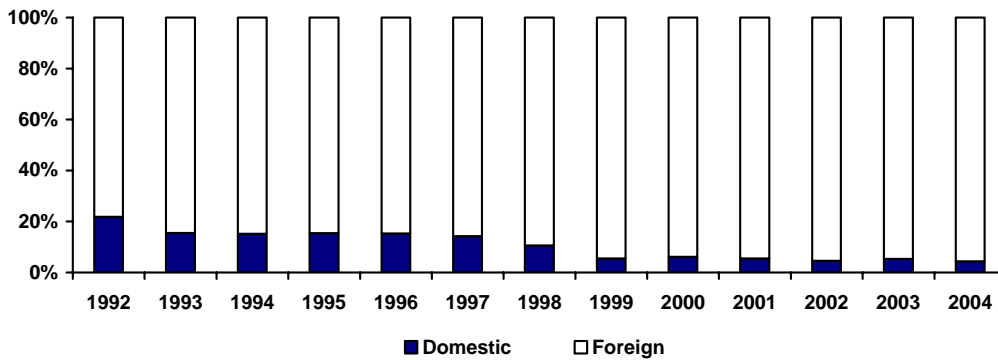
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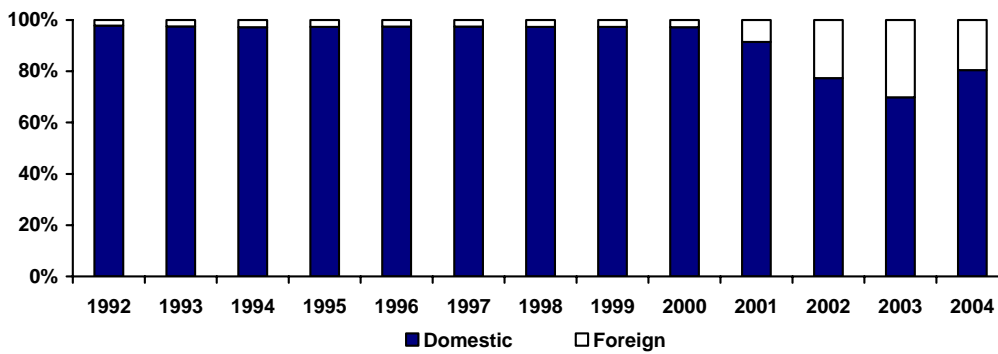
Data source: MINEM 2005

COPPER



Data source: MINEM 2005

ZINC



Data source: MINEM 2005

2.5.2. GOVERNMENT

*“Governments in democratic countries are the proper embodiment of civil society, whether we like or dislike the elected government”*²⁶

The Peruvian government’s mining policy has, in recent times, sought to adjust to changes in the mining sector. However, in the author’s opinion, there is not enough evidence to support the belief that these will continue during the next government (see section 2.1.2). Notwithstanding this, it is relevant to note that the main policy shifts of the 2000s are:

- Increasing concern regarding social issues because of the SD trend and growing social conflicts within Peru. In response to these issues, the Ministry of Energy and Mines of Peru has created the General Bureau of Social Management whose aim is to *“...promote harmonious relations between companies and civil society, as well as prevent and solve social conflicts.”*²⁷ This Bureau is responsible for administering legislation relating to social issues. Ultimately, it seems that the aim of the Peruvian State is to increase companies’ “social investment” in Peruvian society²⁸.
- As a result of the fact that the privatization process is about to finish, the State must rely upon private enterprise to source and promote new mining projects. Thus, in order to attract investment the State should continue to offer tax allowances and a good investment climate to investors.
- Continuing implementation of the Peruvian decentralization process.

²⁶ See Crowson, P., *Old Wine in New Bottles: Policy Issues for the Mining Industry*, in Bastida, E., Wälde, T., and Warden-Fernández J. (eds.), *International and Comparative Mineral Law and Policy. Trends and Prospects*, p. 612, (The Hague: Kluwer Law International, 2005).

²⁷ See Modifican el Reglamento de Organización y Funciones del Ministerio de Energía y Minas, D.S. No 066 – 2005-EM, (enacted on 21 December 2005).

²⁸ See Press release No1700, *Gobierno Crea Direccion General para Prevencion y Solucion de Conflictos*, Ministerio de Energia y Minas, (6 January 2006), <<http://www.minem.gob.pe/common/prensa/data/notihoy1700.pdf>>, (last visited 6 April 2006).

- The environmental agenda is likely to increasingly focus on the monitoring and enforcement of enacted legislation which, in the case of Peru, is mainly the MCL.

2.5.3. SURROUNDING POPULATION

The people who surround a mining project, whether they are indigenous communities or people located in towns or cities, have in recent years increased their involvement in both traditional (for example, employment) and new (for example, sustainable development) mining issues²⁹. According to Ostensson two facts are important in enabling this: “...*first is the general trend towards increased openness, public participation and empowerment of local communities... The second factor is improved information and communications*”³⁰. Better communication facilities have also improved previously isolated populations’ access to information.

A frequent issue of concern to surrounding populations is the lack of adequate representation by local government authorities³¹. This lack creates a space for other stakeholders, such as Non Governmental Organizations (NGOs), to assume political leadership. Ultimately however, surrounding populations’ positions towards mining project will differ in each case according to the particular circumstances.³²

2.5.4. “NEW PLAYERS”

- o Non Governmental Organizations: In recent years NGOs’ influence has considerably increased. This has occurred because of improved communications facilities, the greater involvement of surrounding populations, and the increasing incorporation of public participation in the development of the policies of governments and mining companies. NGOs usually dismiss mining activities. In Peru NGOs with social

²⁹ See Ostensson, *supra* note 20, at p. 439.

³⁰ See Ostensson, O., *The Stakeholders: Interests and Objectives*, in Otto, J., and Cordes, J., (eds.), Sustainable Development and the Future of Mineral Investment, pp. 3-13, (Paris, France: United Nations Environment Programme, 2000).

³¹ *Ibid.*

³² See Ostensson, *supra* note 30, pp. 3-14

development objectives and international cooperation requirements must register with the International Cooperation Peruvian Agency³³, which grants them tax allowances and other benefits. At the beginning of 2006 there were more than 1,000 registered NGOs in Peru.

- Catholic Church: Peru is a Catholic country³⁴ and the church participates actively in politics by influencing public opinion. The church is active throughout the country³⁵, even in places where NGOs have not arrived or the governmental presence is weak. This is relevant to the mining sector because the church has been influential in respect of public participation and hearings regarding mining projects. In addition, members of the church have also played important roles in social conflicts' with respect to mining.

2.6. SOCIAL CONFLICTS

Social conflicts have, in recent years, arisen across Peru due to factors including political crises, the poor presence of the state and economic inequalities. Mining projects are an easy target for social protests due to their remote locations and the large investments involved. In recent years the number of social protests and conflicts from surrounding populations against mining projects has increased. Although the causes of these are diverse and complex, they seem mainly to be related to socio-economic and environmental issues. Most companies have started initiatives that benefit surrounding populations in order to achieve good relationships. However, sometimes this is not enough.

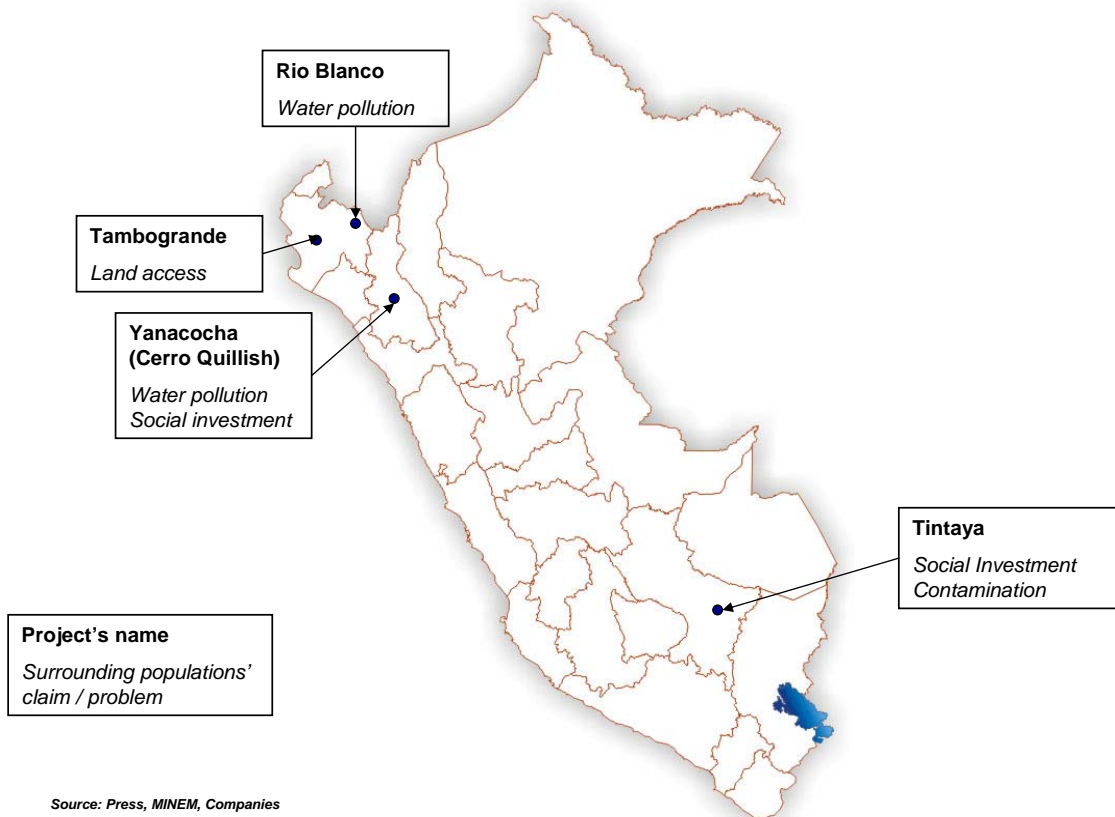
³³ See Agencia Peruana de Cooperacion Internacional, <<http://www.acpi.gob.pe>>, (last visited 21 January 2006).

³⁴ According to the 'Instituto Nacional de Estadistica e Informatica of Peru', 95% and 89% of population were Catholic in 1981 and 1993, respectively. Although these are not up-to-date statistics, it is questionable whether they would have changed substantially today. See Instituto Nacional de Estadistica e Informatica del Peru, <<http://www.inei.gob.pe>>, (last visited on 4 April 2006).

³⁵ According to the 'Conferencia Episcopal Peruana', in Peru there are: 52 working bishops and 25 emeritus, 45 ecclesiastic jurisdictions, 1360 parishes and 2599 priests. More than half of the parishes are located in remote places.

The social conflicts in which the Peruvian government has become involved have been solved by dialogue between all parties. Public participation has been fostered through public hearings and comments, thus involving more stakeholders (see section 2.5.3.) and delaying solutions. In 2004 alone the MINEM intervened on 97 occasions and organized 105 meetings with communities³⁶. The author expects that the government will continue to take appropriate measures to prevent future conflicts.

**FIGURE 5
MAIN MINING SOCIAL CONFLICTS 2000 - 2005**



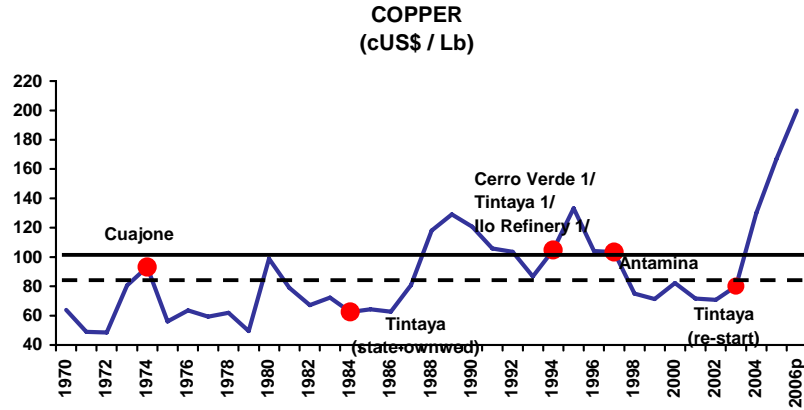
³⁶ See Press release No. 1486, *Primer Contacto Minero debe ser Social*, Ministerio de Energia y Minas del Peru (23 January 2005), <http://www.minem.gob.pe/common/prensa/data/notihoy1486.pdf>, (last visited 6 April 2006).

3. CURRENT INTERNATIONAL INVESTMENT CONDITIONS

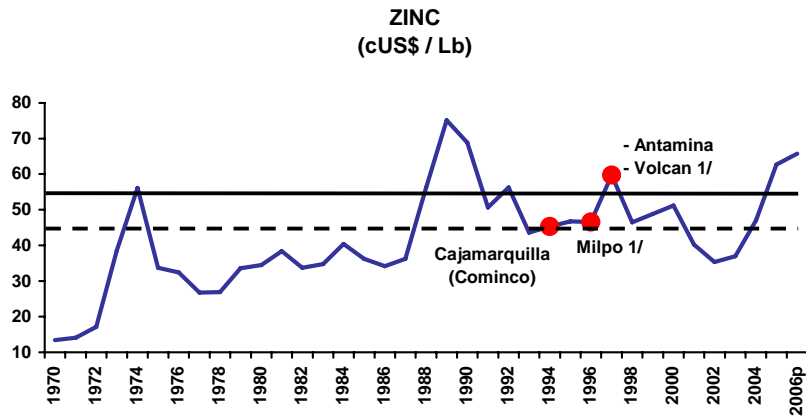
3.1. PRICES

There is evidence about how international mineral prices have influenced corporate investment decision-making process in Peru with respect to whether to re-start existing operations or to develop new ones (see Figure 6). Nowadays price levels are above historical levels and forecasts suggest that such levels will be maintained in the near future , *ceteris paribus*. Thus, it is likely that the reason(s) for the lack of new investment announcements will be other than projects' profitability.

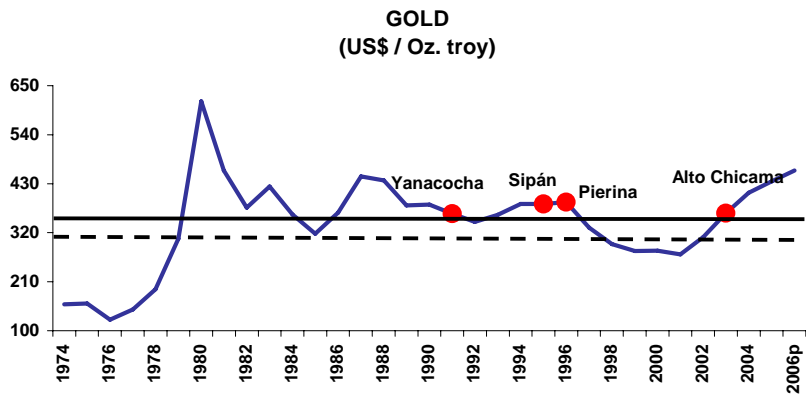
FIGURE 6
INVESTMENT DECISION YEAR FOR MAIN PERUVIAN MINING
PROJECTS AND INTERNATIONAL PRICES



1/ Privatization



1/ Expansion



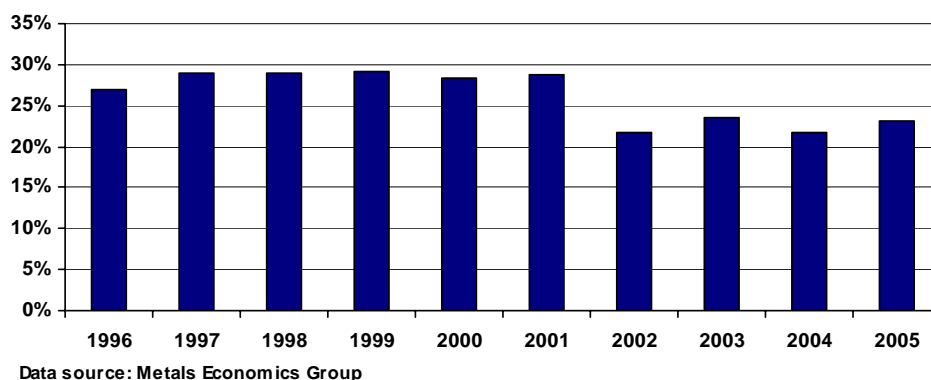
--- Exploitation, Re-start — New Projects

Data source: Central Reserve Bank of Peru, Companies, APOYO Consultoria

3.2. INVESTMENT TRENDS

Expenditure in mineral exploration in Latin America followed the increasing global trend from 1996 (earliest available data) to 2001, and hence its share of the global expenditure has remained stagnant. Since 2002, however, this share dropped by 6 percentage point on average (see Figure 7). The reduced interest in exploring in Latin America affects Peru since less capital is entering the region. This factor can explain the lack of growth of MRA in Peru (see section 2.3.2).

FIGURE 7
EXPLORATION EXPENDITURE IN LATIN AMERICA
(% share of global expenditure)



The mergers and acquisitions process of recent years has probably also hindered mining investment flows into Peru. On the one hand, capital investment is being pulled away from developing new assets in Peru as well as other Latin American countries. On the other hand, Peruvian companies have not been taking part of the many mergers and acquisitions.

4. CONCLUSION

Due to the current policy of adjusting regulation to SD by fostering public participation (even when this sometimes contributes to social conflicts), the politically uncertain future

of Peru which arguably offsets favourable economic conditions, and contradictory international trends in relation to Latin America (less exploration in a high prices scenario); it can be concluded that Peru is not as attractive for companies seeking to invest in mining projects today as it was in the 1990s. Notwithstanding this however, there is also evidence that the Peruvian geological conditions and the passage of appropriate legislation that is in line with international trends are also having an enabling effect and will assist Peru to benefit from the current international mining boom.

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