



VON WOBESER

E S G A R T I C L E S

ESG in the Mexican Mining Industry *Part Four*

By: Edmond Grieger, *Partner*
Ariel Garfio, *Partner*

Introduction

As we mentioned in part three of the document "ESG in (the Mexican Mining Industry)", climate change and energy efficiency issues, now more than ever, play a very relevant role in the industry. This is because in the mining sector, most of the greenhouse gas ("GHG") emissions are directly related to energy consumption. GHG emissions are mainly produced by the burning of fossil fuels to supply electricity to the mines, as well as to power equipment and vehicles for the extraction and processing of minerals and metals. This intensive energy consumption is expected to increase exponentially in the coming years.¹

This fourth part of the document emphasizes one of the most important areas of opportunity the industry may

have in relation to the "E" of ESG criteria, specifically, in relation to the sustainability of GHG emissions and the different ways in which a mining project can demonstrate such sustainability. The reduction of GHG emissions is part of a set of actions that are required for a positive assessment regarding the mitigation of the effects of Climate Change according to the *Responsible Mining Index* ("RMI"), prepared by the *Responsible Mining Foundation* ("RMF"), and, in general, to meet the needs and demands of its stakeholders. The RMI reports that an increasing number of companies are monitoring and publishing their energy consumption and GHG emissions. (*Responsible Mining Index Framework, 2022*).

In this regard, this document contemplates the different legal mechanisms that allow accreditation before the different stakeholders (authorities, civil society and the investing public) that GHG emissions are at sustainable levels. The following alternatives will be explained: (i) accreditation, through mandatory and voluntary carbon offset and credit mechanisms; and (ii) the acquisition or trading of Clean Energy Certificates ("CELS") or I-RECs² (International Renewable Energy Certificate) within the Mexican or international system regarding electricity consumption.

1 Responsible Mining Index Framework. 2022 (n.d.). Retrieved March 16, 2023, from https://www.responsibleminingfoundation.org/app/uploads/RMI_Framework2022_SP_web.pdf.

2 Clean Energy Certificate: Title issued by the Energy Regulatory Commission that accredits the production of a certain amount of electricity from Clean Energy and that serves to meet the requirements associated with the consumption of the Load Centers.

• **Carbon Offset Mechanisms**

Through the ratification of the Paris Agreement, Mexico committed to reducing its GHG emissions by 25% by 2030.³ Currently in Mexico, the emissions trading system is divided in two, a mandatory system (Emissions Trading System) and a voluntary one.

I. Emissions Trading System

The Climate Change Act ("LGCC") determined the foundations of the Emissions Trading System (Cap and Trade) consisting of the determination of a limit (Cap) on the total GHG emissions of one or more sectors of the economy which must be reduced each year, including the mining sector or industry. Likewise, economic operators in these sectors must submit an emission allowance for each ton of CO₂ they emit. These agents may receive or buy these allowances and allow these sectors to buy and sell emission allowances from each other (Trade). As of this date, the Federal Government has not yet issued the

3 United Nations (UN), Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC) https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_spanish_.pdf

4 Resolution establishing the preliminary conditions of the Program to Test the Emissions Trading System. https://www.dof.gob.mx/nota_detalle.php?codigo=5573934&fecha=01%2F10%2F2019&fbclid=IwAR38nx6uLkhGVenrkXZzdhkr93vkVKOoloaBaedoDSH2ytdJH6K_1dWVUo#gsc.tab=0

5 Mexican Carbon Platform: (n.d.). Com.mx. Retrieved March 17, 2023, <http://www.mexico2.com.mx/medio-ambiente.php?id=6>

6 Gold Standard. (n.d.). Carbon Offset Guide. <https://www.offsetguide.org/understanding-carbon-offsets/carbon-offset-programs/voluntary-offset-programs/gold-standard/>

7 Verified Carbon Standard – VCS project Validation and Verification. (s. f.). Certifications. Retrieved on March 16, 2023, from <https://certifications.controlunion.com/en/certification-programs/certification-programs/verified-carbon-standard-vcs-project-validation-and-verification>

8 Verified Carbon Standard. (n.d.). Verra. Retrieved March 16, 2023, from <https://verra.org/programs/verified-carbon-standard/#how-it-works>

complementary provisions that will regulate the operation of the system, whose transition stage for the operational part of the system was scheduled for December 31, 2022.⁴

II. Voluntary Markets

Voluntary emissions trading systems consist of mechanisms that allow companies and individuals to offset their CO₂ emissions on a voluntary basis.⁵ Examples of voluntary emissions trading mechanisms include:

i. Gold Standard and Verified Carbon Standard ("VCS")

Within the voluntary emissions market, two global carbon standards stand out: the *Gold Standard* and the *Verified Carbon Standard*. On the one hand, the *Gold Standard* is a voluntary carbon offset program focused on advancing the United Nations Sustainable Development Goals and ensuring that projects benefit neighboring communities. This mechanism can be applied to voluntary offset projects and Clean Development Mechanism (CDM) projects.⁶

The VCS is also a mechanism that is part of the voluntary emissions market whose main function is to accredit projects that reduce GHG emissions.⁷ Certified projects may be eligible for Verified Carbon Units ("VCUs"), each unit representing one metric ton of CO₂ reduced or removed from the atmosphere. Projects can trade these VCUs in the market to make a profit and expand their climate change mitigation activities.⁸

ii. Clean Development Mechanism ("CDM")

The CDM is a procedure under the Kyoto Protocol in which developed countries can finance GHG emission mitigation projects within developing countries and receive in exchange Emission Reduction Certificates to meet their own emission reduction commitment. This is done through the promotion of projects with low environmental impact and low GHG emissions. The countries that carry out the projects benefit by

reducing their emissions and thereby generating carbon credits that they can use to cover their commitments under the Kyoto Protocol, or trade them on the open market.⁹

• **Electric Power Certificates**

I. CELs

In accordance with the Electric Industry Law ("LIE"), those mining projects whose load centers are registered as a Qualified User are required to prove that a percentage of the electricity they consume comes from clean sources.¹⁰ To prove this, Qualified Users must acquire the number of CELs determined by the Ministry of Energy.

In this regard, the obligations to acquire CELs are established in terms of a specific percentage determined by the Ministry of Energy with respect to the total energy consumption of a Qualified User. As an example, for the year 2022, this mandatory percentage was 13.9% of total energy consumption.¹¹ In this way, economic agents must prove that they have CELs for the amount that corresponds to their consumption, which forces them to acquire CELs or look for clean electricity supply alternatives (e.g. distributed generation or isolated supply schemes through the installation of solar power plants).

9 National Institute of Ecology and Climate Change, (n.d.). Clean Development Mechanism (CDM). Retrieved March 16, 2023, from

<https://www.gob.mx/inecc/acciones-y-programas/mecanismo-de-desarrollo-limpio-mdl>

10 Section LV of article 3 of the LIE defines a Qualified User as "a Final User that is registered before the CRE to acquire Electricity Supply as a Market Participant or through a Qualified Services Supplier".

11 Resolution announcing the requirement for the acquisition of Clean Energy Certificates in 2022.

https://www.cenace.gob.mx/Docs/03_CEL/DocumentosInteres/2019-03-29%20SENER%20Requisito%20CEL%202022.pdf

12 What are RECs? (n.d.). I-REC Standard.

<https://www.irecstandard.org/what-are-recs/>

II. I-RECs

The I-REC (*International Renewable Energy Certificate*) Standard is a renewable energy certificate that is part of the voluntary market recommended by the Greenhouse Gas Protocol, to which Mexico is a party. The main objective of this certificate is to guarantee a system in which electricity consumers can track the energy they receive associated with the certificate, from its generation, source, location and date of production.¹² This is done through certificates or digital declarations that are used in the electricity sector to transmit information regarding the generation of renewable energy.

As part of the global transition by energy generators and consumers towards energy generated by clean technologies, and with the intention of reducing GHG emissions in the world, it is extremely important that mining projects recognize the impact that their productive activities and GHG emissions can have on the world. Therefore, mining projects have the options set out in this document to reduce the carbon footprint associated with such consumption.

In conclusion, it is essential to adopt sustainable legal strategies and practices regarding the accreditation and reduction of GHG emissions, as well as the accreditation of energy generation from clean sources, either through CELs or through voluntary accreditations, always in full compliance with the applicable legal framework, and avoiding double counting, double certificate issuance, and double attribute claims. In any case, the endeavors of the mining industry to reduce its emissions and represent sustainable mining practices, not only benefit the environment, but also create an area of opportunity around the profitability of the industry, since cost and resource efficiencies will be created and there will be a better public perception of the industry. Therefore, it is essential that investors in this industry establish viable integral strategies to reduce their GHG emissions and invest in the mechanisms described in this article so that the mining industry can consolidate viable solutions to address climate change.

For additional information on the topic of this note, please contact our experts:



Edmond Grieger Partner:
+52 (55) 5258-1048
egrieger@vwys.com.mx



Ariel Garfio Partner:
+52 (55) 5258-1048
agarfio@vwys.com.mx

VON WOBESER Y SIERRA, S.C.
Mexico City, May 23, 2023.

The information contained in this note does not constitute, nor is it intended to constitute, nor shall be construed as legal advice on the topic or subject matter covered herein. This note is intended for general informational purposes only. To obtain legal advice on a particular matter in connection with this topic, please contact one of our attorneys referred to herein.



VON WOBESER Y SIERRA, S.C.

Paseo de los Tamarindos 60, 05120 Mexico City
+52 (55) 5258 1000
vonwobeser.com