



Colombia: tapping potential and battling bureaucracy

Robert G Carrington, President, CEO and Director of the **Colombian Mines Corporation** shares his perspective as an entrepreneur seeking to develop the economic and social potential of a country whose government's indifference continually stymies precious metals mining.

Robert G Carrington is a man of experience when it comes to mining and is a three-decade industry veteran. Carrington applies his expertise daily as a registered engineering geologist with a degree from the Mackay School of Mines and Geology in Reno, Nevada. Carrington has taken part in the discovery of deposits containing more than 22 million ounces of gold, in sites such as what is now Newmont Mining's Twin Creeks mine in Nevada. He has also pioneered the exploration and development of gold mining projects in Colombia. In a discussion with IFLR1000, Carrington shared his perspective as an entrepreneur seeking to develop the economic and social potential of a country whose government's indifference and sins of commission or omission continually stymie precious metals mining.

There is so much interest in mining in Colombia right now. From your perspective, are there any disadvantages to operating there?

Colombia has got a lot of things going for it, it's one of the most prospective regions on earth, the government is conservative by Latin standards, they really want direct foreign investment, they want to develop their resources, and they want companies to come and share the technologies they have. They just do not understand the value of time. Without regulatory reform, it makes it tough on foreign companies operating there.

The Colombian government is so backlogged because everybody is careless about processing these things. There is no penalty for government employees if they don't do their job, so they have over 14,000 pending applications, and there's been a two-year moratorium on submitting new applications.

If you're working in an environmentally sensitive area, you have other issues to deal with, such as showing regulators you will not adversely impact

the environment with your exploration. The biggest issue is getting the mineral title, known in Colombia as a Contrato de Concesión or a Concession Contract. In theory the process is to apply for an area, and then by law they have 180 days to issue, deny or otherwise adjudicate the concession contract. We have applications now that have been pending since 2007. Without the mineral title or Concession Contract you can not apply for water diversion or discharge permits, which means you cannot conduct any meaningful exploration such as drilling.

If you could enact one regulatory reform in Colombia, what would it be?

It would be a law providing for a default issuance of permits and mineral titles. The law would kick in when a regulatory agency exceeds the allotted time to issue a permit. Permitting is part of modern mining. Most legislation in every jurisdiction says that a given agency has X number of months to process a permit request, approve it, deny it, or ask for more information. Typically the law goes one step further, so that if the agency does not do this, the permit issues by default and somebody in the agency gets his or her hand slapped for not acting on a timely basis, but the industry is not held hostage through inaction. Here is the biggest problem we grapple with in Colombia—their laws say we'll issue this permit in X number of days. But the laws don't say you'll get the permit by default. Colombian Mines still has pending applications for mineral titles launched in January 2007 which under Colombian law, the regulatory agency should have had 180 days to process. I guess they just didn't tell us which 180 days.

Typically, in the US, certainly in Nevada, one of the biggest mining centers, the regulatory framework is such that when you apply for your air quality or water quality permits, you name it, the law says the agency has this

amount of time, 180 days or whatever it is, to act on the permit application or the permit issues by default. They, the regulators, know this and they tend to be prompt about addressing applications. In Colombia, where nobody even gets a wrist slapped, they just don't worry about it. I actually had a government attorney ask me what the difference was whether we got a permit in a week or two or in three months, and he wasn't joking, he literally didn't see why it should make a difference to us.

This is the single largest hurdle that all the foreign companies have. One of our main projects is in a holding pattern right now, actually two of them because we're waiting on water permits for our core drilling. The amount of water we're seeking to use is about amount you get out of garden hose. We submitted applications October 2012, and we still do not have them as of this afternoon. I do not believe it's corruption, I might suggest that it's incompetence, they don't have that finishing touch in their regulatory framework that says, the regulatory agencies have to act within the legally specified time or the permit will issue by default. This one piece of legislation would solve 90% of the problems foreign and domestic exploration companies are experiencing in Colombia today. Without it, through administrative silence, the Colombian regulators are effectively taping a plastic bag over the collective heads of the investors and companies trying to work there and telling them to hold their breath.

So you see this as an industry-wide problem?

Yes, for example at AngloGold, has two large deposits they want to put into production. They've been trying for years to get permits for construction and pre-production activities at least since 2007, and so far, nothing. No foreign company has permitted a new mine in Colombia successfully to date.

AngloGold's largest deposit has contains roughly 25 million ounces of gold and will be one of the world's biggest gold mines, yet the Colombian government just can't get out of their way.

If you ask almost any executive in any company active in Colombia what the biggest problem is the almost universal answer is permitting and mineral titles.

NGOs seem to be able to influence the mid-level bureaucracy which contributes to the problem, but I think an awful lot of it comes down to incompetence and ignorance. I don't even think it's corruption, I just think they don't have the knowledge, or understand the value of time.

In all of the world's leading mining jurisdictions, Chile, Australia, or the state of Nevada, they all require extensive permitting for mines. The regulatory agencies have a responsibility to process those permits and if they decide to do nothing, the permits will issue by default. The regulators don't want that to happen because they're responsible if something goes wrong.

Are the territorial rights of indigenous peoples a source of legal trouble for mining operations?

Generally no, and I do not expect them to become one, at least in the near future. On May 11 this year, a change to Colombia's mining law will take place. Most of the work being done in Colombia is on mineral titles issued under a mining law passed in 2001. That law was replaced with the current law in 2010 with that had some good and some bad in it. The new (2010) statute was generally not as well written as the 2001 law, but it did mandate consultation, addressing the concerns of indigenous and black communities in Colombia. But there were things in the newer law that the Colombian Supreme Court found to be unconstitutional. So as of May 11, the 2001 mining law will be re-enacted and then Congress can amend the law.

Most companies operating in Colombia do try to address local and indigenous community concerns. Consultation on the ground is critical—we're spending over \$70,000 dollars on this initial consultation with the three indigenous communities on a new project to identify their concerns, what their needs are, what we can do to help them and to be a good corpo-



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rate citizen.

At another of our projects, the El Dovio project, the community is composed entirely of indigenous people but they do not have a formally recognized indigenous community. Even though we're not required to do anything, we strive to be a good corporate citizen and help the community provide for its members what it could not if we were not there. In Colombia, your best defense against guerillas and security issues is having the locals and indigenous peoples be your best friend. If they value your presence, they will warn when you something seems to be wrong. As examples, we helped them re-paint the school, helped them replace windows in the school that got blown out in a storm that they didn't have the money to replace. They didn't have a medical clinic so we got the government to supply medical facilities, and we pay for a nurse to staff the clinic. Now there's a medical clinic in the village on the property. If one of our people gets hurt, we want to have good first responder capability on hand, but the whole community benefits, they get examinations and shots without having to make a two-day trip to the nearest clinic. They benefit because it's infrastructure we want for our people anyway. We, and I think most modern companies active in Colombia, try very hard to create "win – win" situations for everyone. I've done a lot of work in various jurisdictions around the world where you have indigenous community concerns. You need to appreciate those concerns, they live there.

One of the biggest things we do on all of our projects, we hire people from that immediate area, typically within a couple of miles of our project boundary. We try to make sure that if anybody wants a job, they get have a job before somebody from Bogota or Medellin or somewhere else. We always try contribute to the local economy first and foremost.

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What regulatory issues do you need to watch out for on imports or exports?

When we first started we had issues with things you could never think of. We were bringing assay standards for our Quality Control – Quality Assurance. These are finely powder rock sealed in plastic bags. Customs people looked at it rather strangely to say the least, now that there is an understanding of what we are doing and the supplies we need we don't have problems. Colombia had been isolated politically and from a foreign standpoint because of all the violence there, but their legal framework for importing goods and machinery is very proactive. There are some horror stories where people tried to bring in machinery such as drill rigs without going through the proper channels. Once you get cross-wise with customs people, things get locked up in impound and you spend a massive amount of time and money untangling the problem.

We recently imported two small drills for prospecting. It took us a while, but we got a good local customs broker who knew exactly what we had to do, how we had to do it and we had no problem on the Colombian side.

When it comes to choosing counsel, what do you look for?

That depends on what we're doing. As with any counsel the all important question is "Have you done it?" and not "Can you do it?" I don't think I've ever met a lawyer who did not think they could do it, but in my experience there aren't that many who really have done it. We've hired our own in-house counsel because there are precious few attorneys in Colombia who actually are good qualified and competent mining attorneys. Many of the attorneys who hold themselves up to be experts, I would judge to be not nearly as competent as they think.

We steered clear of that. We looked at engaging one attorney who held himself up to be a mining attorney. We just weren't comfortable with his acumen, so we found another independent attorney, and that guy was able to do amazing things, he truly could move heaven and earth. We've never had any unpleasant experiences, but we are very careful to interview, assess, and judge the real capabilities of any attorney there.

Globally, some of the big firms are better than others, but we find that international law firms sometimes rest on their laurels and they tend to hire junior attorneys to go out and do the work. So you may be getting bill for

\$1,000 per hour but the attorney is very junior and getting paid \$40 an hour so you really are getting a \$40 per hour product. We tend to work with local attorneys we have confidence in as to their competence and capabilities.

Colombia is enough of a new frontier that they, the big multinational law firms, often haven't had that much experience or reason to be involved, so they're learning, just like everyone else.

There are times we have to hire outside consultants or attorneys. We have former a Secretary of Mines who sits on our advisory board, and we ask him, "Who can handle this issue for us?" Dealing with any Latin country, you have to have somebody who's well enough connected to help you get hold of the right people.

What is your preference with regard to hourly versus fixed fees?

I've generally found that the hourly fees wind up being cheaper than fixed fees. One thing I do know is that if an attorney gives you a fixed price, and things go over, the attorney will come back to you wanting you to modify that price. So you're really better off with the hourly fee.

What would you like to see happen in the near future?

In Colombia, the challenge is helping the Colombian government get to a point where they understand the value of time and they can execute and issue permits on timely basis. If they fail in that aspect, their giant mining boom will become giant mining bust.

Many companies are finding that financial institutions are just no longer confident that you can develop a mine in Colombia. We were, and actually still are, negotiating a possible joint venture on one of our projects with a company. That company was in very serious negotiations with two banks to finance the project, and at the 11th hour both banks pulled out with very similar concerns. They weren't convinced the company would be able to get permits necessary in a timely fashion to develop the project. You really do see the substantial financial institutions beginning to worry about the permitting issues and Colombia's future.

It's going to become a major issue to obtain financing in public markets, if Colombia becomes seen as a place where you can't do business. Inside Colombia, it all comes down to getting those permits. If I'm seen as not getting the permits I need to drill, my shareholders will go someplace where they can, and I can't blame them.

All of these issues could be solved with a very simple piece of legislation that puts a deadline on the permits and issuing mineral titles and provides for default issuance if the regulator fails to act. If you're looking at issuing water permits it should not take more than two to three weeks at most, if a regulator is assessing an Environmental Impact Statement for a large mining operation, maybe they should have a year, 18 months, or even two years, because the issues are complex and there's a lot to something like that, but there should be a D-Day where a company knows there will be a definitive yes or no.



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About the author

Robert G. Carrington, President, CEO and Director of Colombian Mines Corporation, is a Registered Professional Geologist / Registered Engineering Geologist and a graduate of the Mackay School of Mines and Geology at Reno, Nevada. He has more than 30 years domestic and international experience throughout the western hemisphere and has participated in the discovery of deposits containing more than 22 million ounces of gold, including the giant Twin Creeks mine operated by Newmont Mining in Nevada.

Active in Colombia since 1992, Mr. Carrington is widely regarded as one of the early explorers and was instrumental in founding Colombian Mines and securing its impressive property portfolio. Prior to Colombian Mines he served as Director and CEO of Gold Canyon Resources Inc., and has served as a senior executive of many other public and private companies.