

NEW HYDROCARBON LAW FOR BOLIVIA

June 21, 2025

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INTRODUCTION

Following are some very initial suggestions for a New Hydrocarbon Law for Bolivia for a new government to take charge before the end of 2025.

A new Hydrocarbon Law would have various objectives. **However, the most important matter would be to get petroleum exploration going on a large scale to ensure that a large share of the remaining resources is discovered and produced in the next decades.**

This is urgently needed because oil and gas production are declining.

In this respect time is of the essence. Ideally a new licensing round should be held and new farmout agreements should be signed within one year of the new government coming to power.

Past experience indicates that lawyers seem to take their time in preparing a new Law. Many meetings and inputs are required from the petroleum companies and many citizen representations. Therefore, a complete overhaul of the Law 3058 of 2005 may take to the end of 2027. This is too late.

It is therefore suggested to work in three phases as described below, which consist of:

1. Corporate income tax adjustments,
2. A law amending some articles of law 3058 of 2005,
3. A full-scale new hydrocarbon law.

The new legislation would use the concept on “old” and “new” hydrocarbons. Old hydrocarbon terms would apply to current production, while new hydrocarbon terms would apply to new exploration and production after 2025.

CORPORATE INCOME TAX ADJUSTMENT

The first step is an adjustment of the corporate income tax provisions under the current Operating Contracts. It is my understanding that the corporate income tax is ringfenced per contract area. This is a disincentive for new exploration.

It can be recommended to make the required changes possibly through legislation to make the corporate income tax fully consolidated at the corporate level, as is common in many petroleum producing countries.

This will enable companies that are already producing in Bolivia to deduct their exploration costs for tax purposes from ongoing income. This will encourage such companies to look at new exploration opportunities.

AMENDMENTS TO THE 2005 HYDROCARBON LAW

In order to encourage new exploration, it is not necessary to write a completely new law.

A limited number of amendments to the 2005 Law will create the fiscal and regulatory framework to encourage new exploration and would create a new type of contract, called in this memo Hydrocarbon Agreement. The Law with the Amendments to the 2005 Law could be prepared in a relatively short time frame with the objective to have it introduced well before the end of 2026. This law will probably only 3 – 5 pages.

The amendments would apply for new contracts signed after January 1, 2026 related to new hydrocarbons only. The following would be considered new hydrocarbons:

- == new blocks in a licensing round, and

- == areas selected from currently existing contracts not including producing fields in order to permit farmout agreements for such areas.

The Amendment Law of the 2005 Law would state that certain clauses in the 2005 Law do not apply (such as the Direct Tax on Hydrocarbons) while some other clauses are being introduced.

It is proposed that the following fiscal terms would apply:

- == The payments of Licenses may require some amendments

- == The Royalties would remain, although the 6% royalty for the National Treasury could be based on an R-factor and may include a royalty holiday.

- == The consolidated corporate income tax of 25% would apply as per the suggestions above mentioned.

- == The Direct Tax on Hydrocarbons would not apply

- == All other fiscal provisions, such as the profit sharing with YPFB would not apply.

The objective would be to create a simply royalty-tax system similar to and amply competitive with most countries.

There will also be some modifications required in some of the other Articles of the 2005 Law, such as related to the role of YPFB in Hydrocarbon Agreements. Any role for YPFB in the management of the agreements would not apply.

Investors in Hydrocarbon Agreements would retain all hydrocarbons and make the required fiscal payments to the Government of Bolivia.

The Hydrocarbon Agreements under the new Licensing would be managed by the Ministry as in most other countries.

With these modifications the fiscal terms would be competitive with Argentina and Peru, the main competing nations in the Andean area. The maximum royalties in Argentina are 18%, but lower royalties apply in a number of cases. Peru has several royalty systems. The Peruvian R-factor royalty ranges from 15 to 35%. Corporate income tax applies in Argentina and Peru.

Most of the provisions related to Exploration and Exploitation in the 2005 Law seem OK and can be maintained with possibly a few minor adjustments.

It might also be required to make some amendments to some other provisions of the Law in particular as it related to the role of YPFB.

In this framework, in addition to the re-investment by existing petroleum companies in Bolivia (including YPFB), new petroleum companies could be encouraged to invest in Bolivia through the new licensing rounds and the farm out agreements. There are still many petroleum companies looking for new upstream opportunities.

LICENSING PREPARATION AND HYDROCARBON AGREEMENT MODEL

In parallel with the work on the amendments to the 2005 Law it will be required to prepare for the licensing round and prepare a Hydrocarbon Agreement Model, to be used during the licensing, in order to carry out the licensing round before the end of 2026.

NEW FOCUS

The work on a New Hydrocarbon Law can also take place in parallel with the work on the Law with the Amendments to 2005.

However, in preparation of the New Hydrocarbon Law it is very important that the Government provides new focus to the energy and petroleum industries.

So far Bolivia has not yet made a policy statement on NetZero, the year in which there will be no net carbon emissions. Yet, Peru, Argentina and Chile have committed to 2050 and Brazil to 2060.

Obviously, a NetZero policy for a particular year may be perceived by YPFB as a death warrant.

For the current government strongly committed to state control, this would be difficult to deal with in the current configuration of YPFB.

It is therefore that Bolivia has in the COP meetings so far not produced an NDC with a NetZero target.

It is time for Bolivia to change this.

My suggestion would be as follows:

== to align the NetZero target with Brazil and select the year 2060. This means that gas export planning between Bolivia and Brazil could be jointly based on this target.

== to commit to have all power generation based on renewables by 2050. Natural gas or other fossil fuels would no further be used for power generation after 2050. Bolivia has low cost solar and hydro that should be used instead. This will free up gas for exports to Brazil as natural gas is being replaced on a systematic basis.

== to commit to eliminate all Scope 1 and 2 emissions of the petroleum industry by 2050. It should be noted that more than 50 petroleum companies have already committed to this goal.

Such a focus would bring Bolivia in line with its neighboring countries and the vast majority of other countries and would provide a clear framework for petroleum policy under a New Hydrocarbon Law.

NEW HYDROCARBON LAW

The New Hydrocarbon Law would include:

== the incorporation of the new focus.

== a new role for YPFB consistent with the focus and with the view of creating a profitable company operating well beyond 2060 on a wide variety of matters.

== new fiscal terms for current hydrocarbon producers, to be called Conversion Agreements in this memo. They would be considered in the New Hydrocarbon Law as old hydrocarbon terms, but the terms would be improved relative to current conditions.

== a wide variety of other adjustments and matters.

Following is a brief review.

Incorporating the new focus

The law would require petroleum companies to adhere to the Scope 1 and Scope 2 emission objectives and set requirements for presenting plans and results to the Ministry.

The Hydrocarbon and Conversion Agreements would include a variety of new powers to be executed directly or through sub-contractors related to matters such as carbon capture and storage, carbon removal operations and related carbon credits. It would also permit renewable energy production to serve hydrocarbon operations. This will free up more gas for exports.

New Role of YPFB

YPFB represents a massive source of knowledge and experience. This should not be lost and should continue to benefit Bolivia.

Preferable YPFB should be privatized, for instance for 20%, in order to start operating as any profit-oriented petroleum company. The Government would follow in this case the experience of Petrobras or Equinor, for instance.

However, if this is a “bridge too far” one could also maintain YPFB 100% state-owned. In this case the Government would mandate YPFB to start operating as any other profit-oriented petroleum company, such as Petronas of Malaysia or Petoro of Norway, for instance.

YPFB would have the right to participate based on typical petroleum industry joint operating agreements in the Conversion Agreements or Hydrocarbon Agreements. YPFB would have the right to bid on its own or with partners during licensing rounds.

In this way YPFB could make a significant contribution to further exploration and production.

YPFB would also invest in opportunities ensuring continued profitable operations beyond 2060 as follows:

== The main focus could be to follow the example of OMV (the Austrian national petroleum company) and increasingly become a chemical company using petroleum as feedstock for non-energy petrochemical purposes.

== Instead of the current ammonia production based on natural gas, YPFB could enter in the production of green ammonia as well as production of other green synthetic fuels, due the low solar costs in the Altiplano.

== YPFB could pursue an aggressive carbon removal policy based on low solar costs in order to justify the continuation of use of natural gas or petroleum products for certain hard to abate operations.

Due to the abundance of low-cost renewable resources in Bolivia, YPFB has better opportunities than other petroleum companies trying to achieve these goals.

In summary, selecting 2060 as NetZero year is certainly not a death warrant for YPFB and could in fact be the basis for a wide variety of profitable operations by YPFB beyond 2060.

New Fiscal Terms for Current Hydrocarbon Producers

The law would remove the role of YPFB with current hydrocarbon producers. However, YPFB may receive a working interest under joint operating agreements. Current producers would retain all hydrocarbons and make the fiscal payments to the State.

The base terms for the old hydrocarbons would be the same as for the Hydrocarbon Agreements. However, it could be evaluated whether in addition the producers would pay a Norwegian style consolidated surtax of a level to be determined, for instance 20%.

It is likely that a transition period would be required in order to soften the impact on government revenues.

In order to ensure proper collection of surtax the terms may include certain features that ensure adequate payments to the State, such as cost limits. Alternatively, the surtax could be combined with some other fiscal payments.