

## **HIGHLIGHTS OF THE MINING ACT OF 1995 (RA 7942) AND ITS REVISED IMPLEMENTING RULES AND REGULATIONS**

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The Philippine Mining Act of 1995 and its Revised Implementing Rules and Regulations (RIRR) is considered in the industry today as one of the most socially and environmentally-sensitive legislations in its class. It has specific provisions that take into consideration:

- Local government empowerment;
- Respect and concern for the indigenous cultural communities;
- Equitable sharing of benefits of natural wealth;
- Economic demands of present generation while providing the necessary foundation for future generations;
- Worldwide trend towards globalization; and
- Protection for and wise management of the environment.

These were the products of long periods of assessment, evaluation, and rectification of the sins of the past, the gaps of the old mining law, and the realities of the present times.

### **GOVERNING PRINCIPLES**

The Implementing Rules and Regulations (DENR Administrative Order No.96-40) of the Philippine Mining Act of 1995 provides strict adherence to the principle of SUSTAINABLE DEVELOPMENT. This strategy mandates that the needs of the present should be met without compromising the ability of the future generations to meet their own needs, with the view of improving the quality of life, both now and in the future. Sustainable development provides that the use of mineral wealth shall be pro-people and pro-environment in sustaining wealth creation and improve quality of life.

The principles of SUSTAINABLE MINING operates under the following terms:

- Mining is a temporary land use for the creation of wealth, leading to an optimum land use in post-mining stage as consequence of progressive and engineered mine rehabilitation works done in cycle with mining operations;
- Mining activities must always be guided by current Best Practices in environmental management committed to reducing the impacts of mining while efficiently and effectively protecting the environment.
- The wealth created as a result of mining accruing to the Government and the community should lead to other wealth-generating opportunities for people in the communities and for other environment-responsible endeavors.
- Mining activities shall be undertaken with due and equal regard for economic and environmental considerations, as well as for health, safety, social and cultural concerns.
- Conservation of minerals is effected not only through technological efficiencies of mining operations but also through the recycling of mineral-based products, to effectively lengthen the usable life of mineral commodities.
- The granting of mining rights shall harmonize existing activities, policies and programs of the Government that directly or indirectly promote self-reliance, development and resource management. Activities, policies and programs that promote community-based, community-oriented and procedural development shall be encouraged, consistent with the principles of people empowerment and grassroots development.

### **ORGANIZATIONAL IMPLEMENTATION**

The Mining Act reverts back the Mines and Geosciences Bureau (MGB) from a Staff to a Line Bureau. Under this arrangement, the MGB Central Office has now the administrative jurisdiction and responsibility over its regional offices. The Line Bureau structure was contemplated to ensure organizational efficiency and flexibility in managing limited resources and technical expertise.

The authorities/responsibilities of the MGB are as follows:

- Management and administration of mineral lands and resources, including the granting of mining permits and mineral agreements;
- Enforcement and monitoring of Environmental Work Programs (EWP) and Environmental Protection and Enhancement Program (EPEP);

- Establishment and operationalization of the Contingent Liability and Rehabilitation Fund (CLRF), as well as the mandatory Final Mine Rehabilitation and Decommissioning Plan;
- Cancel mining applications and mining rights violating the provisions of the Mining Act, its implementing rules and regulations, and/or the terms and conditions of a mining permit/contract/agreement;
- For the Regional Directors to impose Cease-and-Desist Orders (CDO);
- To deputize the PNP, LGUs, NGOs and other responsible entities to police mining activities;
- To assist the Environmental Management Bureau (EMB)/DENR Regional Offices in processing/evaluation/conduct of EIA in mining projects;
- To manage and administer Mineral Reservation area (Note: Mineral Reservations, under the New Act, include offshore marine areas.)

## **ROLE OF LOCAL GOVERNMENTS**

The IRR highlights the role of local government units (LGUs) in mining projects, both as beneficiaries and as active participants in mineral resources management, in consonance with the Constitution and government policies on local autonomy and empowerment. As such, the Mining Act provides the following:

- In consonance with the Local Government Code of 1992 (LGC), LGUs have a share of forty percent (40%) of the gross collection derived by the National Government from mining taxes, royalties and other such taxes, fees or charges from mining operations in addition to the occupational fees (30% to the Province and 70% to the Municipalities concerned);
- In consonance with the LGC and the People Small-Scale Mining Act (RA 7076), the LGUs shall be responsible for the issuance of permits for small-scale mining and quarrying operations, through the Provincial/City Mining Regulatory Boards (PMRBs/CMRBs);
- To actively participate in the process by which the communities shall reach an informed decision on the social acceptability of a mining project as a requirement for securing an Environmental Compliance Certificate (ECC);
- To ensure that relevant laws on public notices, consultations and public participation are complied with;
- To participate in the monitoring of mining activities as a member of the Multipartite Monitoring Team, as well as in the Mine Rehabilitation Fund Committee;
- To act as mediator between the Indigenous Cultural Communities (ICCs) and the mining contractor as may be requested/necessary;
- To be the recipients of social infrastructures and community development projects for the utilization and benefit of the host and neighboring communities; and
- To coordinate with and assist the DENR and the MGB in the implementation of the Mining Act and the IRR.

## **AREAS CLOSED TO THE MINING APPLICATION**

Pursuant to the Mining Act of 1995 and in consonance with State policies and existing laws, areas may either be closed to mining operations, or conditionally opened, as follows:

Areas CLOSED to mining applications:

- Areas covered by valid and existing mining rights and applications;
- Old growth or virgin forests, mossy forests, national parks, provincial/municipal forests, tree parks, greenbelts, game refuge, bird sanctuaries and areas proclaimed as marine reserve/marine parks and sanctuaries and areas proclaimed as marine reserve/marine parks and tourist zones as defined by law and identified initial components of the NIPAS, and such areas as expressly prohibited thereunder, as well as under DENR Administrative Order No. 25, s. 1992, and other laws;
- Areas which the Secretary may exclude based, inter alia, on proper assessment of their environmental impacts and implications on sustainable land uses, such as built-up areas and critical watershed with appropriate barangay/municipal/provincial Sanggunian ordinances specifying therein the location and specific boundaries of the concerned area; and
- Areas expressly prohibited by law.

The following areas may be opened for mining operations, the approval of which are subject to the following conditions:

- Military and other government reservations, upon prior written consent by the government agency having jurisdiction over such areas;
- Areas near or under public or private buildings, cemeteries, and archaeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams and other infrastructure projects, public or private works, including plantations or valuable crops, upon written consent of the concerned government agency or private entity, subject to technical evaluation and validation by the MGB;
- Areas covered by FTAA applications, which shall be opened, for quarry resources upon written consent of the FTAA applicants/contractors. However, mining applications for sand and gravel shall require no such consent;
- DENR Project areas upon prior consent from the concerned agency.

## **ANCESTRAL LANDS AND ICC AREAS**

The Mining Act fully recognizes the rights of the Indigenous Peoples (IPs)/Indigenous Cultural Communities (ICCs) and respect their ancestral lands. Thus, in accordance with DENR Administrative Order No. 2, and consistent with the new Indigenous Peoples Rights Act (IPRA), the following shall be observed:

- No mineral agreements, FTAA and mining permits shall be granted in ancestral lands/domains except with prior informed consent in: a) CADC/CLC areas; and b) areas verified by the DENR Regional Office and/or appropriate offices as actually occupied by Indigenous Cultural Communities under a claim of time immemorial possession;
- Where written consent is granted by the ICCs, a royalty payment shall be negotiated which shall not be less than 1% of the Gross Output of the mining operations in the area. This Royalty shall form part of a Trust Fund for socio-economic well being of the ICCs in accordance with the management plan formulated by the ICCs in the CADC/CALC area. (In a large-scale mining operation the 1-% Royalty could easily run into several tens of million pesos per year).
- Representation in the Multi-partite Monitoring Committee;

## **SOCIAL AND COMMUNITY DEVELOPMENT AND RESEARCH AND DEVELOPMENT**

The Mining contractors/operators shall allocate a minimum of 1% of their direct mining and milling costs for the following:

- Development of the host and neighboring communities and mine camp, including the construction and maintenance of social infrastructures to promote the general welfare of the inhabitants in the area. Such infrastructures include roads and bridges, school buildings, churches, recreational facilities, housing facilities, water and power supplies, etc.;
- For the development of mining technology and geosciences, particularly those related to improved efficiencies and environmental protection and rehabilitation;

The mining contracts under the regimes of MPSA and FTAA also provide for the mandatory Filipinization program, technology transfer, and the training and priority employment of local residents. These contracts further mandate that mining operations shall maximize the utilization of local goods and services, the creation of self-sustaining generating activities, and skills-development.

## **ENVIRONMENTAL AND SAFETY CONCERNS**

A significant feature of the Mining Act of 1995 and its IRR is the premium given to environmental protection. Stringent measures were institutionalized to ensure the compliance of mining contractors/operators to internationally accepted standards of environmental management. On top of the ECC conditionalities, herewith are some of the highlights provided for in the IRR;

- Mandatory allocation of an approximately 10% of the initial capital expenditures of the mining project for environment-related activities;
- Mandatory annual allocation of 3-5% of the direct mining and milling costs to implement an Annual Environmental Protection and Enhancement Program;
- Mandatory establishment of a MINE REHABILITATION FUND (MRF) to be composed of: a) a Monitoring Trust Fund of P50,000 which is replenishable; and b) a Rehabilitation Cash Fund of P5 Million or 10% of the EPEP cost, whichever is lower. Such Funds are to be deposited as trust account in a government depository bank to be managed by MRF Committee composed of the MGB Regional Director, DENR Regional Executive Director, representatives from the LGU and an NGO, and the Contractor;
- Mandatory establishment of the Contingent Liability and Rehabilitation Fund (CLRF) to be managed by a Steering Committee chaired by the MGB Director with members coming from concerned government agencies;
- Conduct of Environmental Work Program (EWP) during the exploration stage and an Environmental Protection and Enhancement Program (EPEP) during the development and operations stage.
- Institutionalization of an incentive mechanism to mining companies utilizing engineered and well-maintained mine waste and tailings disposal systems with zero-discharge of materials/effluents and/or with wastewater treatments plants;
- Mandatory constitution and operationalization of a Multipartite Monitoring Team composed of representatives from the MGB, DENR Regional Office, affected communities, Indigenous Cultural Communities, an environmental NGO, and the Contractor/Permit Holder, to monitor mining operations;
- Mandatory establishment and operationalization of a Mine Environmental and Protection and Enhancement Office (MEPEO) in each mining/contract area which shall set the level of priorities and marshal the resources needed to implement environmental management programs;
- Conduct of an independent environmental audit to identify environmental risks affecting mining operations as a basis for the development of an effective environmental management system;
- Mandatory preparation and implementation of a final Mine Rehabilitation/ Decommissioning Plan at least five (5) year prior to the end of the life of the mine, to be undertaken in consultation and in coordination with the concerned communities, and shall be submitted for approval by the MGB and LGU concerned;
- Imposition of higher penalty (P50.00/MT) to mining companies that are found to have illegally discharged and/or

discharging solid fractions of tailings into areas other than the approved tailings disposal area;

- Authorizing the MGB Regional Director to summarily suspend mining/quarrying operations in case of imminent danger to human safety or the environment;
- Mandatory compliance with the rules and regulations of the Mines Safety Rules and Regulations by all Contractors, Permittees, Lessees, Permit Holders and Service Contractors; and
- Institution of the Presidential Mineral Industry Environmental Award to be given to exploration or operating mining companies based on their exemplary environmental performance and accomplishments.

#### **ON SOCIAL ACCEPTABILITY**

Mining contractors/operators shall allocate a minimum of 1% of their direct mining and milling costs for the development of the following:

- Host and neighboring communities and mine camp to promote the general welfare of inhabitants in the area. This includes construction and maintenance of infrastructures such as roads and bridges, school buildings, housing and recreational facilities, water and power supplies, etc.;
- Mining technology and geosciences, particularly those related to improved efficiencies and environmental protection and rehabilitation.

#### **MINING PERMITS GRANTED TO QUALIFIED PERSONS**

The following are the types of mining permits granted under the Mining Act of 1995 and its IRR:

**Exploration Permit** - these permits are issued to qualified individuals or local and foreign corporations granting them to undertake purely mineral exploration activities. Has a term of two (2) years renewable for like terms but not to exceed a total term of six (6) years for non-metallic minerals and eight (8) years for metallic minerals. The Permittee may eventually apply for Mineral Agreement or FTAA, subject to maximum areas limitations. The maximum areas allowed per qualified person under an Exploration Permit are: 1,620 hectares in any one province or 3,240 hectares in the entire country for an individual; and 16,200 hectares in any one province or 32,400 hectares in the entire country for a corporation, association, cooperative or partnership.

**Mineral Agreement** - are granted to individuals or local corporations giving them the right to explore, develop and utilize the minerals within the contract area. There are three modes of Mineral Agreements namely:

**Mineral Production Sharing Agreement (MPSA)** - an agreement wherein the Government grants to the contractor the exclusive right to conduct mining operations within, but not title over, the contract area and shares in the production whether in kind or in value as the owner of the minerals therein. The Contractor shall provide the necessary financing technology, management and personnel;

**Co-Production Agreement (CA)** - an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral resources; and

**Joint Venture Agreement (JVA)** - an agreement where the Government and the Contractor organize a joint venture company with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

The features of a Mineral Agreement are as follows:

- Term of 25 years, renewable for another term of 25 years;
- Exploration Period of two (2) years renewable for like terms but not to exceed a total term of six (6) years for non-metallic minerals or eight (8) years for metallic minerals;
- Maximum allowable areas of 810 hectares in any one province or 1,620 hectares in the entire country for an individual, or 8,100 hectares in any one province or 16,200 in the entire country for a corporation, association, cooperative or partnership.
- Provides for mandatory relinquishment such that the maximum final area shall not exceed 5,000 hectares for metallic minerals or 2,000 hectares for non-metallic mines;
- Subject to Environmental Work Program (EWP) during the exploration period, and to Environmental Compliance Certificate (ECC) and Environmental Protection and Enhancement Program (EPEP) during the development and operation period;
- Approval by the DENR Secretary

**Financial or Technical Assistance Agreements (FTAA)** - a mining contract for large-scale exploration, development and utilization of minerals which allows up to 100% foreign equity participation/ownership. The terms and conditions under an FTAA are as follows: :

- Term of 25 years, extendable for like periods;
- Minimum capitalization, \$4Million, or its peso equivalent;
- Minimum investment for infrastructure and development of \$50Million;
- Minimum ground expenditures: For Years 1 & 2 \$2/ha/yr; Years 3 & 4 - \$8/ha/yr; Year 5 - \$19/ha/yr; Year 6 \$23/ha/yr
- Allowed only for metallic minerals such as gold, copper, nickel, chromite, lead, zinc and other metals;
- Maximum allowable area: Aggregate total of 81,000 in the entire country;
- Mandatory area relinquishments : 25% on the first 2-yrs; 10% per year thereafter;
- Maximum final area: 5,000 hectares for each mining area;
- Maximum periods: Exploration Period – 4 years; Pre-Feasibility Study Period – 2 yrs; Feasibility Study Period – 2 years;
- Subject to Environmental Work Program (EWP) during the exploration/pre-feasibility study/feasibility study period, and to Environmental Compliance Certificate (ECC) and Environmental Protection and Enhancement Program (EPEP) during the development and operation period;
- Approval by the President, upon recommendation of the Negotiating Panel composed of the DENR Secretary, the MGB Director, and representatives from NEDA, DTI/BOE, Dept. of Finance, DENR Field Operations Office, DENR Legal Office, and MGB Regional Office.

While the maximum area allowable for FTAA is apparently substantial, the eventual significant area reduction is ensured by the mandatory relinquishment provision. Further, the P50/ha/yr Occupation Fees and the stipulations for minimum ground expenditures that correspondingly graduate annually upwards are expected to deter any company for holding on unnecessarily any excess land areas that are unmineralized.

**Sand and Gravel Permits** - are issued for the extraction, removal and disposition of sand and gravel and other loose or unconsolidated materials. Permits with areas not exceeding 5 hectares are issued by the Provincial Governor/City Mayor while those exceeding 5 hectares but not more than 20 hectares are issued by the MGB Regional Director. A Sand and Gravel Permit has a term of 5 years and renewable for like terms.

**Quarry Resources Permits** - In accordance with the Local Government Code of 1991, mining permits with areas not more than 5 hectares have been devolved to the Provincial Governor or the City Mayor for approval upon recommendation of the Provincial/City Mining Regulatory Board. These include the Quarry Permit, Guano Permit, Gratuitous Permit and Gemstone Gathering Permit.

**Small-Scale Mining Permits** - In consonance with the Local Government Code and RA No. 7076, small-scale mining permits are approved and issued by the City Mayor/Provincial Governor, upon recommendation of the Provincial/City Mining Regulatory Board.

**Mineral Processing Permit** – a permit granting the right to process minerals. It is issued by the DENR Secretary with a term of 5 years and renewable for like terms.

**Ore Transport Permit** – no minerals, mineral products and by-products shall be transported unless accompanied by an Ore Transport Permit. The OTP is issued by the MGB Regional Director concerned.

## **TAXES AND INCENTIVES**

Mining contractors of MPSA and FTAA can avail of fiscal and non-fiscal incentives granted under the Omnibus Investment Code of 1987, as amended.

In addition to these incentives, the following are also granted by the Mining Act.

- Incentives for pollution control devices;
- Incentives for income tax carry forward of losses;
- Incentives for income tax accelerated depreciation on fixed assets;
- Investment guarantees, such as investment repatriation, earnings remittance, freedom from expropriation, and requisition of investment, and confidentiality of information.

For FTAA contractors, an additional incentive, in the form of a tax holiday on national taxes is granted from the start of the construction and development period up to the end of the cost recovery period, but not to exceed five years from the start of commercial operation. After the recovery period, the contractor starts paying these taxes, including the additional government share based on negotiated scheme.

## **TAXES PAID**

Mining activities generate income both for the local and national governments. The following tax payments are provided for in the Mining Act, the National Internal Revenue Code and other laws:

Payments to the National Government:

- Corporate Income Tax
- Excise Tax on Minerals
- Customs Duties
- Value Added Tax
- Royalties on Minerals Extracted from Mineral Reservation
- Documentary Stamp Tax
- Capital Gains Tax

Payments to Local Government:

- Business Tax
- Real Property Tax
- Registration Fees
- Occupation Fees
- Community Tax
- Other Local Taxes

Withholding Taxes on:

- Payroll
- Interest Income in Banks
- Royalties to Technology Transfer
- Interest Payments to Foreign Loans
- Foreign Stockholders Dividends
- Remittance to Principal

In addition to the above taxes, duties and fees, mining contractors are required to pay or expend on:

- Additional Government Share for FTAA contractors
- Royalties to Landowners/Claim owners
- Royalties to Indigenous Peoples
- Social Development Programs
- Environmental Obligations
- Research and Development of Mining Technology and Geosciences

The benefits of mining projects provides approximately not less than sixty percent (60%) of the total proceeds of the mining operations to the government and the Filipino people, considering that the contractor infused 100% of the capital. These proceeds include all direct and indirect taxes and fees and benefits to other Filipinos.