

# International Comparative Legal Guides



## Mining Law 2021

A practical cross-border insight into mining law

**Eighth Edition**

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## Expert Chapters

**1** Trade and Regulatory Developments Impacting the Mining Industry  
Andrew Emrich, Holland & Hart LLP

**4** World Association of Mining Lawyers (WAOML): An Overview  
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## Q&A Chapters

**6** Argentina  
Marval O'Farrell Mairal: Luis E. Lucero

**15** Canada  
Lawson Lundell LLP: Khaled Abdel-Barr &  
Karen MacMillan

**27** China  
Jincheng Tongda & Neal Law Firm:  
Guohua (Annie) Wu & Yingnan (Jason) Li

**34** Ghana  
Reindorf Chambers: Fui S. Tsikata &  
Dominic Dziewornu Quashigah

**41** Japan  
Anderson Mōri & Tomotsune: Hiroaki Takahashi

**49** Mexico  
RB Abogados: Enrique R. del Bosque

**58** Nigeria  
Brooks and Knights Legal Consultants:  
Adetayo Adetuyi & Nnanke Williams

**64** Peru  
Rubio Leguía Normand: Xennia Forno &  
Miguel Ángel Soto

**72** Philippines  
Cruz Marcelo & Tenefrancia: Patricia A. O. Bunye &  
Alpheus D. Macalalad

**80** Russia  
ALRUD Law Firm: Andrey Zharskiy & Timur Akhundov

**87** South Africa  
Nupen Staude de Vries Inc.: Lili Nupen,  
Nicole Limberis-Ritchie & Chantal Murdock

**94** United Kingdom  
Milbank LLP: John Dewar & Emily Whittaker

**105** USA  
Holland & Hart LLP: Karol L. Kahalley

**114** Zambia  
Eric Silwamba, Jalasi and Linyama Legal  
Practitioners: Joseph Alexander Jalasi, Jr. &  
Eric Suwilanji Silwamba, S.C.

**122** Zimbabwe  
Wintertons Legal Practitioners: Nikita Madya

# Philippines



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## 1 Relevant Authorities and Legislation

### 1.1 What regulates mining law?

Philippine mining law is primarily regulated by the Philippine Constitution, which provides that all natural resources are owned by the State. National laws, *i.e.* Republic Act No. 7942 (the “**Philippine Mining Act**”) and its implementing rules and regulations (“**IRR**”) (as contained in Department of Environment and Natural Resources (“**DENR**”) Administrative Order No. 2010–21), local ordinances and executive issuances on mining must be consistent with the Philippine Constitution.

### 1.2 Which Government body/ies administer the mining industry?

The DENR is the primary government agency responsible for the conservation, management, development and proper use of the country’s environment and natural resources. Line bureaus under the DENR, particularly the Mines and Geosciences Bureau (“**MGB**”) and the Environmental Management Bureau (“**EMB**”), are respectively responsible for the proper management and disposition of mineral lands and mineral resources and the implementation of environmental laws. Further, local government units (“**LGUs**”) also exercise powers that affect the mining industry pursuant to their mandate to promote the general welfare within their territorial jurisdictions, provided they do not contravene the Philippine Constitution and the Philippine Mining Act.

### 1.3 Describe any other sources of law affecting the mining industry.

Republic Act No. 6969 (the “**Toxic Substance and Hazardous and Nuclear Wastes Control Act**”) regulates the importation, manufacture, processing, distribution, use and disposal of chemical substances and mixtures. Republic Act No. 8749 (the “**Clean Air Act**”) outlines measures to reduce air pollution. Republic Act No. 9003 (the “**Ecological Solid Waste Management Act**”) provides for a systematic ecological solid waste management programme. Republic Act No. 8371 (the “**Indigenous Peoples’ Rights Act**”) recognises and promotes the rights of indigenous communities by requiring their free, prior and informed consent (“**FPIC**”) in specified instances relating to mining activities, among others. Republic Act No. 7076 (the “**People’s Small-Scale Mining Act of 1991**”) promotes viable small-scale mining activities.

Executive Order No. 79 (Institutionalising and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilisation of Mineral Resources) (“**EO 79**”) instituted reforms such as a review of the performance of existing mining operations and cleansing of non-moving mining rights holders, imposed a moratorium against the issuance of mineral agreements (“**MAs**”) until the enactment of legislation rationalising existing revenue-sharing schemes and mechanisms, and constituted the Mining Industry Coordinating Council (“**MICC**”), among others.

## 2 Recent Political Developments

### 2.1 Are there any recent political developments affecting the mining industry?

The current administration has taken a conservative position on mining and continues to implement a moratorium on new MAs. However, DENR Administrative Order No. 2018-13 lifted the moratorium on the acceptance, processing and/or approval of applications for Exploration Permits (“**EPs**”). DENR Administrative Order No. 2017-10, which imposes a ban on open-pit mining, remains effective.

### 2.2 Are there any specific steps the mining industry is taking in light of these developments?

The Chamber of Mines of the Philippines, which is a professional association of the country’s largest mining, quarrying and mineral processing companies, formed with the aim of promoting the responsible exploration, development and utilisation of minerals, has been working to lift the ban on open-pit mining, considering that most of the deposits are low-grade and are situated near the surface. The MICC has also recommended the lifting of the ban on the open-pit mining method for select minerals under DAO 2017-10. Local mining companies have agreed to commit to the Mining Association of Canada’s “Towards Sustainable Mining” initiative, which advocates responsible mining.

## 3 Mechanics of Acquisition of Rights

### 3.1 What rights are required to conduct reconnaissance?

Under the Philippine Mining Act, reconnaissance is subsumed under exploration, which requires an EP. A holder of an EP is

granted the right to conduct exploration for all minerals in specified areas. Mandatory requirements for EPs include:

1. Location map/sketch plan.
2. Two-year exploration work programme.
3. Certificate of Environmental Management and Community Relations Record or Certificate of Exemption.
4. Environmental Work Program (“EWP”).
5. EP holders must be: Philippine citizens; Philippine-organised juridical entities with technical and financial capabilities to undertake resource development, at least 60% of the capital of which is owned by Philippine citizens; or a legally organised foreign-owned entity.
6. Proof of technical competence or financial capacity.

### 3.2 What rights are required to conduct exploration?

See question 3.1.

### 3.3 What rights are required to conduct mining?

Generally, the right to conduct mining is granted under MAs or Financial or Technical Assistance Agreements (“FTAAs”).

MAs are agreements between a contractor and the government wherein the government grants to the contractor the exclusive right to conduct mining operations within, but not title over, the contract area. The requirements for MAs include:

1. Location map/sketch plan.
2. Three-year development/utilisation work programme.
3. Mining Project Feasibility Study.
4. Complete and final exploration report.
5. Certification that mining claims are subsisting.
6. Environmental report.
7. Environmental Compliance Certificate (“ECC”).
8. Approved survey plan.
9. Environmental Protection and Enhancement Program (“EPEP”).
10. Certificate of Environmental Management and Community Relations Record or Certificate of Exemption.
11. Certificate Precondition from the National Commission on Indigenous Peoples (“NCIP”).

FTAAs may be entered into between a contractor and the government for the large-scale exploration, development and utilisation of gold, copper, nickel, chromite, lead, zinc and other minerals, except for cement raw materials, marble, granite, sand and gravel and construction aggregates. Requirements for FTAAs include:

1. Location map/sketch plan.
2. Two-year exploration work programme.
3. Posting of bond.
4. Certificate of Environmental Management and Community Relations Record or Certificate of Exemption.
5. EWP.
6. Approved survey plan.
7. ECC.
8. EPEP.
9. Social Development and Management Program.
10. Mining Project Feasibility Study.
11. Three-year development/utilisation work programme.

### 3.4 Are different procedures applicable to different minerals and on different types of land?

Generally, the procedures for different minerals and different types of land are the same. FTAAs, however, may not be entered

into with respect to cement raw materials, marble, granite, sand and gravel and construction aggregates. The Philippine Mining Act also allows qualified persons to apply for quarry permits for building and construction materials located within a maximum area of five hectares.

For procedures relating to ancestral lands, please see question 10.1.

There are also additional requirements for offshore exploration permit (“OEP”) applications.

### 3.5 Are different procedures applicable to natural oil and gas?

Presidential Decree No. 1857 (the “**Oil Exploration and Development Act of 1972**”) governs the procedure for natural oil and gas exploration. It provides that such contracts shall be executed with the Department of Energy (“DOE”), with the approval of the President, and only after due public notice, pre-qualification and public bidding. In the case that bids are requested and no bid is submitted, or the bids submitted are rejected by the DOE for being disadvantageous to the government, the contract may be concluded through negotiation.

## 4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

### 4.1 What types of entity can own reconnaissance, exploration and mining rights?

Natural and juridical persons may own exploration and mining rights. The latter may be in the form of a corporation, partnership, association or cooperative.

### 4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Mining is considered a nationalised industry and is limited by the Philippine Constitution to Philippine citizens or corporations at least 60% of whose capital is owned by such citizens. Hence, only Philippine citizens or such corporations may be granted MAs. Nevertheless, non-Philippine nationals or corporations that are 100% foreign-owned may still apply for EPs and enter into FTAAs.

### 4.3 Are there any change of control restrictions applicable?

Certain transactions may be covered by Republic Act No. 10667, or the Philippine Competition Act.

### 4.4 Are there requirements for ownership by indigenous persons or entities?

There are no such requirements.

### 4.5 Does the State have free carry rights or options to acquire shareholdings?

The State does not hold such rights.

## 5 Processing, Refining, Beneficiation and Export

### 5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

A Minerals Processing Permit (“MPP”) is necessary before engaging in the processing of minerals. MPPs shall be renewable for a period of five years but cannot exceed a total term of 25 years. However, in the case of contractors, holders of Quarry Permits and Industrial Sand and Gravel Permits, the approved Work Program for the production period is sufficient to process minerals *in lieu* of MPPs.

### 5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Parties engaged in mineral trading either domestically or internationally must be registered with the Department of Trade and Industry and accredited by the DENR. Marketing contracts and sales agreements involving commercial disposition of minerals and by-products are subject to approval by the DENR Secretary upon the recommendation of the MGB Director. The approved marketing contracts and sales agreements shall be registered with the MGB. Further, the sale must be made at the highest commercially achievable market price and lowest commercially achievable fees under prevailing circumstances. The parties must also negotiate sales terms and conditions compatible with world market conditions.

For exportation of ores, a permit must be secured from the MGB.

There are no tax or duty restrictions on the export of minerals. Under the National Internal Revenue Code, export sales, which include export of minerals, are subject to 0% value-added tax.

## 6 Transfer and Encumbrance

### 6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

EPs, MAs and FTAAAs may be transferred with the approval of the MGB Director (for EP transfer) and the MGB Regional Director (for MAs and FTAAAs).

### 6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Yes. These rights are usually expressly stated in the written agreement embodying the right to conduct exploration and mining.

## 7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

### 7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes. While the Philippine Mining Act contemplates that a single qualified person may apply for exploration and mining permits,

it also allows the partial transfer or assignment of these rights to other qualified persons. The transferee may further assign or transfer its rights to others likewise qualified. This results in the subdivision of rights to conduct exploration and mining.

### 7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

In cases where the permittees or contractors are corporations or partnerships, the rights granted under the permit or contract belong exclusively to the corporation or partnership to which they are given and are not held in undivided shares by those who compose the corporation or partnership.

### 7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

The Philippine Mining Act is silent as to a permit holder’s right to explore or mine for secondary minerals. However, the MGB requires permittees and permit holders to indicate in their Annual Mineral Resource/Ore Reserve Inventory Report both primary and secondary or accessory minerals.

### 7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Yes. Permit holders are allowed to manage mine wastes and mill tailings produced by operations, provided that they acquire an ECC from the DENR and an Authority to Construct and Operate (“ACO”) from the concerned EMB Regional Office of the DENR.

### 7.5 Are there any special rules relating to offshore exploration and mining?

Offshore exploration activities shall be carried out in accordance with the United Nations Convention on the Law of the Sea and in a manner that will not adversely affect the safety of navigation at sea and will ensure accommodation with other marine activities such as fishing, aquaculture, transportation, etc.

The IRR of the Philippine Mining Act also provide for additional requirements for obtaining an OEP. Further, the following offshore areas are considered closed to mining applications:

1. offshore areas within 500 metres from the mean low tide level and onshore areas within 200 metres from the mean low tide level along the coast; and
2. in case of seabed/marine aggregate quarrying, offshore areas less than 1,500 metres from the mean low tide level of land or island(s) and where the seabed depth is less than 30 metres measured at mean sea level.

With regard to MAs, the maximum area that a qualified person may apply for or hold at any one time is as follows:

- Offshore, in the entire Philippines, beyond 500 metres from the mean low tide level:
  1. for individuals – 50 blocks or approximately 4,050 hectares;
  2. for corporations, partnerships, associations, or cooperatives – 500 blocks or approximately 40,500 hectares; and
  3. for the Exclusive Economic Zone – a larger area to be determined by the Secretary upon the recommendation of the MGB Director.

- Some of the specific provisions established with regard to the conduct of offshore mining are:
  1. drilling platform(s) shall be enclosed within an oil spill containment boom;
  2. only water-based drilling mud/additives shall be used;
  3. the contractor shall utilise the appropriate and efficient mining method with minimal adverse impact(s) on the marine environment. The use of a high-pressure water jet in the extraction of materials shall be prohibited;
  4. on-board mineral processing and laboratory testing/analysis requiring the use of chemicals shall not be allowed; and
  5. size reduction processes, such as crushing and grinding, shall be prohibited.

The MGB has also issued Memorandum Circular No. 005-16 providing for guidelines on offshore mining.

## 8 Rights to Use Surface of Land

### 8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

No. The ownership over the surface areas of the land remains with the landowners. However, permit holders and contractors may enter, occupy and explore mining areas or lands after notifying and paying just compensation to landowners, and may exercise easements for ingress and egress necessary to undertake mining activities.

### 8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The holder of a mining right is responsible for any damage to the property of the landowner, occupant or concessionaire because of the mining operations. The amount of compensation may be based on the agreement between the parties or the determination of the Panel of Arbitrators, the body of MGB officers authorised to resolve disputes involving surface owners, occupants, or claimholders. To guarantee the payment of proper and just compensation, the holder of the right shall post a bond with the concerned Regional Office.

### 8.3 What rights of expropriation exist?

The Philippine Mining Act provides that contractors' properties are generally free from expropriation. However, the government may expropriate when the purpose is for public use or in the interest of national welfare or defence. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

## 9 Environmental

### 9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

An EWP is required prior to the approval of an application for an EP.

An ECC is required prior to the approval of MAs or FTAAAs. To secure an ECC, a proponent must prepare and submit an Environmental Impact Statement ("EIS"), which includes base-line environmental conditions, impact assessments and proof of consultation with stakeholders.

### 9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Permittees must first secure clearance from the MGB, without prejudice to other required permits from other DENR agencies, before constructing and operating building tailings or waste dams. Permittees are required to establish contingency and emergency preparedness plans to deal with significant events, which are assessed by the MGB prior to issuing the said clearance.

For the closure of mines, the Mining Act IRR require that a final mine rehabilitation and decommissioning plan ("FMRDP") or mine closure plan be integrated into the EPEP to be submitted by contractors to the Mine Rehabilitation Fund Committee, to guide the rehabilitation of excavated, mined-out and disturbed areas.

### 9.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

After the termination stage of a mining operation, all open-pit work areas, underground workplaces, mine waste and tailings impoundment systems, quarry sites and other mining-disturbed landforms, including those disturbed during exploration, must be progressively rehabilitated according to the FMRDP as embodied in the ECC and/or EPEP. Additionally, mine site decommissioning and rehabilitation shall aim to establish a land use capability that is functional and proximate to the land use prior to the disturbance of the mine area, unless other more beneficial land uses are predetermined and agreed in partnership with local communities and LGUs.

### 9.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

There are areas under the Philippine Mining Act and its IRR where applications for MAs or FTAAAs are not allowed:

1. in military and other government reservations, except upon prior written clearance by the government agency concerned;
2. near or under public or private buildings, cemeteries, archaeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works, including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;
3. in areas covered by valid and existing mining rights;
4. in areas expressly prohibited by law;
5. in areas covered by small-scale miners as defined by law, unless they have the prior consent of the small-scale miners, in which case a royalty payment upon the utilisation of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and
6. in old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/municipal forests, parks,

greenbelts, game refuge and bird sanctuaries as defined by law, and in areas expressly prohibited under the National Integrated Protected Areas System.

In addition, the following areas were declared closed for mineral contracts, concessions, and agreements under EO 79:

1. prime agricultural lands, in addition to lands covered by the Comprehensive Agrarian Reform Law, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuges and sanctuaries declared as such by the Secretary of the Department of Agriculture; and
2. tourism development areas, as identified in the National Tourism Development Plan; and other critical areas, island ecosystems and impact areas of mining as determined by current and existing mapping technologies that the DENR may identify pursuant to existing laws, rules and regulations.

## 10 Native Title and Land Rights

### 10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes. Indigenous Cultural Communities (“**ICCs**”) and Indigenous Peoples (“**IPs**”) are given priority rights in the harvesting, extraction, development or exploitation of natural resources within their ancestral domains. No ancestral land shall be opened for mining operations without the FPIC of the ICCs and IPs concerned. The parties must enter into an agreement with ICCs and IPs indicating the royalty payment, which may not be less than 1% of the gross output. The said royalty shall form part of a trust fund for the socio-economic well-being of the ICCs and IPs.

Further, no MAs, FTAAs, or mining permits shall be granted in areas subject to certificates of ancestral domains or ancestral land claims or in areas verified by the Regional Office or other office or agency of the government authorised by law for such purpose as actually occupied by the ICCs under a claim of time-immemorial possession, except with their FPIC.

## 11 Health and Safety

### 11.1 What legislation governs health and safety in mining?

The Philippine Mining Act and its IRR are the principal health and safety laws for the mining industry. DENR Administrative Order No. 2000-98 on Mine Safety and Health Standards also imposes standards for health, sanitation and mine safety and the penalties for violation thereof. Other health and safety regulations which are also applicable to the mining industry may be found in the Philippine Labour Code.

### 11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Employers are required, among others, to:

1. establish a safety and health office;
2. make available personal protective equipment in accordance with the type of work performed, at no cost to the employee;
3. provide training to employees in first aid, mine rescue, firefighting and other safety and health measures and proper job procedures; and

4. provide hospitalisation and medical facilities, including the transportation to the hospital; provide full treatment to employees injured and those suffering from occupation-related diseases during the performance of their work; and submit to the MGB Director a Safety and Health Program.

### 11.3 Are there any unique requirements affecting the mining industry in light of the coronavirus (COVID-19) pandemic?

On 8 May 2020, the DENR-MGB issued Memorandum Order No. 2020-004 implementing guidelines for the resumption of mining and mineral processing operations during the General Community Quarantine period. This Memorandum Order provides for protocols on personal profiling, physical distancing, personal hygiene, disinfection and sanitation requirements, and other measures needed to combat the spread of COVID-19, including how to manage suspected cases. Mining contractors, permittees and permit holders are also required to provide personal protective equipment and other necessary medical supplies for their employees in the mine/plant site.

The issuance strictly prohibits the boarding of any vessel without the necessary authorisation from the Philippine Ports Authority and corresponding clearance from the Quarantine Medical Officer. Shipments of minerals and mineral by-products are also subject to additional requirements such as the submission of a Shipment Report indicating the port of origin and the COVID-19 test results of the crew. Further, all mining contractors, permittees or permit holders shall adhere to reporting requirements and submit pertinent documents as required by the MGB.

Mining companies and export-oriented industries are required to follow social distancing and community quarantine protocols in accordance with national regulation and the respective ordinances of the LGUs where they operate. They are also expected to follow pertinent regulations regulating and limiting the operation of transportation through land, sea and air in accordance with Republic Act No. 11469 or the Bayanihan to Heal as One Act.

## 12 Administrative Aspects

### 12.1 Is there a central titles registration office?

The MGB and its regional offices have a Mining Recorder Unit in their respective offices. The Mining Recorder is required to maintain registers for permits.

The MGB regularly publishes this data through its official website (<http://www.mgb.gov.ph>). The information published includes details on existing EPs, MAs, FTAAs, MPPs, pending mining applications and pending cases with the Mines Adjudication Board (“**MAB**”) and Panel of Arbitrators.

### 12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Under the Philippine Mining Act, a Panel of Arbitrators in the Regional Office of the DENR has exclusive and original jurisdiction over disputes involving rights to mining areas, mineral agreements or permits and disputes between or among surface owners, occupants and claimholders/concessionaires. The Panel’s decision or order is appealable to the MAB.

## 13 Constitutional Law

**13.1** Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Under the Philippine Constitution, the State owns all natural resources, including minerals. The exploration, development and utilisation of mineral resources are under the full control and supervision of the State, which may directly undertake the same or enter into co-production, joint venture or production-sharing agreements with Filipino citizens, or corporations or associations at least 60% of whose capital is owned by such citizens. The president of the Philippines may also enter into agreements with foreign-owned corporations involving either technical or financial assistance for the large-scale exploration, development and utilisation of minerals, petroleum and other mineral oils. Because of the State's full control and supervision over mining rights, owners of surface rights do not automatically have rights over mineral resources found within their properties.

**13.2** Are there any State investment treaties which are applicable?

The Philippines has entered into bilateral investment treaties ("BITs") that generally apply to investments made by foreign nationals of states that are parties to the BITs. Thirty-two of these BITs are presently in force, and typically include provisions such as the prohibition of the expropriation of investments in the Philippines of nationals or permanent residents of a contracting state, and the obligation to accord fair and equitable treatment to foreign investors and investments. They also typically contain an investor-state dispute settlement provision, which allows the nationals or permanent residents of a contracting state to submit a dispute involving the Philippine government to international arbitration. There is currently no treaty specifically applicable to the mining industry.

## 14 Taxes and Royalties

**14.1** Are there any special rules applicable to taxation of exploration and mining entities?

Aside from the payment of income tax, mining entities are also liable for excise tax and value-added tax on mineral products, which are national taxes, and for customs duties. They are also liable for local business taxes and real property taxes, which are local taxes. Contractors in MAs and FTAAAs are also granted fiscal and non-fiscal incentives.

**14.2** Are there royalties payable to the State over and above any taxes?

Mining operations within mineral reservations are subject to a royalty paid to the MGB of not less than 5% of the market value of the gross output of the minerals or mineral products extracted or produced from the mineral reservations, exclusive of all other taxes.

## 15 Regional and Local Rules and Laws

**15.1** Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

The mining industry is also regulated by the ordinances issued by the local legislative bodies of the local government units. These ordinances must be confined to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions, and must be consistent with national laws and regulations.

**15.2** Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

There are none.

## 16 Cancellation, Abandonment and Relinquishment

**16.1** Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Abandonment of mining rights is allowed by the Philippine Mining Act if the holder deems the mining project to be economically unviable even after exerting reasonable diligence to remedy the cause of the problem. However, abandonment of the right does not release the holder from his financial, environmental, legal and fiscal obligations arising from his exercise of the right.

**16.2** Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

The holder of an EP must annually relinquish at least 20% of the permit area during the first two years of exploration and at least 10% of the remaining permit area annually during the extended exploration period. However, if the permit area is less than 5,000 hectares, the permittee need not relinquish any part thereof.

An FTAA is also subject to relinquishment as follows: (i) at least 25% of the original contract area during the first two years of the exploration period and at least 10% of the remaining contract area annually during the extended exploration period and pre-feasibility study period; (ii) during the exploration or pre-feasibility study period, the contractor shall finally relinquish to the government any portion of the contract area which shall not be necessary for mining operations and which is not covered by any declaration of mining feasibility, provided that each mining area after final relinquishment shall not be more than 5,000 hectares; and (iii) the contractor may, at its discretion, submit to the concerned DENR Regional Office a declaration of mining project feasibility over any portion of its contract area prior to the lapse of the exploration or pre-feasibility period. In such an event, the contractor shall have the right to continue its mineral exploration or feasibility studies during the exploration and feasibility periods, respectively, in respect of the remaining contract area.

**16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?**

Yes. With regard to an EP, the DENR Secretary, MGB Director or MGB Regional Director concerned may cancel the EP for violations by the permittee of the terms and conditions thereof, including the failure to secure the required proof of consultation with or project presentation to the legislative body of the LGU concerned within one year from the issuance of the permit.

MAAs may be cancelled, revoked or terminated for the failure of the contractor to comply with the terms and conditions thereof.

FTAAAs may be cancelled, revoked or terminated, after due process, under any of the grounds for the cancellation of an EP, MA or FTAA.

The grounds for the cancellation, revocation and termination of an EP, MA or FTAA are: falsehood or omission of facts in the application for the above permits which may alter, change or affect substantially the facts set forth in said statements; non-payment of taxes and fees due to the government for two consecutive years; failure to perform all other obligations, including abandonment, under the permits or agreements; violation of any of the terms and conditions of the permits or agreements; and violation of existing laws, policies and rules and regulations.



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His practice encompasses a broad scope of legal topics involving the Philippine resources sector, ranging from general matters to complex legal issues. Mr. Macalalad regularly provides comprehensive advice to clients regarding corporate restructuring, immigration, labour, indigenous peoples, land acquisition, local government, administrative regulation, intellectual property, and environment, among others, and frequently collaborates with members of the firm's other departments. He has conducted legal reviews of corporations involved in high-stakes transactions, and has been part of the firm's handling of controversial cases in the Supreme Court.

Mr. Macalalad regularly attends local and international mining and energy events and conferences, such as the Mining Philippines Conference and Exhibition, Annual Mine Safety and Environment Conference, Power and Electricity Conference, Asian Development Bank Annual Clean Energy Forum, Mines and Money Asia, and the Asia Mining Conference.

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