

Mining 2021

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Mining 2021

Contributing editors**Darrell Podowski, Brian Dominique, Brandon Manhas
and Lauren White****Cassels Brock & Blackwell LLP**

Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Ireland, Nigeria and Uzbekistan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.



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MINING INDUSTRY

Standing

1 | What is the nature and importance of the mining industry in your country?

The Philippines is the fifth most mineralised country in the world, with an estimated US\$1 trillion in untapped reserves of copper, gold, nickel, zinc and silver. However, recent statistics from the Philippine Mines and Geosciences Bureau indicate that there are only 104 operating metallic and non-metallic mines with around 184,000 workers employed. In the first three quarters of 2020, total exports of minerals and mineral products and non-metallic mineral manufactures amounted to almost US\$3.88 million, and the Philippine Department of Environment and Natural Resources placed the gross production value for large-scale metallic mining at 94.5 billion pesos.

Target minerals

2 | What are the target minerals?

The Philippines' top mineral exports are copper, gold, and nickel. Other target minerals include quartz, mica, iron, gypsum, feldspar, chromite, calcite and sulphur.

Cobalt is the main factor for the increased interest in minerals used in battery technology in the Philippines.

Although the production value of mixed nickel-cobalt sulfide decreased by 1.94 billion pesos from 2019 to 2020, nickel ore and nickel by-products – mixed nickel-cobalt sulfide and scandium oxalate – still ranked highest in the metallic production scene in 2020, with 68.48 billion pesos or 52 per cent of the total metallic production value. The Philippine Mines and Geosciences Bureau (MGB) notes that, from 2012 to 2015, the joint production value of nickel direct shipping ore and mixed nickel-cobalt sulfide consistently ranked highest with a four-year average of about 49 per cent of the total metallic production value.

Regions

3 | Which regions are most active?

The following regions have high metallic and gold mining activities: Benguet, Masbate, Nueva Vizcaya, Cebu, Compostela Valley, Davao, Palawan and Surigao.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

4 | Is the legal system civil or common law-based?

The Philippine legal system is a hybrid of both civil and common law. The civil law elements are primarily derived from the Spanish civil

law system. The common law elements are primarily derived from the Anglo-American system of the United States.

Regulation

5 | How is the mining industry regulated?

The mining industry is regulated by the Philippine Constitution, laws, regulations and ordinances issued by the national government and local government units, as well as by mineral agreements. Mining companies must also comply with regulatory requirements for corporations.

6 | What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The principal laws that regulate the mining industry are the Philippine Mining Act and its implementing rules and regulations (IRR), Philippine Department of Environment and Natural Resources (DENR) Administrative Order No. 2010-21.

The DENR is the primary government agency responsible for conservation, management, development and proper use of the country's environment and natural resources, including mines. The Philippine Mines and Geosciences Bureau (MGB), a line bureau under the DENR, is responsible for the proper management and disposition of mineral lands and mineral resources, and the promotion of sustainable mineral resources development.

The MGB and the Environmental Management Bureau, another line bureau of the DENR, advise the DENR Secretary on matters relating to environmental management, formulate plans and policies on environmental quality standards, exercise supervision over regional offices in implementation of plans and programmes, and issue permits and clearances.

To make the government's mining policies responsive to industry needs, in 2019, the DENR included the review and revision of the Mining Act IRR and the Small-Scale Mining Act IRR in its four priority items. In 2020, the MGB and the Biodiversity Management Bureau, another line bureau of the DENR, started the consultation with large-scale and small-scale mining companies on the proposed policy of integrating biodiversity conservation and protection in all mining operations in the Philippines.

Classification system

7 | What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The mining industry uses the Philippine Mineral Reporting Code (PMRC) for reporting all solid minerals, where public reporting is

required by the Philippine Stock Exchange. The PMRC is largely based on the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, or the JORC Code (2004), and sets out minimum standards for mining companies in accordance with principles of transparency, materiality and competence.

MINING RIGHTS AND TITLE

State control over mining rights

- 8 | To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

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 per cent 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 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.

Publicly available information and data

- 9 | What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The Philippine Mines and Geosciences Bureau (MGB) regularly publishes information on the mining industry through its official website (www.mgb.gov.ph), including details on existing exploration permits, mineral production sharing agreements, financial and technical assistance agreements, mineral processing permits, pending mining applications and pending cases with the Mines Adjudication Board and Panel of Arbitrators, current and historical statistics on the mining industry, such as the production level and prices of each type of mineral, and a list of currently producing mines and a map of where these operate.

The MGB also conducts geoscience surveys such as geological mapping, mineral exploration, geo-hazard assessment, vulnerability assessment and other geological and geo-environmental studies. These surveys are not readily available online.

Acquisition of rights by private parties

- 10 | What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

Private parties acquire mining rights through an exploration permit (EP), a mineral agreement (MA) or a financial and technical assistance agreement (FTAA).

An EP grants exclusive right to explore specified areas, while an MA grants exclusive rights to conduct mining operations and to extract all mineral resource found in the contract area. An FTAA grants the right to provide financial or technical assistance directly to the government to undertake large-scale exploration, development and utilisation of minerals.

Renewal and transfer of mineral licences

- 11 | What is the regime for the renewal and transfer of mineral licences?

The term of an exploration permit (EP) is two years from date of issuance by the Philippine Department of Environment and Natural Resources (DENR) Secretary through the Philippine Mines and Geosciences Bureau (MGB) director. It may be renewed for another two years, but the total term of the permit shall not exceed six years for metallic mineral exploration. In certain cases, the EP may be further renewed by the DENR Secretary for another term of two years. If the permit expires before the declaration of mining project feasibility is approved and the mineral agreement (MA) or financial and technical assistance agreement (FTAA) is filed, it is automatically extended until the MA or FTAA application is approved.

The term of an MA shall not exceed 25 years. It is renewable for another 25 years under the same terms and conditions, without prejudice to changes mutually agreed upon by the government and the contractor.

The term of an FTAA shall not exceed 25 years. It is renewable for another term not exceeding 25 years under such terms and conditions as may be provided by law and mutually agreed upon by the parties.

EPs may be transferred or assigned subject to the approval of the MGB director. MAs may be transferred subject to the approval of the DENR Secretary upon the recommendation of the MGB director. FTAAAs may be transferred subject to the approval of the President, as recommended by the MGB director and endorsed by the DENR Secretary.

Duration of mining rights

- 12 | What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

Mining rights involve exploration permits (EPs), mineral agreements (MAs), financial and technical assistance agreements (FTAAs), quarry, sand and gravel, guano, gemstone gathering permits and small-scale mining permits.

The term of an EP shall be two years from date of issuance, renewable for another two years, but not to exceed six years for metallic exploration. The holder of an EP must annually relinquish at least 20 per cent of the permit area during the first two years of exploration and at least 10 per cent of the remaining permit area annually during the extended exploration period. However, if the permit area is less than five thousand hectares, the holder of an EP need not relinquish any part thereof.

The term of an MA shall not exceed 25 years from the date of its execution. It is renewable for another term not exceeding 25 years. After the exploration period and prior to or upon approval of declaration of mining project feasibility, the contractor must relinquish any portion of the contract area which shall not be necessary for mining operations and not covered by any declaration of mining feasibility. Each mining area after final relinquishment shall not be more than five thousand hectares for metallic minerals.

The term of an FTAA shall not exceed 25 years from the date of its execution. It is renewable for another term not exceeding 25 years. The contractor must relinquish at least 25 per cent of the original contract area during the first two years of exploration period and at least 10 per cent of the remaining contract area annually during the extended exploration period and pre-feasibility period. During the exploration or pre-feasibility study period, the contractor shall finally relinquish 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 five thousand hectares.

The grounds for the cancellation, revocation and termination of an EP, MA or FTAA are:

- falsehood or omission of facts in the application that may alter, change or affect substantially the facts set forth in said statements;
- non-payment of taxes and fees 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.

Acquisition by domestic parties versus acquisition by foreign parties

13 | Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Yes. Under the Philippine Constitution, only Filipino citizens or corporations whose capital is at least 60 per cent owned by Filipino citizens may enter into mining agreements. Non-Filipino nationals or corporations that are 100 per cent foreign-owned may enter into exploration permits and financial and technical assistance agreements only.

Protection of mining rights

14 | How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

The Philippine Mining Act created the Panel of Arbitrators which has exclusive and original jurisdiction to hear and decide mining disputes involving:

- rights to mining areas;
- mineral agreements, financial and technical assistance agreements or permits; and
- surface owners, occupants and claim holders or concessionaires.

The jurisdiction of the panel is limited to mining disputes that raise questions of fact or matters requiring the application of technical knowledge and experience. Otherwise, disputes fall within the jurisdiction of regular courts.

Foreign arbitral awards in respect of domestic mining disputes are recognised and enforceable in this jurisdiction. When confirmed by the Regional Trial Court, they are enforced as a foreign arbitral award

and in the same manner as final and executory decisions of Philippine courts of law.

Surface rights

15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

Permit holders and contractors, upon written notice and payment of just compensation, may enter, occupy and explore the stipulated mining areas or land when they are so situated that, for purposes of more convenient operations, it is necessary to build, construct or install infrastructure on the mining areas or land owned, occupied or leased by other persons.

Further, holders of mining rights cannot be prevented from entering their contract areas for purposes of exploration, development and utilisation, provided that written notices are sent to the surface owners, occupants and concessionaires and that a bond is posted. Should surface rights holders refuse to allow permit holders entry into the mining area, the matter shall be referred to the Panel of Arbitrators.

Participation of government and state agencies

16 | Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

Yes, the Philippine Constitution allows the government and state agencies to participate in mining projects, either by directly undertaking exploration, development and utilisation of minerals or through co-production, joint venture or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per cent of whose capital is owned by Filipino citizens. The state may also enter into financial and technical assistance agreements with foreign-owned corporations for large-scale exploration, development and utilisation.

Neither the Philippine Constitution nor the Philippine Mining Act requires mining project companies to be publicly listed.

Government expropriation of licences

17 | Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The Philippine Mining Act provides that contractors' properties are generally free from expropriation. However, the government may expropriate such property for public use or in the interest of national welfare or defence after payment of just compensation.

Protected areas

18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

The implementing rules and regulations of the Philippine Mining Act enumerate the areas closed to mining applications:

- 1 areas covered by valid mining rights and applications subject to item (3);
- 2 old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial and municipal forests, tree parks, greenbelts, game refuges, bird sanctuaries, marine reserves and parks and tourist zones;

- 3 areas that the Department of Environment and Natural Resources Secretary may exclude;
- 4 offshore areas within 500 metres of the mean low tide level and onshore areas within 200 metres of the mean low tide level along the coast; and
- 5 other areas expressly prohibited by law.

Executive Order No. 79, series of 2012, expanded the list of protected areas to include:

- prime agricultural lands, lands covered by agrarian reform, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries;
- tourism development areas; and
- other critical areas, island ecosystems and impact areas of mining.

Exploration permits, mineral agreements or financial and technical assistance agreements cannot be granted in areas subject to certificates of ancestral domain or ancestral land claims, except with the prior consent of the relevant indigenous cultural communities.

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

- 19 | What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

The total government share in mineral production sharing agreements is the excise tax on the mineral product or 4 per cent based on the actual market value of the gross output thereof at the time of removal.

The government's share in co-production and joint venture agreements shall be negotiated with the contractor considering the capital investment, risks involved, contribution to the economy and other factors for fair and equitable sharing. The government shall also be entitled to compensation for its other contributions, as agreed upon by the parties, consisting of the contractor's income tax, excise tax, and other taxes, duties and fees provided in existing laws.

The government share in a financial and technical assistance agreement is negotiated by the government and the contractor and consists of, among other things, the contractor's income tax, customs duties and fees on imported capital equipment, excise tax on minerals, royalties for mineral reservations and to indigenous peoples, local business tax, and other national and local government unit taxes, royalties and fees.

Taxes

After the lapse of the income tax holiday granted to the contractor by the Omnibus Investments Code, the contractor shall pay income tax. The contractor is also liable for excise tax on mineral products, value added tax under the National Internal Revenue Code, customs duties under the Tariff and Customs Code, and local business taxes and real property tax under the Local Government Code.

The contractor must likewise pay an annual occupation fee, based on the area occupied, and mine waste and tailing fees.

Royalties

Contractors shall pay royalties to the concerned indigenous cultural communities based on the agreed payment, which may not be less than 1 per cent of the gross output.

For mineral agreements and financial and technical assistance agreements over areas covered by small-scale miners, the contractor shall pay royalties to the concerned small-scale miners upon utilisation of the minerals, depending upon their agreement.

Mining operations within mineral reservations are subject to a royalty paid to the Philippine Mines and Geosciences Bureau of not less than 5 per cent of the market value of the gross output of the minerals or mineral products extracted or produced, exclusive of all other taxes.

Tax advantages and incentives

- 20 | What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

Contractors are entitled to fiscal and non-fiscal incentives under the Omnibus Investments Code. The Philippine Mining Act provides that mining activities should always be included in the Investment Priorities Plan prepared annually by the Board of Investments. The guidelines issued by the Board state that the exploration of mineral resources or processing of minerals to produce semi-processed mineral products may qualify for registration with incentives limited to capital equipment.

Tax stabilisation

- 21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

Presently, there are no tax stabilisation agreements on mining in force in the Philippines.

Carried interest

- 22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

The government is not entitled to a carried interest or a free carried interest in mining projects.

Transfer taxes and capital gains

- 23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Gains realised on a transfer of licence are generally subject to income tax.

Distinction between domestic parties and foreign parties

- 24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

The law makes no distinction between the duties, royalties, and taxes payable by domestic and foreign parties, whether to the government or to indigenous cultural communities.

BUSINESS STRUCTURES

Principal business structures

- 25 | What are the principal business structures used by private parties carrying on mining activities?

Private parties ordinarily make use of corporations or enter into joint ventures to carry out mining activities taking into consideration the capital requirements under Department of Environment and Natural Resources Memorandum Order 2013-01. Under said order, the minimum authorised capital stock of applicants for exploration permits, mineral agreements, and financial and technical assistance agreements (FTAAs) is 100 million pesos, while the minimum paid-up capital stock is 6.25 million pesos. Further, an applicant for an FTAA shall have a minimum paid-up capital of 500 million pesos upon the grant of the FTAA by the President and prior to registration of the agreement with the Philippine Mines and Geosciences Bureau.

Local entity requirement

26 | Is there a requirement that a local entity be a party to the transaction?

With regard to mineral agreements, applicants must be Filipino citizens, or a corporation, partnership, association or cooperative whose capital is at least 60 per cent owned by Filipino citizens. However, the participation of a local entity in exploration permits, financial and technical assistance agreements or mineral processing permits is not required as they may be 100 per cent foreign-owned.

Bilateral investment and tax treaties

27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

To date, the Philippines has signed bilateral investment agreements with Argentina, Australia, Austria, Bangladesh, Belgium–Luxembourg Economic Union, Cambodia (not in force), Canada, Chile, China, Czech Republic, Denmark, Finland, France, Germany, India, Indonesia (not in force), Iran (not in force), Italy, Kuwait, Laos, Mongolia, Myanmar, Netherlands, Pakistan (not in force), Portugal, Romania, Russia, Saudi Arabia, South Korea, Spain, Sweden (not in force), Switzerland, Syria, Taiwan, Thailand, Turkey, the United Kingdom, the United States and Vietnam.

The Philippines has also entered into tax treaties with Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Canada, China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Kuwait, Malaysia, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Qatar, Romania, Russia, Singapore, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, the United Kingdom, the United States and Vietnam.

FINANCING

Principal sources of financing

28 | What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The principal sources of financing are debt and equity financing, as well as foreign investments. The domestic public securities market finances the mining industry through bond issuances, initial public offering and sale of preferred shares.

Direct financing from government or major pension funds

29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

In general, the government, its agencies and major pension funds do not provide direct financing to mining projects. Nevertheless, government financial institutions, such as the Social Security System and the Government Service Insurance System, have investments in certain mining corporations.

Security regime

30 | Please describe the regime for taking security over mining interests.

There is currently no Philippine legal framework for taking security over mining interests. However, mineral agreements and financial and

technical assistance agreements (FTAAs) include a stipulation that the financial institutions that have granted loans to contractors shall have the authority to designate their assignees in case of default by the contractors. Moreover, a mortgage or a security interest on the mining interest itself is permissible. The right to mortgage or encumber the mining interest is usually indicated in the mineral agreement or the FTAA.

RESTRICTIONS

Importation restrictions

31 | What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

The Philippine Mining Act and its implementing rules and regulations impose the policy of preferential use of local goods, services and technologies over their imported counterparts of comparable quality to the extent compatible with efficient mining operations.

Standard conditions and agreements

32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

Administrative Order No. 2000-98 of the Philippine Department of Environment and Natural Resources (DENR), or the Mine Safety and Health Standards, covers the standard conditions for equipment supplies to be observed by the contracting parties to comply with the Philippines' international obligations on safety and health. Further, Administrative Order No. 2010-21 provides for the guidelines in implementing these safety measure by requiring the submission of safety and health programmes, safety inspections and audits, and the appointment of safety engineers and safety inspectors.

In 2017, the Philippine Chamber of Mines adopted the mining sustainability standards of the Mining Association of Canada called Towards Sustainable Mining, which requires mining companies to annually assess their tailings management, community outreach, safety and health, biodiversity conservation, crisis management, energy use and greenhouse gas emissions management.

Mineral restrictions

33 | What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

At present, minerals need not be processed or sold in the Philippines. However, the Philippine government examines all sales and exportation of minerals or mineral products, including the terms and conditions of all sales commitments.

For mineral trading, the party must be registered with the Philippine Department of Trade and Industry and accredited by the Philippine Department of Environment and Natural Resources (DENR). Marketing contracts and sales agreements involving commercial disposition of minerals and by-products are subject to approval by the DENR upon recommendation of the Director of the Philippine Mines and Geosciences Bureau. Additionally, the sale must be made at the highest commercially achievable market price and lowest commercially achievable commissions and related fees under circumstances then prevailing. Sales terms and conditions must be compatible with world market conditions.

Bills requiring mandatory processing of all mineral ores are pending before the Philippine Congress.

Import of funds restrictions

- 34 | What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Generally, foreign investments need not be registered with the Philippine Central Bank (BSP). However, if a foreign investment is classified as a direct investment or an inward foreign portfolio investment in a peso-denominated debt instrument issued onshore by private resident firms, it must be registered with BSP.

Moreover, there are no restrictions on the disposition of proceeds from exporting minerals and mineral products. Under BSP regulations, foreign exchange receipts or earnings of residents from exports may be used for any purpose. Such proceeds may be sold for pesos, retained or deposited in foreign currency accounts, whether in the Philippines or abroad, at the exporter's option.

ENVIRONMENT

Principal applicable environmental laws

- 35 | What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Philippine Mining Act and its implementing rules and regulations require contractors to institute an environmental protection and enhancement programme prior to the commencement of mining operations and to submit final mine rehabilitation or decommissioning plans to ensure environmental protection beyond the life of the mine. Other pertinent environmental laws include the Toxic Substance and Hazardous and Nuclear Wastes Control Act, the Clean Air Act, the Clean Water Act, and the Act Establishing an Environmental Impact System, Including Other Environmental Management Related Measures and for Other Purposes.

The Philippine Department of Environment and Natural Resources and the agencies under it, including the Philippine Mines and Geosciences Bureau and the Environmental Management Bureau, administer these environmental laws.

Environmental review and permitting process

- 36 | What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

An environmental compliance certificate (ECC) is required for mining projects. To secure an ECC, a proponent must submit an environmental impact statement, which includes baseline environmental conditions, impact assessments and proof of consultation with stakeholders.

The environmental impact assessment (EIA) process involves four steps: scoping; conduct of EIA study and report preparation; review and evaluation of the EIA report; and decision-making. The Philippine Environmental Management Bureau takes at least 40 days to process an ECC application.

Sustainability

- 37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

As of 2020, to evaluate and mitigate economic, environmental and social impacts, the Philippine Securities and Exchange Commission requires publicly listed companies to submit sustainability reports disclosing material information gathered after undergoing a materiality

assessment process. The material information may constitute data relating to (1) economic impacts, such as employee wages and benefits, community investments and procurement practices, (2) environmental impacts, such as energy and water consumption, materials used, operational sites near protected areas and areas of high biodiversity value outside protected areas, air emissions and solid and hazardous wastes and (3) social impacts, such as employee benefits, equal opportunities at the workplace, and customer privacy and data security.

Under the current Philippine Investments Priorities Plan, environment or climate change-related projects are entitled to incentives, such as income tax holidays.

Additionally, the Philippine Mining Act allows exemption from real property tax and other taxes or assessments of pollution control devices.

Further, under the Philippine Green Jobs Act, businesses generating green jobs or jobs that contribute to preserving or restoring the quality of the environment may avail a tax income deduction of 50 per cent of the total expenses for skills training and research development expenses, which is above the allowable ordinary and necessary business deductions.

Closure and remediation process

- 38 | What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

The implementing rules and regulations of the Philippine Mining Act require that a final mine rehabilitation and decommissioning plan or mine closure plan be integrated in the environmental protection and enhancement programme (EPEP) to be submitted by contractors to the Mine Rehabilitation Fund Committee for the rehabilitation of excavated, mined-out and disturbed areas.

The government has established an environmental guarantee fund mechanism known collectively as the Contingent Liability and Rehabilitation Fund, which comprises the Mine Rehabilitation Fund (MRF), mine waste and tailings fees and the Final Mine Rehabilitation and Decommissioning Fund (FMRDF). The MRF must be established and maintained by each operating contractor and permit holder to ensure availability of funds for the EPEP. Failure to establish an MRF and an FMRDF is sufficient grounds to suspend or cancel the mining operations in the areas under contract.

Restrictions on building tailings or waste dams

- 39 | What are the restrictions for building tailings or waste dams?

Mining permittees must first secure clearance from the Philippine Mines and Geosciences Bureau (MGB), without prejudice to other required permits from other agencies of the Philippine Department Environment and Natural Resources, before constructing and operating buildings, tailings or waste dams. Permittees are required to conduct risk assessments and establish contingency and emergency preparedness plans to deal with significant events, which are assessed by the MGB prior to issuing clearance.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

- 40 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Philippine Mining Act is the principal health and safety law for the mining industry. The Philippine Department of Environment and Natural Resources (DENR), through the Philippine Mines and Geosciences

Bureau (MGB), is the principal regulatory body that administers the Mining Act. The Philippine Mining Act implementing rules and regulations contain provisions on mining health and safety measures. The DENR through the MGB also provides for the implementation of these laws through administrative regulations and issuances.

The principal labour law applicable to the mining industry is the Philippine Labour Code. The Department of Labour and Employment is the principal regulatory body that administers the Labour Code.

Management and recycling of mining waste

41 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

Contractors are required to use the best available appropriate anti-pollution technology and facilities to protect the environment and rehabilitate areas affected by mine waste, mill tailings and other pollution. Moreover, mine waste and tailings fees are collected to cover damage caused by pollution.

Valuable metals in abandoned ores and mine waste and mill tailings generated by defunct mining operations belong to the state and shall be developed and utilised through competitive public bidding in accordance with law.

Use of domestic and foreign employees

42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Philippine Mining Act mandates that parties to mineral agreements or financial and technical assistance agreements shall give preference to Filipinos who are qualified to perform the corresponding work with reasonable efficiency and without hazard to the safety of the mining operations within the Philippines. However, parties may hire foreign employees for technical and specialised work that, in their judgment and with the approval of the Director of the Philippine Mines and Geosciences Bureau, requires highly specialised training or lengthy experience in the exploration, development or utilisation of mineral resources.

In addition, foreign nationals seeking admission to the Philippines for employment must secure a permit from the Philippine Department of Labour and Employment after determination that there is no available Filipino employee who is competent, able and willing to do the job.

The Anti-Dummy Law, as amended, provides that the election of foreigners as members of the boards of directors or governing bodies of corporations or associations engaged in partially nationalised activities is allowed only in proportion to their allowable participation or share in the capital of such entities.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

43 | What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

There are currently no principal community engagement or CSR laws that are applicable to the mining industry. However, community engagement or social development provisions are found in various laws and regulations, including the implementing rules and regulations of the Philippine Mining Act, which require a contractor to annually allot a minimum of 1.5 per cent of operating costs to:

- promote the general welfare of the inhabitants within the host and neighbouring communities;
- develop a programme for advancement of mining technology and geosciences; and
- develop and institutionalise an information, education and communication programme for greater public awareness and understanding of responsible mining and geosciences.

The Philippine Department of Environment Natural Resources, the Philippine Mines Geosciences Bureau and the concerned local government unit administer this requirement.

Rights of aboriginal, indigenous or disadvantaged peoples

44 | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

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 free and prior consent 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 per cent of the gross output.

International law

45 | What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

The Philippines is not a signatory to any IP- or CSR-related treaties, conventions, or protocols.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

46 | Describe any local legislation governing anti-bribery and corrupt practices.

The Anti-Graft and Corrupt Practices Act enumerates and penalises corrupt practices of public officers. It also penalises private individuals who participate with public officers in the commission of corrupt practices.

The Code of Conduct and Ethical Standards for Public Officials and Employees requires all government personnel to make an accurate statement of assets and liabilities, net worth and financial connections. It also requires public officials to divest ownership in any private enterprise to avoid conflict of interest and prohibits them from engaging in acts that affect their performance of official functions.

The Act Defining and Penalising the Crime of Plunder penalises any public officer who, by him or herself, or in connivance with family members, relatives or business associates, accumulates ill-gotten wealth through a combination or series of criminal acts, in an aggregate amount of at least 50 million pesos.

The Revised Penal Code penalises public officers for direct bribery, indirect bribery and qualified bribery. It also penalises private individuals who offer, promise or give gifts to a public officer under circumstances that will make the public officer liable for direct or indirect bribery.

Presidential Decree No. 46 punishes public officers or employees who receive any gift on any occasion, when the gift is given by reason of his or her official position. The Decree also punishes private persons who give, or offer to give, such gifts.

Republic Act No. 1827 prohibits corrupt or undesirable methods of lobbying in Congress and provides for the licensing of lobbyists and the suspension or revocation of these licences.

Foreign legislation

- 47 | Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Although the Philippines has been a signatory to the United Nations Convention Against Corruption (UNCAC) since 2003, the Philippine Congress has not yet enacted a law specifically implementing all of the provisions of the UNCAC.

Nevertheless, there has been partial implementation of some of its provisions through laws such as the Anti-Money Laundering Act, Anti-Red Tape Act, and Anti-Graft and Corrupt Practices Act, among others. The Philippines has also entered into various mutual legal assistance treaties.

Companies registered in the United States and the United Kingdom must also comply with the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010, respectively.

Disclosure of payments by resource companies

- 48 | Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

Yes. Executive Order No. 147, series of 2013, created the Philippine EITI Multi-Stakeholder Group, affirming the Philippine government's commitment to transparency and accountability in the extractive industries, specifically in the collection and payment of taxes. To date, the Philippines' EITI status is 'Satisfactory progress'. Philippine EITI developments may be found at ph-eiti.dof.gov.ph.

FOREIGN INVESTMENT

Foreign ownership restrictions

- 49 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

Yes. The Philippine Constitution limits the conduct of mining to Filipino citizens or corporations whose capital is at least 60 per cent owned by Filipino citizens. Hence, only Filipino citizens or such corporations may enter into mineral agreements. Nevertheless, non-Filipino nationals, or corporations that are 100 per cent foreign-owned, may still be awarded exploration permits and enter into financial and technical assistance agreements.

INTERNATIONAL TREATIES

Applicable international treaties

- 50 | What international treaties apply to the mining industry or an investment in the mining industry?

There is currently no multilateral international treaty or convention to which the Philippines is a party that specially applies to the mining industry or an investment in the mining industry. However, the Philippines has bilateral investment treaties with other states and economic unions. These treaties 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.

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UPDATE AND TRENDS

Recent developments

- 51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

In December 2020, the Philippine Mines and Geosciences Bureau (MGB) temporarily suspended all quarrying and crushing plant operations in Rizal Province in Luzon within the coverage of the Marikina River Basin following the onslaught of a typhoon that caused massive flooding in some parts of Rizal Province and Marikina City. The suspension affected 11 Mineral Production Sharing Agreements and Mineral Processing Permit holders. The MGB noted that the suspension shall remain until the completion of a joint assessment of the Philippine Department of Environment Natural Resources (DENR) and the MGB in identifying the cause of the flooding in the area.

The ban on open-pit mining continues indefinitely under Administrative Order No. 2017-10 of the DENR. A court in South Cotabato in Mindanao upheld the ban on open-pit mining and dismissed a petition for injunction against the ban on open-pit mining, even while South Cotabato has large deposits of copper and gold reserves which can be most viably extracted through open-pit mining.

The nine-year moratorium on the issuance of new mineral agreements pursuant to Executive Order 79 has been lifted following the issuance of Executive Order 130 allowing the Philippine Government to enter into new mineral agreements with qualified persons.

Amid the covid-19 pandemic, supporters of the mining industry reportedly see the mining industry to aid in the economic recovery of the Philippines. The Department of Finance, through its attached agency Privatization Management Office, plans to review the privatisation of mining assets held by government to revive the mining industry.

Coronavirus

52 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Philippine Mines and Geosciences Bureau (MGB) has issued Memorandum Order No. 2020-004 (MO No. 2020-004) that provides for the guidelines or protocols for the resumption of mining and mineral processing operations of Mining Contractors/Permittees/Permit Holders during the General Community Quarantine in order to control the effects of covid-19. MO 2020-004 requires the provision for personal protective equipment, supplies and materials, and the observance of personal hygiene, disinfection and physical distancing at the mine or plant site.

The Memorandum also imposes the protocols to be observed in the shipment of minerals or mineral products, supplies, products, and other similar commodities. Cargo vessels are required to observe 14-day quarantine 'starting from the departure of the vessel at the last port of call.' Mining Contractor/Permit Holders, in case of shipment of minerals/mineral products, are also required to submit shipment monitoring/draft survey report with the MGB Regional Office.

Mining Contractors/Permittees/Permit Holders are required to 'prepare detailed procedures based on the provisions of the Memorandum Order'. Clients are advised to comply with the Memorandum Order and other specific ordinance, guidelines that may be issued by respective local government units, and the Inter-Agency Task Force for the Management of Emerging Infectious Diseases.

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