

**PH-EITI 16<sup>th</sup> MSG MEETING**

**9:00 AM- 12:00 PM | September 5, 2014**

**Soliven Room, Malcolm Hall, Up College Of Law  
Diliman, Quezon City**

**Attendees:**

9	Asst. Sec. Ma. Teresa S. Habitan	Department of Finance (DOF)
10	Usec. Zenaida Monsada	Department of Energy (DOE)
11	Engr. Nenito Jariel	DOE
12	Engr. Romualdo Aguilos	Mines and Geosciences Bureau—Department of Environment and Natural Resources (MGB-DENR)
14	Dir. Anna Liza Bonagua	Bureau of Local Government Development - Department of the Interior and Local Government (BLGD-DILG)
16	Dr. Cielo Magno	Bantay Kita
17	Prof. Jay L. Batongbacal	University of the Philippines, College of Law
18	Prof. Maria Aurora Teresita W. Tabada	Visayas State University
19	Ronald Allan A. Barnacha	Philippine Rural Reconstruction Movement (PRRM)/ North Luzon
21	Filomeno Sta. Ana III	Action for Economic Reforms (AER)/Bantay Kita
22	Vince Lazatin	Bantay Kita/Transparency & Accountability Network (TAN)
23	Starjoan Villanueva	Alternate Forum for Research in Mindanao, (AFRIM) Inc.
24	Engr. Artemio F. Disini	Chamber of Mines of the Philippines (COMP)
25	Gerard Brimo	COMP
26	Elenette C. Pingul	Shell Philippines Exploration BV (SPEX)/ Petroleum Association of the Philippines (PAP)
28	Sec. Elisea Gozun	Mining Industry Coordinating Council (MICC) representative
29	Atty. Gay Alessandra V. Ordenes	Secretariat
30	Maria Meliza T. Tuba	Secretariat
31	Abigail D. Ocate	Secretariat
32	Liezel B. Empio	Secretariat
33	Grace A. Estacio	Secretariat
35	<b>RESOURCE PERSONS:</b>	
37	Atty. Brenda Jay Angeles Mendoza	Consultant
38	Atty. Alett Nunez	Consultant
39	Julius Lotilla	Consultant
40	Amy Mosura	Communication Strategist

1 Pocholo Domondon Isla Lipana & Co.  
2 Feve Hisug Isla Lipana & Co.

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4

5 **AGENDA:**

- 6 • Minutes of the 15<sup>th</sup> MSG meeting
- 7 • Matters arising from previous MSG meetings
- 8 • Status report on data gathering and reconciliation
- 9 • Presentation of legal framework for ETI implementation
- 10 • Presentation of local/sub-national payments
- 11 • Presentation of communications plan
- 12 • Other matters

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14

15 **1. Call to Order:**

16

17 1.1. The Philippine Extractive Industries Transparency Initiative (PH-EITI) Multi-Stakeholder Group (MSG)  
18 meeting was called to order at 9:10 AM.

19

20 The proposed agenda was presented and subsequently approved by the body.

21

22 **2. Minutes of the 15<sup>th</sup> MSG Meeting**

23

24 2.1. The Chair mentioned that the minutes of the meeting was circulated to the Multi-Stakeholder Group  
25 (MSG) and no comments were received by the Secretariat.

26

27 2.2. The body approved the minutes of the 15<sup>th</sup> MSG meeting.

28

29 **3. Matters Arising from Previous MSG Meetings**

30

31 3.1. *Establishment and management of a revenue-linked database and offer of Timor Leste to conduct a*  
32 *training for the PH-EITI MSG on the Petroleum Fund process:* The Secretariat mentioned that there has been  
33 no movement for these two items since the last MSG meeting.

34

35 3.2. *Bureau of Internal Revenue (BIR) waiver:* It was recalled that the MSG agreed to conduct a press  
36 conference to appeal to the mining and oil and gas companies who have not signed the waiver. The  
37 Secretariat mentioned that two press conferences were already conducted, one on July 22 and another one  
38 on September 3.

39

1 In addition to that, the Secretariat shared that the Mines and Geosciences Bureau (MGB) through Director  
2 Jasareno, called the mining companies with no waiver. As a result of this effort, 10 more companies  
3 executed the BIR waiver.  
4

5 3.3. On the part of the Department of Energy (DOE), a briefing for oil and gas companies was conducted on  
6 August 19. It was mentioned that Asst. Sec. Habitan and Undersecretary Monsada, who is the new MSG  
7 representative of the DOE, facilitated the said briefing. The Secretariat also informed that body that Sec.  
8 Purisima also sent a letter to all non-compliant companies.  
9

10 3.4. It was reported that 40 out of 51 companies have already submitted their BIR waiver and there are four  
11 (4) companies who have categorically stated that they will not participate.  
12

13 3.5. One member of the MSG asked if the non-participating companies sent an official communication to the  
14 Secretariat.  
15

16 The Secretariat responded that most of the companies have official communication.  
17

18 3.6. *Incentive regime for mining:* It was recalled that the Board of Investments (BOI) refused to disclose the  
19 incentives that the companies avail of. However, it was mentioned that Sec. Gozun discussed this matter to  
20 Sec. Domingo of BOI. As a result, BOI provided the MSG with the list of the incentives being availed of by the  
21 companies. The Secretariat mentioned that the list was previously sent to the MSG members through the e-  
22 group.  
23

24 3.7. *Selection of Non-COMP alternate representative:* It was reported that Mr. Arañes who is the permanent  
25 representative of the non-members of Chamber of Mines of the Philippines (COMP) has not yet  
26 communicated with the secretariat regarding the replacement of their alternate representative. The  
27 Secretariat is following up on this.  
28

29 3.8. *Other information from Department of Energy:* The Secretariat recalled that DOE was asked to render a  
30 legal opinion whether there will be any impediments in disclosing certain information coming from them.  
31 But, since DOE has already submitted the reporting template with complete information, the Secretariat  
32 stated that this matter is already moot and academic.  
33

34 3.9. *Inclusion of coal in the report:* Sec. Gozun reported that she and Atty. Ordenes had a meeting with  
35 Semirara which was represented by Isidro Consunji, Victor Consunji, Vic Macalingag and Atty. Junar. As  
36 requested by Semirara, Sec. Gozun again gave an overview and a background of what EITI is.  
37

38 3.10. Sec. Gozun relayed to the body the explanation given by Semirara during the meeting for their refusal  
39 to participate. Its reluctance is grounded on considerations relating to the WTO (World Trade Organization)  
40 guidelines on countervailing measures. Sec. Gozun explained that Semirara is availing of income tax holiday  
41 and only pays 10% tax to the government while the coal companies in Indonesia for example, pays 17% tax  
42 with no incentives.

1 3.11. Representatives of Semirara expressed that they are worried that if these subsidies or incentives are  
2 disclosed, WTO will impose countervailing measures to even out the playing field among coal manufacturers  
3 and exporters. According to Semirara participating might be disadvantageous for them since importing  
4 countries can impose taxes on them to balance the prices.

5  
6 3.12. However, Semirara also noted that the numbers do not tell the complete story. To clarify, Semirara  
7 explained that the calorific value of coal in the Philippines is lower than that of Indonesia. Also, it was  
8 mentioned that the strip ratio for the coal in Philippines is 10:1 meaning every 10 cubic meters of waste  
9 materials hauled will only produce 1 ton of coal, while the strip ratio for Indonesian coal is 3: 1. Semirara  
10 exports 3 million tons a year while Indonesia exports 200 million annually.

11  
12 3.13. Sec. Gozun mentioned that according to Semirara, the MSG could get the data from the government. It  
13 was also shared that Semirara is open to have continuous dialogue regarding EITI participation and in finding  
14 solutions with regard to their concerns.

15  
16 3.14. The body was informed that Semirara was asked to submit an official response to the MSG.

17  
18 3.15. For the information of the body, Sec. Gozun shared that in the last Mining Industry Coordinating  
19 Council (MICC) meeting, the issue on the implications of EITI in the global market was also raised by Sec.  
20 Domingo. It was mentioned that Sec. Domingo also asked why the developed countries are not participating  
21 in the EITI. According to Sec. Gozun, she responded that the Philippines is participating in the EITI because it  
22 is good for the country and it is aligned with the reforms of the present government to really improve  
23 transparency and accountability. Sec. Gozun then mentioned that Sec. Domingo and the other MICC  
24 members agreed to support her position.

25  
26 3.16. A Civil Society Organization (CSO) representative commented that the point of EITI is precisely to look  
27 at the incentives being availed of by the coal industry. The same representative also expressed that the MSG  
28 wants to assess the industry. It was mentioned that if the government is subsidizing an industry that is  
29 damaging an area while the country is not getting enough income, since the recoverable cost is up to 90%  
30 and the government is paying additional 7% (income tax holiday), then access to information should be  
31 provided to be able to assess if it makes sense to have this industry in the first place. The CSO representative  
32 stressed that these are exactly the information that the MSG wants to get through the EITI.

33  
34 3.17. The same representative commented that it is not right to compare the Philippine coal with the coal  
35 from Indonesia since there is a different market for the type of coal extracted in Indonesia and the type of  
36 coal that are being extracted in the Philippines. This is the reason why Semirara is able to export all their  
37 products.

38  
39 3.18. One member of the MSG asked how much of the coal produced are being exported.

40  
41 3.19. Sec. Gozun responded that almost all of the coal are being exported and there is a very minimal  
42 portion for local use.

1 3.20. It was stated that the reason why the MSG is pursuing to include Semirara is because it constitutes  
2 20% of the revenues for the mining sector.  
3

4 3.21. Since EITI is about transparency, Sec. Gozun suggested that the government data on Semirara be  
5 disclosed and in the report, the MSG can just state the efforts that have been made.  
6

7 3.22. One member of the MSG commented that the IA will not be able get the tax payments of Semirara  
8 from BIR but there will be available data from the side of the government since the company also pay to  
9 Bureau of Customs (BOC), Local Government Units (LGUs) and others. However, the MSG needs to know if  
10 there is no limitation in terms of confidentiality.  
11

12 3.23. A CSO representative commented that data from the industry is important because if the direction of  
13 Semirara is to merge their production with mining then it will also go to the issue of ring fencing. It is  
14 important that data from the coal industry be disclosed so that future implication on policies can be  
15 analyzed.  
16

17 3.24. The DOE representative reiterated that they have already provided the reporting template to the IA.  
18 For the information of the body, it was also mentioned that the fiscal regime of coal is different from oil and  
19 gas. According to the same representative, the IA can get Semirara's data from Bangko Sentral ng Pilipinas  
20 (BSP), SEC and BOI.  
21

22 3.25. It was mentioned that DOE has encouraged their service contractors and coal operating contractors to  
23 participate in the EITI but since PH-EITI is voluntary, there are no legal grounds and they cannot compel the  
24 contractors.  
25

26 3.26. With regard to the mining companies that have not signed the waiver, Sec. Gozun mentioned that she  
27 talked to Dir. Jasareno of MGB. It was shared that Dir. Jasareno will work on Citinickel Mines & Dev. Corp.  
28 and Sec. Gozun will work on the other companies.  
29

30 3.27. Going back to Semirara, Sec. Gozun mentioned that Semirara will respond to the official letter from  
31 Sec. Purisima.  
32

33 3.28. One member of the MSG inquired regarding the percentage of the metallic mining companies and the  
34 coal from the total revenue.  
35

36 3.29. The Secretariat explained that if Semirara will be lumped under the mining sector, it constitutes 20%  
37 of the total revenue. However, the Secretariat mentioned that there was a suggestion to treat coal as a  
38 separate category and instead of lumping it together with the metallic mines.  
39

40 3.30. The Chair enumerated that the agreements are: 1.) Semirara will not be included as part of the  
41 reconciliation; 2.) in the presentation of the data, Semirara will not be part of mining or oil and gas but a  
42 separate category; 3.) the information with regard to coal will be coming from the government side.

1 3.31. A CSO representative suggested that the MSG publish Semirara's letter as part of the report.  
2

3 3.32. The Chair asked if the body agrees to publish the official letter from Semirara.  
4

5 3.33. Regarding incentives, the Secretariat shared that based on the information provided by BOI, Semirara  
6 availed of income tax holiday in 2009. However, as for 2011 and 2012, Semirara's applications for income  
7 tax holiday are still pending.  
8

9 3.34. A member of the MSG inquired whether companies can implement income tax holiday even with  
10 pending application.  
11

12 3.35. The Secretariat responded that if the application is still pending then the company has no basis yet for  
13 implementing income tax holiday. The body was informed that according to BOI, all applications for 2011  
14 are still pending and BOI have not yet decided on such applications.  
15

16 3.36. A representative of the industry sector mentioned that some companies are already implementing  
17 their incentives even if the application has not yet been approved by BOI.  
18

19 3.37. One representative of the CSO responded that this will then be point for reconciliation.  
20

21 3.38. The Chair asked whether the MSG will not be violating anything if the letter of Semirara will be  
22 published as part of the PH-EITI report.  
23

24 3.39. One member of the MSG commented that communication letters are public documents. In addition, it  
25 was mentioned that there is no confidentiality agreement between the MSG and Semirara so there will be  
26 no problem.  
27

28 3.40. The body then agreed to publish the letter from Semirara as part of the report.  
29

30 3.41. Since there will only be partial disclosure of data for coal, it was suggested that the constraints in  
31 terms of reconciliation and data validation should be highlighted in the report.  
32

33 3.42. *Two mining companies in Tawi-Tawi*: The group initially identified two (2) mining companies in Tawi-  
34 Tawi. However, according to the Regional Department of Environment and Natural Resources (DENR) of  
35 Autonomous Region in Muslim Mindanao (ARMM), there was only one (1) operating mining company for  
36 2012 and that is SR Languyan.  
37

38 3.43. The body was informed that the Secretariat, in partnership with Bantay Kita, conducted an EITI briefing  
39 in Cotabato. It was mentioned that Asst. Sec. Habitan was also present during the said briefing. The  
40 Secretariat then shared that the CSOs and regional ARMM officials who attended the briefing agreed to  
41 participate in the EITI process. In connection to this, the Secretariat will be meeting SR Languyan in the  
42 coming week to get the relevant information from them.

1 3.44. A representative of the CSO asked the Secretariat to request for official information from the MGB  
2 ARMM regarding list of operating companies in the area and list of mining applications.

3  
4 3.45. *Reconciliation of figures*: The Secretariat noted that this matter will be discussed as part of the main  
5 business of the meeting.

6  
7 3.46. *Documentation of efforts to require companies to participate in EITI*: The Secretariat was tasked to  
8 document all the efforts exerted by the MSG to ensure that companies will execute the waiver. The said  
9 documentation is included in the meeting kit.

10  
11 It was shared that the CSOs, COMP and the Petroleum Association of the Philippines (PAP) were asked to  
12 provide the Secretariat with the list of the efforts that they made.

#### 13 14 **4. Status Report on Data Gathering and Reconciliation**

15  
16 4.1. The Independent Administrator (IA) reported that as of August 31, there are 30 participating entities  
17 that have submitted their reporting template (the presentation material is attached as Annex A). The body  
18 was informed that the received templates account for at least 75% of combined revenue and assets of  
19 mining as well as oil and gas companies in scope.

20  
21 4.2. On the part of the government agencies, the IA mentioned that most of them have already submitted  
22 their reporting template. In their presentation, the IA listed down the status of the reporting template as  
23 well as the necessary action points per government agency.

24  
25 4.3. The IA also discussed the following:

- 26 • walkthrough procedures and results
- 27 • preliminary sources of differences between government and company report/data
- 28 • summary results of workshops with LGUs
- 29 • preliminary suggestions for the next EITI implementation

30  
31 4.4. The IA also presented the timetable of key activities leading to the finalization of PH-EITI report. The  
32 body was informed that the walkthrough and financial reconciliation will be finalized in September and the  
33 IA will already present a summary of the financial reconciliation result by October. Then, the draft PH-EITI  
34 report will be submitted on the 1<sup>st</sup> or 2<sup>nd</sup> week of November to give the MSG ample time to review before  
35 publishing the report by December.

36  
37 4.5. According to a representative of the CSO, it is important to note that from the report of the IA, some  
38 companies are already applying incentives in their income tax even though based on the report of BOI,  
39 incentives since 2011 have not yet been approved. In addition, it was also shared that the MGB  
40 representative stated that income tax holiday was already cancelled in 2012.

1 4.6. The IA mentioned that based on the submitted reporting templates, less than five (5) companies are still  
2 enjoying tax holiday in 2012 and these are the entities that only started commercial operation a few years  
3 before 2012. However, the IA stressed that most companies are paying the normal tax rate because their  
4 incentive has already expired or they were not able to renew the same with BOI. One of the companies that  
5 is still enjoying tax holiday is Carmen Copper.

6  
7 4.7. With regard to beneficial ownership, the IA clarified that they will only be looking into the first level of  
8 equity ownership based on the Securities and Exchange Commission (SEC) disclosures of the company  
9 because the compliance of some companies on the 60-40 Filipino-Foreign equity is still a subject of an  
10 appeal made on the Supreme Court.

11  
12 4.8. A representative of the CSO asked if the data from SEC will also be seen in the report.

13  
14 The IA responded that SEC data will also be included. It was mentioned that they have already requested for  
15 the respective financial statement as well as General Information Sheet (GIS) of the companies.

16  
17 4.9. One representative of the industry sector suggested to remove Rapu-Rapu Minerals, Inc. from the list of  
18 reporting entities because this company already closed down and will not operate again.

19  
20 4.10. The IA commented that it may be prudent to exclude Rapu-Rapu Minerals since they will have no  
21 future benefits to EITI implementation given that they closed down in 2013. In addition, the IA shared that  
22 they are having problems and difficulty in reaching out to the said company because there is only a skeletal  
23 workforce manning the rehabilitation as well as wiping down of properties.

24  
25 According to the IA, they can emphasize in the report that even if Rapu-Rapu Minerals is a material entity in  
26 2012, it was excluded in respect of scoping because of the circumstances subsequent to 2012.

27  
28 4.11. A CSO representative commented that similar to Semirara, government data of the companies that are  
29 not reporting should be disclosed. It was noted that BIR can also disclose the tax information of Rapu-Rapu  
30 Minerals since they signed the waiver.

31  
32 4.12. In computing for the percentage of compliance, the Secretariat clarified if Rapu-Rapu Minerals will still  
33 be included under the list of 34 material companies.

34  
35 4.13. The Chair stated that since Rapu-Rapu Minerals was originally part of the 34 materials companies, it  
36 can still be included but with annotation that this company already closed in 2013.

37  
38 The body agreed.

39  
40 4.14. The Secretariat raised that the BOC communicated through the IA that they have concerns as to the  
41 proper official who should be signing their reporting template.



1 4.15. The IA expounded that there might just be some miscommunication because in one of the TWG  
2 meetings, the BOC representative did say that they will be able to provide the information based on the  
3 agreed format as well as provide the proper signature for the template. However, in the last communication  
4 with BOC, it was relayed that they have hesitations in terms of the formal signing off. The IA emphasized  
5 that they would not be able to accept the template with no sign off because that is actually their evidence  
6 that the reporting template has been really reviewed by BOC.

7  
8 4.16. For the information of the body, it was also pointed out that the department representing BOC in the  
9 TWG is different from the actual BOC department that provided the data to the IA.

10  
11 4.17. Since BOC is part of the Department of Finance (DOF), the Chair mentioned that she will talk to BOC  
12 and get to the person who should sign off the reporting template.

### 13 **5. Presentation of Legal Framework for ETI Implementation**

14  
15  
16 5.1. The legal consultant presented the legal framework governing the extractive industries and  
17 transparency (the presentation material is attached as Annex B).

18  
19 5.2. The DOE representative commented that the mining law cannot be compared to the DOE law on oil, gas  
20 and coal since the tax treatment is different. One is under normal taxation while the other is governed by  
21 production sharing.

22  
23 5.3. The DOE representative explained that oil and gas, including coal, is governed by rules on production  
24 sharing meaning the share of government is from the production. It was mentioned that the oil, gas and coal  
25 contracts that DOE provides is initially for exploration which will be conducted up to 5 years. If the  
26 companies do not find anything commercially viable within this period then they just forget their  
27 investment. But if the company finds that there is commercial viability in production then they can recover  
28 the cost incurred during the exploration stage. However, there is a limit for recoverable costs which is  
29 different for coal as well as oil and gas industry.

30  
31 5.4. On the number of incentives, the same representative explained that compared to Indonesia,  
32 Philippines has very small potential offshore oil reserves. Because of this, a lot of incentives are being given  
33 to be able to encourage international investors.

34  
35 5.5. On the issue of allowing the companies to sell their petroleum produce, the DOE representative stated  
36 that companies are allowed to do this, but government, being the owner of the resource, approves the rate.  
37 In addition, it was mentioned that DOE has direct control in marketing the petroleum produce.

38  
39 5.6. There may be no explicit environmental provisions in the oil and gas contract but the DOE  
40 representative noted that there are general provisions. It was further explained that because most of the  
41 country's oil explorations are offshore, the companies are subjected to very strict mining regulations. As an

1 example, there is a DENR circular which requires that the water quality of the area where the oil and gas  
2 platform is located should be the same quality for fishing, boating and diving.

3  
4 Given that there are guidelines being imposed on oil and gas projects, the same representative stressed that  
5 the environment is being protected.

6  
7 5.7. As for the incentives to host communities, the DOE representative noted that under Energy Regulation  
8 (ER) 1-94, host communities will benefit in terms of electrification developments. But, it was pointed out  
9 that DOE contractors also have equivalent share in electrification developments and this is part of the social  
10 funds that are being reported.

11  
12 5.8. On confidentiality of information, the same representative noted that some of the information,  
13 especially seismic data are very confidential. According to the DOE representative, these are very expensive  
14 information that are spent for during the first 5 years of exploration. Thus, these cannot be divulged to the  
15 public. In addition, it was also mentioned that seismic data are actually for sole.

16  
17 5.9. An industry representative clarified what would happen after the publication of the PH-EITI report. The  
18 same representative commented that if all the figures that the MSG has can be properly presented including  
19 the contribution of the industry to the economy, then it may change the perception of the people regarding  
20 mining.

21  
22 5.10. The Chair responded that as mentioned by one of the resource persons during the media forum, EITI  
23 report will not just be for dissemination but it should also provoke discussion and debate. The Chair added  
24 that the country report will be factual.

25  
26 5.11. Going back to the contracts, the Secretariat recalled that based on the previous agreements made by  
27 the MSG, there will be full disclosure of contracts meaning these are going to be published in the website.  
28 The Secretariat shared that they had initial discussions regarding contract disclosure with Open Data and  
29 USAID who is willing to fund the said initiative.

30  
31 5.12. In addition, it was mentioned that the contracts from MGB and DOE are already in the possession of  
32 the Secretariat. However, given that there were discussions during today's meeting regarding certain  
33 confidentiality clauses in the contracts, the Secretariat asked the legal consultant to clarify whether there  
34 are no legal impediments in uploading the contracts in the website.

35  
36 The legal consultant responded that there has to be consent from the DOE.

37  
38 5.13. The Secretariat then inquired if they can get the written consent from the relevant government  
39 agencies, noting that verbal consent has been previously given.

40  
41 5.14. A representative of DOE commented that the consent should not only come from the government  
42 agencies because other parties to the contract must also agree.

1 5.15. The Secretariat explained that companies who are part of the MSG have already consented to full  
2 disclosure of contracts however, contracts of other companies who are not part of the MSG will be uploaded  
3 as well. But still, the Secretariat pointed out that there will be no problem in uploading the contracts if there  
4 is no legal impediment.  
5

6 5.16. One of the consultants remarked that under the law, the DOE consent will already suffice and there is  
7 no need to get the consent of other parties.  
8

9 5.17. A representative of the DOE, explained that their current practice is to also ask if the contracting party  
10 would agree. For oil and gas companies that are not members of the MSG, they are not sure if the contracts  
11 can be published.  
12

13 5.18. The DOE representative mentioned that they will relay the question to their legal department.  
14

15 The Chair then recalled that request for DOE to render a legal opinion regarding disclosure has been a  
16 pending for several months already.  
17

18 5.19. The Chair noted that it is one thing for DOE and MGB to provide the Secretariat with the copy of  
19 contracts while the publication of the contracts in the website is another thing. The Chair clarified if the  
20 agreement stretch as far as publication of the contracts.  
21

22 5.20. The Secretariat reiterated that the MSG members agreed to publish the contracts in the website  
23 including all attachments.  
24

25 5.21. The Chair then asked the Secretariat to remind the companies and government agencies about the  
26 agreement. Also, the Secretariat was asked to identify when the agreement was made and in what MSG  
27 meeting.  
28

29 5.22. Going back to the presentation, the legal consultant clarified that mining as well as oil and gas  
30 industries were presented in a comparative way because the nature of these two sectors is production  
31 sharing. The legal consultant mentioned that the contracts of the two industries are both executed by the  
32 parties with the government.  
33

34 5.23. With regard to environmental provisions, the legal consultant clarified that there is no suggestion that  
35 there is disregard for environmental protection in the oil and gas or coal industry. It was recalled that the  
36 legal consultant only mentioned that in DOE law, there is no extensive discussion on environmental  
37 provisions as compared to the mining act.  
38

39 5.24. It was mentioned that the comments given by the DOE representative are just for further clarification.  
40

1 **6. Presentation of Local/Sub-National Payments**

2  
3 6.1. Before the presentation, the Secretariat explained that study on sub-national payments is actually a  
4 longer study, but for the meeting, the consultants will just be presenting what will be relevant for the EITI  
5 report. The Secretariat informed that body that the rest of the scope which pertains to the sub-national  
6 report, will be presented in future sessions.

7  
8 6.2. The sub-national consultant presented the local revue streams including transfer flows (see attached  
9 presentation material as Annex C).

10  
11 6.3. Based on the presentation, the Secretariat stated that the MSG needs to decide what payments under  
12 the local tax codes should be included in the report. The Secretariat explained that there was a previous  
13 agreement by the MSG that all payments under the Local Government Code (LGC) will be included and are  
14 thus included in the template. However, the MSG still has to decide which of the payments based on local  
15 tax codes are considered material.

16  
17 6.4. The Chair asked the MSG regarding payments to include in the report.

18  
19 6.5. A representative of the Department of the Interior and Local Government (DILG) clarified that the share  
20 of the LGUs from the national wealth is based on the preceding year unlike the Internal Revenue Allotment  
21 (IRA) which is based on the third preceding year. The same representative mentioned that this is the reason  
22 for the delay in releasing the LGU share. In addition, it was mentioned that even if the entire collection for  
23 the year is not yet recorded, the collection is being projected and included in the government allotment for  
24 the General Appropriations Act (GAA).

25  
26 6.6. One member of the MSG inquired whether the shares or revenues presented were solely from large-  
27 scale mining activities and did not include small-scale mining data.

28  
29 6.7. In terms of tax rates, the sub-national consultant explained that there is no distinction because the rates  
30 apply to all. But in terms of the amount, the body was informed that the data presented were only from  
31 large-scale mining.

32  
33 It was further expounded that the sub-national consultants collected the data from the LGUs using a  
34 questionnaire. It was reported that LGUs were able to provide details on large-scale mining collections and  
35 even though some LGUs also supplied information regarding small-scale mining collections, these were not  
36 included in the presentation.

37  
38 6.8. From the fees and charges that are being imposed by the LGUs, one MSG member asked if there is a  
39 way of knowing what fees are specific for small-scale or for large-scale mining.

40  
41 The consultant responded that the fees and charges can be disaggregated.

1 6.9. The sub-national consultant elucidated that their study is very much dependent on the data supplied by  
2 the LGUs. Thus, they are requesting for the assistance of DILG in data collection. The consultant mentioned  
3 that the survey questionnaires was sent to the LGUs as early as June but, the quality of the data that they  
4 are receiving still needs to be enhanced. It was mentioned that the consultants were planning to send out  
5 another wave of questionnaires to collect more data.

6  
7 6.10. In addition, the sub-national consultant also asked for assistance from MGB especially on the social  
8 expenditure data. It was noted that the IA is having problems with data from MGB but by regulation, the  
9 sub-national consultant remarked that MGB should have all data on social expenditure.

10  
11 6.11. A CSO representative supported the request of the consultant and added that there is in fact an MGB  
12 Administrative Order requiring companies to submit soft copy of their Social Development Management  
13 Program (SDMP). Therefore, MGB should have these information.

14  
15 6.12. In terms of determining the materiality, one member of the MSG asked how much percentage of the  
16 revenue should be considered material for reporting.

17  
18 6.13. One representative of the CSO opined that local payments are deemed material regardless of the  
19 amount. The same representative explained that the MSG must try to capture those data on the ground as  
20 long as it would not delay the completion of the report.

21  
22 6.14. The Chair then remarked that all sub-national payments will be included.

23  
24 6.15. It was clarified that all local payments will be included but in terms of reconciliation the 5% threshold  
25 will still be followed.

26  
27 The body agreed.

## 28 29 **7. Presentation of Communications Plan**

30  
31 7.1. The proposed communications plan for PH-EITI was presented by the communication strategist (please  
32 refer to Annex D for the power point presentation on the communications plan)

33  
34 7.2. A CSO representative commented that to better measure the effectiveness in communicating EITI to  
35 different media forms, there should be a target number of audience. For example, the MSG should set a  
36 target number of audience to be informed by the end of December 2014. It was noted that the MSG would  
37 want to know how many people have been influenced and how many have increased level of understanding  
38 and knowledge as far as EITI is concerned.

39  
40 7.3. In relation to communicating EITI, the same representative stated that the MSG should be very cautious  
41 in using conflict sensitive languages especially in affected areas. It was mentioned that people from the

1 extractive industry are also sensitive to certain messaging. It is important for all MSG members to be conflict  
2 sensitive, gender sensitive and culture sensitive, especially with Indigenous People (IP) communities.

3  
4 7.4. The CSO representative also commented that the communication tools presented are only for Manila  
5 audience. Since affected communities do not have access to internet, the CSO representative suggested to  
6 have radio programs in local languages for Mindanao and Visayas areas.

7  
8 7.5. According to the same representative, there should be specific media forms for specific audiences. The  
9 MSG can discuss the details like who will do what, how often and the mechanism for monitoring.

10  
11 7.6. One MSG member added that it will be good to have a specific program at the local level using the local  
12 dialect, at least in the Visayas.

13  
14 7.7. The CSO representative shared that during an EITI Multi-Stakeholder's Conference in Cebu, one of the  
15 Barangay Captains has a wrong understanding of what EITI is. Because of this, it was suggested that the  
16 Secretariat and the MSG conduct more regional outreach especially in Cebuano since this is the language in  
17 most of the mining areas. Explaining what EITI is in Cebuano and why is it good for the companies and the  
18 LGUs will be very helpful.

19  
20 Another suggestion was to translate the basic communication materials in Cebuano.

21  
22 7.8. The communication strategist asked the opinion of the body on how to best communicate with the local  
23 audiences.

24  
25 7.9. A CSO representative responded that there should be radio programs and some printed materials. The  
26 same representative added that the CSOs can be asked to disseminate the printed materials.

27  
28 7.10. The Chair asked who the EITI spokesperson should be. The Chair explained that because the group is  
29 composed of different stakeholders, the spokesperson should not only come from the government but  
30 there should be a spokesperson for each sector.

31  
32 7.11. A CSO representative volunteered to help the communications strategist in formulating the indicators  
33 which will be presented to the MSG.

34  
35 7.12. In response to the concern raised by the Chair, the same representative agreed and mentioned that  
36 the MSG should be trained including people at the local level. It was noted that the MSG would want to  
37 reach people at the regional level down to the provincial, municipal and barangay level.

38  
39 7.13. According to the same representative, the MSG can work in partnership with Bantay Kita and other  
40 CSOs on the ground to do some pilot testing and then expand the outreach activities.

41

1 7.14. For the information of the body, the CSO representative shared that this is called barefoot media and  
2 community-based media.  
3

4 7.15. The communication strategist noted that even though EITI is a continuous project, much of the effort  
5 in terms of publicity is concentrated with the first PH-EITI country report simply because this is the chance to  
6 show the people what the MSG is doing and what EITI can do. On the other hand, if EITI makes enough of  
7 an impact and was able to generate enough interest from the press and from the public, then publicity could  
8 be self-sustaining at some point.  
9

10 7.16. The Chair stated that the MSG also needs to decide on the languages to which the report will be  
11 translated into. In addition, basic communication materials such as primers and frequently asked questions  
12 (FAQs) will also be translated. The Chair mentioned that there would definitely be translation in Tagalog,  
13 Cebuano and Ilocano.  
14

15 7.17. A CSO representative shared that since their organization is specializing in popularization, they have a  
16 pool of cartoonists including script writers for different languages.  
17

18 7.18. The communication strategist added that the MSG should already identify the key messages that will  
19 be relayed on the ground.  
20

21 7.19. The Chair suggested to have a small working group who will refine the communications plan.  
22

23 7.20. A representative of the CSO commented that it would also be good for the MSG to have a training so  
24 that everybody will have a common understanding of the key messages.  
25

26 The same representative explained that if the MSG will not be able to communicate on the ground there can  
27 misinformation and it will be difficult to do damage control.  
28

29 7.21. The CSO representative suggested that a training on communications planning, key messaging as well  
30 as monitoring and evaluation be conducted. In the said training, the MSG would also identify what kind of  
31 behavioral change or what level of influence the group wants to achieve by the end of 3 years, for example.  
32

33 7.22. To summarize, it was mentioned that the Secretariat will just communicate to the MSG members  
34 regarding the representatives who will be part of the small working group. Then, a workshop on the  
35 communications plan will be conducted.  
36

37 The Secretariat suggested that one workshop be conducted before the publication of the report and another  
38 one when the report has already been published, so that the message will depend on the report.  
39

40 7.23. A representative of the CSO proposed that the workshop be conducted before the MSG meeting in  
41 October.

1 7.24. The Secretariat asked the members of the MSG if they agree to conduct the workshop on October 2  
2 (Thursday), before the MSG meeting scheduled on October 3.

3  
4 The body agreed.

5  
6 7.25. A CSO representative also raised the concern that MSG members are sometimes misquoted by the  
7 media.

8  
9 7.26. The communication strategist explained that this will be part of the message standardization that will  
10 be done. It was cited that during the first PH-EITI press conference, talking points were distributed and this  
11 actually helped. According to the communication strategist, the plan is for the MSG to have a consistent set  
12 of talking points that will be distributed to everyone who is going to be assigned to speak for PH-EITI.

## 13 14 **8. Other Matters**

### 15 16 • **Multi-Donor Trust Fund (MDTF) Status**

17  
18 8.1. The body was informed that Sec. Purisima already signed the MDTF grant and the signed grant has been  
19 submitted back to the World Bank. The next step is the signing of the disbursement letter which is already in  
20 the office of Sec. Purisima. The Secretariat shared that as soon as the disbursement letter is signed, the  
21 letter will be sent to the World Bank for authentication of signatures which will take about two (2) weeks.

22  
23 8.2. The Secretariat explained that since the grant will pass to the Bureau of Treasury (BTr), the Department  
24 of Budget and Management (DBM) needs to issue a Special Release Allotment Order (SARO) before the  
25 Secretariat can open a bank account with the Land Bank and before DOF can make use of the funds.  
26 Hopefully, the grant will be available before the publication of the report.

### 27 28 • **Translation of EITI Report**

29  
30 8.3. The Chair reiterated that this will be discussed after the workshop on communications plan.

### 31 32 • **Technical Writer for Contextual Information**

33  
34 8.4. For contextual information, the Secretariat recalled that the original plan was to hire a separate  
35 consultant who will write the contextual information for the report, and in view of this, the Secretariat  
36 asked the members of the MSG if it is acceptable to hire PricewaterhouseCoopers (PWC) to write the said  
37 portion of the report. The MSG then agreed to the suggested approach. As requested by the Secretariat, the  
38 PWC submitted a proposal which was sent to the World Bank. Unfortunately, it was shared to the group that  
39 the Secretariat has been informed by the World Bank that there are legal issues regarding the engagement  
40 of a writer for the contextual information. It was mentioned that the legal issue was communicated to the  
41 Secretariat just before the day's meeting.



1 8.5. The Secretariat shared that according to World Bank, if they will pay for the writers of the contextual  
2 info then it would be as if it is the Bank who is the client of the writer. This might run counter to some bank  
3 regulations considering that the final output will be a country report that should be approved by the MSG  
4 and not the bank.

5  
6 8.6. Because of the legal constraint, the MSG has the following options:

- 7 • The MSG will undertake a rapid bank-managed competitive tender process excluding PWC, since  
8 they have already submitted a proposal before. The bank will still pay for the writer but the approval  
9 would be from their end.
- 10 • The Secretariat could hire PWC using the same justification for a sole-source procurement using the  
11 MDTF grant.
- 12 • The MSG will constitute a small working group to work on the contextual information of course with  
13 the help of the secretariat

14  
15 8.7. The Secretariat commented that the 1<sup>st</sup> option is not ideal given the time constraints.

16  
17 As for the 2<sup>nd</sup> option, the Secretariat noted that this is not feasible also considering the timelines. The  
18 Secretariat explained that since the fund will pass through the DOF, the MSG still has to follow the usual  
19 procurement procedure which will take at least 2 months.

20  
21 8.8. The Secretariat clarified that since the other topics had been assigned to other consultants and to the  
22 PWC, there are only four topics to write. These are:

- 23 • Overview of Extractive Industries in the Philippines
- 24 • Licensing System
- 25 • IP Processes
- 26 • State-Owned Enterprises

27  
28 8.9. One member of the MSG mentioned that since he is handling a supervised legal research class with 5  
29 students, the topics for contextual information can be assigned to the students who will get guidance from  
30 him.

31  
32 8.10. The Secretariat shared that this matter was also discussed with one of the CSO representatives. The  
33 body was informed that the said representative mentioned that she can also ask her students to write the  
34 overview of extractive industries in the Philippines or commission a study which will be funded by COMP.  
35 The Secretariat added that the COMP representative who is present during the meeting already agreed to  
36 the suggestion.

37  
38 8.11. Given the options, the Chair asked the body to decide.

39  
40 8.12. The body agreed to the suggestions of the MSG members. It was then resolved that the four remaining  
41 chapters (mentioned above) will be taken care of by the MSG using the aforesaid approach.

1       • **Appointment of Usec. Zenaida Monsada as New DOE Representative to the MSG**

2  
3 8.13. The Chair reiterated that Usec. Monsada is the new permanent representative from the DOE while  
4 Engr. Jariel is the alternate representative.

5  
6       • **Financial Statement for July to August 2014**

7  
8 8.14. The Secretariat mentioned that copies of the financial statement are included in the meeting kit. It was  
9 reported that the Secretariat has a remaining balance of Php 8 million for 2014. However, it was pointed out  
10 that a portion of this is allocated for the IA who has not billed yet.

11  
12 8.15. The Secretariat flagged that they are requesting for a budget realignment to cover the printing cost of  
13 the EITI report. It was mentioned that the Secretariat discussed this already with the accounting division of  
14 the DOF and they agreed to realign.

15  
16 8.16. The Secretariat explained that the printing of the EITI report is supposed to be funded by the MDTF  
17 grant. However, to be sure that the report will be printed on time, the Secretariat asked the government to  
18 fund it instead. The realignment for the printing is around Php 2 million.

19  
20 **ADJOURNMENT**

21  
22 There being no other matters to discuss, the meeting was adjourned at 12:30 PM.

*Mirroring the truth*  
Extractive Industries  
Transparency Initiative –  
Progress update  
September 2014

## Reporting templates

*As at 31 August 2014, we have received reporting templates from 30 participating entities, of which 21 entities have undergone walkthrough discussions with the IA*

- Representation of these entities to total revenue and assets per industry is presented as follows:

	In scope (in P'000s)	% of material entities to total	% of entities with templates to total
<b>Mining</b>			
Revenue	71,911,161	96.3%	84.2%
Assets	156,459,575	93.0%	88.5%
<b>OG</b>			
Revenue	72,747,088	100.0%	96.0%
Assets	134,888,960	99.7%	74.7%
<b>Coal</b>			
Revenue	17,626,630	100%	0%
Assets	23,509,432	100%	0%

- In the overall, total reporting templates received account for at least 75% of combined revenue and assets.

# *Reporting templates per government agency*

<b>Agency</b>	<b>Status</b>	<b>Action points</b>
BIR	Partial submission for entities with waivers with ten (10) remaining for transmittal.	Agreeing alternative procedures for those without waivers (e.g. examination of returns) and cutoff.
BOC	On-going reconciliation based on submission last 19 August.	Discussion on required sign-off of reporting templates.
PPA	Request for supplementary information based on reconciliation.	For follow up with PPA, but nonetheless commenced examination of entities' supporting documents.
DOE	Received in order.	None to date until receipt of templates from other entities.
MGB	Awaiting increment details and disclosures on social funds and mandatory expenditures, if any.	Scheduled walkthrough and follow through discussion with the monitoring team next week.
LGUs	Outstanding templates from LGUs.	For follow up with identified LGUs.
NCIP	Outstanding template.	Recommendation raised on required monitoring.

---

## ***Walkthrough procedures and results***

***Understanding and evaluation of existing processes to confirm accuracy and completeness of information presented in the reporting templates***

- Entailed discussions with entities' key finance personnel (e.g. Controller, Accounting Manager) and relevant section heads for each government agency (e.g. LTD)
- Focus is on data gathering process and review undertaken on key information relating to taxes and fees.
- For entities, certain information are readily available as disclosed in audited financial statements and reports submitted to regulatory bodies.
- Correspondingly, more material taxes such as corporate income and excise are in scope as part of statutory audits.

---

## ***Walkthrough procedures and results, continued***

***Varying reporting systems implemented by government agencies relative to the nature and volume of revenue streams***

- Most agencies are already implementing automated system that facilitated data generation per entity, however some still revert to manual ledgers (e.g. excel spreadsheets).
- Primary challenges include data consolidation from provincial and satellite offices and/or lack of monitoring system.
- Under government accounting, cash basis is adopted, which is one of the more causes of identified variances.
- Regular post audits conducted to ensure compliance and determine possible tax deficiencies.

# *Preliminary sources of differences*

<b>Areas</b>	<b>Description</b>
Accounting framework	Difference in accounting frameworks wherein entities and government agencies adopt accrual and cash basis, respectively.
Consolidation of information	Difficulty in the consolidation of information sourced from provincial government offices; hence entities normally disclosed higher tax and fee payments. Certain information are also not readily available from the national government headquarters such as SDMP and IP royalty payments.
System limitation	Inherent limitation in the current reporting system to provide information at the required level of detail or specification; hence taxes and fees presented in the reporting templates are either at lump-sum, per consortium or project basis or excluding standard fees and charges.



---

## *Collaboration with the LGUs*

Summary results of workshop conducted:

- Consistent utilization of ESRE with manual ledgers maintained to monitor individual payments of entities with quarterly reporting to the Bureau of Local Government – Finance.
- Cash basis of accounting framework implemented; hence, essentially, there is no structured monitoring of non-monetary grants and donations.
- Determining accuracy and of allocated share in national wealth
  1. Challenges in frequency and timeliness of receipts;
  2. Full accounting of portion attributed to operations of mining and OG entities; and
  3. Absence of any remittance.
- Social funds are directly implemented by entities with limited involvement from/participation by municipal LGUs.

---

## *Preliminary suggestions for the next EITI implementation*

- Possible inclusion of companies, whose facilities are substantially used to process ore concentrates from local mining entities;
- Consideration of foundations established by OG entities to underscore commitment to social/community development, as well as environmental protection;
- Sample representation of small-scale mining operators to participate in the disclosure and reconciliation process;
- Scoping of OG based on operating projects to align with monitoring approach undertaken by DOE; and
- Adoption of alternative procedures should there be legal restrictions imposed on the disclosure of requested information (e.g. BIR waivers) and absence of any reconciliation that can be performed (e.g. social funds), and verification procedures of non-financial information.

# ***Timetable***

## Key activities leading to finalization of report



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# *Questions?*

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# **LEGAL FRAMEWORK GOVERNING THE EXTRACTIVE INDUSTRIES AND TRANSPARENCY**

Prepared by: *Atty.* Brenda Jay Angeles Mendoza  
For EITI PHILIPPINES

# OUTLINE OF PRESENTATION

## Introduction

- I. Natural Resources Governance
- II. Transparency
- III. Mandated Information
- IV. Regulatory Framework
- V. Payments
- VI. Sanctions
- VII. Incentives
- VIII. Contracts
- IX. Social and Environmental Provisions
- X. Inputs to EITI Legislation

# INTRODUCTION

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- Policy of full public disclosure of transactions involving public interest
- Agreements involving the exploration, development and utilization of natural resources as transactions involving public interest
  - Revenue potential → national development
  - Impact on communities and environment



- PH Commitment to EITI
- PH-EITI-MSG
  - Set strategic direction to effectively implement EITI in the country
  - Assess and seek removal of barriers to EITI implementation
- Legal framework study as an input to PH-EITI-MSG

# I. NATIONAL RESOURCES GOVERNANCE

---

# Constitutional Provisions

## ■ Art. XII, Section 2

- State ownership of all lands and natural resources
- Non-alienability (except agricultural lands)
- Exploration, development and use allowed, under full control and supervision of State
  - State directly, co-production, joint-venture, production-sharing agreement (nationality requirement, term)
  - Financial or technical assistance (foreign, large-scale)
  - Small-scale by Filipino citizens (law)

# Constitutional Provisions

- **Art. XII, Sec. 2**

- Financial or technical assistance (foreign, large-scale)
  - According to general terms & provisions of law
  - Based on real contributions to economic growth & general welfare of country
  - Promote use & development of local & scientific resources

# Constitutional Provisions

- In allowing the exploration, development, and use of natural resources, two relevant rights:
  - Rights of IP/ICC to their ancestral land (*Art. XII, Sec. 5*)
  - Right of people to healthful & balanced ecology (*Art. II, Sec. 16*)

# Law and Policy (Mining)

- Rep. Act No. 7942 (1995)
- DAO 2010-21
  - Legislative history (CA 137 – EO 79)
- Exec. Order No. 192 (1987)
  - DENR
  - MGB
  - EMB/PAB

# Law and Policy (Petroleum, Coal)

## Oil & Gas

- Pres. Decree No. 87 (19872)
  - Rep. Act No. 387 (1949)
- Pres. Decree No. 1857

## Coal

- Pres. Decree No. 972 (1976), as amended
- Rep. Act No. 7638 (1992)
  - DOE

# II. TRANSPARENCY

Public disclosure

Public information and access to information

Public participation

---



# Constitutional Provisions

## Public disclosure

- State's policy of full public disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by law. (*Art. II, Sec. 28*)
  - Public officials/employees to submit SALN (*Art. XI, Sec. 17*)
  - Top government officials to disclose SALN to the public (*Art. XI, Sec. 17*)
  - Each House of Congress to keep journal & record of proceedings [*Art. VI, Sec. 16 (4)*]
  - Congress to preserve records & books of accounts, open to public, audited by COA (*Art. VI, Sec. 20*)

# Constitutional Provisions

## Public information & access to information

- Recognizes people's right to information on matters of public concern.
- Filipino citizens are afforded access to:
  - official records
  - documents and papers pertaining to official acts, transactions, or decisions
  - government research data used as basis for policy development
- Subject only to such limits as may be provided by law. (*Art. III, Sec. 7*)

# Constitutional Provisions

## Public information & access to information

- Information on foreign loans obtained or guaranteed by the government shall be made available to the public. (*Art. XII, Sec. 21*)
- Limitations:
  - National security matters, trade secrets, banking transactions, law enforcement, and other confidential matters. (*J. Bernas, commentary*)
  - Privileged information, military & diplomatic secrets, matters affecting public order (*Chavez v. PEA, IDEALS v. PSALM, Akbayan v. Aquino*)

# Constitutional Provisions

## Public participation

- Guarantees the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making.
- The State shall, by law, facilitate the establishment of adequate consultation mechanisms. (*Art. XIII, Sec. 16*)

# Law and Policy (in general)

- Transparency in government frontline services (*RA 9485, Anti-Red Tape Act 2007*)
- Transparency in government procurement process (*RA 9184 /2003*)
- Transparency in local government budget & finances (*RA 7160/1991, DILG MC 2010-83, DILG MC 2011-134*)
- Transparency in the extractives industry (*EO79/2013*)
- Data Privacy Law (personal information) (*RA 10173*)

# Transparency (mining)

- Confidentiality Rule
  - Information supplied by contractor (*RA 7942, Sec. 94*)
  - Agreed by the parties in the negotiation (IRR)
  - Treated as confidential during project term
- Exceptions:
  - production and sales of minerals;
  - employment;
  - royalty and tax payments;
  - metallic and non-metallic reserves;
  - operational parameters (mining/milling capacities and rates, mine & mill recoveries, dilution factors, etc. )

# Transparency (mining)

- Qualified confidentiality :
  - Act of divulging *publicly* any information classified as such
  - DENR/MGB Director or reps may use data internally within MGB for monitoring and for policy, planning and research studies
- Not confidential means:
  - Made available to the public upon request duly approved
  - May be reproduced upon showing of approved written request & payment of fees

# Transparency (mining)

- Contractors are obliged to allow MGB representatives to inspect & examine their books of accounts & other pertinent records and documents
- Purpose: to ascertain compliance with law, IRR, terms & conditions of mineral agreement/FTAA

(IRR, Sec. 228)



# Transparency (oil & gas)

- Law
  - Contractor is obliged to allow BIR examiners & DOE full access to their accounts, books, and records
  - For tax and other fiscal purposes [PD 87, Sec. 8(j)]
  - DOE Secretary or representative with visitorial & examining authority over energy contractors
  - Purpose: (1) to determine the government's share in the revenue or product thereof; and (2) to ascertain all funds and collectibles due to the government, and whether those funds have actually been collected or delivered.
  - Contractor obliged to produce all required reports, records, books of account, other papers (*RA 7638*, Sec. 24)

# Transparency (oil & gas)

- Law
  - Privilege in service contracts: exemption from publication requirement under RA 5455 & RA 6173 re: exploration, sale, disposition of crude oil discovered & produced in the Philippines (*PD 87 Sec. 12*)
  - Negotiations of contracts w/ government to be given publicity that is consistent with the government's best interest (*PD 87, Sec. 29*)

# Transparency (oil & gas)

- Model contract (PECR-5)
  - All documents, information, data and reports related to the Petroleum Operations w/in the Contract Area (Confidential Information) shall be kept confidential
  - Contractor/assignee cannot disclose info to 3<sup>rd</sup> party & to any affiliate not directly connected with implementation of contract
  - Parties cannot transfer, present, sell, or publish info in any way within the confidentiality period
  - DOE bears the obligation for confidentiality for info within the confidentiality period

# Transparency (oil & gas)

- Exceptions:
  - With written consent of the DOE
  - DOE with right to furnish 3<sup>rd</sup> parties the ff. original info & data or interpretation thereon with respect to contract area:
    - Raw &/or processed data generated & held by contractor for over 5 years from date data are generated
    - Interpretations of info & data generated & held by contractor for over 7 years from date data/report was generated (provided contract still existing & active)

# Transparency (oil & gas)

- Exceptions:
  - Contractor may furnish necessary confidential info to the ff. 3<sup>rd</sup> parties & affiliates:
    - Banks/other credit institutions from which finance is sought by any party to the contract for the implementation of the contract;
    - Third parties /affiliates which provide services for the petroleum operations, incl. subcontractors & other service contractors;
    - A prospective assignee /s to whom rights & obligations under the contract are intended to be assigned; and
    - Consultants, auditors, officers or employees & persons engaged by the contractor, where necessary for the performance of its obligations & in pursuance of its rights under the contract.

# Transparency (oil & gas)

- Exceptions:
  - A Party may disclose confidential information which would otherwise be confidential:
    - if and to the extent required by the law of any relevant jurisdiction or by any relevant authority to which the Party making the disclosure is subject, whether or not such requirement has the force of law; or
    - required by existing contractual obligations; or
    - required to vest the full benefit of the contract in any of the parties; or
    - when disclosure is made to the professional advisers, auditors and bankers of any of the parties; or
    - when the confidential information has come into the public domain through no fault of that party; or
    - the other parties have given prior written approval to the disclosure.

# Transparency (oil & gas)

- Exceptions:
  - Necessary confidential Information may be furnished by the contractor to governments & stock exchanges in accordance with the laws of the relevant countries.
- Note: The parties when furnishing confidential information to third parties/affiliates shall require them to assume the confidentiality obligations as set forth in the contract.

Model contract (PECR-5)

# Transparency (coal)

- Operator is obliged to allow authorized DOE representatives full access to their accounts, books, and records
- Purpose: For tax and other fiscal purposes.
- Operator is obliged to promptly furnish the DOE with all information, data and reports which it may require. [*PD 972, Sections 9(i) and (e)*]



# Transparency (Revenue Law)

- Confidentiality rule: Unlawful for any BIR officer or employee to divulge to any person or make known in any other manner than that provided by law information relating to:
  - business, income, or estate of any taxpayer;
  - secrets, operation, style or work, or apparatus of any manufacturer or producer;
  - confidential information regarding the business of any taxpayer.
- Knowledge acquired in discharge of official duties  
(NIRC, Sec. 270)

# Transparency (Revenue Law)

- Exceptions:
  - When BIR Commissioner exercises authority to inquire into bank deposit accounts & other related information held by financial institutions of:
    - a decedent to determine his gross estate;
    - a taxpayer who has filed an application for compromise of his tax liability by reason of financial incapacity to pay the tax assessed, upon written waiver of his privilege from public disclosure of tax information; and
    - a specific taxpayer/s subject of request for the supply of tax information from a foreign tax authority pursuant to a tax treaty, on which basis the BIR may use the information obtained for tax assessment, verification, audit, and enforcement purposes.

*(NIRC, Section 6(f), as amended by RA No.*

*10021)*

# Transparency (Revenue Law)

- Exceptions:
  - Income tax returns filed with BIR
    - Constitute public records & open to inspection as such upon order of the President, under rules & regulations prescribed by the Finance Secretary.
    - In each year, the BIR Commissioner may also cause to be prepared & published in any newspaper the lists of names & addresses of persons who have filed ITR. (*Sec. 71, NIRC as amended by RA 10021*)

# Transparency (Revenue Law)

- Exceptions:
  - An individual who files a sworn Certificate of Candidacy for an electoral post is required to provide income tax information for the last 2 years immediately preceding the election.
    - This must include a waiver of the privilege from public disclosure of the candidate's income tax return and tax census statement for the 2-year period.
    - However, for financial statements attached to the certificates, the waiver is effective only during the period of the candidacy. (*Sec. 26, RA 6388*)

# Transparency (Investments Law)

- Confidential:
  - All *applications and supporting documents* that are filed under the Omnibus Investments Code.
  - Disclosure of such information to any person is prohibited, except:
    - with the consent of the applicant; or
    - on orders of a court of competent jurisdiction.

(Art. 81, EO 226)

# Transparency (Investments Law)

## APPLICATION

- Extent of ownership & control of Filipino citizens
- Economic rates of return
- Measured capacity
- Foreign exchange earned, used, or saved in operations
- Use of labor

*(Art. 33, EO*

*226)*

## CERTIFICATE OF REGISTRATION

- Name of registered enterprise
- Preferred area of investment
- Nature of activity
- Registered capacity
- Terms & conditions of registration (e.g., incentives matters, etc.)

*[Art. 7(3), EO 226]*

# Transparency (public information & access to information)

- Mining:
  - National & regional filing & recording system, incl. mineral resource data base system
  - National mineral resource gazette (Sec. 14, RA 7942)
  - Public information , public hearing, publication re: boundaries of mineral reservations (*IRR, Sec. 9*)
  - Publication of applications for mineral agreements/FTAA, posting of notices, radio (no approval of application unless complied) (*IRR, Sec. 21, 38, 55*)
  - Posting of order approving declaration of mining feasibility (*Sec. 30*)

# Transparency (public information, access to public information, public participation)

- Extractives
  - FPIC process (Mining IRR, IPRA, NCIP Circ. No. 3, series of 2012)
  - EIA process (PD 1586, DAO 2003-30)
  - Local consultations (*RA 7160, Sec. 26-27*)
  - LGU approval (*RA 7160, Sec. 26-27*)



# III. MANDATED INFORMATION

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# Reports to MGB

	Type of Report	Date of Submission	Submitted to	Basis
1	Report of Exploration Work Program (EWP) implementation and expenditures	30 calendar days after the end of each semester	MGB/Regional Office	Section 22 (d)
2	Final Report of EWP findings in the permit area, including detailed expenditures incurred during exploration	Upon the expiration or relinquishment of an exploration permit or its conversion into Mineral Agreement or FTAA	MGB/Regional Office	Section 22 (h)
3	Report of accidents	Within 24 hours, in case of incident or accident causing or creating danger of loss of life or serious physical injuries; monthly	Regional Office (copy to MGB)	Section 155
4	Reports of explosives transactions and explosives and accessories consumption (as Purchaser's License Holders)	15 working days after every calendar month	MGB Director	Section 162
5	Status report on compliance with Environmental Work Program detailing environmental impact control and rehabilitation activities, including costs	Within 30 days from the end of 6 months after approval of the Environmental Work Program and every 6 months thereafter	MGB/ Regional Office (copy to Provincial Government concerned)	Section 168
6	Progress report on Final Mine Rehabilitation/Decommissioning Plan (FMRD/P)	Within 30 days from the end of the term of the preceding work and financial plan	MRF Committee	Section 187-D
7	Final Rehabilitation Report (with 3 <sup>rd</sup> Party Environmental Audit)		MRF Committee then to CLRF Steering Committee	Section 187-F

# Reports by MGB & others

	Type of Report	Schedule of Submission	Person Responsible	Office to Submit Report	Basis
1	Report of confiscation or seizure of minerals/mineral products	Monthly Quarterly	MGB Regional Director MGB Director	MGB DENR Secretary	Section 126, IRR
2	Report of accomplishments on Annual Social Development and Management Program (ASDMP)	Quarterly Annual	Community Relations Office (CRO) CRO	MGB Regional Office MGB Regional Office (copy to MGB)	Section 136- D
3	Monitoring Report on implementation of approved programs	Semi- Annual	Regional Office	MGB	Section 136- D
4	Mine Safety Inspection Report	Quarterly	Regional Director or representative	MGB Director	Section 145
5	Environmental monitoring report (of EPEP and AEPEP)	Quarterly	Multi-partite monitoring team (MMT)	Mine Rehabilitation Fund (MRF) Committee CLRF Steering Committee	Section 174
6	Accomplishment Report	Annual	CLRF Steering Committee	DENR Secretary	Section 193 (o)

# IV. REGULATORY FRAMEWORK

Agencies with mandate & role in payment, collection, reporting of revenue, regulation, other matters relevant to EITI report

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# DENR-MGB

Agency	Mandate	Role	Basis
DENR-MGB	<p>Promulgate rules and regulations pertaining to mineral resources exploration, development, and utilization.</p> <p>Directly implement mining-related programs of DENR.</p>	<p>Collect payment of royalty in mineral reservations</p> <p>Allocate 10% share of all royalties and revenues derived by the government from the development and utilization of the mineral resources within mineral reservations to special projects and administrative expenses related to the exploration and development of other mineral reservations.</p> <p>Collect annual occupation fees from contractor or permit holder on public or private lands.</p>	<p>Exec. Order No. 192 (1987); Rep. Act No. 7942 (1995); DAO 2010-21</p>

# DOE

Agency	Mandate	Role	Basis
DOE	Supervise and control all government activities relative to energy projects; regulate private sector activities in all energy projects; formulate rules and regulations necessary to implement the law	<p>Collect annual rent on area retained by contractor after exploration period (if petroleum in commercial quantity has been discovered) and during the effectivity of the contract.</p> <p>Devise ways and means of giving direct benefits to the province, city or municipality, especially community and people affected, and equitable and preferential benefit to the region that hosts the energy resource and/or energy-generating facility; <i>provided that</i> other provinces, cities, municipalities or regions shall not be deprived of their energy requirements.</p> <p>Its <i>Compliance Division</i> formulates plans, policies and programs related to compliance by service contractors with their financial obligations under their contracts and ensures effective implementation thereof and compliance with government regulations and standards.</p> <p>Its <i>Petroleum Division</i> formulates fiscal policy recommendations relative to petroleum service contracts, conducts detailed audit of their books of accounts, evaluates their compliance with their financial and other contractual obligations, prepares and maintains a database on government shares service contractors revenues, expenditures and performance bonds, remits to the DOE's treasury division all monies due from petroleum service contractors.</p>	Rep. Act No. 7638, Sec. 5; Pres. Decree No. 87, Sec. 9(e), (i) DOE website , date accessed June 8, 2014

# DOE

Agency	Mandate	Role	Basis
DOE	Supervise and control all government activities relative to energy projects; regulate private sector activities in all energy projects; formulate rules and regulations necessary to implement the law	<p>Its <i>Geothermal and Coal Division</i> formulates and implements policies, plans, programs and regulations relating to exploration, development, exploitation and market development of geothermal and coal resources.</p> <p>Its <i>Special Compliance Concerns Division</i> formulates policy recommendations relative to DOE-administered energy funds, allocates LGU shares on national wealth taxes from service contractors, assists in the interpretation of pertinent government fiscal policies relative to the national wealth taxes, benefits to host communities, and other DOE-administered energy funds, conducts periodic audit of electricity sales of power producers/energy resource developers and expenses from the ER 1-94 fund and other DOE-administered energy funds, prepares and maintains database on national wealth taxes, benefits to host communities and other DOE-administered energy funds, monitors reports submission by the LGUs on receipts and utilization of the national wealth taxes, and coordinates with various DOE unities and concerned government agencies on national wealth taxes, ER 1-94 and other DOE-administered energy funds.</p>	Rep. Act No. 7638, Sec. 5; Pres. Decree No. 87, Sec. 9(e), (i) DOE website , date accessed June 8, 2014

# DOF

Agency	Mandate	Role	Basis
DOF	Manage in a sound and efficient manner the financial resources of the government	<p>Institutionalize and administer fiscal policies in coordination with other government agencies.</p> <p>Generate and manage the financial resources of the government.</p> <p>Supervise the revenue operations of all LGUs.</p> <p>The DOF Secretary, in consultation with the DBM Secretary: promulgate the necessary rules and regulations for a simplified disbursement scheme for the speedy and effective enforcement of the internal revenue allotment provisions of the Code.</p>	<p>Exec. Order No. 292 (1987)</p> <p>Rep. Act No. 7160 (1991), Section 288</p>



# DOF-BIR

Agency	Mandate	Role	Basis
DOF-BIR	<p>Assess and collect all national internal revenue taxes, fees, and charges; enforce all related forfeitures, penalties, and fines, including execution of judgments in cases decided in its favor by the Court of Tax Appeals and ordinary courts.</p>	<p>Obtain information from any person or entity other than the person whose tax liability is subject to audit or investigation, summon any person, examine any data relevant to the inquiry, and take testimony of persons in ascertaining the correctness of any return, or in making a return, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance.</p> <p>Make assessments of correct amount of tax due and prescribe additional requirements for tax administration and enforcement.</p> <p>Conduct inventory of goods to determine tax liability and place business under surveillance if with reason to believe that income, sale, or receipt is not correctly declared for tax purposes.</p> <p>Prepare an annual report containing detailed statement of the collection of the BIR and specifying sources of revenue by type of tax, manner of payment, by revenue region and by industry group and its disbursement by classes of expenditures.</p> <p>Notwithstanding Section 270 of the Code (on confidentiality of tax information), upon request of Congress and in aid of legislation, furnish the appropriate Committee pertinent industry audits, collection performance data, status reports in criminal actions initiated against persons and taxpayer's returns. Provided that, if the return information can be associated with or identify a particular taxpayer, the information shall be furnished only to the Committee when sitting in an executive session, unless taxpayer otherwise consents in writing in such disclosure.</p>	<p>National Internal Revenue Code of 1997, Sections 5, 6, 19, 20</p>

# DOF-BOC

Agency	Mandate	Role	Basis
DOF-BOC	<p>Collect customs duties, taxes, and corresponding fees, charges, and penalties, account for all customs revenues collected, exercise police authority for the enforcement of tariff and customs laws, prevent and suppress smuggling, pilferage and all other economic frauds within all ports of entry, supervise and control exports, imports, foreign mails and clearance of vessels and aircrafts in all ports of entry administering all appropriate legal requirements, prevent and prosecute smuggling and other illegal activities in ports under its jurisdiction, exercise supervision and control over its constituent units.</p>	<p><i>Its Collection Districts</i> are tasked to:</p> <p>Collect duties, taxes, fees, charges, penalties and fines accruing to the Government under the Tariff and Customs Code and related laws.</p> <p>Exercise police powers conferred by the Code which include enforcement of penalties and fines.</p> <p>Examine goods, assess duties, fees, charges, penalties, and fines accruing to the Government under the Code.</p> <p><i>Its Customs Revenue Collection Monitoring Group</i> is tasked to:</p> <p>Maintain an updated accounting of all Customs revenues collected;</p> <p>Provide the Commissioner with accurate and timely information and analysis of collection statistics.</p>	<p>Exec. Order No. 127 (1987), Sections 33, 36, 37</p>

# DOTC-PPA

Agency	Mandate	Role	Basis
DOTC-PPA	Establish, develop, regulate, manage, and operate a rationalized national port system in support of trade and national development.	<p>Collect all dues, fees, and rates collectible under Title VII but excluding Part VII of the Tariff and Customs Code, as amended, regardless of the port or place of call of the vessel, whether government or private port.</p> <p>Supervise, control and regulate all matters and affairs pertaining to the operation of and issuance of permits or licenses to construct ports, port facilities, warehouses, and other facilities within port districts.</p> <p>Exercise all powers pertaining to all matters concerning port facilities, port operations or port works.</p> <p>Exact reasonable administrative fines in specific amounts for specific violations arising out of the use of the port.</p> <p><i>Note:</i> all revenues of the PPA generated from the administration of its port or port-oriented services and from whatever sources shall be used exclusively for the operations of the PPA, as well as for the maintenance, improvement, and development of its port facilities, upon approval of the PPA Board of Directors of its budget requirements, as exemption to PD 1234 and the budgetary processes in PD 1177, as amended.</p>	<p>Exec. Order No. 513 (1978), which amended Pres. Decree No. 857 (1975), Sections 8 and 9. Exec. Order No. 159, as amended (1987)</p>

# DTI-BOI

Agency	Mandate	Role	Basis
DTI-BOI	Regulate and promote investments in the country	<p>Prepare investments priority plan (IPP).</p> <p>Promulgate rules and regulations to implement law.</p> <p>Approve applications for registration (including refund and limit of incentives),.</p> <p>Inspect books and compliance.</p> <p>Cancel or suspend enjoyment of incentives.</p> <p>Regulate investment/doing of business by foreigners/business organizations owned in whole or in part by foreigners</p>	Exec. Order No. 226 (1987), Chap. III

# NCIP

Agency	Mandate	Role	Basis
NCIP	<p>Formulate and implement policies, plans, and programs to promote and protect the rights and well-being of the indigenous peoples and indigenous cultural communities (IPs/ICCs), including recognition of their ancestral domain as and rights thereto.</p>	<p>Through its Ancestral Domains Office, issue, upon the free and prior informed consent (FPIC) of the ICCs/IPs concerned, appropriate certification prior to any grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs.</p> <p>Promulgate rules and regulations to implement the provisions of the law.</p> <p>Register the indigenous people's organization that will be authorized to receive and manage the royalties.</p> <p>Give its concurrence to the release of royalties to the IP organization or its trustee bank to check on the use of the funds.</p> <p>Direct financial and management audits of IP organizations managing its royalties and other benefits, or exercise visitorial powers as provided for by law.</p>	<p>Rep. Act No. 8371 (1997), Sections 44, 46            NCIP Admin. Order No. 3 (2012), Part VIII</p>

# LGUs

Agency	Mandate	Role	Basis
LGUs	<p>Exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the Local Government Code, consistent with the basic policy of local autonomy.</p> <p>Exercise its right to receive a just share in the national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, and to share the same with their inhabitants by way of direct benefits.</p>	<p>Through an appropriate ordinance, impose tax, fee, or charge or generate revenue under the Local Government Code.</p> <p>Collect local taxes, fees, and charges (to be done by its city, municipal, or barangay treasurer, or their duly authorized deputies)</p> <p>Observe process for the approval of local tax ordinances and revenue measures, and conduct public hearings prior to its enactment.</p> <p>Publish all local tax ordinances or revenue measures in full for 3 consecutive days in a newspaper of local circulation, or if no such local newspaper, post the same in least two conspicuous and publicly accessible places.</p> <p>Furnish all tax ordinances and revenue measures to their respective local treasurers for public dissemination.</p> <p><i>Note:</i> Revenue collected shall inure solely to the benefit of, and subject to the disposition by, the LGU levying the tax, fee, charge or other imposition, unless otherwise specifically provided.</p> <p>Receive their share in the national internal revenue taxes (IRA) and in the proceeds from the development and utilization of national wealth, and share the same with the local inhabitants by way of direct benefits.</p>	<p>Rep. Act No. 7160 (1991), Sections 129, 130, 132, 170, 186, 188, 189; Sections 3, 18</p> <p>Rep. Act No. 7160, Title III, Chapters I-II,</p>

# DOF-DBM-DILG-DENR *Joint Circular No. 2009-1* Expediting Release of LGU Shares from Mining Taxes

Agency	Role in expediting release of LGU shares from mining taxes	Timeframe
DOF-BIR	Submit to DOF, for budget preparation purposes, the estimated or projected mining tax to be collected for the current year and the corresponding 40% share of the LGUs.  <i>Note:</i> Such estimated tax collection shall be equivalent to the amount of excise tax from the mining industry allocated from the total revenue target of BIR.	On or before March 15
	Prepare and approve a <i>Joint Certification</i> with the Bureau of Treasury, for budget execution purposes, the actual collections from mining taxes during each calendar year and the schedule of corresponding shares of the beneficiary LGU.	Transmit to Bureau of Treasury for validation and approval within 75 days after the end of the quarter
	Determine the correct mining taxes paid and collected during the immediately preceding year based on the estimated and actual volumes and value of the mineral products submitted by the DENR-MGB	
DOF-BTr	Validate (based on reports of its regional offices and authorized agents/government depository bank) and approve the <i>Joint Certification</i> from BIR	Within 30 days from receipt
	Transmit to DBM the validated and approved <i>Joint Certification</i>	Within 45 days from receipt
	Furnish BIR a copy of the validated and approved <i>Joint Certification</i> , together with a summary of recorded mining tax deposits/collection and the Journal Entry Voucher of total BIR collections	Within 15 days from transmittal to DBM

# DOF-DBM-DILG-DENR *Joint Circular No. 2009-1* Expediting Release of LGU Shares from Mining Taxes

Agency	Role in expediting release of LGU shares from mining taxes	Timeframe
DENR-MGB	Furnish BIR the estimated volume and values of metallic mineral production of mining companies for the current year	Before the end of February
	Furnish BIR the actual annual volume and values, on a per project basis, of metallic minerals produced during the immediately preceding year.	Before the end of March
	Provide BIR with the list of new metallic permit holders, actual volumes and values of their production and extraction sites	Within 60 days after the end of each quarter
DENR-LMB	After coordination with DBM, furnish BIR with an updated copy of the consolidated master list of land area	Before December 15 of every third year after CY 2001
DILG-BLGS	Prepare and submit to BIR the validated list of actual extraction sites of all non-metallic mineral products, with a summary of LGUs where such production or extraction originated	Before May 15
	Enjoin local chief executives to ensure submission by mining permit holders of quarterly production and sales report form to the MGB Regional Offices	
	Furnish the DBM, BIR, Bureau of Treasury with the updated master list of LGUs during the first quarter of the year.	



# DOF-DBM-DILG-DENR *Joint Circular No. 2009-1* Expediting Release of LGU Shares from Mining Taxes

Agency	Role in expediting release of LGU shares from mining taxes	Timeframe
DBM-Regional Operations and Coordination Services and Regional Offices (ROCS/ROs)	For budget preparation purposes, program the amount representing LGU shares of mining taxes in the budget of the following year (based on estimated/projected mining taxes to be collected for the current year and the corresponding 40% share of the LGUs submitted by BIR).	
	Release the shares of the LGUs on the mining taxes by issuing the allotment and corresponding cash allocation, based on the <i>Joint Certification</i> . Funding check to be deposited to the government servicing banks for direct credit to the LGU's account	For mining taxes collected during the first 3 quarters, in February of the ensuing year; for those collected during the 4 <sup>th</sup> quarter, in May of the ensuing year.

# DOF-DBM-DILG-DENR *Joint Circular No. 2010-1* Expediting Release of LGU Shares from Royalty Income in Mineral Reservations

Agency	Role in expediting release of LGU shares from royalty income in mineral reservations	Timeframe
DENR-MGB	For budget preparation purposes, submit to DBM the estimated or projected royalty royalty income to be collected for the current year and the corresponding 40% share of share of the LGU	On or before March 15 of every year
	For budget execution purposes, prepare a <i>Joint Certification</i> of the actual collection from collection from royalty income during each calendar year and transmit to BTr for validation and approval purposes.	Within 60 days after end of the year.
	Inform the LGUs of their share from the proceeds of the royalty income from the mineral reservations of the preceding year.	Within 30 days after receipt of a copy copy of the validated and approved <i>Joint Certification</i>
	Validate (based on confirmed royalty collections and reports of BTr regional offices and offices and government depository bank) and approve the <i>Joint Certification</i> from BIR	Within 30 days from receipt
	Transmit to DBM the validated and approved <i>Joint Certification</i> , together with validated validated collections and schedule of corresponding LGU shares	Within 30 days from receipt of documents from MGB
	Furnish MGB a copy of the validated and approved <i>Joint Certification</i>	Within 15 days from transmittal to DBM

# DOF-DBM-DILG-DENR *Joint Circular No. 2010-1* Expediting Release of LGU Shares from Royalty Income in Mineral Reservations

Agency	Role in expediting release of LGU shares from royalty income in mineral reservations	Timeframe
DILG-BLGS	Enjoin local chief executives to ensure submission by contractors and permit holders of holders of the quarterly production and sales report form to the MGB Regional Offices	
	Furnish the DBM and MGB with the updates of the master list of LGUs during the first first quarter of the year as a result of creation, conversion, merger, and abolition of LGUs.	
DBM Budget and Management Bureau Bureau and Regional Offices	For budget preparation purposes, program the amount representing LGU shares on the on the royalty income in the budget of the following year (based on DENR-MGB estimated/projected royalty income to be collected for the current year and the corresponding 40% share of the LGUs).	
	Release the shares of the LGUs in royalty by issuing the allotment and corresponding cash corresponding cash allocation, based on the <i>Joint Certification</i> by MGB and BTr. Funding check to be deposited to the government servicing banks for direct credit to the to the beneficiary LGU's account.	Within 30 days

# V. PAYMENTS

Payments to National and Local Governments by the Extractive Industry

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# Payments to National Government by Mining Companies

- Income tax
- Excise taxes
- Mine Wastes & Tailings Fees
- Customs, Duties & Fees
- VAT
- Royalties in Mineral Reservations
- Documentary Stamp Tax
- Capital Gains Tax
- Withholding tax on interest payments on foreign loans
- Withholding tax on from dividend payments to foreign stockholders
- Wharfage & Port fees)
- Licensing Fees
- Other fees

# Payments to National Government by Oil & Gas Companies

- Income tax
- Tariff duties & compensating tax on sale, transfer, disposition of imported machinery, equipment, spare parts, and materials (if sale without prior DOE approval)
- Rental fee on retained areas
- Note: exemption from all taxes, except income taxes, must be provided in the contract

# Payments to National Government by Coal Operators

- Income tax
- Tariff duties & compensating tax on sale, transfer, disposition of imported machinery, equipment, spare parts, and materials (if sale without prior DOE approval)
- Performance Guarantee
- Note: exemption from all taxes, except income taxes, must be provided in the contract

# Payments to LGUs

- Local Business Tax
- Real Property Tax
- Special Education Levy
- Occupation Fees
- Community Tax
- Toll Fees or Charges
- Other Fees



# Other Payments

- Special Allowance
- Royalty payments for indigenous peoples

# Revenue Sharing

## ■ Government share

- MPSA – excise tax on mineral products (Sec. 80)
- Other mineral agreements – negotiated (Sec. 81)
  - Considerations: capital investment, risks, contribution to economy, other factors *plus* tax contributions
- FTAA – negotiated
  - Same considerations + technical complexity of project
  - Minimum: taxes *plus* additional share after recovery period (IRR)
  - Collection after full recovery period (5 years max) (Sec. 81)
- MA & FTAA *within* mineral reservations – in addition to royalty payment of not less than 5% of the gross output of the minerals extracted/produced from the mineral reservations exclusive of all other taxes.
  - 10% of royalty + 10% of other revenues accrues to MGB as trust fund for special projects related to mineral reservations (IRR, Sec. 215, 13)

# Revenue Sharing

- Payment of Government Share
  - Nearest BIR office where contract area is located
  - Those from mineral reservations – MGB (IRR, Sec. 216)
  - Guaranteed despite grant of incentives (IRR, Sec. 38 and 52)
- Allocation of LGU Share
  - Internal revenue allocation
  - 40% share of gross collection by national government from the preceding fiscal year from mining taxes, royalties, and such other taxes, fees, or charges, including related surcharges, interests, or fines, AND from its share in any joint venture or production sharing agreement in the use and development of the national wealth within their territorial jurisdiction (RA 7942, Sec. 82; IRR, Sec.216; RA7160, Sec. 289)
  - Automatically released, quarterly, no lien (See *DOF-DBM-DILG-DENR JC 2009-1*)
  - Proceeds used to finance local development & livelihood projects  
(RA7160, Sec. 286, 293)

# Revenue Sharing

Location of natural resources	Province	City or Municipality	Barangay	Remarks
In the province	20%	45%	35%	
In 2 or more provinces, or in 2 or more component cities or municipalities, or in 2 or more barangays				Shares computed according to population (70%) and land area (30%)
In highly urbanized or independent component city		65%	35%	
In 2 or more cities				Same formula as above

# Revenue sharing

- Occupation fees
  - 30% of all such collections from mining rights holders in onshore mining area accrue to the province
  - 70% to the municipality where the mining area is located.
  - In a chartered city, the full amount of occupation fees accrues to the concerned city. (Sec. 88)

# Revenue sharing

- Government share
  - Petroleum service contracts
    - Negotiated
    - Includes tax
    - Not less than 60% of the difference b/w the gross income & the sum of operating expenses & such allowances as the DOE Secretary deems proper to grant. [*PD 1459 (1)*]
  - Coal contracts
    - No equivalent provision in PD 972
    - Model contract (PECR-5): balance of the gross income after deducting all operating expenses, operator's fees & special allowance

# Revenue sharing

- Allocation of LGU government share for projects involving hydrothermal, geothermal, and other sources of energy
  - LGUs are directed to apply at least 80% of such proceeds to lower the cost of electricity in the LGU where such a source of energy is located

(RA 7160, Sec. 294)

- *DOE-DILG Circular No. 98-01*

# VI. SANCTIONS

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# Sanctions (mining law)

- Grounds for cancellation, revocation, & termination of any mineral agreement
  - Failure to comply with any of the requirements provided in the Mining Act or its IRR without a valid reason. (Sec. 95)
  - Violation of the terms and conditions of the agreement. (Sec. 96)
  - Non-payment of taxes and fees due to the government for 2 consecutive years shall cause the cancellation of the agreement and the re-opening of the subject area to new applicants. (Sec. 97)
  - Failure to abide by the terms and conditions of tax incentives and credits shall cause the suspension or cancellation of said incentives and credits. (Sec. 98)

# Sanctions (mining law)

- Penal Provisions
  - Any person who knowingly presents any false application, declaration, or evidence to the government or publishes or causes to be published any prospectus *or other information* containing any false statement relating to mines, mining operations or mineral agreements, financial or technical assistance agreements and permits shall, upon conviction, be penalized by a fine of not exceeding PHP 10,000. (Sec. 101)
  - *Any other violation* of the Mining Act and its IRR constitutes an offense punishable with a fine not exceeding PHP 5,000. (Sec. 110)
  - The DENR Secretary is authorized to charge fines for late or non-submission of reports in accordance with the IRR. (Sec. 111)

# Sanctions (Petroleum & coal)

- No equivalent provisions in the decrees

# Sanctions (under NIRC)

- *Procuring unlawful divulgence of trade secrets*
  - any person who causes or procures an officer or employee of the BIR to divulge any *confidential information* regarding the business, income or inheritance of any taxpayer,
  - knowledge of which was acquired by him in the discharge of his official duties,
  - and which it is unlawful for him to reveal, and
  - any person who publishes or prints in any manner whatever, not provided by law
  - any income, profit, loss or expenditure appearing in any income tax return,
  - shall be punished by a fine of not more than PHP2,000, or suffer imprisonment of not less than 6 months nor more than 5 years, or both. (Sec. 278)

# Sanctions (under NIRC)

- Civil penalties
  - For failure to file any return and pay tax due under the Code on the date prescribed, or failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment, or failure to the full or part of the amount shown in the return
  - a penalty equivalent to 25% of the amount due shall be imposed. This is in addition to the tax required to be paid. (Sec. 248)
  - In general, an *interest* at the rate of 20% per annum, or such higher rate as prescribed in the rules, from the date prescribed for payment until amount is fully paid, shall be assessed and collected on any unpaid amount of tax. (Sec. 249).

# Sanctions (under NIRC)

- Criminal liability
  - Penalties, among others, for the crime of tax evasion and failure to file return, supply correct and accurate information. (Sec. 254-255).
  - Penal liability imposed upon the responsible corporate officers, partners, or employees can, upon conviction for the act or omission, extend to the corporation itself. (Sec. 256)

# Sanctions (under Tariff & Customs Code)

- *Concealment or destruction of evidence of fraud*
  - any person who willfully conceals or destroys, any invoice, book or paper relating to any article liable to duty, after an inspection thereof has been demanded by the Collector of any Collection district, or at any time conceals or destroys any such invoice, book or paper for the purpose of suppressing any evidence of fraud therein contained
  - punished by a fine of not more than P2,000, or by imprisonment for not more than 1 year, or both.

(Sec. 3605)

# Sanctions

## (under Tariff & Customs Code)

- *Violation of tariff and customs law and regulations in general*
  - Any person who violates a provision of the NIRC Code or its regulation, for which delinquency no specific penalty is provided, shall be punished by a fine of not more than PHP 400 or by imprisonment for not more than six months, or both.

(Sec. 3610)



# Sanctions (EO 513, PPA)

- *Penalties*
  - Any person who violates any of the provisions of the law or any of its rules shall be punished by imprisonment for not less than 1 day but not more than 6 years, and pay a fine of not less than PHP 200 but not more than PHP 1,000
  - If the offender is a government official or employee he shall, in addition to imprisonment and fine be perpetually disqualified to hold any public office.
  - If the offender is a juridical person, the penalty of imprisonment and fine shall be imposed upon its manager, director, representative or employee thereof responsible for the violation.
  - If the offender is an alien he shall be deported immediately without further proceedings, after serving his sentence and paying the fine. (*Sec. 43, EO 513*)

# Sanctions

## (RA 6713, Sec. 7)

- Prohibited Act
  - Disclosure and/or misuse of confidential information
    - Public officials and employees
    - Confidential or classified information
    - Information known to them by reason of their office & not made available to the public
    - Purpose of disclosure and/or misuse of information:
      - To further private interests
      - To give undue advantage to anyone
      - To prejudice the public interest
- Penalty
  - Imprisonment not exceeding 5 years and/or
  - Fine not exceeding PHP 5,000
  - By discretion of court, disqualification to hold public office

# Sanctions

## *Joint DOE-DILG Circulars (LGU use of proceeds from energy sources)*

- In case of violation or non-compliance with the provisions of the Joint DILG-DOE Circular 95-01, 98-01, and other relevant issuances, the DILG may, upon prior notice of said hearing, order the project proponent through DOE, the non-remittance of the royalty payment to the host LGU concerned pending the completion of the investigation of the concerned LGU. The unremitted funds shall be deposited in a government bank under escrow. (*DOE-DILG Circular No. 98-01, Sec. 6*)

# VII. INCENTIVES

Fiscal and Non-Fiscal Incentives

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# Incentives (Mining)

- Fiscal Incentives for BOI-Registered firms:
  - Income Tax Holiday (6-8 years)
  - Tax and duty exemption on imported capital equipment and its accompanying spare parts
  - Exemption from taxes and duties on imported spare parts
  - Tax and duty free importation on breedings stocks and genetic materials
  - Tax credit – on portion of domestic breeding stocks and genetic materials, and for taxes on raw materials.
  - Tax credit on domestic capital equipment
  - Exemption from wharfage dues and export tax, duty, impost and fees (limited to export of non-traditional export products) *[EO 226, Art. 39 (a)]*

# Incentives (Mining)

- Non-Fiscal Incentives for BOI-Registered firms:
  - Employment of foreign nationals
  - Simplification of customs procedures for the importation of equipment, spare parts, raw materials, and supplies & and exports of processed products of registered enterprises in the operations of their bonded warehouses
  - Unrestricted use of consigned equipment
  - Access to bonded manufacturing/trading warehouse system )                    *[EO 226, Art. 39 (e)(f)(g)]*

# Incentives (Mining)

- Additional Incentives:
  - Incentives for pollution control devices
  - Income tax–carry forward of losses
  - Income Tax-Accelerated Depreciation
    - *(RA 7942, Sec. 91, 92 and 93; DAO 2010-21, Sec. 22, 224 – 226)*

# Incentives (Oil & Gas)

- Contract may provide the ff. privileges: (Sec. 12, PD 87)
  - Exemption from all taxes except income tax
  - Exemption from payment of tariff duties & compensating tax on the importation of machinery and equipment, and spare parts and all materials required for petroleum operations (subject to the conditions)
  - Exemption upon approval by the DOE from laws, regulations, and/or ordinances restricting the (a) construction, installation, and operation of power plant for its exclusive use if no local enterprise can provide such power within a reasonable period and at reasonable cost in its operations; (b) export of machinery and equipment which were imported solely for its petroleum operations when such is no longer needed.



# Incentives (Oil & Gas)

- Contract may provide the ff. privileges: (Sec. 12, PD 87)
  - Exemption from publication requirements under RA 5455 (applications by foreign) & RA 6173 on the exploration or sale or disposition of crude oil discovered and produced in the country.
  - Exportation of petroleum subject to the prior filing pro-rata of domestic needs as elsewhere provided in the Act
  - Entry, upon sole approval of the DOE which shall not be unreasonably withheld, of alien technical and specialized personnel (incl. immediate family members), who may exercise their professions solely for the operations of the contractor as prescribed in its contract
  - Rights and obligations in any contract shall be deemed as essential considerations for its

# Incentives (Oil & Gas)

- Contract may provide the ff. privileges:
  - Privileges and benefits made available to concessionaires under the Petroleum Act of 1949 and their authorized contractors and/or service operators, if they so elect (*Sec. 12, PD 87*)
  - Exemption from the investment requirements of foreign corporations under Section 125 in relation to Section 148 of the Corporation Code of the Philippines (corporate information that must be specified by a foreign corporation in its application for license to transact business in the Philippines) (*PD 1857*)

# Incentives (coal)

- Contract may provide the ff. privileges: (*Sec. 16, PD 972*)
  - Exemption from all taxes except income tax;
  - Exemption from payment of tariff duties & compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to certain conditions;
  - Accelerated depreciation (options)
  - Foreign loans and contracts (right to remit at prevailing exchange rate)
  - Preference in grant of government loans (nationals)
  - Entry, upon sole approval of DOE, of alien technical and specialized personnel (incl. immediate family members) who may exercise their profession only for the operation of the operator as prescribed in its coal operating contract

# VIII. CONTRACTS

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# Mining Contracts

- Modes of Acquiring Mining Rights:
  - Exploration Permit
  - Mineral Agreement
  - FTAA

# Mining Contracts

- Stipulations in Mineral Agreements:
  - Non-acquisition of title over contract/mining area
  - Financial and technical capability and technology
  - If opting for an exploration period, application accompanied by the ff documents:
    - Justification of renewal
    - Comprehensive technical reports on the outcome of the 2-year EEWP, signed by a licensed mining engineer or geologist and an environmental officer
    - Audited financial statements covering the term of the exploration period
    - 2--year Exploration Work Program (MGB Form No. 5-4), duly prepared, signed, and sealed by a licensed mining engineer or geologist
    - Environmental Work Program (MGB Form No. 16-1 or 16-1A)

# Mining Contracts

- Stipulations in Mineral Agreements:
  - If opting for an exploration period, application accompanied by the ff documents:
    - Regional Office certification on the contractor's compliance with the terms and conditions of the mineral agreement during the exploration period
    - Other supporting papers required by the MGB
  - Qualifications
  - Relinquishment of contract area
    - Declaration of Mining Feasibility during exploration period
  - Guarantee payment of taxes despite grant of incentive
  - Size of mining area after relinquishment (5,000 max.)

# Mining Contracts

- Stipulations in Mineral Agreements:
  - Conduct of mining operations in acc. with law
  - Preference for Filipino goods and services
  - Preference to Filipinos in employment
  - Women workers' rights and gender discrimination
  - Anti-pollution measures
  - Annual reports, open for inspection by gov't
  - Sale of minerals
    - Copy of sales agreement to MGB, subject to confidentiality
  - Consultation & arbitration
  - Payment of taxes, fees, royalties and other obligations
  - Alien employment (technologies, highly specialized)
  - Understudies training



# Mining Contracts

- Stipulations in Mineral Agreements:
  - Conformity w/ labor, safety, and health standards
  - Non-interference with rights of other contractors
  - Recognition & respect of rights of local communities & indigenous people
    - Royalty payments
  - Development of host and neighboring communities, local geo-sciences and mining technology
    - SDMP
  - Environmental programs
    - AEPEP/EPEP – approx. 3-5% of direct mining & milling costs
  - Exploration work program

# Mining Contracts

- Stipulations in Mineral Agreements:
  - Progress reports of exploration
    - Quarterly report (activities & accomplishments)
    - Final report (list of activities w/ corresponding expenditures, at the end of the exploration term, plus 1:50,000 geologic map of contract area)
  - Cancellation, revocation or termination of agreement for non-compliance
  - Withdrawal from the agreement, non-release from obligations
  - Designation of assignee (loan default)
  - Annual submission of GIS
  - LGU endorsement
  - Assumption of risks

# Mining Contracts

- Stipulations in Mineral Agreements:
  - Inspection and audit of financial records
  - No beneficial ownership of minerals
  - Minimum ground expenditures during exploration & pre-feasibility periods
    - Sworn statement of commitment
  - Other terms & conditions (for national interest & public welfare)

# Mining Contracts

- Stipulations in FTAA:
  - Similar to Mineral Agreements
  - NO equivalent provisions on labor, safety, and health, assumption of risks, and inspections and audits
  - Minimum ground expenditures
  - Minimum investment of USD 50M if Filipino contractor for infrastructure & development
  - Relinquishment of contract area
    - Declaration of mining feasibility (option)
    - Report of relinquishment w/ geologic report, maps, expenditures, etc.
  - Financing of mining operations
  - Performance of activities within period
  - Designation of assignee (loan default)

# Oil & Gas Contracts

- Obligations of contractor
  - Provide all necessary services and technology;
  - May be authorized to dispose of or market petroleum produced;
  - Provide the requisite financing;
  - Perform exploration work obligations and program;
  - Operate the field on behalf of the government once petroleum in commercial quantity is discovered;
  - Assume all exploration risks such that it is not entitled to reimbursement if no petroleum in commercial quantity is discovered and produced;
  - Furnish the Petroleum Board promptly with geological and other information, data and reports which it may require;

# Oil & Gas Contracts

- Obligations of contractor
  - Maintain detailed technical records and accounts of its operations;
  - Conform to regulations regarding, among others, safety, demarcation of agreement acreage and work areas, non-interference with the rights of other petroleum, mineral and natural resources operations;
  - Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration and production sites and operations to inspectors authorized by the DOE;
  - Allow examiners of the BIR and other DOE authorized representatives full access to their accounts, books and records for tax and other fiscal purposes; and
  - Be subject to Philippine income tax.

# Oil & Gas Contracts

- Obligations of DOE
  - Reimburse the contractor for all operating expenses not exceeding 70% of the gross proceeds from production in any year;
  - Pay the contractor a service fee the net amount of which shall not exceed 40% of the balance of the gross income after deducting the Filipino participation incentive, if any, and all operating expenses recovered;
  - Reimburse operating expenses and pay service fee in such form and manner as provided for in the contract.

# Oil & Gas Contracts

- Minimum terms & conditions
  - Obligation to spend in direct prosecution of exploration work, delineation & development following the discovery of oil in commercial quantity not less than the amounts provided for in the contract
  - Payment in case of abandonment of exploration work
  - Compulsory relinquishment of area
  - Delineation of production area
  - Exploration period and rental on retained area
  - Production period
  - Properties of contractor
  - Labor, health, safety, and ecology
  - Discovery, production, sale, and disposal of natural gas and casinghead petroleum spirit



# Oil & Gas Contracts

- Contract may provide the ff. privileges: (Sec. 12, PD 87)
  - Exemption from all taxes except income tax
  - Exemption from payment of tariff duties & compensating tax on the importation of machinery and equipment, and spare parts and all materials required for petroleum operations (subject to the conditions)
  - Exemption upon approval by the DOE from laws, regulations, and/or ordinances restricting the (a) construction, installation, and operation of power plant for its exclusive use if no local enterprise can provide such power within a reasonable period and at reasonable cost in its operations; (b) export of machinery and equipment which were imported solely for its petroleum operations when such is no longer needed.

# Oil & Gas Contracts

- Contract may provide the ff. privileges: (*Sec. 12, PD 87*)
  - Exemption from publication requirements under RA 5455 (applications by foreign) & RA 6173 on the exploration or sale or disposition of crude oil discovered and produced in the country.
  - Exportation of petroleum subject to the prior filing pro-rata of domestic needs as elsewhere provided in the Act
  - Entry, upon sole approval of the DOE which shall not be unreasonably withheld, of alien technical and specialized personnel (incl. immediate family members), who may exercise their professions solely for the operations of the contractor as prescribed in its contract
  - Rights and obligations in any contract shall be deemed as essential considerations for its

# Oil & Gas Contracts

- Contract may provide the ff. privileges:
  - Privileges and benefits made available to concessionaires under the Petroleum Act of 1949 and their authorized contractors and/or service operators, if they so elect (*Sec. 12, PD 87*)
  - Exemption from the investment requirements of foreign corporations under Section 125 in relation to Section 148 of the Corporation Code of the Philippines (corporate information that must be specified by a foreign corporation in its application for license to transact business in the Philippines) (*PD 1857*)

# Coal Operating Contracts

- Obligations of the operator
  - Provide all the necessary service and technology;
  - Provide the requisite financing;
  - Perform the work obligations and program prescribed in the contract;
  - Operate the area on behalf of the government in accordance with good coal mining practices;
  - Furnish the DOE promptly with all information, data and reports which it may require;
  - Maintain detailed technical records and

# Coal Operating Contracts

- Obligations of the operator
  - Maintain detailed technical records and account of safety demarcation of agreement acreage and work areas, non-interference with the rights of the other petroleum, mineral and natural resources operators
  - Maintain all necessary equipment in good order and allow access to these as well as to the exploration, development and production sites and operations to inspectors authorized by the DOE;
  - Allow DOE authorized representatives full access to their accounts, books and records for tax and other fiscal purposes.

# Coal Operating Contracts

- Obligations of DOE
  - Reimburse the operator for all operating expenses not exceeding 70% of the gross proceeds from production in any year. Operating expenses means the total expenditures for coal operating incurred by the operator as provided in a coal operating contract;
  - Pay the operator a fee, the net amount of which shall not exceed 40% of the balance of the gross income after deducting all operating expenses;
  - Reimburse operating expenses and pay the operator's fee in such form and manner as provided for in the coal operating contract.
  - May grant special allowances.

# Coal Operating Contracts

- Minimum terms & conditions
  - Spend amounts in direct prosecution of exploration work
  - Exploration, development and production
  - Movable properties
  - Labor, health, safety, and ecology

# Coal Operating Contracts

- Contract may provide the ff. privileges: (*Sec. 16, PD 972*)
  - Exemption from all taxes except income tax;
  - Exemption from payment of tariff duties & compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to certain conditions;
  - Accelerated depreciation (options)
  - Foreign loans and contracts (right to remit at prevailing exchange rate)
  - Preference in grant of government loans (nationals)
  - Entry, upon sole approval of DOE, of alien technical and specialized personnel (incl. immediate family members) who may exercise their profession only for the operation of the operator as prescribed in its coal operating contract



# **IX. SOCIAL AND ENVIRONMENTAL PROVISIONS**

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# Social & Environmental Provisions (Mining)

- Social Development & Management Expenditures
  - SDMP: annually, *minimum* of 1.50% of the operating costs
    - Operating cost: specific costs of producing a saleable product on a commercial scale incurred in the calculation of the net income before tax, as confirmed by the MGB/RO.
    - Includes costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion, and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management

# Social & Environmental Provisions (Mining)

- SDMP : minimum 1.50% of operating costs
  - 75% - for the development of host and neighboring communities
  - 10% for the development of mining technology and geosciences
  - 15% for the implementation of IEC programs.

# Social & Environmental Provisions (Mining)

Specific SDMP Concern (% of SDMP)	Suggested Activities
For the development of the host and neighboring communities	<i>Human resource development and institutional building activities</i> that aim to strengthen existing local institutions, create new community organizations, and provide opportunity for marginalized/disadvantaged groups to participate in developing their communities, such as capacity building on project management, organizational development, entrepreneurship, and skills training.
(75%)	<i>Enterprise development and networking activities</i> that help develop and promote economically viable community enterprises by providing community members with access to capital to stimulate existing livelihood industries and other income generating activities, such as animal husbandry, provision of farm implements, small/micro-businesses, preferential procurement of local goods, cooperative development, and market linkaging.
	<i>Assistance to infrastructure and support services</i> that facilitate other forms of economic activity, such as development, construction, improvement, maintenance of farm-to-market roads, water systems, post-harvest facilities, bridges, and electric power.
	<i>Access to education and educational support programs</i> that aim to provide educational opportunities to members of the community, including scholarships, technical/vocational education, apprenticeship programs, construction/repair/improvement of school buildings and related facilities, provision of school furniture and fixtures, and subsidy to teachers, among others;
	<i>Access to health services, health facilities and health professionals</i> that seek to improve overall living conditions and health of the host and neighboring communities. This could be provision of health facilities, access to health services, medicines and professionals, health education and preventive measures, training of health paraprofessionals, maternal-child health care and family planning, health insurance, nutrition and immunization programs, access to clean and potable water, and waste and sewage disposal facilities.
	<i>Protection and respect of socio-cultural values</i> of the host and neighboring communities to promote social cohesion and cultural awareness and to instill community pride.
	<i>Use of facilities or services within the mine camp or plant site</i> , such as hospitals and schools, among others, by members of the host and neighboring communities.

# Social & Environmental Provisions (Mining)

Specific SDMP Concern (% of SDMP)	Suggested Activities
For the development of mining technology and geosciences (10%)	Basic and applied research on mining technology, geosciences, and related subjects like socioeconomics related to mining operations, environmental protection, and mineral economics.
	Advanced studies and publications related to mining which are conducted by qualified researchers who are not employees of the mine.
	Expenditures for scholars, fellows and trainees, including grants for dissertations, on mining technology and geosciences and related subjects.
	Expenditures on equipment and capital outlay to assist research and educational institutions that serves as venue for developing mining technology and geosciences.

# Social & Environmental Provisions (Mining)

Specific SDMP Concern (% of SDMP)	Suggested Activities
For the promotion of public awareness and education on mining technology and geosciences (15%)	Establishment or enhancement of information and publicity centers where stakeholders can access information on the performance of a mining project.
	Publication of IEC materials on social, environmental and other issues/concerns relative to mineral resources development and responsible mining operations.
	Expenditures for continuing public awareness and education campaigns (radio/web-based broadcasts, publications, other forms of mass communication on mining-related information and issues).

# Social & Environmental Provisions (Mining)

- Environmental Standards
  - Environmental protection standards
    - EPEP and EWP during exploration
  - EIA
    - Environmental Compliance Certificate (ECC)
  - Rehabilitation
  - Tree cutting standard
  - Water use standard
  - Payment of just compensation for easement rights
  - Payment for damages caused by mining operations or as a result of exercise of easement rights

# Social & Environmental Provisions (Mining)

- Environment-related expenditures
  - EPEP
    - Initial environment-related capital expenditure: approx. 10% of total capital/total project cost or such other amount depending on the environmental or geological condition, nature and scale of operations, & technology
  - Annual EPEP
    - Minimum of 3-5% of its direct mining and milling costs depending on the environment/geologic condition, nature and scale of operations and technology employed



# Social & Environmental Provisions (Mining)

- Environment-related expenditures
  - CLRF
    - Mine Rehabilitation Fund (MRF)
      - Monitoring Trust Fund – not less than PHP 150,000 (MMT) expenses
      - Rehabilitation Cash Fund - 10% of the total amount needed to implement the EPEP or PHP 5 million, whichever is lower
    - Mine Waste & Tailings Fee – semi-annual
      - Generally, basic fee at PHP0.05/MT of mine waste produced and PHP0.10/MT of mill tailings generated from mining operations
    - Final Mine Rehabilitation & Decommissioning Fund (FMRDF)
      - Annual Provision = Cost of Implementing the Approved FMRDP

# Social & Environmental Provisions (Petroleum & Coal)

- once petroleum in commercial quantity is discovered, operate the field acc. to accepted good oil field practices using modern and scientific methods to enable maximum economic production of *petroleum in a manner that avoids hazards to life, health and property, avoids pollution of air, land and waters*, and in pursuit of an efficient and economic program of operation. [PD No. 87, Sec. 8(d)]
- operate the area in accordance with good coal mining practices using modern methods appropriate for the geological conditions of the area to enable maximum economic production of coal, *avoiding hazards to life, health and property, avoiding pollution of air, land and waters*, and pursuant to an efficient and economic program of operation. [PD 972, Sec. 9(d)]

# Social & Environmental Provisions (Petroleum & Coal)

- Contractors/operators are subject to the provisions of laws of general application that relate to *labor, health, safety, and ecology* insofar as they are not in conflict with the provisions of either decrees . [PD 87, Sec. 9; PD972, Sec. 11(d)]
- 1999 August MOA b/w DENR & DOE re: streamlining of EIS for energy projects

# Social & Environmental Provisions (Petroleum & Coal)

- *DOE*
  - tasked to devise ways and means of giving direct benefits to the province, city or municipality, especially community and people affected, and equitable and preferential benefit to the region that hosts the energy resource and/or energy-generating facility
  - ensure that other provinces, cities, municipalities or regions shall not be deprived of their energy requirements. (RA 7638, Sec. 5)

# **X. INPUTS TO EITI LEGISLATION**

# Inputs to EITI Legislation

- Often described as voluntary initiative
- Implemented by governments
- Survey of implementing countries
  - EITI enacted or decreed (Nigeria, Liberia, Mongolia)
  - EITI a clause in mining or petroleum law (Norway, Ghana, Sierra Leone)
  - EITI declared as commitment by government (PH)
  - EITI in MOUs, signed by government, companies, CSOs (Trinidad & Tobago)
- In whatever form, strong direction for agencies & companies to comply with EITI

# Inputs to EITI Legislation

- Considerations in legislation:
  - Nature of PH-EITI
    - Autonomous agency
    - Reports to the President
    - Multi-stakeholder body
    - Body corporate
  - Mandate
    - Facilitation
    - Monitoring & Reporting
    - Investigation
    - Regulatory/enforcement

# Inputs to EITI Legislation

- Considerations
  - Scope
    - Limited to financial disclosures
    - Expanded to include socio-economic monitoring
  - Aim
    - Monitor and ensure accountability
    - Eliminate corruption in payment, liabilities & penalties
    - Evaluate government, industry practices in acquisition of contracts
    - Ensure that benefits due to government are paid, duly accounted for, & prudently used



# Inputs to EITI Legislation

- Considerations:
  - Activities apart from reporting, reconciling, audit, publishing:
    - Information, capacity-building
    - Platform for dialogue, policy-making, enforcement
    - Reward, provide incentives
    - Shame & blame, prosecute
  - Financial provisions
    - General appropriations
    - Privately-sourced

- What needs to be strengthened:
  - Transparency & accountability provisions
  - Database management, storage & access
  - Mechanisms for implementing EITI
  - Commitment
  - Lines & flow of communication
  - Understanding of EITI & its benefits

- What needs to be changed/managed:
  - Barriers to full disclosure
  - Management of disclosed information (maintaining credibility, minimizing incorrect use or interpretation of data)
  - Attitude
  - Expectations

# Thank you.

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PH-EITI

Sub-National Implementation  
Scoping Study –

Local Revenue Streams

5 September 2014

# Local Revenue Streams



- Indirect Payments

- Share in IRA [Not Disaggregated]
- Share in National Wealth

- Direct Payments

- Taxes & Fees, Based on Statutes
- Taxes & Fees, Based on Local Taxing Power

# Indirect Payments

TYPE	RATE	LEGAL BASIS
Share in National Wealth: Excise Taxes	40% of the 2% of the Gross Output	CONST., Art. X, Sec. 7, RA 7160 Sec. 289, 290
Share in National Wealth: Royalty in Mineral Reservation	40% of the 90% of 5%	CONST., Art. X, Sec. 7, RA 7160 SEC. 289, 290 DAO 2010-21 Sec. 13
Share in IRA (Not Disaggregated)	Based on a Formula [Population, Land Area]	CONST., Art. X, Sec. 6 RA 7160, Sec. 284, 285

# Direct Payments [Statutes]

TYPE	RATE under National Statute	LEGAL BASIS
BUSINESS TAX	Schedule of Graduated Tax Rate, Based on Gross Production	RA 7160, Sec. 143 (a) and (c), Sec. 146, Sec. 151
REAL PROPERTY TAX - BASIC	Ceiling on the Assessment Based on a Schedule of FMV	RA 7160, Sec. 200, 212, 215, 218
REAL PROPERTY TAX – SEF	1% of Assessed Value	RA 7160, Sec. 154



# Direct Payments [Statutes]

TYPE	RATE under National Statute	LEGAL BASIS
PUBLIC UTILITY CHARGES		RA 7160, Sec. 154
TOLL FEES	To be fixed by Sanggunian	RA 7160, Sec. 155
COMMUNITY TAX	P5 + P1/P1000 income; P500 + P2/P500 income for corporations, >P10,000	RA 7160, Sec. 157, 158
TAX ON SAND, GRAVEL, AND OTHER QUARRY	Not more than 10% of FMV	RA 7160, Sec. 138; RA 7942, Sec. 44

# Direct Payments [Statutes]

<b>TYPE</b>	<b>RATE</b> under National Statute	<b>LEGAL BASIS</b>
FIXED TAX FOR DELIVERY TRUCKS	P500	RA 7160, Sec. 154
PROFESSIONAL TAX	Not exceeding P300	RA 7160, Sec. 155
OCCUPATION FEES	P5-P100/hectare	RA 7942, Sec. 86
PENALTIES, SURCHARGES AND INTEREST	25% Penalties 25% Surcharge, max 2% Interest/Mo, max,, up to 36 months only	RA 7160, Sec. 169

# Direct Payments [Local Taxing Power]

TYPE	RATE/RANGE
Mayor's Permit	P200 – P60,500
Regulatory/ Administrative Fees/Application/ Verification Fees/ Governor's Permit/ <u>Endorsement Fee</u>	P500 - P10,000 (mining) P25,000 (oil and gas)
Tax on Mining Operations	1% - 2.2 % of Gross Receipts
Environmental Enhancement Fees/Extraction Fee	P2 – P12/cu. m. P25/metric ton
Soil Depletion Tax	1%/Gross Receipts

# Direct Payments [Local Taxing Power]

TYPE	RATE/RANGE
Hazard Mitigation Fee	P5/cu. m
Municipal Mining Clearance Fee	P5/cu. m
Provincial/Municipal Environmental Compliance Certificate + Verification and Inspection Fees/Certificate of Non-Coverage	P600 – P5,000

# Direct Payments [Local Taxing Power]

TYPE	RATE/RANGE
Transport Fees	P10,000 – P60,000 per shipment
Delivery Receipts	P5/Delivery Receipts – P1,000/Booklet of Delivery Receipts
Miscellaneous Regulatory Fees	P100 – P1000 (Sanitary Fee) P500 – P6000 (Garbage Disposal)
Donation & Grants	

# Indirect Payments [Top 4 Companies]

Company	Province	Share in National Wealth*
Carrascal Nickel Corporation	Surigao del Sur	P16,677,043
Carmen Copper Corporation	Cebu	P74,461,596
Philex Mining Corp.	Benguet	P41,249,088
Platinum Metals Group Corporation	Surigao del Norte	P37,742,211

# Indirect Payments [Top 4 Companies]

Company	City/Municipality	Share in National Wealth
Carrascal Nickel Corporation	Carrascal	P102,332,451
Carmen Copper Corporation	Toledo City	P2,651,705
Philex Mining Corp.	Itogon Tuba	P127,901,109 P83,248,478
Platinum Metals Group Corporation	Claver	P132,212,800

# Indirect Payments [Oil and Gas Companies]

Service Contracts	Province	Share in NW From Oil and Gas	Total Share in NW
Malampaya [38]	Palawan		P65,658,229
Galoc [14]	Palawan	P39,628,039	



# Indirect Payments [Oil and Gas Companies]

## Breakdown by Operating Companies

Service Contract 14 Operators	Oil Fields in Palawan	Total Share in NW
The Philodrill Corporation	Nido	1,495,456.18
	Matinloc	1,442,628.18
	North Matinloc	224,424.24
Galoc Production Corporation	Galoc	36,465,530.02
Nido Petroleum	Tindalo	-
<b>TOTAL</b>		<b>P39,628,038</b>

# Direct Payments

[Based on Gross Production – 2012 Illustration]

<b>Taxes/Fees</b>	<b>LGU</b>	<b>Rate</b>	<b>Amount (2012)</b>
Business Tax	M. of Rapu-Rapu	55% of 1% of Gross Receipts (at P2M Gross Receipts)	P62,000,000 [highest]
Business Tax	M. of Dona Remedios Trinidad	55% of 1% of Gross Receipts (at P2M Gross Receipts)	P700,000 [lowest]
Tax on Mining Operation	M. of Cagdianao	1.1% of Gross Receipts	P11,780,589.04

# Direct Payments

[Based on Gross Production – 2012 Illustration]

<b>Taxes/Fees</b>	<b>LGUs</b>	<b>Rate</b>	<b>Amount (2012)</b>
Extraction Fee/Municipal Clearance Fee	M. of Quezon, Palawan	P5/cu. m	P1,912,565.70
Environment Enhancement Fees	Zambales	P50/ metric ton (Nickel)	P36,718,100.00

# Materiality: Sub-National



- Anchor on Materiality Definition and Threshold at National Level
  - Material Companies
    - <1 B in Assets or Revenue
  - Reconciliation Variance
    - <5% variance [Co v. NGA v. LGU]

# Materiality: Sub-National

- **Payments to be Included:**
  - Share in National Wealth
  - Share in IRA, *when and if disaggregated*
  - Taxes and Fees based on Gross Production/Receipts
    - Business Tax
    - Tax on Mining Operations
    - Environmental/Extraction Fees
    - Others: Soil Depletion Tax, Hazard Mitigation Fee, Municipal Mining Clearance Fee

# Sub-National Transfer Flows

## Procedure in the Release of LGU Shares in Excise Tax

Extractive Industries

Pay Excise Tax to BIR



BIR

Within 15 days after the end calendar quarter when minerals were removed

Prepare and approve a joint certification of actual collection for each quarter  
Schedule LGU Shares

Transmit joint certification of 1 <sup>st</sup> quarter collection to BTr	Transmit joint certification of 2 <sup>nd</sup> quarter collection to BTr	Transmit joint certification of 3 <sup>rd</sup> quarter collection to BTr	Transmit joint certification of 4 <sup>th</sup> quarter collection to BTr
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June 15

Sept. 15

Dec. 15

March 15 of ensuing year

BTr

BTr

BTr

BTr

Validate and approve the joint certification

Validate and approve the joint certification

Validate and approve the joint certification

Validate and approve the joint certification

July 31

Oct. 31

Jan. 31 of ensuing year

April 30 of ensuing year

DBM

DBM

DBM

DBM

Release of funds

Release of funds

Release of funds

Release of funds

Within March of ensuing year

LGU

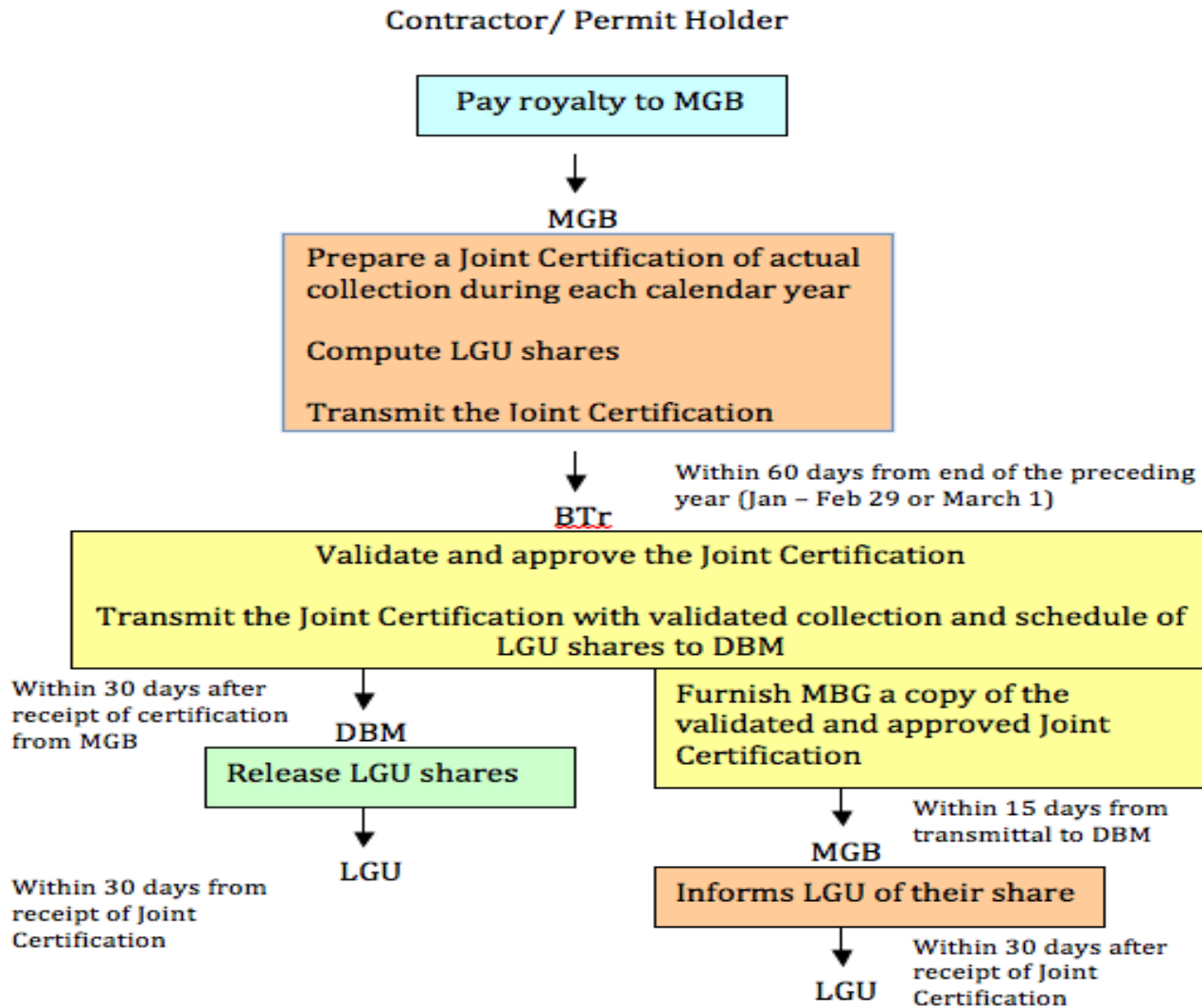
Within February of ensuing year

LGU



# Sub-National Transfer Flows

## Procedure on the Release of LGU Shares in Royalty Income



# Sub-National Transfer Flows

- **INITIAL ASSESSMENT:** 2012 Receipts
- LGUs do not know if receipts are correct amounts, based on law and correct figures.
- Transfers are not disaggregated (mining, forestry, fishery chargers)
- Releases are up to three years late.
- Releases are not timely for budgeting purposes.
- LGUs have to provide collection data to DBM.
- LGUs have to follow-up release of their shares.





# Thank you for your attention!

We continue to work for enhanced  
transparency and accountability!

## Mabuhay ang Pilipinas!

Atty. Alett C. Nunez  
Atty. Julius M. Lotilla  
Atty. Jenny L. Ramos

Special Thanks to Mithi Laya Gonzalez-Suarez,  
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# PH-EITI

Philippine Extractive Industries Transparency Initiative

## PROPOSED COMMUNICATIONS PLAN FOR PH-EITI

Presented by Amy Mosura  
Communication Strategist

## *Long-term Goal*

- Improved public debate on EI issues
- Increased awareness and support for EITI implementation in the Philippines
- Very long-term goal: Create self-sustaining interest in public and the press for PH-EITI and its advocacies

# *Publics*

- The press – They are under the impression that PH-EITI is a dry subject.
- Solution: Create alternative pitches and stories
- The general public: Unaware of many of our activities
- Solution: Populate the social and web space with material, seek out new audiences
- Stakeholders – May need further engagement
- Solution: Create more engaging material



# *Mainstream Communication Workplan*

- Targets and Key Performance Indicators: Increased number of news articles regarding EITI implementation in the country.
- Achievements so far: Total of 14 articles published on PH-EITI between 7 July and 4 September
- Created alternate outreach channel with college media
- Pitches for PH-EITI have been made to ANC, ABS-CBN and TV5 (for follow-up)

# *Mainstream Communication Workplan*

- Proposed additional activities:
- Outreach to radio, online media (Rappler, etc)
- Further outreach to college media
- Creation of alternate pitches for PH-EITI publicity
- Creation of standard media kit, including FAQs, boilerplate releases, infographics, fact sheets

# *Mainstream Communication Workplan*

- Targets and Key Performance Indicators: PH-EITI Newsletter, distributed quarterly
- Achievements so far: First issue was launched in August, articles are in progress for September issue, mechanisms are in place for faster production and distribution
- Mechanism is in place for feedback
- PH-EITI is now the testing ground for data-driven journalistic efforts: infographics, video
- Newsletter drives traffic to PH-EITI website



# *Mainstream Communication Workplan*

- Proposed additional activities:
- Create newsletter sign-up kiosk for COMP expo
- Create additional infographics that can be used for exhibits and expos that will describe the work we do
- Utilize social media to publicize newsletter
- Reach out further to media and the public

# *Mainstream Communication Workplan*

- Targets and Key Performance Indicators: Publication of reference materials, primers, articles on EI and EITI implementation, online trainings, digital presentation and develop structured presentations
- Achievements so far: Creation of FAQs, graphics, newsletters, presentations specifically for PH-EITI
- However, these are still to be standardized.

# *Mainstream & Alternative Communication Workplan*

- Proposed additional activities:
- Creation of PH-EITI-specific standard media kit, including FAQs, boilerplate releases, infographics, fact sheets
- Creation and launch of a PH-EITI app in time for the PH-EITI Country Report





8:40 AM



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# *Communication Workplan: Additional Activities*

- Identification of key messages
- Identification of spokespersons for PH-EITI for media events

# *Communications Workplan: Additional Activities*

- Creation of database of media contacts for PH-EITI news and events
- Further utilize PH-EITI social media accounts for public engagement through contests and giveaways
- Begin live coverage of PH-EITI events on website

***Thank you!***