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**“UPLIFT: UNFOLDING THE ROLE OF THE MINING INDUSTRY IN**  
**ECONOMIC RECOVERY”**

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**EXECUTIVE ORDER 130 AND ITS IMPLICATIONS TO MINING**

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ATTY. FERNANDO PEÑARROYO

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- The legalities of EO 130 - EO 79 and how EO 130 amends it
- How EO 130 can support various government projects geared towards economic growth
- Ensuring the mining sector's adherence to environmental policies and mine safety

# Executive Order No. 79

- Implemented July 2012 by President Aquino III
- Sets the policy framework that will guide government and other stakeholders in the implementation and operationalization of mining laws, rules and regulations.
- Sets the direction and lays the foundation for the implementation of responsible mining policies.
- Aims to improve environmental mining standards and increase revenues to promote sustainable economic development and social growth, both at the national and local levels.

## Issuances by Former DENR Sec. Lopez

- **DMO 2016-01**, issued on 08 July 2016, mandated the audit of all operating mines and moratorium on new mining projects. The audit strictly covers the environmental, economic, social, legal and technical aspects of the mining operations;
- **DAO 2017-07**, issued on 10 March 2017, mandated participation by mining contractors in the Philippines-EITI;
- **DMO 2017-01**, issued on 10 March 2017, excluded quarries from the mining moratorium put in place under DMO 2016-01;
- **DAO 2017-10**, issued on 27 April 2017, banning the open pit mining method for gold, silver, copper, and complex ores;
- Closure of 28 operating mines and the cancellation of 75 mineral production sharing agreements as they allegedly encroached on watersheds and destroyed marine ecosystems.



# RECENT MINING DEVELOPMENTS

- DENR lifted of the moratorium on new mining projects (MPSA) imposed under EO 79 and DENR M.O. 2016-01 by issuing EO 130
- Philippine government resolved the FTAA extension of OceanaGold
- 14 mining firms pass government's 2nd industry audit, 3rd round to cover quarry operations, 4 mines in Bangsamoro in 2022



Amending Section 4 of Executive Order No. 29, s. 2012, Institutionalizing and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources

## Objectives:

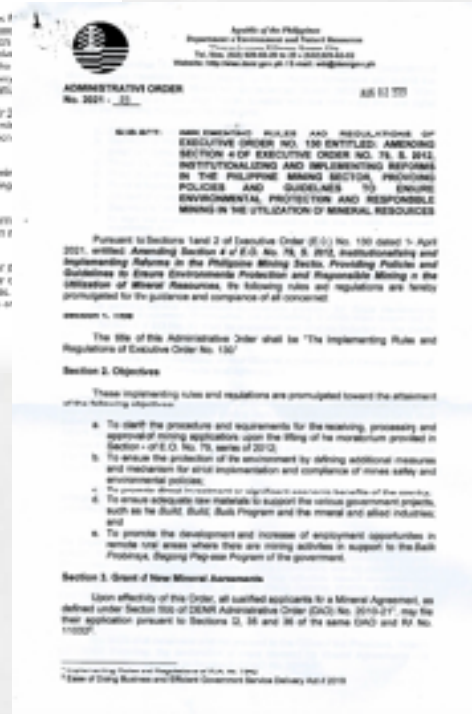
- promote direct investment for significant economic benefits of the country;
- ensure adequate raw materials to support various government projects such as the Build, Build, Build program and the mineral and allied industries;
- promote the development and increase of employment opportunities in remote rural areas where there are mining activities in support of the Balik Probinsya Bagong Pagasa Program

- DENR lifted of the moratorium on new mining projects (MPSA) imposed under EO 79 and DENR M.O. 2016-01 by issuing EO 130 on 14 April 2021

<https://www.officialgazette.gov.ph/2021/04/14/executive-order-no-130-s-2021/>

- IRR issued (02 August) and published DAO 2021-25 (08 August)

<https://apidb.denr.gov.ph/infores/uploads/DAO-2021-25.pdf>



## What Does EO 130 Specifically Amend in EO 79?

EO79 (2012)	EO130 (2021)
<p><b>SECTION 4. Grant of Mineral Agreements Pending New Legislation.</b> No new mineral agreements shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect. The grantees of such permits shall have the rights under the said laws, rules, and guidelines over the approved exploration area and shall be given the right of first option to develop and utilize the minerals in their respective exploration area upon the approval of the declaration of mining project feasibility and the effectivity of the said legislation.</p> <p>The DENR shall likewise undertake a review of existing mining contracts and agreements for possible renegotiation of the terms and conditions of the same, which shall in all cases be mutually acceptable to the government and the mining contractor.</p>	<p><b>Section 4. Grant of Mineral Agreements.</b> <u>The Government may enter into new mineral agreements, subject to compliance with the Philippine Mining Act of 1995 and other applicable laws, rules, and regulations. The DENR may continue to grant and issue Exploration Permits under existing laws, rules, and guidelines.</u> The grantees of such permits shall have the rights under the said laws, rules, and guidelines over the approved exploration area and shall be given the right of first option to develop and utilize the minerals in their respective exploration area upon the approval of the declaration of mining project feasibility.</p> <p><u>The DENR shall formulate the terms and conditions in the new mineral agreements that will maximize government revenues and share from production, including the possibility of declaring these areas as mineral reservations to obtain appropriate royalties, in accordance with existing laws, rules, and regulations.</u></p> <p>The DENR shall likewise undertake a review of existing mining contracts and agreements for possible renegotiation of the terms and conditions of the same, which shall in all cases be mutually acceptable to the government and the mining contractor.</p> <p><u>The DENR and the Department of Finance shall undertake appropriate measures to rationalize existing revenue sharing schemes and mechanisms.</u></p>



# Is the DENR ready to lift the ban on open pit mining?

## Duterte's Declaration

- In November 2017, when asked regarding the recommendation of the (MICC) to lift the ban on open-pit mining, the President said he does not like this because it destroys the soil and the environment and there are no corrective measures immediately available.
- In 09 April 2018: 'Yun ang masasarahan ko, maybe next year, I will ban open-pit mining.'
- Spokesman Roque: "What the President said is apparently against open-pit mining, but because there is no mention of open-pit mining in EO 130, the matter is still being studied by the DENR."

**(DENR) is still studying whether it can lift the open-pit mining ban as there is no mention in EO 130 and its IRR.**

# Ban On Open Pit Mining Has No Legal Basis And Should Be Reversed

- **Open pit mining should NOT be banned in the country.** It is an internationally accepted method done in many countries of the world and has been repeatedly proven to be safe for miners, the community and the environment. While the environmental footprint may be visibly large, open pit mines can be successfully rehabilitated and converted into other land uses like agriculture, forestry, and even tourism.
  - **For shallow ore deposits, such as nickel, iron, coal, and copper, open pit mining is the only economically viable method extraction.**
  - **An open pit mining ban will also have adverse impacts on our energy security** as coal mining is done in the country only through open pit mines.
- Three pending copper developments:  
Philex's Silangan in Surigao del Norte,  
Indophil's Tampakan in South Cotabato,  
and St. Augustine's Kingking in  
Compostela Valley with projected \$4B in  
capital investment if they were allowed to  
start operations.

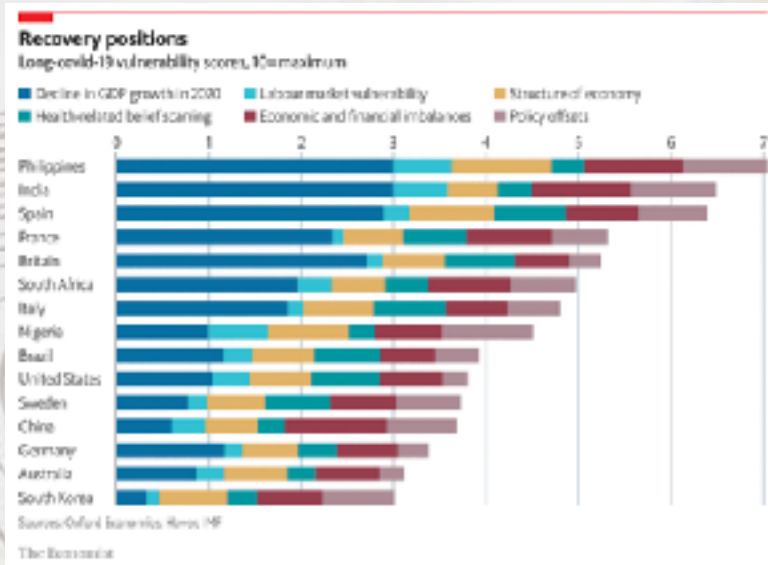


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- Philippine economy recovering in 2021 with stronger growth in 2022 but 2021 recovery hampered by the pandemic.
- Philippine construction industry is expected to grow by 24.2 percent year-on-year this year, and by 16.1 percent in 2022.
- The metallic mineral production value ended 2020 on a positive note with a 1.13% gain from PhP130.74 billion in 2019 to PhP132.21 billion in 2020, a PhP1.47 billion increase.
- From January to June of 2021, the value of metals output was up at P68.63 billion: nickel ore production volume went up by 39 percent from 109,471 metric tons (MT) to 151,646 MT; gold volume increased by 3% from 8,257 kg to 8,545 kg.



# Taxes Paid by Mining Companies in 2020

## **Excise taxes on minerals increased from 2% to 4%**

- Mining industry contributed ₱102.3 billion to the GDP in 2020.
- Contributed about ₱25.52 billion from national and local taxes, fees and royalties.
- Mining and quarrying activities generated 184,000 jobs and around ₱25.71 billion was committed for SDMP.
- Metallic mineral production at ₱132.69 billion.
- Total value of minerals, mineral products, and non-metallic mineral manufacture exported was at US\$5.2 billion.

# Royalties

## **Mineral Reservation Areas - 5% royalty**

Free and Prior Consent of Indigenous Peoples/Indigenous Cultural Communities (IPs/ICC) for Mining Operations within Ancestral Domains

- not less than 1% of the value of the gross output of minerals sold in favor of IPs/ICCs if mining operations are conducted within ancestral lands/domains

## Small-scale Miners

- over areas covered by small-scale miners, the contractor shall pay royalties to the concerned small-scale miners upon utilization of the minerals depending on the agreement with small-scale miners

## Landowners/mining tenement owners

- Mining operations within private property are subject to negotiations between the landowner/tenement holders and the mining companies

# Social Development Funds

- Contractor will allot annually a minimum of 1.5% of the operating costs necessary to implement the foregoing:
- Social Development and Management Program - 1.125% (75% of 1.5%);
- Development of Mining Technology and Geosciences - 0.150% (10% of 1.5%); and
- Information, Education, and Communication Program - 0.225% (15% of 1.5%).
- “Operating cost” - the specific costs of producing a sellable product on a commercial scale incurred in the calculation of the net income before tax; 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

**Realignment of Social Development and Management Program Budget raised PHP 402M for COVID-19 response in 2020**

# Local Government Taxes

LGUs entitled to 40% of the excise tax (Barangay - 35%; Municipal - 45%; and Province - 20%)

- Annual Occupation Fees
- PHP50.00/hectare (outside mineral reservations)
- PHP100/hectare (inside mineral reservations)
- Local Business Tax - rates vary depending on the LGUs, max of 2% of gross receipts
- Real Property Tax - rates vary LGUs depending on LGUs, max of 2% of assessed value; mobile equipment is not subject to tax
- Special education levy - 1% of the assessed value of the property
- Registration fees - rate depends on the activity to be registered
- Community tax - max of PHP 5,000 for individuals and PHP 10,000 for establishments per year
- Other local taxes - type of taxes depend on local government concerned at maximum of 2% based on gross sales/receipts



# Board of Investments' Initiatives in the Copper and Iron & Steel Industries

## CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT

Republic Act No. 11534

Signed 26 March 2021 | Effective 11 April 2021 | IRR Effective 26 June 2021

Based on the IRR of the CREATE Act, Memorandum Order No. 50, Approving the 2020 Investment Priorities Plan (IPP), signed by the President on 18 November 2020, which took effect on 06 December 2020, and its General Policies and Specific Guidelines to Implement the 2020 IPP shall be open for application until the publication of the Strategic Investment Priority Plan (SIPP)

## 2020 IPP (Transitional SIPP)

BOI Memorandum Circular No. 2021-001

• UNDER SPECIAL LAWS (RA 7942)  
(limited to capital equipment incentives)

1. Exploration of mineral resources
2. Processing of metallic and non-metallic minerals to produce semi-processed mineral products, e.g. metallic ore concentrate, whether or not integrated with mining/quarrying operations

• ALL QUALIFIED MANUFACTURING ACTIVITIES  
(includes copper and iron and steel products)

Production of pure metals (refined at least 99.99% purity)

Manufacture of industrial goods into:

- (a) semi-finished / intermediate goods for use in the production of other goods
- (b) Finished products or consumer goods for final consumption

\* subject to the general policies and specific guidelines

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## Legal requirements for mining companies

- **Technical and financial qualifications** to engage in large-scale mining in the Philippines;
- **The area being applied for is open and available for mining activities** and is not located within any of the areas where mining is prohibited;
- **An approved ECC** showing that the impacts of mining in the area can be mitigated and/or remediated through proper environmental protection measures;
- **An approved Project Feasibility Study** showing that the mine has enough ore reserves to operate profitably, and can give government a fair share in revenues.
- **The endorsement/approval of the local government units** (Province, Municipality/City, and Barangays) that will be impacted by the proposed mining activity;
- **The endorsement/approval of the indigenous peoples**, if the area being applied for is within their ancestral domains.
- **Requirements under EO 79 IRR** - [https://mgb.gov.ph/images/stories/DAO\\_2012-07.pdf](https://mgb.gov.ph/images/stories/DAO_2012-07.pdf)
- **DAO 2015-07** institutionalizes an environmental management system that ensures the adherence of local mining operations to ISO 14001 Certification

## Other Laws Related to Resources Development

- Ecological Solid Waste Management Act <https://www.officialgazette.gov.ph/2001/01/26/republic-act-no-9003-s-2001/>
- Toxic Substances and Hazardous and Nuclear Wastes Control Act <https://www.officialgazette.gov.ph/1990/10/26/republic-act-no-6969/>
- Clean Air Act <https://emb.gov.ph/wp-content/uploads/2015/09/RA-8749.pdf>
- Clean Water Act <https://emb.gov.ph/wp-content/uploads/2015/09/RA-9275.pdf>
- 1976 Philippine Water Code defines the extent of the rights and obligations of water users <https://www.officialgazette.gov.ph/1976/12/31/presidential-decree-no-1067-s-1976/>
- 1998 Philippine Fisheries Code provides for the sustainable development of fishery and aquatic resources <https://www.officialgazette.gov.ph/1998/02/25/republic-act-no-8550/>
- Pollution Control Law <http://r12.emb.gov.ph/wp-content/uploads/2016/04/presidential-decree-no984.pdf>
- National Environmental User's Fee of 2002 [https://mgb.gov.ph/images/stories/DAO\\_2002-16.pdf](https://mgb.gov.ph/images/stories/DAO_2002-16.pdf)
- Palawan Council for Sustainable Development <http://extwprlegs1.fao.org/docs/html/phi19797.htm>
- Incentives granted by the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 <https://boi.gov.ph/wp-content/uploads/2018/02/EO-226-omnibus-investments-code.pdf>

Only 2.42% of the Philippine total land area is covered by mining tenements!



DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
**MINES AND GEOSCIENCES BUREAU**  
**MINERALS INDUSTRY AT A GLANCE**

Philippine Total Land Area

**30 Million has.**

High Mineral Potential

**9 Million has.**

**727,372.1818 has.**

**or ONLY 2.42%**

of the Philippine total land area  
is covered by mining tenements  
as of May 31, 2020



**OPERATING MINES  
AND QUARRIES 2020**

50 metallic mines

54 non-metallic mines

5 processing plants

3,389 LGU Issued Permits

# Mining Act of 1995

## Areas Open to Mining Operations

- all mineral resources in public or private lands, including timber or forestlands as defined in existing laws

## Areas Closed to Mining Operations

- a. In military and other government reservations, except upon prior written clearance by the government agency concerned;
- b. Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;
- c. In areas covered by valid and existing mining rights;
- d. In areas expressly prohibited by law;
- e. In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners
- f. Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.

# Executive Order No. 79

Areas closed to mining applications – In addition to the areas declared Mining Act and NIPAS Act, the EO disallows applications for mineral contracts, in:

- prime agricultural lands, in addition to lands covered by the Comprehensive Agrarian Reform Law of 1988, including plantations and areas devoted to valuable crops;
- strategic agriculture and fisheries development zones, fish refuge and sanctuaries declared as such by the Secretary of the Department of Agriculture;
- tourism development areas as identified in the National Tourism Development Plan; and
- other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may identify pursuant to existing laws, rules, and regulations, such as but not limited to the NIPAS Act.

# Water Impact of Mining Operations

Impacts on water are a central element of the assessment of mining projects by the government. All mining proposals are required to prepare detailed water studies that are independently assessed by government agencies and scientists. Mineral exploration drilling involves the same or very similar techniques to water bore drilling. All drilling requires government licenses, which include specific requirements to protect aquifers.



# Environmental Fund

Environmental Protection and Enhancement Program - 10% of Project Cost

Annual Environmental Protection and Enhancement Program - 3% to 5% of Direct Mining and Milling Cost

Contingent Liability and Rehabilitation Fund

- Monitoring Trust Fund - not less than PHP 50,000/month
- Rehabilitation Cash Fund - 10% of the total amount to implement the EPEP or PHP5 million, which ever is lower
- Environmental Trust Fund - PHP 50,000.00
- Mine Waste and Tailings Fees Reserve Fund - PHP0.05/MT of mine waste produced and PHP0.10/MT of mill tailings generated
- Final Mine Rehabilitation and Decommissioning Fund:

Annual Provision = Cost of Implementing the Approved FMRDP x Percentage Required (in accordance with the IRR)

# Legal and Regulatory Issues

Local government units outright refusal of consent

- declaration of mining moratoriums, ban of particular technologies like open pit mining and submarine tailings disposal
- emissions and pollution; loss of agricultural land and subsequent livelihood; threat to water resources; relocation and right of way; and health and safety of workers and communities.

Indigenous Peoples's consent

Environment

- low level of awareness, understanding and attention, afforded to the complex array of policy, regulatory, technical financing and organizational factors affecting mining projects and their wider economic and environmental benefits.

Resource Nationalism

# Resource Nationalism

- Phil Government is now looking at different strategies to extract a greater share of the value from mining operations. Imposing additional royalty of 5% on all mining projects, including those outside mineral reservation areas
- Requiring in-country processing or beneficiation prior to export
- Encouraging in-country processing can also be achieved indirectly by imposing export restrictions and increasing export levies on unrefined ores.
- Continued resource nationalism from governments makes the countries less attractive for mining investment.

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# Conclusion

- Recent policy initiatives by the government are laudable to erase policy uncertainties that can be extremely damaging to both investors and the host country.
- EO 130 is not enough, government has to lift open pit mining ban.
- Existing mining rules and regulations will ensure protection to the environment and mine safety.
- Key challenge is to bring back investors' confidence to the mining industry.



For more references on the mining industry and a copy of the presentation materials, visit my website [penarroyo.com](http://penarroyo.com)



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