

A close-up photograph of a person's hand holding a silver pen, writing on a white document. The background is a warm, yellowish light. The text is overlaid on the image.

Registration, Disclosure, and Taxation

Geology 198 - Laws and Policies in Geology

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Outline of Lecture

- ❖ Ownership in natural resources - general rule, foreign equity in mineral and energy
- ❖ Registration of business - private and public company investments
- ❖ Disclosure - key takeaways, material facts or events, and requirements under the law
- ❖ Taxation, royalties, incentives
- ❖ Summary



CONSTITUTION

- Regalian doctrine - The exploration, development and utilization of these natural resources are under the full control and supervision of the State.
- The State has the option of entering into energy agreements with Philippine citizens or Philippine corporations or associations. At least 60% of the capital of a corporation or association must be owned by Phil. Citizen to qualify as a Philippine corporation or association.
- Exception to the nationality requirement: The Constitution authorizes the President to enter into agreements with foreign-owned corporations involving either financial or technical assistance, for large-scale exploration, development and utilization of minerals, petroleum and other mineral oils.

THE 1987 PHILIPPINE CONSTITUTION

INVESTMENT LAWS IN ENERGY RESOURCE DEVELOPMENT

- Presidential Decree (P.D.) 87, as amended, "Oil Exploration and Development Act of 1972" for petroleum service contracts – allows 100% foreign ownership <https://www.officialgazette.gov.ph/1972/12/31/presidential-decree-no-87-s-1972/>
- PD 972, as amended, introduced the coal service contract system and established the guidelines for coal operations – 60/40 coal operating contracts <https://www.officialgazette.gov.ph/1976/07/28/presidential-decree-no-972-s-1976/>
- RA 9513 "Renewable Energy Law of 2008" for renewable energy service contracts including geothermal <https://www.officialgazette.gov.ph/2008/12/16/republic-act-no-9513/>

MINING ACT

- Exploration Permit
- Mineral Agreements
 - MPSA
- Financial and Technical Assistance Agreement
- Mineral Processing Permits
- http://www.mgb.gov.ph/images/stories/RA_7942.pdf
- <http://www.mgb.gov.ph/images/stories/CDAO-Final.pdf>

Republic of the Philippines
Congress of the Philippines
Metro Manila

Republic Act No. 7942

**AN ACT INSTITUTING A NEW SYSTEM OF MINERAL
RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION
AND CONSERVATION**

**CHAPTER I
INTRODUCTORY PROVISIONS**

Section 1. Title. - This act shall be known as the Philippine Mining Act of 1995.

Section 2. Declaration of Policy. - All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

Section 3. Definition of Terms. - As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:

- (a) "Ancestral lands" refers to all lands exclusively and actually possessed, occupied, or utilized by indigenous cultural communities by themselves or through their ancestors in accordance with their customs and traditions since time immemorial, and as may be defined and delineated by law.
- (b) "Block" or "meridional block" means an area bounded by one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, containing approximately eighty-one hectares (81 has).

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Setting Up a Company

Corporate vehicles

- Sole proprietorship
- Partnership
- Domestic/foreign corporation

Special licensing and registration requirements

Corporate structure: Governance, corporate officers, stockholders

- Private company investments
- Public company investments
 - Registration of securities



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What Is a Disclosure?

Disclosure is the process of making facts or information known to the public.

- Proper disclosure by corporations is the act of making its customers, investors, and analysts aware of pertinent information.
- Companies often place disclosures that protect them in case their financial forecasts are wrong due to changing economic conditions.
- Corporate disclosures also state that investors speak with a financial advisor before investing in the stock since it might not be right for them.
- structured/regular and unstructured/current



Net Revenue	10,828	3,075
Operating expenses (COGS, SG&A, D&A, other)	7,665	36
Operating Income	3,141	(257)
Interest income	4	(97)
Interest expense	(224)	18
Other income	2,939	2,752
Pre-tax income	882	5
Income taxes	5	1,949
Minority interest	2,652	94
Net income from continuing operations	110	2,043
Income from discontinued operations (after tax)	2,162	29
Net income	30.0%	2,150
Effective tax rate	2,125	1.01
Weighted shares outstanding		

Disclosure of Material Information

“Material Fact or Event”

- one which would reasonably be expected to affect investor’s decisions in relation to those securities.
- includes any significant and relevant information relating to the business and operations that, if and when disclosed, would result in or would reasonably be expected to cause a significant change in the trading and/or market value of the shares of the listed company.
- must be disclosed within 10 minutes from the receipt of such information or the happening or occurrence of the act, development or event; prior to the release to the news media.

It is the sole responsibility of the LISTED COMPANY to determine whether this information is material under these standards and therefore disclosable to the PSE.

Key features of the corporate governance framework for public companies:

- The board of directors is primarily responsible for governance of the company.
- The board of directors should establish corporate disclosure policies and procedures.
- The board must appoint a compliance officer.
- The board of directors should ensure that an appropriate internal control system is in place.
- The board of directors should ensure that basic shareholder rights are disclosed in the Manual on Corporate Governance and on the company's website.



Listing with the PSE for Mining Companies

The basic principle is to ensure full, fair, timely and accurate disclosure of material information. The aim is to enable a reasonable investor to determine whether to buy, sell or hold shares or in relation with the exercise of related voting rights. All investors must have equal access to information.

- Certification from the MGB
- Permits and Agreements
- Geological Report on Mineral Resource and Reserve
- MGB-approved Exploration / Construction / Utilization Work Program
- Quality of Management and Technical Competence of Applicant
- Working Capital and Financial Resources



The Philippine Mineral Reporting Code (PMRC) sets out the minimum standards, recommendations and guidelines for Public Reporting in the Philippines of Exploration Results, Mineral Resources and Ore Reserves

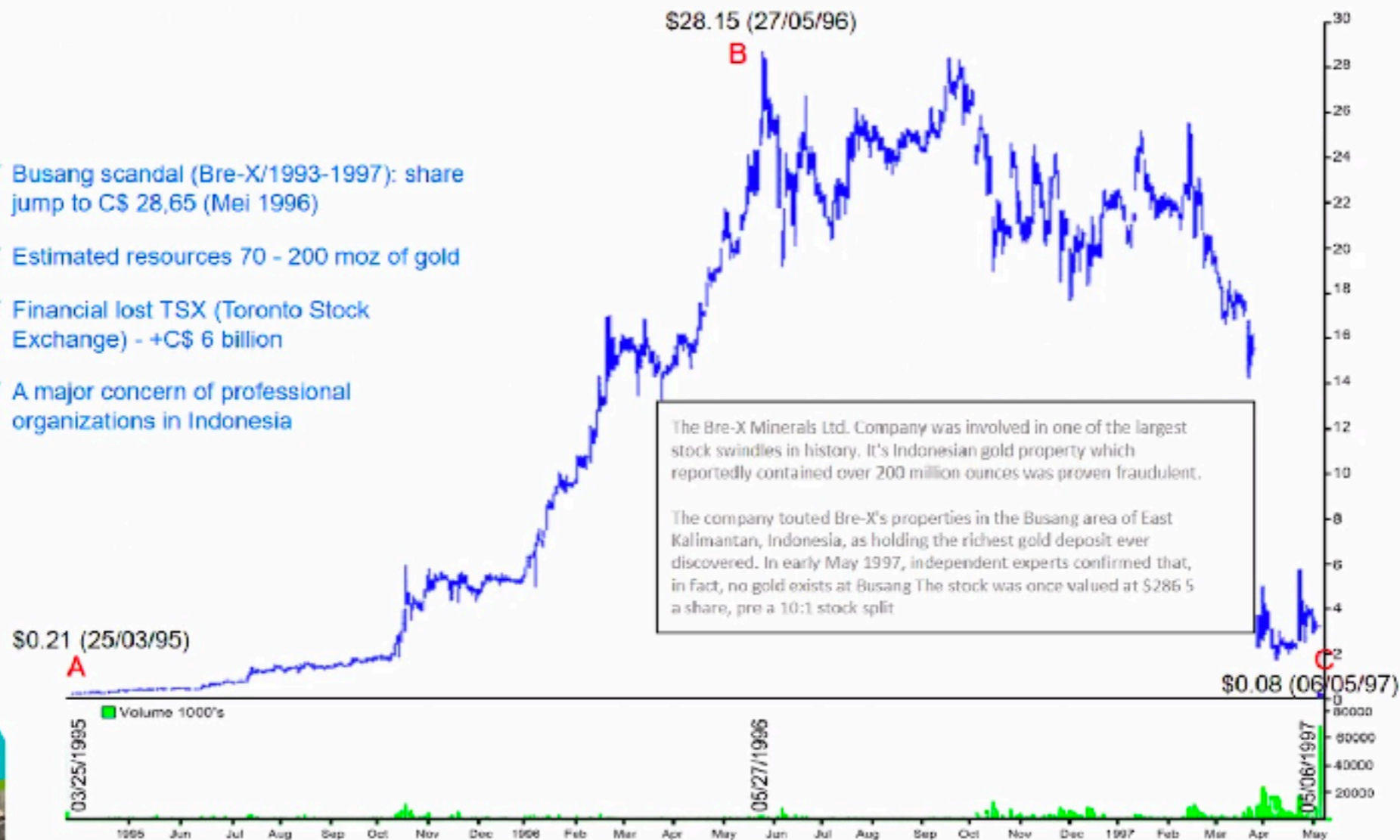
- required for all listed mining and mineral exploration companies in PSE or when applying for listing with the PSE
- to protect investors in mineral exploration and mining
- to protect the capital markets from fraudulent practices
- to promote a common understanding in reporting mineral assets
- DENR AO No. 2010-09 - Providing for the Classification and Reporting Standards of Exploration Results, Mineral Resources and Ore Reserves
- The main principles governing the operation and application of the PMRC are transparency, materiality, and competence



Bre-X's Busang Mining Fraud of 1997

“Single Event” that fast tracked mineral reporting standards

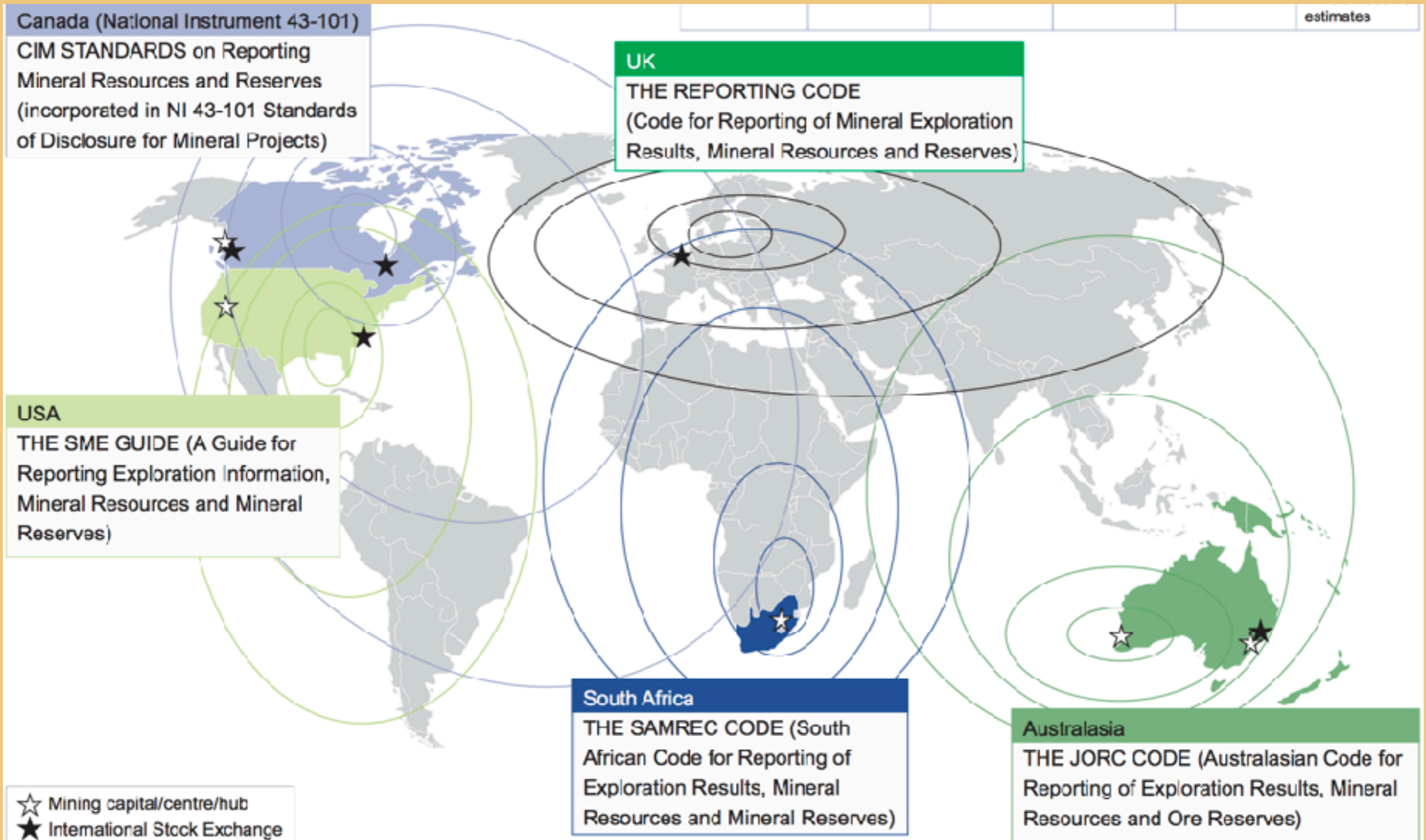
- ✓ Busang scandal (Bre-X/1993-1997): share jump to C\$ 28,65 (Mei 1996)
- ✓ Estimated resources 70 - 200 moz of gold
- ✓ Financial lost TSX (Toronto Stock Exchange) - +C\$ 6 billion
- ✓ A major concern of professional organizations in Indonesia



Source: : <http://www.goldchartsrus.com/charts/temp/charts5/stocksbubble02.php>



Reporting Codes



Public Reporting

A Public Report is reporting on Exploration Results, Mineral Resource and Ore Reserves, prepared for the purpose of informing investors or potential investors and their advisers. This includes reports or reporting for purposes of satisfying regulatory requirements of the regulatory authorities (i.e., PSE or the MGB-DENR). Public Reports include, but not limited to:

- annual reports, quarterly reports and other reports to the PSE;
 - other publicly-released company information (i.e., on company websites, briefing to shareholders, stockbrokers and investment analysts).
- ◆ Should include a description of the style and nature of the mineralization.
 - ◆ Persons Responsible for Public Report / Public Reporting
 - ◆ The Public Report must be prepared by or under the direction of a Competent Person/s.
 - ◆ Qualifications of a Competent Person/s

The PMRC shall apply to the following listed companies and those applying to list in the PSE:

- Companies whose primary purpose is to engage in mining, mineral development or exploration activities.
- Companies classified under the mining sector.
- Companies who regularly engage in mining and exploration activities.
- Companies with an equity or participating interest in companies or partnerships regularly engaged in mining or exploration activities, the value of which is at least 10% of the book value of the listed company.



Other Mandatory Disclosures

Security and Exchange Commission – For all publicly listed companies

- Annual SUSTAINABILITY REPORT, containing the company's Environmental, Social, and Governance (ESG) performance

ISO 14001-25

- Under a DENR Administrative Order 2015-07, all operating mining companies are to undergo accreditation

Extractive Industry Transparency Initiative

- A government-led, multi-stakeholder initiative implementing EITI, the global standard that promotes the open, accountable management, and good governance of oil, gas, and mineral resources
- Mining companies to disclose revenues, disbursements, & ESG compliances

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Fiscal Regime of MPSAs

Total government share in an MPSA shall be the excise tax on mineral products

- on metallic minerals, the excise tax based on the actual market value of the gross output at the time of removal will be as follows:
 - for copper and other metallic minerals except gold and chromite – 4%
 - for gold and chromite – 4%
- on nonmetallic minerals and quarry resources – 4% based on the actual market value of the annual gross output thereof at the time of removal.

Fiscal Regime of FTAAAs

- Government share shall consist of the (i) basic government share and (ii) additional government share
- Negotiated by the government and the contractor taking into consideration the capital investment of the project, risks involved, contribution of the project to the economy, the technical complexity of the project and other factors that will provide for a fair and equitable sharing between the parties
- Net Mining Revenue is computed as follows:
 - Gross revenues from sale of mineral products Less: Deductible operating expenses
 - Plus: Government taxes, duties, and fees included as part of deductible expenses

Net Mining Revenue

Fiscal Regime of FTAA's

Basic Government Share

- consists of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the FTAA holder
- the following national and local taxes, royalties and fees paid by the FTAA holder are deemed part of the Basic Government Share: FTAA holder's income tax; customs duties and fees on imported capital equipment; value-added tax on imported goods and services; withholding tax on interest payments on foreign loans; withholding tax on dividends to foreign stockholders; documentary stamps taxes; capital gains tax; excise tax on minerals; royalties for mineral reservations and to indigenous peoples, if applicable; local business tax; real property tax; community tax; occupation fees; registration and permit fees; and all other national and local government taxes, royalties and fees as of the Effective Date of the FTAA.

Fiscal Regime of FTAAAs

A "Recovery Period" is granted in favor of the FTAA holder ends five years from the Date of Commencement of Commercial Production or at a date the aggregate of the Net Cash Flows from the mining operations is equal to the aggregate of its Pre-Operating Expenses, whichever comes first.

In case the FTAA project incurs very large investments with a high production rate and an extensive mine life, the Recovery Period may be extended subject to the DENR Secretary's approval.

Fiscal Regime of FTAA's

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- acquisition, maintenance and administration of any mining tenements or agreements covered by the FTAA;
- exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
- stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
- development within the FTAA Area relating to the mining operations;
- infrastructure contributions and payments made to local governments except taxes, royalties and fees;
- payments to landowners, surface rights holders, claim owners, indigenous cultural people or indigenous cultural communities, if any;

Fiscal Regime of FTAA's

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- expenses incurred in fulfilling the FTAA holder's obligations to contribute to national development and training of Filipino personnel;
- consulting fees incurred inside and outside the Philippines for work related directly to the mining operations and consistent with the FTAA holder's approved Work Program;
- the establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocable to the mining operations and directly related to the performance of the FTAA holder's obligations and exercise of its rights under the FTAA;
- financing costs provided that the interests will not be more than the prevailing international rates charged for similar types of transactions at the time the financing was arranged;

Fiscal Regime of FTAAAs

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- all costs of constructing and developing the mine incurred before the Date of Commencement of Commercial Production; and
- general and administrative expenses actually incurred by the FTAA holder for the benefit of the FTAA area.

The FTAA holder will not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mining operations for and in the contract area

Fiscal Regime of FTAA's

From the date of approval of the Declaration of Mine Feasibility up to the end of the Recovery Period, the FTAA holder is required to pay the following:

- excise tax on minerals;
- royalties for mineral reservations and to indigenous peoples, if applicable;
- local business tax;
- real property tax;
- community tax;
- occupation fees;
- registration and permit fees; and
- all other national and local government taxes, royalties and fees as of the effective date of the FTAA.

Fiscal Regime of FTAAAs

After the Recovery Period, the FTAA holder must pay all applicable taxes, fees, royalties and other related payments to the national and local governments, which comprise the Basic Government Share.

Any value-added tax on exported products refunded by or credited to the FTAA holder will not form part of the Basic Government Share.

Fiscal Regime of FTAAAs

Additional Government Share

- If the Basic Government Share is less than 50% of the Net Mining Revenue, an “Additional Government Share” to increase the total government share to 50% of the Net Mining Revenue must be paid by the FTAA holder.

Fiscal Regime of FTAAAs

Deductible Expenses: the following cash expenses are allowed for deduction from the Gross Output to determine the Net Mining Revenue:

- mining, milling, transport and handling expenses together with smelting and refining costs other than smelting and refining costs paid to third parties;
- general and administrative expenses actually incurred by the FTAA holder in the Philippines;
- expenses necessary to fully comply with its environmental obligations as stipulated in the environmental obligation under the FTAA, Mining Act, and IRR;
- expenses for the development of host and neighboring communities and for the development of geosciences and mining technology including training costs and expenses;
- royalty payments;
- continuing mine operating dev't expenses within the FTAA Area after the pre-operating period; &
- interest expenses charged on loans or such other financing-related expenses incurred by the FTAA holder, which shall not be more than the prevailing international rates charged for similar types of transactions at the time the financing was arranged, and where such loans are necessary for the operations.

Companies are required to fund/deposit to the following environmental protection measures:

Environmental Protection and Enhancement Program - equivalent to 10% of Total Project Cost

Annual Environmental Protection and Enhancement Program - allocate annually 3%-5% of its direct mining and milling cost

Contingent Liability and Rehabilitation Fund

- Monitoring Trust Fund - must be in cash and in an amount to be determined by the Mine Rehabilitation Fund (MRF) Committee which shall not be less than the amount of PHP50,000 replenished monthly
- Rehabilitation Cash Fund - equivalent to 10% of the total amount needed to implement the EPEP or PHP5 million, whichever is lower.
- Environmental Trust Fund - replenishable amount of at least PHP50,000
- Mine Waste and Tailings Fees Reserve Fund - PHP0.05/MT of mine waste produced and PHP0.10/MT of mill tailings generated from the mining operations
- Final Mine Rehabilitation and Decommissioning Fund - annual contributions in accordance with Final Mine Rehabilitation and Decommissioning Plan deposited in a trust fund

Royalties

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

Mineral Reservations

- Mining operations within mineral reservations are subject to a royalty paid to the MGB that shall not be less than 5% of the market value of the gross output exclusive of all other taxes.

Social 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” means the specific costs of producing a sellable product on a commercial scale incurred in the calculation of the net income before tax. This 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.

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

Fiscal Regimes Applicable to Both MPSAs and FTAAAs

Environmental Fund

Social Fund

Royalties

- Indigenous Peoples/Indigenous Cultural Communities
- Small-scale Miners
- Mineral Reservations

Investment Guarantees and Incentives

- Mining Act
- Omnibus Investments Code

Tax Regime under the NIRC

Local Government Taxes

Summary of Lecture



RESOURCE INVESTMENTS

- Registering business creates new investments, accesses financing, increases revenues and benefits from legal and financial services offered by the government.
- Transparency and disclosure are essential elements of a robust corporate governance framework as they provide the base for informed decision making by shareholders, stakeholders and potential investors.
- The mining contract holder should seek to avail itself of the maximum fiscal incentives permitted under its mining contract with the government, whether MPSA or FTAA, and the Omnibus Investment Code. A financial and tax advisor to do the tax modeling will make sure that this objective can be realized by the contract holder.

For more references on the energy industry and a copy of the presentation materials, visit my website

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