



Technical Report

Improving Transparency of Payments and Receipts in the Mining Industry

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Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-03-00020-00, Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

This task responds to a request from Benjamin Philip G. Romauldez, President, Chamber of Mines of the Philippines, by letter dated July 20, 2006, for technical assistance (TA) from EMERGE in improving the transparency of payments and receipts of mining taxes and other payments. This along with other reforms currently implemented or planned to be implemented by the Chamber are intended to revitalize the Philippine mining industry. The Chamber sought this technical assistance due to a provision in the proposed General Appropriations Act (GAA) of 2006 whereby mining companies may directly pay the LGUs in mining areas their share of mining taxes to facilitate their access to these revenues and thus initiate programs benefiting the local communities. However, without appropriate mechanisms for public disclosure by mining companies of their payments and by LGUs of their utilization of mining taxes, the direct payments to LGUs are vulnerable to abuse, and if and when that occurs, it would tend to undermine efforts at revitalizing the mining industry. EMERGE contracted a team composed of Nelia Halcon, team leader, Ed Coronel, and the R.S. Bernaldo and Associates audit firm to provide this TA, and this is their final report.

The views expressed and opinions contained in this publication are those of the authors and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

FINAL REPORT

IMPROVING TRANSPARENCY OF PAYMENTS AND RECEIPTS IN THE MINING INDUSTRY

Executive Summary

The emergence of mining as one of the major drivers of the Philippine economy at the turn of the twentieth century has prompted industry stakeholders to evaluate the means of reforming a sector that is continuously beleaguered by a plethora of controversies despite exhibiting potentially large economic and social returns to local communities.

The Philippine mining industry and localized governance

Revitalizing the mining industry requires a substantial consideration of the growing role of local government units in resource planning and management in order to address their distinct development issues. One manifestation of this trend is the proposed General Appropriations Act (GAA) of 2006 which incorporates a provision that allows mining companies to directly pay the local government units (LGUs) in mining areas their share of taxes. Ideally, the provision will facilitate LGU access to these revenues, allowing them to initiate programs benefiting local communities. However, these payments are highly vulnerable to abuse due to the absence of an appropriate mechanism for the public disclosure of large potential payments from mining companies and the utilization of mining taxes by LGUs. This is currently the main threat to reforms introduced in the industry. Estimates show that on an annual basis, mining revenues may reach up to US\$1.2 billion.

Industry reforms and pilot project

To achieve greater accountability and transparency in the industry, the Chamber of Mines of the Philippines is spearheading the adoption of the Extractive Industry Transparency Initiative (EITI)¹, an implementing system that institutionalizes a mechanism of disclosure from both mining companies and their host governments of the legitimate payments the former make to the latter.

A technical assistance for a pilot project was provided by EMERGE for the improvement of transparency of payments and receipts of mining taxes and other payments. The project's objectives were: (1) to develop a template for conducting an EITI-aligned audit of tax payments by mining companies; and (2) to stimulate the audit and reporting process for a single mining operation. The Philex Mining Company's Padcal mines in Itogon, Benguet and the Rio Tuba Nickel Mining Company's operations in

¹ An initiative of UK Prime Minister Tony Blair, launched at the World Summit on Sustainable Development in Johannesburg in September 2002.

Bataraza, Palawan were selected as subjects. Both companies are homegrown, hence, unrestricted by any influence or pressure from a foreign partner or majority owner.

The project was implemented in two phases. The first entailed the development of a reporting template and audit plan in agreement with the mining company, the LGU, the national government² and where necessary, the civil society. The reporting template and audit plan attempted to: (1) investigate the existence and role of all financial payments required by the Mining Law and its Revised Implementing Rules and Regulations (IRR)³ and (2) incorporate all benefit streams from the mining operation including payments made to the national and local governments and other Filipinos. The second phase involved the preparation of reports, reconciliation of company submissions with the government submissions, and analysis of information with regard to any gaps and discrepancies. A series of public consultations were held in the capital of Benguet and Palawan and were attended by the host LGUs and officials of the subject mining companies.

Marketing the EITI

The main issue that surfaced during the project implementation was crafting a marketing program founded on incentives that would convince companies and governments to commit to the practice.

The EITI's success would largely depend on what it can offer for the parties involved – what's in it for mining companies, LGUs, the National Government and civil society. Once the answers are firmed, the actual promotion, selling, testing, expanding and refining of the EITI's processes and procedures will logically follow.

The following factors are vital in effectively marketing EITI:

1. **Product Positioning.** Requires strategic positioning vis-à-vis the needs of its target market arising from the distinct nature of the industry.
 - a. Demand - what is it responding to and who should be spearheading its promotion?
 - b. Transparency - as a “transparency” product, correct incentives must be given to companies to transform their defensive position into a public relations value.
 - c. Governance - as a governance tool of mining companies adhering to global standards within an environment of government regulatory agencies saddled with corruption reaching up to levels of institutionalized rent-seeking politics.

² Primarily the Department of Environment and Natural Resources/Mines and Geosciences Bureau and Department of Finance

³ Contingent Liability and Rehabilitation Fund (CLRF) and its Technical Working Group, Rehabilitation Cash Fund (RCF), Monitoring Trust Fund (MTF), Environmental Trust Fund (ETF) and Social Development and Management Program (SDMP)

- d. Industry segmentation - recognition of the industry's segmentation (the big players, the "juniors"⁴, the cross-over "juniors"⁵ and the homegrown mining companies) and articulating the incentives corresponding to their distinct behavior.
2. **Price.** Includes weighing the cost-benefit implications of doing the process and the actual cost of committing to the EITI.
3. **Promotion.** Clear communication of the EITI's goals and objectives as well as the benefits and responsibilities that come along with the commitment to the process.
4. **Place.** Setting a clear set of procedures for companies undergoing an EITI audit.

Other Issues

There were also issues encountered during the pilot project's implementation that may require administrative and pseudo-legislative actions. These issues include:

1. LGUs deprived from accessing to their "rightful share" from the company's operations due to delayed releases of LGU allocations;
2. Tension between LGUs and medium to large-scale mining operations again due to the delayed release of LGU shares from the national government;
3. LGU-led promotion of the process;
4. Inclusion of an assessment as to whether mining-related revenues are actually utilized for what they are intended;
5. Emergence of other needs of stakeholders' that the EITI may need to focus on; and
6. Utilizing the EITI as a government response to evaluating the effectiveness of a designated fiscal regime.

Recommendations

The EITI can play an integral role in revitalizing the Philippine mining industry. The pilot project was an exercise that allowed the prioritization of issues in order to refine the EITI and look at the possibility of expanding its capacity to address other concerns of industry stakeholders. There are seven broad areas that need attention in packaging a Philippine-adapted EITI process:

⁴ Considered the "lifeline" of the mining industry, the "juniors" are exploration companies that are born every time a group of investors launch for listing an exploration property in a remote location. A majority of their funding are sourced through the stock market.

⁵ Evolution of a company from exploration to operation.

- a. For product positioning, it is recommended that the EITI should be marketed as a voluntary initiative of the mining or resources industry but having the recognition by government as a seal of good housekeeping.
- b. For promotion and expansion
 - o package EITI adaptation in the Philippines as a joint government, NGO and private sector initiative by formulating the processes and instruments of a local EITI initiative through a consultative process involving key stakeholders; and
 - o manage the initiative via a dedicated private sector Secretariat advised by a joint Government-NGO-Industry EITI Advisory Council
- c. For improving national government releases to LGUs, the Department of Budget and Management (DBM) must observe the law mandating the automatic release of LGU share in taxes collected from national wealth.
- d. For LGU capacity-building, they need to acquire training and the development of skills necessary to assess the proper taxes particularly those covered by real property tax.
- e. For ensuring transparency on taxes paid and collection, a body must be created with the authority to examine the production report of the mining companies and at the same time review the books of the LGU on how they accounted for the receipt of their share.
- f. For the growing demand to assess the real impact of mining payments, funding for mitigating measures and community development expenditures must also increase.
- g. The effectiveness of the different monitoring mechanisms institutionalized by the Mining Act of 1995 must be measured to initially establish benchmarks and identify practical targets for companies and their host communities to commonly agree to.

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Part 1: Introductory Notes to the Pilot Project

PROJECT BRIEF⁶

Background

This task responds to a request from the Chamber of Mines of the Philippines for technical assistance from EMERGE in improving the transparency of payments and receipts of mining taxes and other payments. This along with other reforms currently implemented or planned to be implemented by the Chamber are intended to revitalize the Philippine mining industry.

The Chamber has sought for this technical assistance due to a provision in the proposed General Appropriations Act (GAA) of 2006 whereby mining companies may directly pay the LGUs in mining areas their share of these taxes to facilitate their access to these revenues and thus initiate programs benefiting the local communities. While positive from the perspective of facilitating access of LGUs to development resources for the benefit of their constituents in mining areas, direct remittance of mining taxes to LGUs has a potential problem.

Without an appropriate mechanism for public disclosure by mining companies of their payments and utilization of mining taxes, the direct payments to LGUs are vulnerable to abuse, and if and when it occurs, it would tend to undermine efforts at revitalizing the mining industry.

The potential size of these payments is large. Based on one estimate⁷, they may reach a total of US \$1,198 million per year. These payments are for excise and corporate income taxes, value added tax, customs duties, local business taxes, real property taxes, occupation fees, and royalty payments to indigenous peoples.⁸ Balce et al. (1996) estimated that the government only

⁶ Lifted from the Terms of Reference, prepared by EMERGE.

⁷ Coronel, F. K. (2001), "Economic and Social Costs of the Constitutionality Issue of the FTAA and the Mining Act". Paper presented at the Mining Philippines, 2001.

⁸ The list excludes payments of other taxes such as for additional payments for FTAA, royalty for mineral reservations, community taxes, and the like, which are relatively small.

collects about half of the potential tax income.⁹ Based on the DENR Mining and Geosciences Bureau's estimates of how these taxes are to be shared, LGUs on average will tend to get the following: 9 per cent goes to provincial LGUs; 16 per cent to municipal governments; and 16 per cent are allocated to the barangays.

At their peak, these revenues amount to nearly US \$1.2 billion.

This concern has prompted the Chamber to initiate reforms which would institutionalize financial transparency of mining taxes and payments. On March 27, 2005, the President of the Chamber, Mr. Benjamin Philip G. Romualdez, (who requested this for this technical assistance) wrote to President Gloria Macapagal-Arroyo, asking her to "consider the adoption of the Extractive Industry Transparency Initiative (EITI) as an implementing mechanism in addressing the interest of government, industry and civil society towards the revitalization of the mining industry". Earlier on January 20, 2006, the Chamber endorsed the EITI to the Department of Foreign Affairs. At the World Mines Ministries' Forum held in Toronto Canada in March 2006, the Chamber reiterated its position supporting EITI.

Extractive Industries Transparency Initiative (EITI).

Launched by UK Prime Minister, Tony Blair, at the World Summit on Sustainable Development, in Johannesburg, September 2002, the EITI aims to institutionalize a mechanism of disclosure by both mining companies and their host governments of the legitimate payments the former make to the latter, as well as transparency over legitimate revenues by those host country governments. Comparison of the data (although differently sourced) allows the detection of discrepancies and thus brings about greater accountability.

An independent financial audit of these revenues and payments is needed to attain the broad objectives of EITI, which is transparency and accountability. Potentially covered by the initiative are the following revenues, in cash or in kind, of the Government from mining companies, such as tax receipts, royalties, lease fees, rental payments, bonuses, share of production, dividends and other profit transfers or receipts from asset sales. On the other hand, mining companies typically pay to host governments and their agencies taxes, dividends, royalties, fees, rentals or bonuses, as well as might transfer of funds (in cash or kind) for the purchase of an asset or service.

⁹ Balce, G.R., Halcon, N. and Kalingking, Jr. (1996) "Mining Policy and Taxation in the Philippines".

Objectives The objectives of the project are (1) to develop a template for conducting an EITI-aligned audit of tax payments by mining companies and (2) to simulate the audit and reporting process for a single mining operation.

Project Activities These objectives will be pursued with the following project activities:

Phase I Before the conduct of the *simulated* audit, a reporting template and audit plan is developed in agreement with the mining company, the LGU, and the national government (DENR/MGB and the DOF, primarily). Civil society may also be included, as appropriate. The Chamber of Mines and the auditor should make sure that the relevant local and national government agencies, mining companies, and other key stakeholders are willing and able to collaborate in the design of the reporting template and capable of responding to the audit plan. The reporting template and audit plan should attempt to reconcile all financial payments required by the Mining Law, its Revised IRR (as amended), as illustrated below.^[4]

1. The reporting template and audit plan should investigate the existence and role of the following with regard to financial payments, as required by the Mining Law and its Revised IRR (DENR AO 96-40, as amended).
 - a. Contingent Liability and Rehabilitation Fund (CLRF) and its Technical Working Group (TWG):
 - i. Mine Rehabilitation Fund Committee (MRFC) and its deputized Multi-Partite Monitoring Team (MMT).
 - ii. Mine Waste and Tailings Reserve Fund (MWTRF) designed to be used for compensation for damages as a result of mine waste and mill tailings.
 - b. Rehabilitation Cash Fund (RCF) equivalent to 3-5% of annual direct mining and milling costs or Php5 million, whichever is lower; to be used for the implementation of the progressive rehabilitation measures defined in the Environmental Protection and Enhancement Program (EPEP).
 - c. Monitoring Trust Fund (MTF) provided by a replenishable amount of Php50,000; to be used by the

Multi-partite Monitoring Team (MMT) with LGU, NGO, IP, company and government representatives as members.

- d. Environmental Trust Fund (ETF) provided by a replenishable amount of at least PhP50,000; to be used for compensation for damages outside of those caused by mine waste and tailings.
 - e. Social Development and Management Program (SDMP) equivalent to at least 0.9% of annual direct mining and milling costs, to be used for the implementation of sustainable community development projects and programs for the host and neighboring communities.
2. The reporting template and audit plan should incorporate all benefit streams from the mining operation, including the following:
- a. Payments to National Government (for example)
 - i. 35% Corporate Income Tax
 - ii. 2% Excise Tax on actual value of minerals produced
 - iii. Custom duties and fees under the Customs and Tariff Code
 - iv. 12% Value Added Tax on imported equipment, goods and services
 - v. 5% of the actual market value of the minerals produced as royalty
 - vi. Documentary Stamp tax depending on the nature of transaction
 - vii. Capital Gains Tax equivalent to 10-20% of the gain
 - viii. 15% Tax on interest payments to foreign loans
 - ix. 15% Tax on foreign stockholders dividends
 - b. Payments to Local Governments (for example)
 - i. Local Business Tax at a maximum of 2% of the gross sales
 - ii. Real Property tax equivalent to 2% of fair market value of property based on an assessment level (plus 1% special education levy)
 - iii. Registration Fees

- iv. Occupation Fees equivalent to 50 pesos per hectare per year
 - v. Community Tax - 10,500 pesos maximum per year
 - vi. Other Local taxes, the rate and type depend on the local government concerned.
- c. Payments to Other Filipinos (for example)
- i. Other allowances as defined by the Mining Act and its Revised IRR, as amended; and
 - ii. Royalties to indigenous cultural communities, if any
 - iii. Other mitigating payments (schools, roads, etc.)

Phase II

Preparation, reconciliation, and analysis of the reports

- The auditor will receive the reports of the companies and the government. The auditor may also work with relevant counterparts in the companies and government to facilitate preparation of the reports. (Assist the key stakeholders in understanding and completing the reporting templates.)
- The auditor will attempt to reconcile the company submissions with the government submissions, provide a detailed analysis of the information especially with regard to any gaps and discrepancies.

Expected Results

This reform activity would have institutionalized government’s policy for the sustained development of the members of the mining communities and enhanced its capacity along with the stakeholders, Church and non-governmental organizations to ensure effective implementation of this policy initiative. The outcome of the project will strengthen the government’s policy of revitalizing the industry and will boost investment confidence. This activity will provide mining companies and the Philippine government information and experience in completing reporting templates for tax payments and expenditures. It will facilitate the process of the Philippines implementation of EITI.

COMMENCING THE PILOT STUDY

The original subject companies were TVI Pacific’s Canatuan Mining Operations in Siocon, Zamboanga del Norte and Philex Mining Company’s Padcal mines in Itogon, Benguet.

Preliminary discussions were made by the Chamber of Mines with both companies. Formal letters introducing the project were sent to the top management of both companies. Commitments were obtained via follow-up calls.

However, in the course of coordinating the project, the LGUs hosting TVI's operations proved difficult to deal with. This led to the decision to recommend another subject company. USAID eventually approved the choice of Rio Tuba Nickel Mining Company's nickel operations in Bataraza, Palawan.

CONDUCTING THE ACTUAL PILOT PROJECT

A series of public consultations were held in the capital of Benguet and Palawan where both host LGUs and officials of the subject mining companies attended.

The pilot project covered two Filipino mining companies, a PSE-listed company and another owned by a politically powerful family. Both companies are homegrown and are not under significant influence or pressure from any foreign partner or majority owner.

Table 1 below shows the dates and attendees of the series of consultations conducted by the pilot project.

Table 1.
Consultations with LGUs and Companies

Meeting with Benguet LGUs March 17, 2007 Baguio City	<ol style="list-style-type: none"> 1. Mr. Adam Ventura, Itogon LGU 2. Mr. Borromeo Melchor, Benguet LGU 3. Mr. Cresencio Pacalso, Benguet LGU 4. Mr. Eddie Taganap 5. Mr. Peter Pis-oy, Benguet LGU 6. Mr. Eddie Ammasen, Benguet Barangay 7. Mr. Blas Dalus, Tuba LGU 8. Mr. Ignacio Rivera, Benguet LGU 9. Mr. Ryan Sabug, R.S. Bernaldo and Associates (RSBA) 10. Mr. Jeffrey Piamonte, RSBA 11. Mr. Aquino Bayani, RSBA 12. Mr. Marvin Garcia, RSBA 13. Mr. Ernesto Diaz, RSBA 14. Mr. Tyler Holt, USAID 15. Mr. Ed Coronel, Project Consultant 16. Ms. Myrna Austria, EMERGE
EITI Presentation June 19, 2007 Baguio City	<ol style="list-style-type: none"> 1. Ms. Roselyn Damilan, Philex Mining Corp. 2. Mr. Rodolfo Saguid, Philex Mining Corp. 3. Mr. Gilbert Olayo, Philex Mining Corp. 4. Mr. Blas Dalus, Tuba LGU 5. Mr. Cresencio Pacalso, Spoberg/VGI

	6. Mr. Julie Esteban, Benguet LGU
	7. Mr. Ronald Jabul, USAID/EMERGE
	8. Ms. Myrna Austria, EMERGE
	9. Mr. Jun Miranda, RSBA
	10. Mr. Eddie Taganap, EMERGE
	11. Mr. Christopher Mariano, Benguet SPO
Meeting with Benguet LGUs March 22, 2007 Puerto Princesa, Palawan	<ol style="list-style-type: none"> 1. Mr. Liro Bustare, Brgy. Wahis 2. Mr. Lores Jaliman, Brgy. Igang-Igang 3. Mr. Artolin Edlap, Brgy. Culandanim 4. Mr. O. Atbula, Brgy. Sarong 5. Mr. Yusa Musa, Brgy. Taratak 6. Mr. Eddie Catague, Brgy. Sandoval 7. Mr. Joel Pondales, Brgy. Culandanum 8. Mr. R. Jayag, Brgy. Rio Tuba 9. Mr. Nidong Milodin, Brgy. Ocayan 10. Mr. Haron Narrazid, LGU 11. Mr. Wilson Anigan, LGU 12. Mr. Tata Asgali, LGU 13. Mr. Abraham Ibba, LGU 14. Mr. Jose Saref, Rio Tuba Nickel Mining Company (RTNMC) 15. Ms. Bibiana Ranes, RTNMC 16. Mr. Redentor Feliciano, RSBA 17. Mr. Gerry Pagstic, BM & D 18. Mr. Perfecto Mirador, Jr., RSBA/ BMD Law 19. Ms. Divina Garcia Maramba, RSBA 20. Mr. Michael Icaro, BM & D 21. Mr. Ivan Baje, RSBA 22. Mr. Ramon Clarete, EMERGE
EITI Presentation June 25, 2007 Palawan	<ol style="list-style-type: none"> 1. Mr. Artolin Edlap, Brgy. Culandanum 2. Mr. Yusa Musa, Brgy. Taratak 3. Mr. Nidong Milodin, Brgy. Ocayan 4. Mr. Gregory Dagupan, Brgy. Rio Tuba 5. Mr. Eddie Catague, Brgy. Sandoval 6. Ms. Myrna Austria, EMERGE 7. Mr. John Avila, USAID 8. Ms. Nelia Halcom, Chamber of Mines 9. Mr. Rogelio Faraillaran, RTNMC 10. Mr. Amorsolo Marzan, RTNMC 11. Mr. Francisco Tablagon, Brgy. Sumbiling 12. Mr. Andili Anmal, Brgy. Sumbiling 13. Mr. Armin Senyo, Bataraza 14. Mr. Abraham Ibba, Bataraza 15. Mr. Ernesto Llacuna, PPC 16. Mr. David Ponce Deceon, LGU 17. Mr. Joel Pondales, Brgy. Culandanum 18. Mr. Lores Jaliman, Brgy. Igang-Igang

Part 2:

Summary of Issues Encountered During the Pilot Project Implementation

DESIGNING THE AUDIT TEMPLATE

1. Analysis of the project design confirmed that it is focused on ascertaining transparency in the payment of taxes by mining companies operating in the Philippines and the mirror receipts by Philippine government agents and other Filipino entities.
2. The research conducted to prepare the audit template indicated that the existing framework on taxes and fees from mining companies operating in the Philippines sufficiently provide for benefits to accrue to the respectively affected parties and communities.
3. As a parallel, the research also revealed that the payments due based on contingent liabilities are also provided for, albeit in levels that may need to be reviewed vis-à-vis the magnitude of risks they are designed to cover. Given that most if not all mining companies are publicly listed, chances are they are would tend to be compliant in tax payments.
4. In preparing the audit manual, the insights are:
 - The audit process needs to consider factors that are not covered by provisions of law but are shaped by local politics, dynamics of governance and particular characteristics of a local area.
 - The audit process needs to also understand the dynamics between the LGU and the mining company.
5. For instance, both the mayor of the host municipality and the governor of the host province are opposing TVI's Canatuan Mining Project. In many instances, both local executives have publicly criticized the company and the project for not giving the LGUs their "rightful share" from the company's operations.
6. There is a disagreement between the company and its host LGUs on the meaning of "rightful share". The issue emanates from the fact that the taxes imposed upon an operation like TVI's are mostly national taxes. The taxes that LGUs directly collect, and to a certain extent have control of, are real property taxes, occupation fees and business taxes. The share of LGUs from national taxes has to

**APPARENT
WEAKNESS OF A
VOLUNTARY AUDIT
PROCESS**

go through the Department of Budget and Management (DBM) and are allocated to them based on a set formula. Usually, the releases of LGU allocations are delayed.

7. Under this condition where LGUs are not incentivized, they are bound to find ways to extract their own “taxes” from mining companies. Conducting an EITI-type audit under this scenario certainly poses both a design challenge and an implementation challenge.
8. The audit conducted by RSBA noted that in the absence of a legal mandate by virtue of either law or regulation, the audit process undertaken under the pilot project was very much subject to the cooperation of the subject companies and LGUs. While the audit report under this scenario may not cover all the necessary transactions because companies or LGUs may be selective in their disclosures – the resulting audit report would be able to clearly indicate these gaps.
9. Thus one can imagine that if this was not a pilot project, and an audit report was issued indicating gaps in the financial obligations of a company – the burden of proving otherwise would be on the company’s side. Thus, even if an EITI-type audit does not have legal mandate, the very audit process itself would compel a company to disclose all necessary information to “come across clean”.
10. The key in the process is getting companies to participate in the audit process – and for this reason, the challenge is how to market an EITI-type mechanism.
11. RSBA noted a number of material exceptions, which in their view should merit attention. These exceptions have been classified below in terms of having direct implication on an EITI process and those that are more structural in nature, i.e. beyond EITI.
12. The EITI-process related exceptions will be handled by this report under the analysis of what is needed in developing a local EITI; those structural concerns are under Other Recommendations.

EITI process-related

Structural

LGUs

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Hesitation of LGUs to provide critical documents 2. Misapprehension of the nature of the engagement | <ol style="list-style-type: none"> 1. Late releases of LGU's share from the utilization of national wealth. 2. At Itogon and Tuba, province of Benguet, query on the legality and |
|---|---|

as that of a regular and mandatory audit

3. Very limited access to public records and personalities.

propriety of the local ordinance imposing mining taxes at certain percentages.

3. Weak monitoring on PMCs representation as to the market valuations of real properties subjected to real property taxes.

4. Difficulty in the completion of documents for the release of shares on excise taxes.

5. Weak monitoring on the implementation of SDMP funds and projects.

6. Lack of monitoring on valuations of real properties and assessments of local taxes to determine correct payments of PMC.

National Government Agencies

1. Non-cooperation of DBM on the provision of data and information relevant to the engagement.

1. Delay in releases of LGUs share in the utilization of natural resources.

2. Weak monitoring of MGB on the implementation of SDMP.

3. No trace of mandatory compliance of SDMP from the effectivity of the Mining Act of in 1995 to the date of approval of SDMP in 2004 or 2005.

Mining Companies

1. Hesitation of PMC to provide critical documents; and

2. Misapprehension of the nature of the engagement as that of a regular and mandatory audit.

DYNAMICS OF THE RELATIONSHIP BETWEEN A MINING COMPANY AND ITS HOST LGUs

13. Making the arrangements for presentation of the project with the LGUs proved difficult for Zamboanga del Norte and Siocon municipality where TVI Resources Development's Canatuan Mining Project is located. Governor Rodolfo Yebes is critical of TVI's operations in his province because of perceptions that the company is not paying the appropriate taxes to the LGUs. This is actually an issue that the project addresses, thus the confidence initially remained high that the LGUs would be supportive of the activities of the project. However, continuous difficulties in dealing with

both the governor and the mayor eventually led to dropping the Canatuan site.

14. A pseudo-feudal attitude towards large-scale mining is typical among LGUs. In the case of a town hosting a gold operation in Mindanao, the municipality assessed the mining company business tax based on investments and not on previous year's sales. The company paid in protest to buy peace and finally get a Mayor's permit. Immediately after the payment, there were stories that went around the municipality that says the money actually was diverted to the Mayor's own bank account. There appears to be sufficient basis for that story.
15. In the case of the Governor of Zamboanga del Norte, he publicly quarreled with TVI on the basis that he does not believe that the province is getting the benefits due it. TVI officials went through difficulties to meet the Governor and make a presentation of the taxes and other contributions made by the company. This did not change the situation any bit, with the Governor maintaining his belligerent position against TVI. There are indications that his political partners are supporting him to deny TVI access to other exploration areas in the province that are presently occupied by small-scale miners. Small-scale miners are known to contribute substantial amounts to Mindanao politicians. Case in point is Diwalwal. Small-scale miners in Diwalwal, many of them illegal, are known to give pay-offs to LGU officials. This is in addition to accounts of corrupting the police, military and DENR officials.
16. The issues related to presenting the project to the LGUs of Zamboanga del Norte are self-imposed, mostly election-related. Considering all factors and issues with respect to dealing with the LGUs of TVI's Canatuan Mining Project, it is advisable to drop them for a project whose LGUs are more open to the project's proposed undertaking.
17. The key to understanding the experience with TVI's LGUs is in terms of analyzing the incentives available.
 - Permits through contracts such as MPSAs and FTAAAs are issued by the national government. In the same light, mining is levied excise tax that is collected by the national government through the BIR. In this scenario, the LGUs are left to wait for their share from the national government. Note that from discussions with the Benguet LGUs, the issue of timing of release of LGU share from taxes collected by the national government was raised as a major concern. Thus, there is an ever-present tension

LGUs AS ALLIES IN PROMOTING EITI

- between LGUs and medium to large-scale mining operations.
- On the other hand, the situation is reversed when it comes to small-scale mining (SSM). Since SSM permits are issued by the provincial LGU through the Provincial Mining Regulatory Board (PMRB), the LGUs have sufficient incentives to control or support small-scale mining operations. In a number of cases, local provincial and municipal officials are known to have financial interests in SSM operations.
18. Given the structural resistance of LGUs to medium to large scale mining operations, how then should EITI be packaged?
 19. During the briefing session with the Palawan LGUs, the idea of adopting the EITI on a limited basis was proposed. Discussions begun on a Palawan EITI.
 20. This proposal should merit attention, with the aim initially on understanding further the viability of EITI as a mechanism that is LGU-led. This observation comes from the view that if LGUs are not encouraged to support big-scale mining because they believe they do not benefit enough, then the EITI can be re-tooled to be an LGU means to monitor the economic contribution of mining to their communities.
 21. As in any other good intention, the option of an LGU-led EITI needs to be assessed in terms of the potential for abuse, thereby discrediting the transparency and accountability factor of the EITI process.
 22. The other push factor for pursuing a province-level adoption of EITI in Palawan is due to the fact that the province hosts a number of mining projects that can be considered to have been developed under the new Mining Act of 1995.
 - Rio Tuba nickel laterite mine, operating since the 1980s. Actual mine activities are at a minimal level because the company is using the stockpile of laterite accumulated for about two decades. However, the company is presently renewing its permits or applying permits for expansion areas.
 - Coral Bay Nickel project – involves an intermediate processing of Rio Tuba’s nickel ore, using HPAL (high pressure acid leach) technology, and is currently doubling its capacity
 - Berong Nickel Project – As of this writing, the Mineral Production Sharing Agreement of the Company with government was just approved by the

DENR. Through a temporary permit obtained earlier, the project has finished 5 ship loads of direct shipping ore (DSO).

- Celestial Nickel project – An affiliate of Berong, the project is already into advanced exploration activities, presently pushing for its various permits.

23. Any change in the leadership brought about by the May 2007 elections is not expected to result in major policy shifts for the province.

BENEFITS FROM MINING FOR HOST COMMUNITIES

24. Again, from the series of LGU consultations, the issue of whether the host communities actually benefit from the tax payments of mining companies resulted in the following views being articulated:

- Projects financed by the LGUs do not necessarily reflect the needs of the community. This is an issue that would be significant in the discussion on the impact of mitigating measures funded by mining companies.
- Local officials seem to view funds from the tax payments by mining companies the same way they view the rest of the funds they get, and therefore subject to the level of governance and transparency in the particular locality. Note that the Mayor of Bataraza, Palawan commented that they can give their consent for the conduct of the audit as long as the auditors do not ask how they spend the funds they receive.
- Because of this attitude, there is minimal participation from the local community in ensuring that the benefits from mining are “invested” to mitigate the impact of the industry in their area. This disconnect between how the tax payments are actually used versus for what they are intended cannot be resolved by simply auditing the tax payments, but rather by interventions involving planning, public accounting and “development” audit.

25. The Chamber was conscious throughout the conduct of this pilot study that the EITI process should be limited to the audit or comparison of payments and receipts by mining companies and government. However, the assertion that the more pressing concern is whether the financial revenues from mining really benefit its host communities was repeatedly expressed by both government and company representatives.

POTENTIAL DEMAND FOR EITI

26. The discussions with the LGU on transparency of payments by mining companies indicate that there is a market for public accounting. In the Tampakan Copper Project of WMC Resources in South Cotabato, the company introduced

in 1997 a quarterly public accounting system where Barangay and tribal council leaders present to the community assembly an accounting of the development funds they are managing. It was also an occasion for the community to assess whether the projects that are being funded are benefiting them or not – with two basic criteria for assessment – equity and sustainability. This mechanism has shown strong potential of neutralizing the oppressors from within, i.e. local leaders behaving like feudal lords. But what the process implies is a strong community organizing and mobilization inputs where the different sectors within the host community is provided with capacity-building inputs to enable them to assess their environment, prepare project proposals, and evaluate interventions.

27. It became apparent from the consultations that the requirement of transparency is capacity-building, i.e. for the stakeholders of a mining project to engage in transparency, they need to have the necessary tools and resources. This represents a clear market for EITI – there is a clear demand articulated by one of the two target sectors.
28. Benguet LGUs also noted their weakness in terms of assessing the mining company of quarrying fees (more of monitoring) and in determining the basis for real property tax. In terms of the latter, they indicated they lack the technical skills to value the machineries that the company is using.
29. When the project was still in discussions with TVI, the company expressed its support for the EITI objectives – precisely because they see it as a means to clarify with the LGUs the tax payments and economic contributions that its operations contribute to the area. Again this is another need that the EITI may need to focus.

OTHER ISSUES

Delay of receipts by LGUs

30. A number of important issues, not directly related to the prescribed limitations of EITI, were raised by LGUs and other sectors – mainly focused on delay in releases of their share from payments made by mining companies to the national government, the need to verify whether these payments are really benefiting the host communities.
31. Initial informal discussions with LGUs and mining company executives indicated that there are already pending issues by LGUs on the receipt of their share from exploitation of mineral resources in their respective areas – and these are mostly focused on timing of receipts. Payments by mining companies are mixed into the general funds of government and subjected to periodic but oftentimes delayed releases to

the LGUs. Thus it is not common to hear LGUs complaining about releases that are three to six years delayed.

32. The actual audit conducted under the pilot project proved that the issue of delayed receipts by LGUs is quite serious.
33. There are potential issues of whether there are ways in which payments made a mining company to an LGU can actually be hijacked such that it does not actually reach the LGU. This is obviously a sensitive issue to discuss with LGUs.
34. The meeting with the Benguet LGUs confirmed the indicative concerns of LGUs regarding tax payments by mining companies.
 - Timing of receipts – Since excise tax payments are collected by the BIR and the share of the LGUs are controlled by the Department of Budget and Management, there is a wide gap in timing.
 - Difficulties in securing release of their share – The LGUs related their experiences in lobbying with the DBM for the release of their allocation.
35. From the series of discussions with both the Benguet and Palawan LGUs, the main issues they raised were on the timing of release of their share from the excise tax collected by the national government. For instance, Benguet noted that their share from 1996-2003 is being given to them piecemeal because GMA was supposed to have said that she will only pay what was collected during her term. The LGUs related their ordeal in getting the necessary certifications that DBM requires before releasing their share.
36. There are issues related to data coming from the mining companies that are not “automatic”, i.e. the LGUs have to extract the necessary documentation from the companies, instead of the process being routine.

Audit of compliance under the designated fiscal regime

37. The MGB is currently reviewing the fiscal regime of the FTAA because the Tampakan Copper Project and the Didipio Copper-Gold Project – both FTAAAs are in advanced feasibility study stages already. As they enter final feasibility, the taxation regime will become critical to determine long term viability amidst volatile metal prices.
38. An EITI audit may be a response to this need by government to understand whether the fiscal regime is really working as designed.

Assessing the impact of mitigating measures and payments by mining

39. The Mayor of Bataraza, Palawan, host LGU of Rio Tuba Nickel mining said that it’s alright for the project to check whether they are getting their share of what the mining company is

companies

paying, but it's another story for the project to ask where they spend the money. This emphasizes the issues that would be faced in pursuing the indicated direction of the post-pilot direction of the EITI project – i.e. assessing the impact and effectiveness of payments made by a mining company to the development prospects of its host communities.

40. Other than tax payments, mining companies are required by the Mining Act and its Revised Implementing Rules and Regulations to set up funds to mitigate whatever impacts mining operations may have on the environment.
41. The Contingent Liability and Rehabilitation Fund (CLRF) covers the Mine Rehabilitation Fund, the Mine Waste and Tailings Fee Fund (MWTF) and the Final Rehabilitation and Decommissioning Fund (FRDF). The purpose of these payments is to ensure just and timely compensation for damages as well as the progressive and sustainable rehabilitation of any adverse effect a mining operation or activity may cause.
42. The CLRF is composed of a Mine Rehabilitation Fund (MRF), which functions as a Php 5 million rehabilitation cash fund (RCF) utilized to implement the activities in the Annual Environmental Protection and Enhancement Program (AEPEP) and a Monitoring Trust Fund (MRF) that operates on a replenishable fund of Php50,000, utilized by a Multipartite Monitoring Team with LGU and civil society representation.
43. The Mine Waste and Tailings Fee Fund is designed to be used for compensation for damages resulting from mine waste and mill tailings. DAO 2005-07 expanded the coverage of the fund to other damages caused by mining operations. This fund correspond to a rate of Php.05 per metric ton of mine waste and Php 0.10 per metric ton of tailings produced by and contained by the mine in tailings ponds for any given year.
44. The Final Mine Rehabilitation and Decommissioning Fund (FMRDF) depends upon the full cost of the approved final mine rehabilitation and decommissioning program which the government ensures would be accrued before the end of the operating life of the mine.
45. For the implementation of sustainable community development projects and programs for the local communities hosting the mining operations, the law provides that mining companies allocate an equivalent amount of at least 0.09% to 1% of their annual mining and milling cost for the implementation of an approved Social Development Management Program.

Part 3:

Analysis of Issues

MAIN ISSUE: MARKETING EITI

The success of the EITI, as in other governance reform, relies heavily on crafting a marketing program that is founded on the idea of incentives. This is the reason why perhaps the most basic question to be asked in marketing the EITI is “what’s in it for parties involved?”. What does EITI offer companies and governments to “buy”?

Once firm answers are provided for these questions, the task of actually promoting, selling, testing, expanding and refining the processes and procedures of EITI will logically follow.

The aim of EITI is “to institutionalize a mechanism of disclosure by both mining companies and their host governments of the legitimate payments the former make to the latter, as well as the transparency over legitimate revenues by those host country governments”¹⁰. The Initiative also seeks to compare data to allow the detection of discrepancies and “thus brings about greater accountability”.

From this articulation, there are a number of perspectives that can be assumed as take-off points for marketing EITI.

- Disclosure by mining companies
- Transparency of receipts by government
- Accountability by mining companies
- Accountability by governments

These potential take-off points will be discussed as they weave through the issues of identifying and meeting the needs of mining companies and their host governments.

PRODUCT POSITIONING

What is the demand that EITI is responding to?

If one were to adapt a view that “marketing’s central purpose is demand management”¹¹ then we should ask the question, “What demand is EITI responding to”? What needs is it meeting? Are those needs particular only to government? Or to mining companies? Should EITI be packaged as one product for both government and industry? Or should EITI be packaged such that

¹⁰ Terms of Reference

¹¹ Philip Kotler, “Kotler on Marketing: How to Create, Win and Dominate Markets”, 1999

it has an element focused on governments and regulators and another on companies?

The issues are further complicated by the messenger – who should be spearheading the promotion of EITI in a country? Should it be the mining department? The tax bureau? The industry department? Or NGOs? Or the Office of the President? Or a foreign aid agency? Or a local consortium of government, industry and NGOs organized as such?

EITI as alternative regulatory mechanism

If EITI responds to a demand by society for transparency in the mining industry, then should it be packaged as an alternative regulatory mechanism and promoted to so-called 3rd party regulators such as NGOs as chief implementors?

This is quite relevant in a weak governance regime like the Philippines where there is mistrust in government's ability to regulate the mining industry.¹²

The EITI can be packaged as an independent audit of the mining industry, expanding the scope from just comparing receipts and payments but exploring such areas as effectiveness of mitigating measures and impact of the industry on economic development.

A likely evolution of EITI as an alternative regulatory mechanism can be in terms of the following steps:

- Identifying a credible NGO whose political integrity is acceptable to a broader section of the NGO community – to become the secretariat or convener of the undertaking
- Refining the concepts of EITI such that it takes shape as alternative regulatory mechanism – in a participatory process that primarily involves NGOs, with inputs from industry and government
- Promoting the benefits of the EITI to the industry as a trust-bearing process aimed at improving the credibility of companies to civil society.
- Identifying a champion from the industry who will carry-on the promotion and expansion

Protecting the integrity of the process would be a key challenge because there will be close scrutiny on the relationship of the NGO consortium and the industry, while at the same time maintaining the balance between NGOs as auditors and industry as participants

¹² A position often articulated by NGOs who may or may not be critical of mining or of government.

. . . and as one mining executive once quipped, “to our own lynching”.

EITI as an audit mechanism by host governments

If EITI responds to a need by host governments to find out whether mining companies are really paying the correct types and amounts of taxes, then perhaps the marketing of EITI is as an audit mechanism for the BIR¹³, BOC¹⁴ and DENR¹⁵ to institutionalize.

There are a lot of arguments against promoting the EITI as a government-mandated audit process – primarily because government regulation is highly suspect.

However, the EITI can still be implemented as a government-sponsored process but managed privately via an accreditation process. Accredited external auditors can be appointed to conduct an EITI audit in much the same way that companies engaged external auditors for financial regulatory reports.

EITI as meeting the needs of industry

If EITI in fact responds to a need by mining companies for an independent mechanism that can highlight the economic contribution a mining operation gives to its host community and government, then it should be packaged as such.

EITI as repentance and redemption

Based on reference documents, it appears that at its core, EITI is about transparency – therefore, the question is posited whether “transparency” is in fact the product that EITI is marketing.

Based on the experience of the project, from a mining company’s viewpoint, there is already a judgment that has been made – that there is a strong case against the payments they make to government to warrant an initiative like the EITI. As was the experience, in its first encounter with EITI, a mining company would tend to take a defensive position.

The logic of having “transparency” as the product is akin to the Christian concept of redemption from sin, i.e. a company submits to the EITI process to seek forgiveness, with confession as being the first step.

The challenge under this market positioning is to correctly incentivize companies to believe that it makes good business sense

¹³ Bureau of Internal Revenue

¹⁴ Bureau of Customs

¹⁵ Department of Environment and Natural Resources

¹⁶ The term came to be used to refer to mining when companies moved from single commodity, single mine to multi-commodity, multi-mine structures.

for them to confess their sins and thereafter repent from their evil ways.

The most obvious incentive that a mining company may perceive to be available from EITI-as-repentance perspective is its public relations value.

EITI as a governance tool

The mining business is global by nature – mines located in remote locations produce basic raw materials for factories that are located close to urban centers. Beginning from the first time European traders raised the sails of merchant ships in search for gold and silver, mining was already playing the game of globalization.

Today, most of the big players in the resources¹⁶ industry are headquartered in cities like London, Perth, Melbourne, Toronto and Vancouver. They would have regional offices in Asia, Latin America and Africa – and have project offices in the Philippines, Peru and Nigeria.

Mining companies operate in fiscal, legal, financial and governance regimes that are quite different if not lower in standards than where they are headquartered. At headquarters or at offices located in countries where there is rule of law and governance standards are fairly high, mining companies do not think twice about obeying the law, observing standards and even raising the benchmark.

With practically all of big and small mining companies being publicly-listed, the pressure of installing transparency mechanisms and upgrading corporate governance is felt by the industry.

However, once a mining company enters a governance regime where regulatory agencies of the host government are saddled with corruption beyond just mere bribes but reaching up to levels of institutionalized rent-seeking politics, ensuring that regional and project offices observe headquarter standards becomes more challenging.

For a mining company to voluntarily submit to an EITI audit process, there is an implicit assumption that that company has the confidence it has installed the necessary transparency mechanisms. In fact it can be a way for a company to test whether its systems and procedures work or are effective.

The other way for the EITI process to become a governance tool is for a company that has adopted its process or is domiciled in a country where EITI standards are observed – is for that company to impose the EITI standards to its contractors, suppliers and joint venture partners much the same way that mining contractors are normally qualified via such international standards as the ISO.

**Mining is not a monolith:
segmentation in the mining
industry**

But then we need to distinguish whether the level of urgency or need to establish transparency mechanism is equally valid for big companies with established name and reputation as well as with so-called junior players or smaller exploration companies that make up much of the list of mining stocks but much less of its market capitalization.

In the Philippine mining industry, reflecting the rest of the world, three types of companies operate.

. . . The big players

- The “majors” or the big multi-national mining companies with significant presence in the country include BHP-Billiton, Anglo-American and XStrata. They are among the leading advocates of the buzzwords of modern resources development – sustainable development, community development, human rights. These companies operate in different fiscal, governance and ideological settings and they have the resources to adjust and adapt to the differences. They have entire departments devoted to any of the so-called soft issues of mining – community, environment.

**the “juniors”, lifeblood of
the mining industry . . .**

- The “juniors” are the exploration companies that are born every time a group of investors launch for listing an exploration property in some remote location. They are considered the “lifeblood” of the industry because they are responsible for discovering deposits via risky exploration expeditions and actually working under difficult political, geographical and governance environments. Their being relatively small lends to their agility and flexibility, decision-making traits critical in developing exploration projects. These realities have shaped the character of many “junior” mining companies. Risk-taking, gung-ho attitudes permeate the organization – from top management to field geologists. The exploration business is very much like the Oklahoma land rush – it’s a race on staking grounds. Under this business environment, it is not abnormal to expect “junior” companies to take short-cuts and compromise. In many cases, it’s a company’s leadership that defines the extent to which a “junior” stays or strays.
- There is another important nature of a “junior” mining company in terms of corporate governance challenges. Most of these companies source a majority chunk of their funding via the stock market – mainly the London Stock Exchange’s Alternative Investment Market (LSE-AIM), Toronto Stock

Exchange (TSX) and Australian Securities Exchange (ASX). As publicly listed companies, they are covered by the governance rules of the exchanges where they are listed. As such, anything they do with respect to governance can be considered as mere compliance. It becomes a stretch to expect these companies to push the benchmarks of corporate governance beyond what is minimum and necessary to maintain their licenses.

- While there are no hard data to refer to, given the rule of thumb in the industry – only one in a thousand prospective properties develop into a mine – one can surmise that there are only a handful of “juniors” that mature into companies that have formal corporate policies translated into actual practice down the organization – including good corporate governance. Since it takes resources and management sensibilities to prioritize good corporate governance, it is a challenge for a “junior” company to push for the installation of transparency mechanisms seriously.

“Juniors” crossing over . . .

- There are two active “juniors” operating in the Philippines that have crossed over to actually operating a mine. These are TVI (Canadian) and Rusina (Australian). TVI has progressed from a purely exploration company to an operating company with the opening in 2004 of its polymetallic mine in Canatuan at the middle of the Zamboanga peninsula. Rusina on the other hand is re-developing the old Acoje mines¹⁷ in Zambales, with focus on nickel laterites. Rusina expects to make its first shipment by the 3rd quarter of this year.
- Cross-over “juniors” operate in grounds where the major players are – under the close scrutiny of militant NGOs and their cohorts in the media. As such, they find themselves having to engage corporate governance beyond the minimum.

and the “locals”

- In the case of the Philippines, we have the so-called “locals” – homegrown mining companies, some of which were established before WW2. These include Benguet and Philex, and some inactive but still alive old mining companies like Zambales Chromite Mining Company, Inc. and Filipinas Mining Company – both of which were established during the 1930s – but because of the current boom find themselves resurrecting claims and pushing for development partnership, oftentimes with “juniors” and “majors” alike.

¹⁷ Acoje Mining Company closed its Acoje chromite mine in the early 1990s as it got pummeled by depressed metal prices and labor issues.

- There are also two types among the “locals” publicly-listed mining companies – the old companies that are either still operating mines like Philex, Lepanto and Manila Mining or are mere shadows of their once grand selves like Benguet. And then there are those companies that are more involved in mining the stock market than actually diligently conducting mining operations.

Understanding the incentives of companies

If EITI is to be marketed to the industry, it must be done in a manner that recognizes the segmentation with their respective behavior and incentives.

When a mining company believes it can wiggle its way through the complex regulatory environment in the Philippines, then there is very little incentive for it to submit to an EITI process.

On the other hand, when a mining company arrives at a decision to submit to an EITI process, chances are it must have undergone an analysis and arrived at a conclusion that it does make good business sense to undergo a transparency and accountability audit. The thinking process that would go into this decision is what the EITI must focus – at what level and in what respect would a mining company be incentivized sufficiently to submit to a public review of its financial transactions with its host government.

If the most obvious reason is public relations, then one must ask how EITI can be implemented beyond public relations. Or is this PR angle at the heart of promoting the EITI?

PRICE

What does it cost a mining company?

In submitting itself to an EITI audit, the cost to a company comes at two levels:

- putting in people and effort in weighing the cost-benefit of doing it, and
- the actual cost of submitting to an audit.

Pre-audit cost

Anxiety is the first type of cost a mining company incurs when faced with the prospect of submitting to an EITI audit. The higher the asymmetry of information between the implementer and the subject of the audit, the higher the anxiety level that must be overcome. The experience of the pilot project will be discussed under “Audit Issues”.

If a company is fairly confident of its financial housekeeping, then the stress level is significantly reduced.

The decision whether to submit to audit or not must be made by top management. In truly public companies, there is no doubt who management is. However, there are some listed companies where the owner and the manager are one and the same – in which case the hurdle may be higher than in real public companies.

One can assume that owner-managers may be more reluctant to submit to public scrutiny as compared to managers-only.

Once there is sponsorship from top management, it becomes similar to standard audit processes of going through records using an EITI audit template. The absence of support can make the process tedious if not outrightly confrontational.

Actual audit cost

The actual cost in submitting to an audit process is fairly low. This would mostly involve the cost of transporting and hosting auditors to site and to head office where the financial records are kept. A point person must also be appointed to take charge of coordinating with the EITI secretariat the conduct of the audit, clarifying initial findings, going through the draft report and finally in issuing the final report.

A company may decide to publicize and promote the results of the audit if the results are impressively favorable. For some, even if the results are frank about discrepancies, they may also publish them as a cathartic act and signal the start of better, more transparent and accountable financial transactions with its host government.

PROMOTION

How do we advertise and communicate EITI?

Once the product positioning of EITI is clarified, promotion is tailored to communicate as clearly as possible the goals and objectives, the benefits to a company, the particular steps to be taken, the consequent reporting and public disclosure that follows an audit and the larger context of corporate governance improvements that a company needs to undertake.

PLACE

How do we make it convenient for a mining company?

Convenience in undergoing an EITI audit comes in terms of a clear set of procedures. If the terms are vague, a company would raise a lot of issues as to privacy of its financial records and securing cooperation from company personnel becomes a challenge.

Part 4: Summary of Recommendations towards Adapting EITI to Philippine Conditions

MARKETING EITI

The objectives of the pilot project are to develop an EITI audit template and apply it to pilot companies and LGUs. These objectives are focused on determining the adjustments and packaging needed to introduce this particular transparency mechanism.

Thus the central issue that the pilot project dealt with is determining the most practical and effective way of facilitating the development and launch of an EITI-type initiative in the Philippines.

Product positioning

The intersection of the different concerns on how to position EITI is the question of incentives. As leached from the analysis of issues derived from the pilot project, the recommendation is to position EITI as a voluntary initiative of the mining or resources industry but having the recognition by government as a seal of good housekeeping.

The advantages of this positioning are as follows:

1. It is not perceived as a mandatory requirement and being seen as additional burden by the industry, therefore risking minimal compliance at best or undermining at worst.
2. It also manages the risk of being perceived by NGOs as having little value because of structural mistrust on government as regulator.
3. A participating mining or resources company is encouraged by the benefits a seal of good housekeeping provides, similar to ISO-type certification. This is useful for projects raising financing from international lending institutions.
4. The positioning allows companies to employ the results of the process as communications tool to impart to their stakeholders the achievements of their respective corporate social responsibility work.

On the other hand, the proposed product positioning for local adaptation of EITI is likely to face the following challenges:

1. It needs to overcome the initial skepticism of NGOs about the ability and integrity of the process to serve its purpose, i.e. provide the public with a fairly accurate audit of tax and other payments that a mining or resources company must make as

prescribed by law.

2. The positioning work needed must likewise hurdle skepticism from the other side of the fence, i.e. for industry, they need to be able to appreciate the initiative as “making business sense”.
3. As far as government side is concerned, the bureaucracy needs to view the initiative as helpful tool in their regulatory function, not necessarily unburdening them, but providing such agencies as the MGB and EMB with “ammunition” to counter criticisms of being soft to the mining or resources industry.

Promotion

In expanding the EITI initiative from pilot project to an expanded effort, the following steps are recommended.

1. Package the adaptation of EITI in the Philippines as a joint government, NGO and private sector initiative by formulating the processes and instruments of a local EITI initiative through a consultative process involving key stakeholders
 - a. Government as regulatory entity, primarily the DENR
 - b. Government as an investment promoter, led by DTI and the Board of Investments
 - c. NGOs as alternative regulators
 - d. Industry as cooperating sector
2. Manage the initiative via a dedicated private sector Secretariat advised by a joint Government-NGO-Industry EITI Advisory Council
 - e. Having a Secretariat ensures work being done on schedule, under an environment of transparency, and built to benefit all the stakeholders.
 - f. The joint advisory council is proposed to be designed to function like a board of directors – provide strategic guidance, ensure good governance within the structure and facilitate inputs from different stakeholders.
3. Explore the pros-and-cons of launching the EITI via a DENR Administrative Order (DAO). This will provide the needed “mandate” from government – but packaged less a prescription and more of an admonition. Admittedly, this balancing act would be the trickiest to accomplish.

RECOMMENDATIONS ON OTHER ISSUES

Improving releases of the National government to LGUs

1. The law provides that the share of LGUs in taxes collected from national wealth should be automatically released. It is recommended that this provision be observed by DBM.
2. This will immediately cure the absence of incentives among LGUs in support of mining operations.
3. Patterning the distribution of LGU share on taxes after the PEZA zones practice wherein, upon collection of taxes a certain percentage goes straight to the host government.

Capacity-building program for LGUs

4. LGUs need to acquire the skills needed to assess the proper taxes particularly those covered by real property tax. For instance, the RSBA audit indicated that the Benguet LGUs find it difficult to determine the actual value of real properties of Philex that are subject of real property tax. The training would require understanding mining operations, the type and nature of equipment and machineries that are used, and the factors that contribute to their replacement or continued use.

Monitoring of mining companies' actual production

5. RSBA proposed the creation of a body with the authority to examine the production report of the mining companies and at the same time review the books of the LGU on how they accounted for the receipt of their share. This aims to ensure transparency on taxes paid and collected.
6. The function of that body that RSBA is proposing can be incorporated in an EITI process.
7. What may be practical is for the DENR to issue a Department Administrative Order (DAO) creating an EITI mechanism that incorporates the functions identified by RSBA, i.e. monitoring the actual production of mining companies.

Assessing the effectiveness of mitigating measures and development funding by mining companies

8. With the growing clamor for an assessment of the real impact of mining payments, funding for mitigating measures and community development expenditures must also expand.
9. However, more than expanding funding for environmental, social and cultural development of host communities, there is a need for a mechanism that would assess the impact of these interventions. At the end of the

day, communities hosting mining operations would ask themselves if their prospects and conditions have been improved or not presently and post-mining.

10. The fate of host communities post mining operations is still very much in doubt. Presently, Philex is preparing a mine closure plan. That plan is critical to the lives of thousands of Philex employees and their dependents – an entire community who have depended on the mine for more than half a century for their livelihood, education, health needs and security.

Assessing the effectiveness of environmental monitoring and management funds

11. It is recommended to measure the effectiveness of the different monitoring mechanisms institutionalized by the Mining Act of 1995 for the purpose of, initially, establishing benchmarks and identify practical targets for companies and their host communities to commonly agree to.

12. Of equal concern to government and host communities is the rehabilitation of mined out areas. In the case of Philex, rehabilitation of surface areas has been going on for quite sometime. The underground mining areas would have to be sealed and their plans and lay-out preserved for whatever circumstance may merit going back to them.

13. In the case of Rio Tuba, the company has been pursuing a progressive reforestation program. However, with the opening of a processing facility within the mining area, additional rehabilitation work needs to be put in place. Of particular concern would be the tailings pond created for the nickel processing facility.

ANNEXES

ANNEX 1. Audit Template

ANNEX 1. Audit Template Matrix 1

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Payments to the National Government					
Corporate Income Tax	Commercial Operations	The collection of government share commence after the Contractor has fully recovered its pre-operating, exploration and development expenses, inclusive. The period of recovery which is reckoned from the date of commercial operation shall be for a period not exceeding five (5) years or until the date of actual recovery, whichever comes earlier.	Corporate Income	Currently 35% of taxable income but will be reduced to 30% by January 1, 2009.	
Withholding Tax on Payroll	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Payroll Disbursement	Payroll		
Withholding Tax on Foreign Stockholders Dividends	Commercial Operations	Payment of dividends to Foreign Stockholders	Amount of Foreign Stockholders Dividend	15% of dividend	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Withholding Tax on Profit Remittance to Principal	Commercial Operations	Remittance of Profit to Principal	Amount of Profit remitted to Principal	15% of profit remitted	
Withholding Tax on Royalties to Landowners	Commercial Operations	Payment of Royalty to Landowners/ Claimowners	Royalties to Landowners/ Claimowners	20% of royalties	
Withholding Tax on Interest Income	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Bank deposits in interest-bearing accounts	Amount of Interest Income in Banks	20% of interest	
Withholding Tax on Royalties to Technology Transfer	Exploration Pre-Development Construction Commercial Operations	Payment of Royalty to Technology Transfer	Amount Royalties to Technology Transfer	40% of royalties to technology transfer	
Withholding Tax on Interest Payments to Foreign Loans	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Payment of Interest on Foreign Loans	Amount of Interest Payment on Foreign Loans	15% of interest	
Royalties: Mineral Reservation	Commercial Operations	Production of minerals from mining area	Actual market value of gross output	5% of the market value of the gross output extracted or produced	
Excise Taxes on Minerals	Commercial Operations	Production of minerals from mining area	Actual market value of gross output	2% of the actual market value of the minerals	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Customs Duties/Fees	Exploration Pre-Development Construction Commercial Operations	Importation of goods / equipment	If imported article is subject to ad valorem rate of duty, the duty shall be assessed on its market value plus freight, insurance and other costs. Imported articles subject to specific tax shall be based on weight.	Depends on type of imported goods, e.g. three to seven percent for chemicals; three to 10 percent for explosives; three to 15 percent for mechanical and electrical equipment; three to 10 percent for vehicles, aircrafts and vessels	
Value-Added Tax on Imported Equipment	Exploration Pre-Development Construction Commercial Operations	Importation of equipment	Importation of goods brought into the country, whether for use in business or not	12% of the total value used by the Bureau of Customs in determining tariff and customs duties	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Value Added Tax on Sale of Goods or Properties	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Sale of goods or properties except exported products	Gross selling price or gross value in money of the goods or properties sold	12% of the gross selling price or gross value in money of the goods or properties sold except exported products	
Mine Waste and Tailings Reserve Fund	Exploration Pre-Development Construction Commercial Operations	Generation of mine waste and mill tailings within a six-month period	Fee shall be based on the sworn semiannual report (MGB Form No. 18-1) that shall be submitted to the Bureau by each operating Contractor/Lessee/Permit Holder	P0.05/MT of mine waste produced and P0.10/MT of mill tailings generated from the mining operations ¹⁸ .	

18 Except where such mine waste and mill tailings were utilized in the following manner:

- a. Filling materials for underground mine openings;
- b. Filling materials for surface mine openings: *Provided*, That such materials shall not affect natural drainage systems as may be determined by the Committee or its duly authorized representative;
- c. Filling materials for engineered tailings dams, roads and housing areas: *Provided*, That such areas shall not affect natural drainage systems as may be so determined by the Committee or his/her duly authorized representative: *Provided, further*, That those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay P50.00/MT without prejudice to other penalties and liabilities the Contractor/Lessee/Permit Holder shall be subject to under other existing laws, rules and regulations: *Provided, finally*, That said amount shall accrue to the MWT Reserve Fund;
- d. Concreting and manufacture of concrete products; and
- e. Mine waste impounded for future use: *Provided*, That a two-year work program on the utilization of the said materials shall be submitted together with the semiannual report: *Provided, further*, That said materials, which are not utilized within the two-year period, shall be charged the corresponding fee of P0.05/MT.

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Government share in Co-Production and Joint Venture Agreements	Commercial Operations	Production of minerals from mining area	Negotiated between Government and Contractor	Negotiated between Government and Contractor	
Additional Government in FTAA	Commercial Operations	Production of minerals from mining area after recovery of investments	Two Options to be elected by Contractor: 1. 50-50 Sharing of the Cumulative Present Value of Cash flows ¹⁹ 2. Profit Related Additional Government Share ²⁰ 3. Additional Share based from the Cumulative Net Mining Revenue ²¹	See Notes.	
Drilling Fund	Exploration Pre-Development Construction	Lease and transport of drilling equipment from the Bureau for exploration and development work	DENR Administrative Order 2005-08	Depends on type of equipment based on duration of rental period	

¹⁹ The government shall collect an Additional Government Share from the contractor equivalent to an amount which when aggregated with the cumulative present value of government share during the previous contract years and the basic government share for the current contract year is equivalent to a minimum of 50% of the cumulative present value of project cash flow before financing for the current contract year.

²⁰ The government shall collect an Additional Government Share from the contractor based on 25% of the additional profits once the arithmetic average of the ratio of Net Income After Tax to Gross Output as defined in the National Internal Revenue Code, for the current and previous taxable years is 0.40 or higher rounded off to the nearest two decimal places.

²¹ Fifty percent (50%) of cumulative Net Mining Revenue from the end of the Recovery Period to the end of that taxable year less Cumulative Basic Government Share for that period

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Mines Survey, Investigation and Monitoring Fund	Exploration Pre-Development Construction	Miscellaneous services rendered by the Bureau and/or its Regional Office	DENR Administrative Order 2005-08	Depends on type of service rendered Fieldwork charges shall be computed by man-days at P2,000 per man per day provided the minimum charge is P6,000.	
Filing Fee: Exploration Permit Application	Exploration	Application for Exploration Permit	DENR Administrative Order 2005-08	P60/Hectare but not less than P50,000 per Application	
Clearance Fee: Exploration Permit	Exploration	Application for Exploration Permit	DENR Administrative Order 2005-08	P5,000 per Application	
Registration Fee: Exploration Permit Application	Exploration	Application for Exploration Permit	DENR Administrative Order 2005-08	P5,000 per Permit	
Filing Fee: Mineral Agreement Application	Pre-Development	Application for Mineral Agreement Transfer of Mineral Agreement	DENR Administrative Order 2005-08	P60/Hectare but not less than P50,000 per Application	
Clearance Fee: Mineral Agreement Application	Pre-Development	Application for Mineral Agreement	DENR Administrative Order 2005-08	P5,000 per Application	
Registration Fee: Mineral Agreement	Pre-Development	Registration of Mineral Agreement	DENR Administrative Order 2005-08	P20,000 per Contract	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Application Fee: FTAA Application	Pre-Development	Application for FTAA Transfer of FTAA	DENR Administrative Order 2005-08	P60/Hectare but not less than P100,000 per Application	
Clearance Fee: FTAA Application	Pre-Development	Application for FTAA	DENR Administrative Order 2005-08	P5,000 per Application	
Registration Fee: FTAA Application	Pre-Development	Registration of FTAA	DENR Administrative Order 2005-08	P50,000 per Contract	
Conversion Fee: Approved Contract/Permit	Exploration Pre-Development Construction Commercial Operations	Conversion of Approved Contract/Permit (from Mineral Agreement to FTAA/vice versa or Exploration Permit to Mineral Agreement or FTAA, or Special Exploration Permit to Government Seabed Quarry Permit	DENR Administrative Order 2005-08	P100 per Hectare but not less than P50,000 per Conversion	
Conversion Fee: Mining Application	Exploration Pre-Development	Conversion of Mining Application from one form of mining application to another	DENR Administrative Order 2005-08	P10,000 per Conversion	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Transfer/Assignment Fee: Approved Contract Permit	Exploration Pre-Development Construction Commercial Operations	Transfer / Assignment of Exploration Permit, Mineral Agreement, Temporary Exploration Permit, Special Mines Permit, Government Seabed Quarry Permit, Government Dredging Permit or FTAA	DENR Administrative Order 2005-08	For approved Exploration Permit, Mineral Agreement, Temporary Exploration Permit, Special Mines Permit, Government Seabed Quarry Permit, Government Dredging Permit: P20/Hectare but not less than P50,000 per Transfer For FTAA: P20/Hectare but not less than P100,000 per Transfer	
Transfer/Assignment Fee: Application for Exploration Permit, Mineral Agreement, FTAA or Special Exploration Permit	Exploration Pre-Development	Transfer / Assignment of Application for Exploration Permit, Mineral Agreement, FTAA or Special Exploration Permit	DENR Administrative Order 2005-08	P10/Hectare but not less than P25,000 per transfer	
Amendment Fee: Application for/Approved Exploration Permit or Mineral Agreement (except reduction in applied area)	Exploration Pre-Development Construction Commercial Operations	Amendments in Application for or Approved Exploration Permit or Mineral Agreement	DENR Administrative Order 2005-08	P20/Hectare but not less than P25,000 per Application	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Amendment Fee: Application for/Approved FTAA (except reduction in applied area)	Exploration Pre-Development Construction Commercial Operations	Amendments in Application for or Approved FTAA	DENR Administrative Order 2005-08	P20/Hectare but not less than P50,000 per Application	
Evaluation Fee: Feasibility Study Report / Environmental Protection and Enhancement Program	Exploration Pre-Development	Evaluation of Feasibility Study Report or Environmental Protection and Enhancement Program	DENR Administrative Order 2005-08	P20,000 per Study Report or EPEP	
Application Fee: Certificate of Environmental Management and Community Relations Record	Exploration Pre-Development	Application for Certificate of Environmental Management and Community Relations Record	DENR Administrative Order 2005-08	P5,000 per Application	
Clearance Fee: Quarry or Sand and Gravel Permit		Application for Quarry or Sand and Gravel Permit if the proposed permit area is open for mining operations	DENR Administrative Order 2005-08	P2,000 per Application	
Clearance Fee: Guano Permit		Application for Guano Permit if the proposed permit area is open for mining operations	DENR Administrative Order 2005-08	P2,000 per Application	
Clearance Fee: Gemstone Gathering Permit		Application for Gemstone Gathering Permit if the proposed permit area is open for mining operations	DENR Administrative Order 2005-08	P2,000 per Application	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Filing Fee: Mineral Processing Permit Application or Renewal	Pre-Development	Application or Renewal for Mineral Processing Permit	DENR Administrative Order 2005-08	P50,000 per Application for Projects with Investments above P500 Million P20,000 per Application for Projects with Investments of P250 Million to P500 Million P10,000 per Application for Projects with Investments of P250 Million and below	
Transfer Fee: Mineral Processing Permit	Pre-Development Construction Commercial Operations	Transfer of Mineral Processing Permit	DENR Administrative Order 2005-08	P50,000 per Transfer for Projects with Investments above P500 Million P20,000 per Transfer for Projects with Investments of P250 Million to P500 Million P10,000 per Transfer for Projects with Investments of P250 Million and below	
Application Fee: Ore Transport Permit	Commercial Operations	Ore Transport	DENR Administrative Order 2005-08	P2,000 per Application for Metallic Ores P1,000 per Application for Non-Metallic Ores	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Certification Fee: Ore Transport	Commercial Operations	Ore Transport of products less than 2 metric tons	DENR Administrative Order 2005-08	P500 per Certification	
Application Fee: Purchaser's License, License to Purchase/Transfer Explosives or Blaster Foreman's License	Exploration Pre-Development Construction Commercial Operations	Purchase or transfer of explosives for mining or quarrying purposes	DENR Administrative Order 2005-08	Depends on type of license	
Occupation Fees	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Mining area located offshore	DENR Administrative Order 2005-08	For Exploration Permit, Mineral Agreement, FTAA, Temporary Exploration Permit, Special Mines Permit or Mining Lease Contract: P100 per Hectare in Mineral Reservation areas P75 per Hectare in non- Mineral Reservation areas	
Documentary Stamp Tax	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Various transactions	NIRC	Depends on type of transaction	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Capital Gains Tax	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Sales of shares of stock not traded in the Stock Exchange	NIRC	5% if net capital gains is not over P100,000 10% if net capital gains is in excess of P100,000	
Other Fees		Services rendered by the Bureau and/or its regional office ²²	DENR Administrative Order 2005-08	Depends on type of service rendered	
Payments to the Local Government					
Business Tax	Commercial Operations	Generation of revenues from mineral production in mining area	Gross revenues	Up to a maximum of 2% of the gross sale of goods produced Actual rates vary among municipalities	

22 The Bureau may perform or accomplish work or service for Government offices, agencies, instrumentalities or private parties and collect payment or charge therefor in accordance with the schedule hereinafter prescribed, which work or service shall include, but shall not be limited to, the following:

- a. To execute surveys of mining claims and other mineral lands for locations, patent, permit, contracts, lease or development purposes;
- b. To docket and conduct office and field investigations of conflicting mining locations;
- c. To perform geological, geophysical and geochemical surveys in onshore and offshore areas and make mineralographic, petrologic, petrographic and paleontologic examinations;
- d. To verify and investigate mineral discoveries and locations, exploration and development work;
- e. To perform fire and wet assays and smelting and metallurgical tests of ores and to sample ore piles for shipment;
- f. To check and evaluate ore reserves for the Securities and Exchange Commission, for other Government entities and/or private parties who may request or order for such work;
- g. To perform drafting or projection work;
- h. To issue blue or white prints of survey plan or sketch plan; and
- i. To do such other work and/or service to interested parties as may be requested and which is within the scope of the functions of the Bureau.

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Real Property Tax: Land	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Real property ownership	Fair market value of real property	1% of fair market value of property based on assessment level	
Real Property Tax: Buildings/Non-mobile Equipment	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Real property ownership	Fair market value of real property	1% of fair market value of property based on assessment level	
Community Tax	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Required payment to local government unit/s under the scope of mining area	Assessed value of real property and gross receipts	Maximum of P10,500 per year per individual or establishment computed as follows: For corporations: P500 community tax plus additional community tax amounting to P2 for every P5,000 worth of real property and P2 for every P5,000 of gross receipts.	

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Occupation Fees	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Mining area located onshore	DENR Administrative Order 2005-08	For Exploration Permit, Mineral Agreement, FTAA, Temporary Exploration Permit, Special Mines Permit or Mining Lease Contract: P100 per Hectare in Mineral Reservation areas P75 per Hectare in non- Mineral Reservation areas	
Special Education Fund	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Required payment for owners of real property	Assessed value of real property	1% of fair market value of real property based on assessment level	
Tax on Sand, Gravel and other Quarry Resources	Commercial Operations	Extraction of sand, gravel and other quarry resources	Fair market value of resources extracted	Not more than 10% of fair market value per cubic meter	
Application Fee: Quarry Permit	Pre-Development	Application for Quarry Permit	Set by Provincial/City Mining Regulatory Board		
Application Fee: Commercial Sand and Gravel Permit	Pre-Development	Application for Commercial Sand and Gravel Permit	Set by Provincial/City Mining Regulatory Board		
Application Fee: Industrial Sand and Gravel Permit	Pre-Development	Application for Industrial Sand and Gravel Permit	Set by Provincial/City Mining Regulatory Board		

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Application Fee: Exclusive Sand and Gravel Permit	Pre-Development	Application for Exclusive Sand and Gravel Permit	Set by Provincial/City Mining Regulatory Board		
Registration Fee: Quarry or Sand and Gravel Permit	Pre-Development	Registration of Quarry or Sand and Gravel Permit	Set by Provincial/City Mining Regulatory Board		
Application Fee: Guano Permit	Pre-Development	Application for Guano Permit	Set by Provincial/City Mining Regulatory Board		
Registration Fee: Guano Permit	Pre-Development	Registration of Guano Permit	Set by Provincial/City Mining Regulatory Board		
Application Fee: Gemstone Gathering Permit	Pre-Development	Application for Gemstone Gathering Permit	Set by Provincial/City Mining Regulatory Board		
Registration Fee: Gemstone Gathering Permit	Pre-Development	Registration of Gemstone Gathering Permit	Set by Provincial/City Mining Regulatory Board		
Quarry Fee	Commercial Operations	Quarry Operations	Set by Provincial/City Mining Regulatory Board		

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Other Mitigating Payments					
Development of Mining Technology and Geosciences ²³	Exploration Pre-Development Construction Commercial Operations	Implementation of required development program	Actual cost of development program	10% of a minimum of one percent (1%) of the direct mining and milling costs	
SDMP ²⁴	Exploration Pre-Development Construction Commercial Operations	Implementation of Approved SDMP	Approved SDMP	90% of a minimum of one percent (1%) of the direct mining and milling costs	

23 The following activities or expenditures shall be considered towards the development of mining, geosciences and processing technology and the corresponding manpower training and development:

- a. Advanced studies conducted in the mining area such as, but not limited to, institutional and manpower development and basic and applied research;
- b. Advanced studies, including the cost of publication thereof in referred technical journals or monographs accessible to the local scientific community, related to mining which are conducted by qualified researchers, as construed by the practices at the Department of Science and Technology, who are not employees of the mine;
- c. Expenditures for scholars, fellows and trainees on mining, geoscience and processing technology and related subjects such as community development and planning mineral and environmental economics;
- d. Expenditures on equipment and capital outlay as assistance for developing mining, geoscience and processing technology and the corresponding manpower training and development ; and
- e. Other activities that the Director may consider upon proper recommendation by the concerned professional organizations and/or research institutions, where appropriate.

24 The following activities or expenditures shall be considered in enhancing the development of mining and neighboring communities :

- a. Establishment and maintenance of community schools, hospitals, churches and recreational facilities which will be open to the general public whether or not they are mine employees;
- b. Construction and maintenance of community access roads, bridges, piers and wharves;
- c. Establishment and maintenance of communication, waterworks, sewerage and electric power systems which are accessible to mine employees and members of the community;
- d. Development and maintenance of community housing projects for mine employees and members of the community;
- e. Establishment of training facilities for manpower development for mine employees and members of the community ; and
- f. Establishment of livelihood industries for the dependents of the mine employees as well as for other members of the community.

**ANNEX 1. Audit Template
Matrix 1**

<i>Type of Tax / Fee</i>	<i>Mining Stage</i>	<i>Events/Transactions that Trigger Payments</i>	<i>Basis of Tax / Fee</i>	<i>Tax / Fee Rates</i>	<i>Remarks</i>
Final Mine Rehabilitation and/or Decommissioning Plan	Commercial operations	Annual provision for the cost of implementing approved FMR/DR according to prescribed payment ratio	Approved FMR/DR	Cost variable depending on approved FMR/DR	
Payments to Other Filipinos					
Royalties: Land Claimowners except IPs	Commercial Operations	Mineral production	Negotiated fee	Depends on negotiated contract	
Royalties: Ancestral Land	Commercial Operations	Mineral production	Gross revenue	At least 1% of gross revenue. Expenses for community development may be credited to or charged against said royalty.	
Easement Rights	Exploration Pre-Development	When mining areas are so situated that for purposes of more convenient operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons	Negotiated fee	Just compensation whose amount shall be first agreed upon by the parties and in accordance with P.D. No. 512, where appropriate	

In addressing the future mine development, the Contractor/Permit Holder/Lessee may involve the concerned communities, Local/National Government or concerned private institution in the preconstruction and social planning stage.

**ANNEX 1. Audit Template
Matrix 2**

	<i>Mining Stage</i>	<i>Source of Funds</i>	<i>Approving Party</i>	<i>Disbursing Party</i>	<i>Auditing Party</i>	<i>Remarks</i>
Contingent Liability and Rehabilitation Fund						
Mine Rehabilitation Fund Committee ²⁵ and the Multipartite Monitoring Team ²⁶	Exploration Pre-Development Construction Commercial Operations Rehabilitation	The expense for monitoring activities shall be chargeable against the Monitoring Trust Fund of the Mine Rehabilitation Fund.	CLRF Steering Committee	MRF Committee	CLRF Steering Committee	

25 The Mine Rehabilitation Fund Committee shall be composed of the following:

- a. Regional Director as Chair;
- b. Regional Executive Director (RED) of the Department as Co- Chair;
- c. Representative of the Autonomous Regional Government, where this is applicable, as Member;
- d. Representative from the Local Government Unit as Member;
- e. Representative from the local NGOs and community organizations, including People's Organizations, church or civic organizations, as Member; and
- f. Representative of the Contractor/ Permit Holder as Member.

26 The Multipartite Monitoring Team (MMT) shall be composed of the following:

- a. Representative from Regional Office as Head;
- b. Representative from Department Regional Office as Member;
- c. Representative of the Contractor/Permit Holder as Member.
- d. Representative from the affected community(ies) as Member;
- e. Representative from the affected Indigenous Cultural Community(ies), if any, as Member; and
- f. Representative from an environmental NGO.

**ANNEX I. Audit Template
Matrix 2**

	<i>Mining Stage</i>	<i>Source of Funds</i>	<i>Approving Party</i>	<i>Disbursing Party</i>	<i>Auditing Party</i>	<i>Remarks</i>
Mine Waste and Tailings Reserve Fund ²⁷	Exploration Pre-Development Construction Commercial Operations	Contractor / Permit Holder	CLRF Steering Committee	CLRF Steering Committee		
Rehabilitation Cash Fund ²⁸	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Contractor / Permit Holder	MRF Committee ²⁹	Contractor / Permit Holder	The Contractor/ Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.	

27 The Mine Waste and Tailings Reserve Fund is to be used for payment of compensation for damages caused by any mining operations. The MWT Reserve Fund shall also be utilized for research projects duly approved by the CLRF Steering Committee which are deemed necessary for the promotion and furtherance of its objectives.

28 The RCF shall be equivalent to ten percent (10%) if the total amount needed to implement the EPEP or Five Million Pesos (P5,000,000.00), whichever is lower.

29 Any one of the following shall be authorized to issue the instruction to the bank on behalf of the MRF Committee:

- a. The Chair,
- b. The Co-Chair or
- c. The designated representative of either (a) or (b).

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of thirty (30) calendar days from the time the written request for instruction is received by them, the Contractor/ Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

**ANNEX 1. Audit Template
Matrix 2**

	<i>Mining Stage</i>	<i>Source of Funds</i>	<i>Approving Party</i>	<i>Disbursing Party</i>	<i>Auditing Party</i>	<i>Remarks</i>
Monitoring Trust Fund ³⁰	Exploration Pre-Development Construction Commercial Operations Rehabilitation	Contractor / Permit Holder	Designated representatives of both the MRF Committee and the Contractor/Permit Holder	Multipartite Monitoring Team	The Contractor/ Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.	
Environmental Trust Fund	Exploration Pre-Development Construction Commercial Operations	Contractor / Permit Holder				
Social Development and Management Program	Exploration Pre-Development Construction Commercial Operations	Contractor / Permit Holder	MGB Regional Office to be affirmed by Central Office	Contractor / Permit Holder	MGB Central Office shall conduct audit of SDMP based on monitoring reports of MGB Regional office and internal monitoring report of Community Relations Officer	

³⁰ The MTF shall be in cash and in an amount to be determined by the MRF Committee which shall not be less than the amount of Fifty Thousand Pesos (P50,000.00) to cover maintenance and other operating budget for the transportation and travel expenses, cost of laboratory analysis, cost of supplies and materials, cost of communication services, cost of consultancy work and other reasonable expenses incurred by the monitoring team.

Annex 2. Audit Manual

FOR MATRIX 1

A. PAYMENTS TO THE NATIONAL GOVERNMENT

1 CORPORATE INCOME TAX

1.1 DOMESTIC AND RESIDENT FOREIGN CORPORATIONS

For **domestic corporations**³¹, the taxable income includes income earned from all sources (within or outside the Philippines). Income tax rate is currently pegged at 32 percent.

The same tax rate is applied to **resident foreign corporations**³². However, its tax base includes only net income earned from Philippine sources.

Corporate income tax is to be remitted to the concerned Bureau of Internal Revenue (BIR) Revenue District Office.

Refer to BIR Form No. 1702 to determine actual income tax paid. Tax return should be filed, with or without payment, on or before the 15th day of the fourth month following the close of the taxpayer's taxable year whether fiscal or calendar year.

Quarterly Income Tax Return (BIR Form No. 1702Q) is also filed, with or without payment, within sixty days following the close of each of the first three quarters of the taxable year whether fiscal or calendar year.

1.1.1 MINIMUM CORPORATE INCOME TAX

To deter corporations that consistently declare losses or pay very small income taxes, the law requires corporations to pay a **minimum corporate income tax** of 2 percent on gross income on an annual basis, beginning its fourth year of operations, if the minimum corporate income tax is greater than its regular corporate income tax liability.

Any excess of the minimum corporate income tax over the regular income tax shall be carried forward and credited against the normal tax for the three immediately succeeding taxable years.

1.2 NON-RESIDENT FOREIGN CORPORATIONS

Non-resident foreign corporations are taxed at 32 percent of the gross amount of Philippine-source income such as the following:

- Dividends

³¹ A domestic corporation is a corporation organized under Philippine laws.

³² A resident foreign corporation is a corporation organized under the laws of a foreign country but is one considered doing business in the Philippines (continuity of commercial dealings).

- Rents
- Royalties
- Compensation
- Remuneration for technical services
- Others

This tax is withheld at source.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

1.3 REGIONAL OR AREA HEADQUARTERS AND REGIONAL OPERATING HEADQUARTERS OF MULTINATIONAL COMPANIES

Regional or area headquarters shall not be subject to income tax.

Regional operating headquarters shall pay a tax of 10 percent of their taxable income.

1.4 TAX ON CORPORATIONS IMPROPERLY ACCUMULATING PROFITS

A 10-percent income tax is imposed on the improperly accumulated profits of a corporation, except in the case of publicly held corporations. When a corporation allows its profit to accumulate without justifiable needs, then the law presumes that it is avoiding tax on shareholders³³.

Improperly accumulated taxable income refers to taxable income adjusted by:

- Income exempt from tax;
- Income excluded from gross income;
- Income subject to final tax; and
- Amount of net operating loss carry-over deducted;

and reduced by the sum of:

- Dividends actually or constructively paid, and
- Income tax paid for the taxable year.

Tax is to be remitted to the concerned Bureau of Internal Revenue (BIR) Revenue District Office.

Refer to BIR Form No. 1704 for report on amount of tax paid, if any, for improperly accumulating profits. Tax return should be filed within 15 days after the close of the year immediately succeeding taxpayer's covered taxable year.

2 WITHHOLDING TAX SYSTEM

³³ Individual shareholders, depending on their status, pay 10 to 25 percent tax on dividends received from corporations.

Under the withholding tax system, the payer is required to deduct and withhold from the payee and to remit to the government the withholding tax. An employer is likewise required to withhold income tax from the salaries and wages of its employees.

2.1 TAX ON PAYROLL

Employers are required by law to withhold income tax from the salaries and wages of its employees. The rates of income tax on citizens, resident aliens and non-resident aliens engaged in trade or business are as follows:

Annual Gross Income	Income Tax Rate
Not over P10,000	5 percent
Over P10,000 but not over P30,000	P 500 plus 10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500 plus 15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500 plus 20% of the excess over P70,000
Over P140,000 but not over P250,000	P22,500 plus 25% of the excess over P140,000
Over P250,000 but not over P500,000	P50,000 plus 30% of the excess over P250,000
Over P500,000	P125,000 plus 32% of the excess over P500,000

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City/Municipality where the principal office is located.

The return for final withholding tax should be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

Refer to BIR Form/s No. 1601 for report on remittance return of income taxes withheld on compensation.

2.2 TAX ON FOREIGN STOCKHOLDERS' DIVIDENDS

Dividends received by a domestic or resident foreign corporation from a domestic corporation shall not be subject to tax.

A 15 percent final withholding tax rate is imposed on the amount of cash and/or property dividends received by a non-resident foreign corporation from a domestic corporation.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

2.3 TAX ON PROFIT REMITTANCE TO PRINCIPAL

Remittance of profits by a branch to its principal office is subject to a tax of 15 percent of the total profits applied or earmarked for remittance without any deduction for the tax component

thereof. However, corporations registered with the Philippine Economic Zone Authority are exempt from this tax.

Interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

2.4 TAX ON INTEREST INCOME

A 20-percent final tax is imposed on the amount of interest on any currency bank deposit and yield or other monetary benefits from deposit substitutes and from trust funds and similar arrangements received by domestic and resident foreign corporations.

However, interest income derived by a domestic or a resident foreign corporation from a depository bank with foreign currency deposit units (FCDUs) is subject to a 7.5-percent final tax.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

2.5 TAX ON INTEREST PAYMENTS TO FOREIGN LOANS

Non-resident foreign corporations are subject to a 15 percent final withholding tax rate on the amount of interest payments on foreign loans.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

3 CAPITAL GAINS TAX

3.1 CAPITAL GAINS FROM SALE OR EXCHANGE OF SHARES OF STOCK NOT LISTED AND TRADED IN THE LOCAL STOCK EXCHANGE

A final tax on net capital gains of domestic and foreign corporations is imposed from the sale, exchange, or other disposition of shares of stock in a domestic corporation not listed or traded in the local stock exchange. Prescribed tax rates are as follows:

- 5 percent capital gains tax on net gains not exceeding P100,000.
- 10 percent tax on amount in excess of P100,000.

Refer to BIR Form No. 1707 for report on capital gains tax paid from sale or exchange of shares of stock not listed and traded in the local stock exchange. Tax return is filed within 30 days after each cash sale, barter, exchange or other disposition of shares of stock not traded through the local stock exchange. In case of installment sale, the return is to be filed within 30 days following the receipt of the first down payment and within 30 days following each subsequent installment payment. Annual Capital Gains Tax Return (BIR Form No. 1707-A) is filed on or before the 15th day of the 4th month following the close of the taxable year covering all transactions of the preceding taxable year.

Taxes deducted and withheld by withholding agents are covered by a return and paid to the Treasurer of the City / Municipality where the principal office is located.

The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

3.2 CAPITAL GAINS FROM SALE OR EXCHANGE OF LANDS AND/OR BUILDINGS

A final tax of 6 percent is imposed on the gains presumed to have been realized on the sale, exchange or disposition of lands and/or buildings by a domestic corporation which are not actually used in the business of a corporation and are treated as capital assets. The tax is based on the gross selling price or fair market value, whichever is higher, of such lands and/or buildings.

Refer to BIR Form No. 1706 for report on capital gains tax paid from sale or exchange of lands and/or buildings. Tax return is filed within 30 days following each sale, exchange or disposition of real property. In case of installment sale, the return shall be filed within 30 days following the receipt of the 1st down payment and within 30 days following each subsequent installment payment. One return is filed for every transfer document regardless of the number of each property sold, exchanged or disposed of.

However, filing of the return is not required when the real property transaction involves the following:

- it is not classified as a capital asset;
- not located in the Philippines;
- disposition is gratuitous;
- disposition is pursuant to the Comprehensive Agrarian Reform.

Tax return is to be filed with the BIR Revenue District Office having jurisdiction over the place where the property being transferred is located.

4 EXCISE TAX ON MINERAL PRODUCTS

Excise tax is imposed on minerals, mineral products and quarry resources according to a tax rate as follows:

- P10 per metric ton for coal and coke;
- Two (2) percent of the actual market value of the gross output of all metallic and nonmetallic minerals, and quarry resources locally extracted or produced. In case of importation, the excise tax is based on the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value added tax.

Refer to BIR Form No. 2200M for report on excise tax declaration. The return should be filed and the excise tax on nonmetallic mineral or mineral products, or quarry resources is due and payable upon removal of such products from the locality where mined or extracted. For locally produced or extracted metallic mineral or mineral products, the person liable should file a return and pay the tax within 15 days after the end of the calendar quarter when such products were removed.

The return should be filed with and the tax paid to any authorized agent bank or Revenue Collection Officer, or Treasurer of the City/Municipality concerned.

5 DOCUMENTARY STAMP TAX

Documentary Stamp Tax is a tax imposed upon documents, instruments, loan agreements, sales and transfers of obligations, right or property incident thereto.

Refer to BIR Form No. 2000 for report on documentary stamps tax declaration. The return should be filed within 5 days after the close of the month when the taxable document was made, signed, accepted or transferred. The tax return should be filed with and the tax due should be paid through the authorized agent bank within the territorial jurisdiction of the Revenue District Office which has jurisdiction over the principal place of business of the taxpayer. In places where there is no authorized agent bank, the return should be filed with the Revenue District Officer, collection agent, or Treasurer of the City/Municipality in which the taxpayer has his principal place of business.

The most common transactions subject to documentary stamp tax are as follows:

5.1 STAMP TAX ON DEBENTURES AND CERTIFICATES OF INDEBTEDNESS

A documentary stamp tax of P1.50 is imposed for every P200, or a fraction thereof, of the face value of all debentures and certificates of indebtedness issued by any association, company or corporation.

5.2 STAMP TAX ON ORIGINAL ISSUE OF SHARES OF STOCK

A documentary stamp tax of P2.00 is imposed for every P200, or a fraction thereof, of the par value of shares of stock on every original issue by any association, company or corporation.

5.3 STAMP TAX ON SALES, AGREEMENTS TO SELL, MEMORANDA OF SALES, DELIVERIES OR TRANSFER OF DUE-BILLS, CERTIFICATES OF OBLIGATION, OR SHARES OF CERTIFICATES OF STOCK

A documentary stamp tax of P1.50 is imposed for every P200, or a fraction thereof, of all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation or shares of certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock,

5.4 **STAMP TAX ON ALL BONDS, LOAN AGREEMENTS, PROMISSORY NOTES, BILLS OF EXCHANGE, DRAFTS, INSTRUMENTS AND SECURITIES ISSUED BY THE GOVERNMENT OR ANY OF ITS INSTRUMENTALITIES, DEPOSIT SUBSTITUTE, DEBT INSTRUMENTS, CERTIFICATES OF DEPOSITS BEARING INTEREST AND OTHERS NOT PAYABLE ON SIGHT OR DEMAND**

A documentary stamp tax of P0.30 is imposed for every P200, or a fraction thereof, on all bonds, loan agreements, bills of exchange, drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute, debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note.

5.5 **STAMP TAX ON POLICIES OF INSURANCE UPON PROPERTY**

A documentary stamp tax of P0.50 is imposed for every P4.00, or a fraction thereof, of the amount of premium charged on all insurance policies or other instruments by which insurance is made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lighting.

5.6 **STAMP TAX ON CERTIFICATES**

A documentary stamp tax of P15.00 is imposed on each certificate of damages or otherwise, and on every certificate or document issued by any customs officer, marine surveyor, and on each certificate issued by a notary public, and on each certificate of any description required by law or by rules or regulations of a public office, or which is issued for the purpose of giving information, or establishing proof of a fact.

5.7 **STAMP TAX ON DEEDS OF SALE AND CONVEYANCES OF REAL PROPERTY**

A documentary stamp tax of P15.00 is imposed for every P1,000.00, or a fraction thereof, of the consideration, or value received or contracted to be paid for the real property.

5.8 **FILING AND PAYMENT OF TAX**

Tax return is to be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred, and the tax is to be paid at the same time the return is filed.

6 CUSTOMS DUTIES

Customs duties are taxes on imports or exports. Importation begins from the time the carrying vessel or aircraft enters Philippine territorial jurisdiction with the intention to unload therein to the time the goods are released or withdrawn from the customhouse upon payment of the customs duties or with legal permit to withdraw.

7 VALUE ADDED TAX

A twelve (12) percent value-added tax is imposed on any person who, in the course of trade or business sells, barter, exchanges, leases goods or properties, renders services, or engages in similar transactions and who imports goods.

The value-added tax is based on the gross selling price or gross value in money of the goods or properties sold or bartered. In case of imported goods, the value-added tax is based on

the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes (if any), and any other charges as may be due.

In computing the tax liability, the taxpayer subtracts from the tax due on sales the taxes on his purchase of raw materials.

If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over the succeeding quarters.

Export sales are zero-rated, while certain transactions such as services rendered by regional headquarters of multinational companies are exempt from VAT.

Refer to BIR Form No. 2550 for report on value-added tax declaration. The return should be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or Treasurer of the City/Municipality located within the revenue district where the taxpayer is registered. The return should be filed not later than the 25th day following the close of each taxable quarter.

8 ROYALTY OF MINERALS AND MINERAL PRODUCTS EXTRACTED FROM MINERAL RESERVATIONS

Mining operations in mineral reservations may be undertaken in any of the following modes:

- Exploration permit;
- Mineral Agreement;
- Financial or Technical Assistance Agreement;
- Small-scale mining permit; or
- Quarry permit.

Companies operating within mineral reservations are required to pay a royalty of not less than five (5) percent of the market value of the gross output of minerals and mineral products extracted or produced from mineral reservations exclusive of all other taxes.

Royalty payment should be made to the Mines and Geosciences Bureau (MGB).

9 MINE WASTE AND TAILINGS RESERVE FUND

Mine waste and tailings fees are to be collected semiannually from each operating Contractor/Lessee/Permit Holder based on the amounts of mine waste and mill tailings it generated for the said period. The schedule of fees collected is as follows:

- P0.05 for every metric ton of mine waste produced
- P0.10 for every metric ton of mill tailings generated

Above fees apply except in cases where mine waste and mill tailings were used in the following manner:

- Filling materials for underground mine openings;
- Filling materials for surface mine openings;
- Filling materials for engineered tailings dams, roads and housing areas;
- Concreting and manufacture of concrete products; and
- Mine waste impounded for future use.

The amount of fees collected is accrued to a Mine Waste and Tailings (MWT) Reserve Fund and will be deposited in a government depository bank to be used for payment of compensation for damages caused by any mining operations.

Mine waste and tailings fees are payable to the Mines and Geosciences Bureau within forty-five (45) calendar days after the end of each semester. These are based on the sworn semiannual report (MGB Form No. 18-1) that is to be submitted to the Bureau, copy furnished the concerned Regional Office, by each operating Contractor/Lessee/Permit Holder.

Non-submission of semiannual reports disqualifies the Contractor/Lessee/Permit Holder from availing of the exemption from payment of mine waste and tailings fees and a penalty of P5,000. Failure to comply with payments of the mine waste and tailings fees also entails a ten percent (10%) surcharge to the principal amount for every month of delay.

10 GOVERNMENT SHARE IN MINERAL AGREEMENTS

10.1 GOVERNMENT SHARE IN CO-PRODUCTION AND JOINT VENTURE AGREEMENTS

The share of the Government in Co-Production and Joint Venture Agreements is to be negotiated by the Government and the Contractor taking into consideration the following factors:

- Capital investment in the project;
- Risks involved;
- Contribution of the project to the economy; and
- Other factors that will provide for a fair and equitable sharing between the parties.

The Government share should be paid to the nearest BIR Revenue District Office where the mining area is located.

10.2 ADDITIONAL SHARE IN FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT

Prior to the commencement of Development and Construction Phase, the Contractor selects one of the formulas for calculating the Additional Government Share which the Contractor wishes to apply to all of its mining operations. The options are as follows:

- **Fifty-Fifty Sharing of the Cumulative Present Value of Cash Flows.** The Additional Government Share will be equivalent to an amount which when aggregated with the cumulative present value of Government Share during the previous Contract Years and the Basic Government Share for the current Contract Year is equivalent to a minimum of fifty percent (50%) of the Cumulative Present Value of Project Cash Flow before financing for the current Contract Year.
- **Profit Related Additional Government Share.** The Additional Government Share is based on twenty-five percent (25%) of the additional profits once the arithmetic average of the ratio of Net Income After Tax To Gross Output for the current and previous taxable years is 0.40 or higher rounded off to the nearest two decimal places.

The computation of the Additional Government Share will start immediately after the recovery period. If the computation covers a period of less than one year, the Additional Government Share corresponding to this period is computed pro-rata wherein the Additional Government Share during the year shall be multiplied by the fraction of the year after recovery.

Payment of the Additional Government Share starts after the recovery period and is paid to the Mines and Geosciences Bureau within fifteen (15) days after the filing and payment of the final income tax return during the taxable year to the Bureau of Internal Revenue. Late filing and payment of the Additional Government Share will be subject to the same penalties applicable to late filing of income tax returns.

10.3 GOVERNMENT SHARE IN MINING OPERATIONS WITHIN MINERAL RESERVATIONS

For Mineral Production Sharing Agreements, other Mineral Agreements or FTAA within the Mineral Reservations, the Government share shall be in addition to the royalties payable to the Government.

The Government share should be paid directly to the Mines and Geosciences Bureau.

10.4 PAYMENT OF GOVERNMENT SHARE

The Government share in a Mineral Agreement and FTAA is to be paid to the nearest Bureau of Internal Revenue (BIR) office where the mining/contract area is located.

The Government share in mining operations within Mineral Reservations is to be paid directly to the Mines and Geosciences Bureau in addition to the royalty due. The share of the Bureau from the royalty shall be paid separately and directly to the Bureau.

11 DRILLING FUND

Drilling equipment of the Mines and Geosciences Bureau may be leased to Permittees/Lessees/Contractors/Permit Holders desiring to conduct exploration and development work for a fee. Rental fees depend on the type of equipment leased to be paid to the Bureau.

All rental fees of drilling equipment is accrued to a Drilling Fund, which would be used for the purchase of supplies, materials and spare parts needed in the repair of drilling equipment.

12 MINES SURVEY, INVESTIGATION AND MONITORING FUND

The Mines and Geosciences Bureau may perform or accomplish work or service for Government offices, agencies, instrumentalities or private parties. Such work or service includes, but not limited to, the following:

- To execute surveys of mining claims and other mineral lands for locations, patent, permit, contracts, lease or development purposes;
- To docket and conduct office and field investigations of conflicting mining locations;
- To perform geological, geophysical and geochemical surveys in onshore and offshore areas and make mineralographic, petrologic, petrographic and paleontologic examinations;
- To verify and investigate mineral discoveries and locations, exploration and development work;
- To perform fire and wet assays and smelting and metallurgical tests of ores and to sample ore piles for shipment;
- To check and evaluate ore reserves for the Securities and Exchange Commission, for other Government entities and/or private parties who may request or order for such work;
- To perform drafting or projection work;
- To issue blue or white prints of survey plan or sketch plan; and

- To do such other work and/or service to interested parties as may be requested and which is within the scope of the functions of the Bureau.

All payments and charges for work performed or to be performed by the Bureau or Regional Office is accrued to a Mines Survey, Investigation and Monitoring Fund of the Bureau/Regional Office and deposited as Trust Fund.

13 FILING FEES

13.1 EXPLORATION PERMIT APPLICATION

A Qualified Person seeking to apply for an Exploration Permit requires payment of a filing fee amounting to P60 per hectare of the proposed permit area, but not less than P50,000 per application. Filing fee is to be paid to the concerned MGB Regional Office upon submission of the documentary requirements.

13.2 MINERAL AGREEMENT APPLICATION

A Qualified Person seeking to apply for a Mineral Agreement requires payment of a filing fee amounting to P60 per hectare of the proposed permit area, but not less than P50,000 per application. Filing fee is to be paid to the concerned MGB Regional Office upon submission of the documentary requirements.

13.3 FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT APPLICATION

A Qualified Person seeking to apply for a Financial or Technical Assistance Agreement requires payment of a filing fee amounting to P60 per hectare of the proposed permit area, but not less than P100,000 per application. Filing fee is to be paid to the concerned MGB Regional Office upon submission of the documentary requirements.

13.4 APPLICATION FOR TEMPORARY EXPLORATION PERMIT / SPECIAL MINES PERMIT / SPECIAL EXPLORATION PERMIT / GOVERNMENT SEABED QUARRY PERMIT / GOVERNMENT DREDGING PERMIT

A Qualified Person seeking to apply for a Temporary Exploration Permit / Special Mines Permit / Special Exploration Permit / Government Seabed Quarry Permit / Government Dredging Permit requires payment of a filing fee amounting to P20 per hectare of the proposed permit area, but not less than P50,000 per application. Filing fee is to be paid to the concerned MGB Regional Office upon submission of the documentary requirements.

13.5 MINERAL PROCESSING PERMIT APPLICATION OR RENEWAL

A Qualified Person seeking to apply for a Mineral Processing Permit requires payment of a filing fee to be paid to the concerned MGB Regional Office upon submission of the documentary requirements. Filing fees for a mineral processing permit application or renewal are as follows:

- P50,000 per application for projects with investments above P500 million;
- P20,000 per application for projects with investments of P250 million to P500 million; or
- P10,000 per application for projects with investments of P250 million and below.

14 CLEARANCE FEES

14.1 EXPLORATION PERMIT APPLICATION

A clearance fee of P5,000 per application is imposed before an applicant for an Exploration Permit can be issued the necessary area status/consent/clearance from pertinent Department sector/s affected by the Exploration permit.

Clearance fee is to be paid to the Mines and Geosciences Bureau for areas inside mineral reservations, or the concerned Regional Office for areas outside mineral reservations upon written notice that the proposed permit area is open for mining applications.

14.2 MINERAL AGREEMENT APPLICATION

A clearance fee of P5,000 per application is imposed before an applicant for a Mineral Agreement can be issued the necessary area status/consent/clearance from pertinent Department sector/s affected by the Mineral Agreement.

Clearance fee is to be paid to the Mines and Geosciences Bureau for areas inside mineral reservations, or the concerned Regional Office for areas outside mineral reservations upon written notice that the proposed contract area is open for mining applications.

14.3 FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT APPLICATION

A clearance fee of P5,000 per application is imposed before an applicant for a Financial and Technical Assistance Agreement can be issued the necessary area status/consent/clearance from pertinent Department sector/s affected by the Financial and Technical Assistance Agreement.

Clearance fee is to be paid to the Mines and Geosciences Bureau for areas inside mineral reservations, or the concerned Regional Office for areas outside mineral reservations upon written notice that the proposed contract area is open for mining applications.

14.4 QUARRY OR SAND AND GRAVEL PERMIT

A clearance fee of P2,000 per application is imposed before an applicant for a Quarry or Sand and Gravel Permit can be issued the necessary area status/consent/clearance from the relevant government agencies.

Clearance fee is to be paid to the concerned MGB Regional Office upon written notice that the proposed permit area is open for mining applications.

14.5 GUANO PERMIT

A clearance fee of P2,000 per application is imposed before an applicant for a Guano Permit can be issued the necessary area status/consent/clearance from the relevant government agencies.

Clearance fee is to be paid to the concerned MGB Regional Office upon written notice that the proposed permit area is open for mining applications.

14.6 GEMSTONE GATHERING PERMIT

A clearance fee of P2,000 per application is imposed before an applicant for a Gemstone Gathering Permit can be issued the necessary area status/consent/clearance from the relevant government agencies.

Clearance fee is to be paid to the concerned MGB Regional Office upon written notice that the proposed permit area is open for mining applications.

15 REGISTRATION FEES

15.1 EXPLORATION PERMIT APPLICATION

A registration fee of P5,000 per application is imposed before an applicant for an Exploration Permit may register the approved Permit to the Mines and Geosciences Bureau for areas inside mineral reservations; or the concerned Regional Office for areas outside mineral reservations.

Registration fee is to be paid to the concerned MGB Regional Office upon evaluation that all terms and conditions are in order and that the subject area has been cleared from any conflict.

15.2 MINERAL AGREEMENT APPLICATION

A registration fee of P20,000 per application is imposed before an applicant may register the approved Mineral Agreement to the Mines and Geosciences Bureau for areas inside mineral reservations; or the concerned Regional Office for areas outside mineral reservations.

Registration fee is to be paid to the concerned office upon written notice of the approval of the Mineral Agreement by the Secretary. Registration of the Mineral Agreement should be made within 15 working days from receipt of the written notice.

15.3 FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT APPLICATION

A registration fee of P50,000 per application is imposed before an applicant may register the approved Financial or Technical Assistance Agreement to the Mines and Geosciences Bureau for areas inside mineral reservations; or the concerned Regional Office for areas outside mineral reservations.

Registration fee is to be paid to the concerned office upon written notice of the approval of the Financial or Technical Assistance Agreement by the President. Registration of the Mineral Agreement should be made within 15 working days from receipt of the written notice.

16 CONVERSION FEES

16.1 CONVERSION OF APPROVED CONTRACT/PERMIT

A conversion fee of P100 per hectare is imposed upon filing intent to convert an approved Contract or Permit. Such conversion may be under any of the following modes:

- Conversion from Mineral Agreement to Financial and Technical Assistance Agreement;
- Conversion from Financial and Technical Assistance Agreement to Mineral Agreement;
- Conversion from Exploration Permit to Mineral Agreement or Financial and Technical Assistance Agreement; or
- Conversion from Exploration Permit to Special Exploration Permit to Government Seabed Quarry Permit.

Conversion fee should be not less than P50,000 per conversion, payable to the Mines and Geosciences Bureau.

16.2 CONVERSION OF MINING APPLICATION FROM ONE FORM OF MINING TO ANOTHER

A conversion fee of P10,000 is imposed upon filing intent to convert totally or partially a Mineral Agreement into another form of Mineral Agreement. Conversion fee is payable to the Mines and Geosciences Bureau.

17 TRANSFER/ASSIGNMENT FEES

17.1 TRANSFER/ASSIGNMENT OF APPROVED CONTRACT/PERMIT

A transfer/assignment fee of P20 per hectare is imposed in the event of transfer or assignment to another Qualified Person of any of the following approved contract/permit:

- Exploration Permit;
- Mineral Agreement;
- Temporary Exploration Permit;
- Special Mines Permit;
- Government Seabed Quarry Permit; or
- Government Dredging Permit.

Transfer/assignment fee should not be less than P50,000 per conversion, payable to the Mines and Geosciences Bureau.

For transfer/assignment of an approved Financial or Technical Assistance Agreement, transfer/assignment fee is P20 per Hectare but not less than P100,000 per conversion.

17.2 TRANSFER/ASSIGNMENT OF APPLICATION FOR MINING PERMIT

A transfer/assignment fee of P10 per hectare is imposed in the event of transfer or assignment to another Qualified Person of an application for any of the following contract/permit:

- Exploration Permit;
- Mineral Agreement;
- Financial or Technical Assistance Agreement; or
- Special Exploration Permit.

Transfer/assignment fee should not be less than P25,000 per conversion, payable to the Mines and Geosciences Bureau.

17.3 TRANSFER OF MINERAL PROCESSING PERMIT

A transfer fee is imposed in the event of transfer to another Qualified Person of an approved mineral processing permit. Schedule of fees is as follows:

- P50,000 per transfer for projects with investments above P500 million;
- P20,000 per transfer for projects with investments of P250 million to P500 million;
- P10,000 per transfer for projects with investments of P250 million and below.

Transfer fee is payable to the Mines and Geosciences Bureau.

18 AMENDMENT FEES

18.1 AMENDMENT IN APPLICATION FOR OR APPROVED EXPLORATION PERMIT OR MINERAL AGREEMENT

An amendment fee of P20 per hectare is imposed in the event of an amendment in the application for or approved Exploration Permit or Mineral Agreement. Amendment fee should not be less than P25,000 per application, payable to the Mines and Geosciences Bureau.

18.2 AMENDMENT IN APPLICATION FOR OR APPROVED FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT

An amendment fee of P20 per hectare is imposed in the event of an amendment in the application for or approved Financial or Technical Assistance Agreement. Amendment fee should not be less than P50,000 per application, payable to the Mines and Geosciences Bureau.

19 EVALUATION FEE FOR FEASIBILITY STUDY REPORT OR ENVIRONMENTAL PROTECTION AND ENHANCEMENT PROGRAM

An evaluation fee of P20,000 is imposed for the evaluation of a feasibility study report or environmental protection and enhancement program, payable to the Mines and Geosciences Bureau.

20 APPLICATION FEES

20.1 CERTIFICATE OF ENVIRONMENTAL MANAGEMENT AND COMMUNITY RELATIONS RECORD

An application fee of P5,000 is imposed for the application for Certificate of Environmental Management and Community Relations Record, payable to the Mines and Geosciences Bureau.

20.2 ORE TRANSPORT PERMIT

An application fee is imposed for the application for Ore Transport Permit. Schedule of fees are as follows:

- P2,000 per application for metallic ores; or
- P1,000 per application for non-metallic ores.

Application fee is payable to the concerned MGB Regional Office.

20.3 PURCHASER'S LICENSE, LICENSE TO PURCHASE/TRANSFER OR BLASTER FOREMAN'S LICENSE

An application fee is imposed for the application of the following licenses necessary for the purchase or transfer of explosives for mining or quarrying purposes such as the following:

- Purchaser's License;
- License to Purchase / Transfer; or
- Blaster Foreman's License.

Application fee is payable to the concerned MGB Regional Office upon submission of documentary requirements.

21 CERTIFICATION FEES

21.1 ORE TRANSPORT

A certification fee of P500 is imposed for the transport of ores, minerals, or mineral products less than two metric tons.

Certification fee is payable to the concerned MGB Regional Office.

22 OCCUPATION FEES

22.1 MINING AREA LOCATED OFFSHORE

An occupation fee is imposed for all registered mining permits and minerals agreements according to the following schedule:

- P100 per hectare for projects located in Mineral Reservation areas; or
- P75 per hectare for projects located outside Mineral Reservation areas.

For mining areas located offshore, occupation fees should be paid to the Mines and Geosciences Bureau.

The occupation fees should be paid on the date the Mineral Agreement/FTAA is registered with the appropriate office and on the same date every year thereafter. A surcharge of 25 percent is added as penalty in the event the fee is not paid on the date specified.

B. PAYMENTS TO THE LOCAL GOVERNMENT

1 BUSINESS TAX

A tax on business is imposed by a host municipality based on gross sales or receipts of the preceding calendar year. Tax rate may be up to a maximum of 2 percent of the gross sales or receipts of the previous calendar year. Actual rate may vary among municipalities. Tax rate imposed by a City may exceed the maximum rate allowed for the municipality by not more than 50 percent.

Tax should be paid to the Treasurer of the City/Municipality where the mining area is located. A surcharge of 25 percent is added as penalty in the event the fee is not paid on the due date and an interest at the rate not exceeding 2 percent per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

2 REAL PROPERTY TAX

2.1 REAL PROPERTY TAX ON LAND

An annual tax is imposed on real property (land) equivalent to 1 percent of the assessed value. Real property tax is paid to the Treasurer of the Province/City where the real property is located.

2.2 REAL PROPERTY TAX ON BUILDINGS AND NON-MOBILE EQUIPMENT

An annual tax is imposed on real property (land) equivalent to 1 percent of the assessed value. Real property tax is paid to the Treasurer of the Province/City where the real property is located.

Machinery and equipment used for pollution control and environmental protection are exempted from payment of real property tax.

3 COMMUNITY TAX

An annual community tax of up to P10,500 is imposed upon every corporation, whether domestic or resident foreign, engaged in or doing business in the Philippines.

Tax should be paid not later than the last day of February. Corporations established and organized on or before the last day of June are liable for the community tax for that year. Corporations established and organized on or before the last day of March have 20 days within which to pay the community tax without becoming delinquent. Corporations established and organized on or after the first day of July are not subject to the community tax for that year. If the tax is not paid within the time prescribed period, a surcharge of twenty-four percent (24%) per annum of the unpaid amount is charged from the due date until it is paid.

Community tax is paid in the place where the principal office of the company is located. A community tax certificate is issued upon payment of community tax.

4 OCCUPATION FEES

An occupation fee is imposed for all registered mining permits and minerals agreements according to the following schedule:

- P100 per hectare for projects located in Mineral Reservation areas; or
- P75 per hectare for projects located outside Mineral Reservation areas.

For mining areas located onshore, occupation fees should be paid to the Treasurer of the Municipality/City where the onshore mining areas are located.

The occupation fees should be paid on the date the Mineral Agreement/FTAA is registered with the appropriate office and on the same date every year thereafter. A surcharge of 25 percent is added as penalty in the event the fee is not paid on the date specified.

If the applied area lies in several municipalities, the Director (in the case of Mineral Reservations) or the Regional Director (in the case areas outside Mineral Reservations) would determine the amount to be paid by the Contractor based on official maps available in the respective offices and endorses the same to the concerned Municipality/City Treasurer. If disagreements arise from the payment later, the Provincial Governor would decide on the proportionate amount to be paid to the municipalities.

5 SPECIAL EDUCATION FUND

An additional tax on real property equivalent to an annual tax of one percent (1%) on the assessed value of real property is to be collected for the Special Education Fund.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

6 TAX ON SAND, GRAVEL AND OTHER QUARRY RESOURCES

The province may levy and collect not more than 10 percent of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7 APPLICATION FEES

7.1 QUARRY PERMIT

An application fee is imposed on the application for a quarry permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7.2 COMMERCIAL SAND AND GRAVEL PERMIT

An application fee is imposed on the application for a commercial sand and gravel permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7.3 INDUSTRIAL SAND AND GRAVEL PERMIT

An application fee is imposed on the application for an industrial sand and gravel permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7.4 EXCLUSIVE SAND AND GRAVEL PERMIT

An application fee is imposed on the application for an exclusive sand and gravel permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7.5 GUANO PERMIT

An application fee is imposed on the application for a guano permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

7.6 GEMSTONE GATHERING PERMIT

An application fee is imposed on the application for a gemstone gathering permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

8 REGISTRATION FEES

8.1 QUARRY OR SAND AND GRAVEL PERMIT

A registration fee is imposed on the registration of a quarry or sand and gravel permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

8.2 GUANO PERMIT

A registration fee is imposed on the registration of a guano permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

8.3 GEMSTONE GATHERING PERMIT

A registration fee is imposed on the registration of a gemstone gathering permit at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

9 QUARRY FEE

A quarry fee is imposed on all quarry operations at a rate set by the Provincial/City Mining Regulatory Board.

Tax should be paid to the Treasurer of the Province/City where the mining area is located.

C. OTHER MITIGATING PAYMENTS

1 DEVELOPMENT OF MINING TECHNOLOGY AND GEOSCIENCES

Credited activities for the development of mining technology and geosciences include the following:

- Advanced studies conducted in the mining area such as, but not limited to, institutional and manpower development and basic and applied research;
- Advanced studies, including the cost of publication thereof in referred technical journals or monographs accessible to the local scientific community, related to mining which are conducted by qualified researchers, as construed by the practices at the Department of Science and Technology, who are not employees of the mine;
- Expenditures for scholars, fellows and trainees on mining, geoscience and processing technology and related subjects such as community development and planning mineral and environmental economics;
- Expenditures on equipment and capital outlay as assistance for developing mining, geoscience and processing technology and the corresponding manpower training and development ; and
- Other activities that the Director may consider upon proper recommendation by the concerned professional organizations and/or research institutions, where appropriate.

Information, education and communication campaign for the development of mining, geosciences and processing technology and the corresponding manpower training and development are also considered under this program.

Funds for the implementation of this program should be equivalent to 10 percent of a minimum of 1 percent of direct mining and milling costs.

2 SOCIAL DEVELOPMENT AND MONITORING PROGRAM

The Social Development and Monitoring Program (SDMP) is a comprehensive five-year plan of the Contractor / Permit Holder / Lessee authorized to conduct annual mining and milling operations towards the sustained improvement in the living standards of the host and neighboring communities by creating responsible, self-reliant and resource-based communities capable of developing, implementing and managing community development programs, projects and activities in a manner consistent with the principle of people empowerment.

Credited activities under the SDMP include the following:

- Establishment/construction, development and maintenance of infrastructure such as community schools, hospital, churches, roads, bridges etc;
- Establishment of livelihood industries including reforestation through usufruct contracts to be issued by the DENR utilizing fruits trees;
- Using facilities within the mine camp, such as hospitals and schools by members of host and neighboring communities; and
- Other activities as may be considered by the Director.

Expenditures for programs, projects and activities for the mine camp accruing to the contractors' employees and their families are not included in the computation of the cost of the SDMP.

The Annual SDMP should be submitted to the concerned MGB Regional Office at least 30 days prior to the start of the calendar year for the effective implementation of the approved five-year SDMP.

Funds for the implementation of the SDMP should be equivalent to 90 percent of a minimum of 1 percent of direct milling and mining costs. Direct mining costs refer to expenditures and expenses directly incurred in all activities preparatory to and in the actual extraction of the ore from the earth and transporting it to the mill plant for mineral processing; while direct milling costs refer to expenditures and expenses directly incurred in the mechanical and physical processing and/or chemical separation of the ore from the waste to produce marketable mineral products. For cement plant operations, direct milling costs are limited to expenditures and expenses directly incurred from raw materials crushing and grinding up to ground raw meal homogenizing, prior to clinker manufacturing.

Amount of annual direct milling and mining costs should be declared in a sworn statement submitted to the Mines and Geosciences Bureau within 60 days after the end of each calendar year.

Companies engage in exploration activities are exempted from the submission of the SDMP.

Contractor/Permit Holder/Lessee found operating without an approved SDMP are to be fined according to the following schedule:

- First Offense – fine not exceeding P5,000.
- Second Offense - sufficient ground to suspend mining/milling operations in the areas under contract and fine not exceeding P5,000.

3 FINAL MINE REHABILITATION AND DECOMMISSIONING FUND

A Final Mine Rehabilitation and Decommissioning Fund (FMRDF) is established to ensure that the full cost of the approved Final Mine Rehabilitation and/or Decommissioning Plan (FMR/DP) is accrued before the end of the operating life of the mine.

The FMRDF is to be deposited as a trust fund in a Government depository bank to be used exclusively for the implementation of the approved FMR/DP.

Annual cash provisions should be made by the Contractor/Permit Holder to a FMRDF based on the predetermined payment formula. The initial annual cash provision should be made to the MRF Committee within 60 days from the date of the FMR/DP's approval, and subsequently on every anniversary date thereafter.

Disbursements from the FMRDF should be approved by the CLRF Committee upon recommendation by the MRF Committee based on the approved work and financial plan. Progressive rehabilitation or annual environmental and enhancement programs pursuant to its EPEP cannot be reimbursed or credited to the FMRDF.

D. PAYMENTS TO OTHER FILIPINOS

1 ROYALTIES TO LAND CLAIMOWNERS EXCEPT INDIGENOUS PEOPLES

The amount of royalty payment to land claimowner/s is negotiated between concerned parties. Time and manner of royalty payment should also be stipulated in negotiated agreement.

2 ROYALTIES TO INDIGENOUS PEOPLES ON ANCESTRAL LAND

Approved mining areas within ancestral lands are subject to royalty payment to the concerned Indigenous Cultural Community holding Certificates of Ancestral Domains/Ancestral Land Claims. Concerned parties should agree on the royalty payment, which should not be less than 1 percent of the gross output. Royalty should form part of a Trust Fund managed and utilized by the Indigenous Cultural Community for their socioeconomic well-being.

Royalty payment may include funds to be allocated for the Social Development and Monitoring Program and the development of mining technology and geosciences.

3 EASEMENT RIGHTS

When mining areas are so situated that for purposes of more convenient operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailings ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels or mills, the Permittee / Permit Holder/Contractor, upon payment of just compensation, would be entitled to enter and occupy said mining areas or lands.

The voluntary agreement between a surface owner, occupant or concessionaire thereof permitting holders of mining rights to enter into and use its land for mining purposes are to be registered with the concerned MGB Regional Office. The said agreement is binding upon the parties, their heirs, successors-in-interest and assigns.

FOR MATRIX 2

Contingent Liability and Rehabilitation Fund

Basis of Tax: DENR Administrative Order 1996-40, as amended
Chapter XVIII Section 180

Definition: An environmental guarantee fund mechanism in the form of the **Mine Rehabilitation Fund (MRF)** and the **Mine Waste and Tailings Fees**.

Component 1: Mine Rehabilitation Fund

Basis of Tax: DENR Administrative Order 1996-40
Chapter XVIII Section 181

Definition: A reasonable environmental deposit to ensure availability of funds for the satisfactory compliance with the commitments and performance of the activities stipulated in the Environmental Protection and Enhancement Program (EPEP)/ Annual Environmental Protection and Enhancement Program (AEPEP) during specific project phase.

MRF is further composed of two separate funds, the **Monitoring Trust Fund (MTF)** and the **Rehabilitation Cash Fund (RCF)**.

Subcomponent 1: Monitoring Trust Fund

Basis of Tax: DENR Administrative Order 1996-40, as amended
Chapter XVIII Section 181

Mining Stage: Exploration
Pre-Development
Construction
Commercial Operations
Rehabilitation

Amount: Cash **not less than P150,000** used exclusively to cover necessary costs of monitoring program approved by MRF Committee. Any interests or earnings of the MTF shall be made part thereof to comprise and satisfy the minimum required amount.

MTF is to be deposited in a Government depository bank mutually acceptable to the Contractor/Permit Holder and the Mine Rehabilitation Fund (MRF) Committee.

Replenishment of this amount shall be done **quarterly** to correspond to the expenses incurred by the monitoring team for the month.

Source of Funds:
Contractor / Permit Holder

Allowable Disbursements:
Transportation and travel expenses;

Laboratory analyses;
Supplies and materials;
Communication services;
Consultancy work; and
Other reasonable expenses incurred by Multipartite Monitoring Team (MMT).

Approving Party:

Chair or Co-Chair of the MRF Committee or their designated representative/s

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of 30 calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

Disbursing Party:

Contractor / Permit Holder

Audit Procedure:

The Contractor/ Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

The Head of the MMT shall submit to the MRF Committee, at least 5 working days before the scheduled regular meetings of the latter, a report on the status and/or result of its monitoring activities, copy furnished the CLRF Steering Committee.

MRF Committee prepares and submits to the Secretary/Director, within 30 calendar days after the end of each year, an annual report of accomplishments, including audited financial statements and such periodic reports of activities as may be required.

Supporting Documents:

Approved Annual Environment Protection and Enhancement Program (current year)

Bank Certificate/s of Deposit

Request/s for Instruction to Withdraw Funds

Written Instruction/s to Withdraw Funds

Environmental Monitoring Report/s

Receipts

Transportation and travel expenses;

Laboratory analyses;

Supplies and materials;

Communication services;

Consultancy work; and

Other reasonable expenses incurred by MMT.

Subcomponent 2: Rehabilitation Cash Fund

Basis of Tax: DENR Administrative Order 1996-40, as amended
Chapter XVIII Section 181

Mining Stage: Exploration
Pre-Development
Construction
Commercial Operations
Rehabilitation

Amount: Ten (10) percent of the total amount needed to implement the Environment Protection and Enhancement Program (EPEP) or P5,000,000, whichever is lower. The amount shall be deposited in four (4) equal quarterly deposits within 15 calendar days from the beginning of each quarter of the first year following the approval of the EPEP. Any interests or earnings of the RCF shall be made part thereof to comprise and satisfy the minimum required amount.

RCF shall be deposited as a Trust Fund in a government depository bank mutually acceptable to the Contractor/Permit Holder and the Mine Rehabilitation Fund (MRF) Committee.

In the event of withdrawals from the RCF, the Contractor/Permit Holder shall annually replenish the RCF so as to maintain the minimum required amount thereof.

Source of Funds:
Contractor / Permit Holder

Allowable Disbursements:
Approved rehabilitation activities and schedules for a specific mining project phase, including research programs as defined in the EPEP/AEPEP.

Approving Party:
Chair or Co-Chair of the MRF Committee or their designated representative/s

In the event that none of the above-mentioned persons issues the instruction to the bank after the lapse of 30 calendar days from the time the written request for instruction is received by them, the Contractor/Permit Holder shall have the authority to sign the instruction on behalf of the MRF Committee and to withdraw the amount in accordance with the approved AEPEP.

Disbursing Party:
Contractor / Permit Holder

Audit Procedure:
The Contractor/ Permit Holder shall notify the Chair or the Co-Chair of the MRF Committee of its compliance with the deposit requirement through a certification from the bank.

The Head of the MMT shall submit to the MRF Committee, at least 5 working days before the scheduled regular meetings of the latter, a report on the status and/or result of its monitoring activities, copy furnished the CLRF Steering Committee.

MRF Committee prepares and submits to the Secretary/Director, within 30 calendar days after the end of each year, an annual report of accomplishments, including audited financial statements and such periodic reports of activities as may be required.

Supporting Documents:

Approved Environment Protection and Enhancement Program
Approved Annual Environment Protection and Enhancement Program (current year)
Bank Certificate/s of Deposit
Request/s for Instruction to Withdraw Funds
Written Instruction/s to Withdraw Funds
Environmental Monitoring Report/s
Receipts
Expenses as per AEPEP

Component 2: Mine Waste and Tailings Fees Reserve Fund

Basis of Tax: DENR Administrative Order 1996-40, as amended
Chapter XVIII Section 189

Definition: Fees collected from operating Contractors / Lessees / Permit Holders based on the amount of mine waste and tailings each generate, to be used for payment of compensation for damages caused by mining operations.

Mining Stage: Exploration
Pre-Development
Construction
Commercial Operations

Amount: P0.05/MT of mine waste produced and P0.10/MT of mill tailings generated from the mining operations except where such mine waste and mill tailings were utilized in the following manner:
a. Filling materials for underground mine openings;
b. Filling materials for surface mine openings;
c. Filling materials for engineered tailings dams, roads and housing areas;
d. Concreting and manufacture of concrete products; and
e. Mine waste impounded for future use

Mine waste and tailings fees shall be payable to the Bureau within 45 calendar days after the end of each semester. The amount of fees collected shall accrue to a Mine Waste and Tailings (MWT) Reserve Fund and shall be deposited in a Government depository bank.

Penalties: Non-submission of semiannual reports shall mean non-availment of the exemption from payment of mine waste and tailings fees and a penalty of P5,000.00.

Failure to comply with payments of the mine waste and tailings fees shall mean a 10 percent surcharge to the principal amount for every month of delay.

The Contractor/Lessee/Permit Holder shall pay for damages incurred due to previously exemption from payment of fees but were denied based on the verification report, and shall be remitted to the Bureau within 60 calendar days upon receipt of notice. Failure to comply with the said provision shall mean a 10 percent surcharge on the principal amount for every month delay.

Those with tailings impoundment/disposal system that were found to have discharged and/or to be discharging solid fractions of tailings into areas other than the approved tailings disposal area shall pay P50.00/MT.

Source of Funds:

Contractor / Lessee / Permit Holder

Allowable Disbursements:

Compensation for damages caused by mining operations, as verified and approved by CLRF Steering Committee; and Development and implementation of research and other relevant special projects.

Approving Party:

CLRF Steering Committee

Disbursing Party:

CLRF Steering Committee

Audit Procedure:

CLRF Steering Committee prepares and submits to the Secretary, within 30 calendar days after the end of each year, an annual report of accomplishments and such periodic reports of activities

Supporting Documents:

MGB Form No. 18-1 (submitted semi-annually)
MWT Fee Payment Receipt/s

Social Development and Management Program

Basis of Tax: DENR Administrative Order 1996-40, as amended
Chapter XIV Section 136-A

Definition: A Social Development and Management Program shall include all plans, projects and activities of the Contractor / Lessee / Permit Holder towards enhancing the development of the host and neighboring communities.

Mining Stage: Exploration
Pre-Development
Construction
Commercial Operations
Rehabilitation

Amount: Ninety (90) percent of a minimum of one percent of the direct milling and mining costs.

Source of Funds:

Contractor / Lessee / Permit Holder

Allowable Disbursements:

Establishment/construction, development and maintenance of infrastructure

Community schools;

Hospitals;

Churches;

Recreational facilities;

Access roads;

Bridges;

Piers;

Wharves;

Communication;

Waterworks;

Electric power;

Sewerage systems;

Community housing projects; and

Training facilities for manpower development

Establishment of livelihood industries and other income-generating activities;

Using facilities within the mine camp by members of host and neighboring communities; and

Other facilities considered by the Director.

Approving Party:

MGB Regional Office to be affirmed by Central Office

Disbursing Party:

Contractor / Lessee / Permit Holder

Audit Procedure:

The Contractor / Lessee / Permit Holder shall provide each of the concerned local government units with a copy of the approved SDMP not later than 30 days prior to the intended date of commencement of mining operation or of effecting the SDMP.

MGB Central Office shall conduct audit of SDMP based on monitoring reports of MGB Regional Office and internal monitoring report of Community Relations Officer.

Supporting Documents:

Approved Social Development and Management Program, updated every five years.

Annual Social Development and Management Program

Internal Monitoring Report by Community Relations Officer

Monitoring Report by MGB Regional Office

E. Guide Questions for the Financial Audit of Mining Operations

Contingent Liability and Rehabilitation Fund (CLRF), Mine Rehabilitation Fund (MRF), Mine Waste and Tailings Fees (MWTF), Final Mine Rehabilitation and Decommissioning Fund (FMRDF)

1. How much has been deposited for the Monitoring Trust Fund (MTF)³⁴.
 - a. How much have been disbursed from the fund and what is the breakdown of expenses?
 - b. Has the expenses been replenished?
2. Is there an approved EPEP? If so, how much is the total budget?
 - a. What is the amount deposited for the Rehabilitation Cash Fund (RCF)?
 - i. Is it the full amount required by law³⁵?
 - b. What are the projects and activities implemented? What is the breakdown of expenses per activity/project?
 - c. Has it been replenished?
3. Is there an approved Final Mine Rehabilitation and Decommissioning Plan?
 - a. If so when was it approved? How much has been deposited to the Final Mine Rehabilitation and Decommissioning Fund?
 - b. What is the break down per annum?
 - c. Were withdrawals made on the fund? What were the activities and expenses incurred on progressive rehabilitation work?
4. Does the company pay mine waste and tailing fees? If not why?
 - a. How much was paid?
 - b. How much mine waste in MT were produced? How much tailings?³⁶
 - i. How much was stored/impounded/utilized?
 - c. Were there penalties incurred in utilizing mine waste and tailings?
 - d. Were there damages incurred in the use of mine wastes and tailings? Enumerate if any.
5. Were there damages and liabilities incurred in the course of mining operations?
 - a. Please enumerate compensations paid for if any.

³⁴ The MRF has two forms; the Monitoring Trust Fund (MTF) and the Rehabilitation Cash Fund (RCF).

³⁵ 10% of the cost of EPEP/AEPEP or P5 million, whichever is lower.

³⁶ Fees are computed based on generated wasres and tailings over a six month period at P0.05/MT of mine waste and P0.10/MT of mill tailings.

6. Is there an Environmental Trust Fund?
 - a. What were the payments made out of this fund?
7. Is there an approved Social Development and Management Program (SDMP)?
 - a. How much is the total budget for the SDMP³⁷?
 - b. What is the total mine and milling cost?
 - c. What are the projects implemented under the SDMP? and the costs of implementation?
 - d. Are there other social development projects implemented aside from SDMP?
8. How much was the expenditure on activities for the development of mining, geosciences and processing technology and the corresponding manpower training and development?³⁸
9. Is the company paying royalty³⁹ to Filipinos? How much?
 - a. How much royalty does it pay to claim owners?
 - b. How much royalty does it pay to the indigenous community?
10. Were there payments made for easement rights in the exploration and pre development stage? How much?

Payments to National Government

1. How much has been paid by the company for the following taxes:
 - a. Corporate Income Tax⁴⁰ (30% of taxable income)
 - b. Withholding tax on dividends
 - i. on Foreign stockholders' dividends
 - c. Withholding tax on payroll
 - d. Withholding tax on profit remittances to principal
 - e. Withholding tax on interest income
 - f. Withholding tax on interest payments to foreign loans
 - g. Withholding tax on royalties to landowners

³⁷ 90% of a minimum of 1% of direct mine and milling cost.

³⁸ 10% of a minimum of 1% of direct mine and milling cost

³⁹ For claim owners it will be a negotiated settlement but for IPs it will have to be at least 1% of the gross revenue.

⁴⁰ Collection of government share commences after the Contractor has fully recovered its pre-operating, exploration and development expenses or a period not exceeding 5 years from the start of commercial operations or whichever comes earlier.

- h. Withholding tax on royalties to technology transfer
 - i. Withholding tax on royalties to Mineral Reservation
 - j. Excise tax on minerals
 - k. Customs duties/fees
 - l. VAT on imported equipments
 - m. VAT on sale of goods or properties
 - n. Capital gains tax
 - o. Documentary tax
 - p. Fuel Tax
 - q. Tax payments on foreign loans
2. If the mining permit is co-production, joint venture and FTAA, how much was paid as government share in the production of minerals?
 3. What fees and obligations were paid by the company in exploration and pre-development stage?
 - a. Drilling Fund Mines Survey, Investigation and Monitoring Fund
 - b. Filing Fee, Clearance fee and Registration fee for Exploration Permit Application
 - c. Filing fee, Clearance fee and Registration fee for Mineral Agreement application
 - d. Application fee, clearance fee and registration fee for FTAA applications.
 - e. Conversion fees, if there was conversion of approved contract/permit or conversion of mining permit application
 - f. Transfer fees for approved contracts⁴¹ or mining permit application.
 - g. Amendment fee for approved exploration or mineral agreement
 - h. Evaluation fee for Feasibility Study Report/EPEP
 - i. Application fee for Certificate of Environmental Management and Community Relations Record
 - j. Filing fee for mineral processing permit
 - k. Transfer fee for mineral processing permit
 - l. Application fee and certification fee for ore transport permit

⁴¹ PHP 20.00/hectare but not less than PHP50,000 per transfer, for FTAA, PHP20.00/hectare but not less than PHP100,000 per transfer

- m. Application fee for Purchaser's License, License to purchase/transfer explosives or blaster foreman's license
- 4. Were there other fees paid for services rendered MGB and/or its regional office? Enumerate.

Payments made to the local government

- 5. What were the taxes and fees paid to the local government?
 - a. Business tax
 - b. Real property tax for land and buildings/non-mobile equipment
 - c. Community Tax
 - d. Occupation Fees
 - e. Special Education Fund

For Quarry, Guano and Gemstone Gathering

- 6. What were the fees paid?
 - a. Clearance fees
 - b. Application Fees for permits
 - c. Registration Fees for permits
- 7. For sand, gravel and other resources, were fees paid for the following:
 - a. Tax on extraction of sand, gravel and other resources
 - b. Application fee for exclusive sand and gravel permit

Annex 3. Auditors' Personal Notes

A. Divina Gracia M. Maramba, *Audit Manager*

- Visited Rio Tuba Mining Site in Bataraza, Palawan; reviewed the working papers and reports of the members of the Audit Team; conducted inquiry and interview with DBM personnel.

Questions	Auditor's Notes
1. Was there reluctance from the company people or the LGUs in handing over data to you?	<p>Reluctance on the part of the company was experienced only in Philex Mining Corporate office on the onset of the engagement but when clarifications were made as to the objective of the project they have given their cooperation.</p> <p>However, on the part of the LGU's particularly in the Province of Palawan and Municipality of Bataraza the team was not able to get full cooperation despite verbal and written communications.</p>
2. Where do you think this came from?	<p>On the part of the company the reluctance came from lack of knowledge on what is the role of the Financial Auditor and what the project is all about.</p> <p>On the part of the LGU's it may be associated with the schedule. The busy schedule of the Governor and the Mayor due to campaign period delimits us in acquiring their approval to go over their records.</p>
3. How did your team overcome this?	<p>The data that should be provided by the LGU was acquired using alternative procedures. Research and inquiry from DBM and going over budgetary references such as the General Appropriations Act for 2005 and 2006 was made.</p>
4. Did the situation improve when you finished your field work? meaning did they "relax" or "opened up" at some point?	<p>The pilot companies opened up and seemed more relaxed when it was explained to them that the role of the Financial Auditors is to compare their data with what the LGU's have and not to go over the basis of their tax returns.</p>
5. Aside from reluctance, what were the other behavioral highlights of your inter-action with the companies and LGUs? Excitement? Why? Uncertainty? Skepticism? Warmth and openness?	<p>Skepticism on the part of the Barangay LGU's since they experienced delays on the receipt of their share on taxes. Excitement on their part also when it was explained the aim of the project. Warmth and openness because they view the success of the project as a means to improve the taxes on mining activities and the subsequent remittance of their share to them.</p>
6. Were the discrepancies of receipts by LGUs only from timing of DBM releases? What could be the other factors?	<p>The discrepancies on the receipts of the LGU's are not solely due to timing difference. It was explained by a DBM Director that there were times that the remittance was not equivalent to the actual share that they should received because the allocation provided for by the BIR during the budget preparation is not the same with what</p>

Questions	Auditor's Notes
	is computed based on the actual tax payments by the mining companies.
7. Aside from inability to assess and monitor real properties to be taxed, were there other issues related to auditing RPT payments?	We could have made substantial observations and recommendations if we were able to go over the documents of the LGU and compare it with that of the Mining Companies.
8. What about income tax payments?	Our assessment of the Income Tax payments was made based on the audited financial statements provided to us.
9. Personal reflections on the entire process.	The project will greatly help the mining industries and the government if there will be one body who will be given the authority to thoroughly examine and reconcile the tax payments made and the subsequent remittance of the share of the LGU's.

B. Auditors who visited Philex Mine in Baguio and worked with Benguet LGUs

Questions	Auditors' Notes
<p>1. Was there reluctance from the company people or the LGU's in handing over data to you?</p> <p>2. Where do you think this came from?</p> <p>3. How did your team overcome this?</p>	<p>During our fieldwork, the LGU's in Baguio were very cooperative though there were some point in time that they are reluctant to give some data that we need because they are afraid that we might use those data on purposes that will put them in trouble. Through thorough explanation about the nature of the project and how this will help them, we were able to convince them to hand over to us some data regarding the payments made by Philex directly to the local government and the share they received from its payment to the national government.</p> <p>On the other hand, Philex Mining Corporation is very reluctant at first to give data believing that we're doing an audit regarding the correctness of their payments. But through clarifications that we are only gathering data for the purpose of comparing it to the amount received by the government and not for the purpose of validating its correctness, we were able to convince them to show us what we need.</p>
4. Did the situation improve when you finished your fieldwork? Meaning did they "relax" or "opened up" at some point?	Yes. During the last part of the fieldwork, they become more cooperative. Philex even provided us photocopies of some tax returns they filed with the BIR.
5. Aside from reluctance, what were the other behavioral highlights of your inter-action with the companies and LGU's? Excitement?	The LGU's and Philex were oriented regarding the project before the fieldwork started. Both of them were a bit skeptical on the benefits they would obtain from it since most of them, especially the people from the LGU, thinks that its objectives are not attainable because the government would only ignore it.

Questions	Auditors' Notes
Why? Uncertainty? Skepticism? Warmth and openness?	
6. Were the discrepancies of receipts by LGU's only from timing of DBM releases? What could be the other factors?	As to the sentiments of the LGU's, sometimes the national government would only release what it wanted to be released as their share from the payments of Philex. The application of tax credit certificate on the payments of excise tax is another factor since the national authorities are not considering it as tax payment.
7. Aside from inability to assess and monitor real properties to be taxed, were there other issues related to auditing RPT payments?	None.
8. What about income tax payments?	None.
9. Personal reflections on the entire process.	The project was a bit harder because unlike in regular audit, we have no authority to oblige the LGU's and the mining companies to provide data that we need during our fieldwork since this is voluntary in nature. This limits our audit only to information that the LGU's and the mining companies wanted to disclose us. We were unable to validate if the payments made by the mining companies to the government and to the communities where they are operating are correct, which I think is a very important procedure to determine the right amount of share that they should be receiving.

c. Auditors who visited both Philex Mine and Rio Tuba Nickel Mine and worked with Benguet and Palawan LGUs

Questions	Auditors' Notes
<p>1. Was there reluctance from the company people or the LGUs in handing over data to you?</p> <p>2. Where do you think this came from?</p> <p>3. How did your team overcome this?</p>	<p>Rio Tuba Nickel Mining Corporation (RTNM) is very cooperative on the project through their Vice President, Engr. Jose F. Saret who accommodated us and provided the documents we asked from them.</p> <p>The LGU's in Baguio were very cooperative. Though there was some reluctance on their part at first, through explanation about the nature of the project, we were able to get data from them regarding the payments made by Philex and the share they received from National government.</p> <p>As mentioned in the report, we only relied from the data they supplied to us, but as to the correctness of the data, we were not sure since our task is not as what Commission on Audit does. Also, the treasury departments were busy because of the election season nonetheless they entertained us. With much persuasion and good human relations of the auditors, we were able to obtain documents from the LGUs.</p> <p>Philex Mining Corporation is reluctant to give data believing that we're doing an audit regarding the correctness of their payments. But clarifications were made that we are not doing this to render opinion</p>

	regarding the correctness or fairness of their records and payments.
4. Did the situation improve when you finished your field work? meaning did they "relax" or "opened up" at some point?	In the LGUs, when they learned the nature of the project as well as the benefits they may obtain from the projects they opened up their concerns like late remittance of their share of excise tax.
5. Aside from reluctance, what were the other behavioral highlights of your inter-action with the companies and LGUs? Excitement? Why? Uncertainty? Skepticism? Warmth and openness?	Since the LGU's were oriented regarding the project before the fieldwork started, they have some background regarding the nature of the engagement though they didn't fully understand the project itself and its nature. They were a bit skeptical regarding the benefits they would obtain regarding the project, until we told them that the project could somehow help them lobby the Congress to pass a bill requiring the mining company to pay directly their share of excise tax to LGUs.
6. Were the discrepancies of receipts by LGUs only from timing of DBM releases? What could be the other factors?	The share of the LGUs from the mining companies' excise tax is paid to the national government, and the national government sends back this share to the local government, the process takes long. We notice that there were no initiatives from the national government to return the share of the LGUs. The LGUs needs to request first from the national government to release the fund, which by law is rightfully theirs.
7. Aside from inability to assess and monitor real properties to be taxed, were there other issues related to auditing RPT payments?	None
8. What about income tax payments?	Income tax payments should be assessed and monitored by the Bureau of Internal Revenue. Since our task is not to audit the correctness of their tax payments we only relied to the representations of the management regarding the taxes they paid.

<p>9. Personal reflections on the entire process.</p>	<p>What made the project a bit hard is the inability of the auditors to compel the LGUs and the mining companies to provide data since this is voluntary in nature and no legal basis to back them up. With these limitations we were not able to determine the correctness and completeness of the data the mining companies provided us. Nevertheless, we we're able to perform the tasks assigned to us.</p> <p>Also, it's nice to know that despite some opposition from different anti-mining NGOs the two mining companies have made efforts to bring back to the community the benefits they deserved from the gift of nature found in their area. As we visited the different Social Development and Management Program (SDMP) projects of RTNMC, we appreciated the contributions of the mining companies in the development of the affected communities. Straightforwardly, mining activities damage the environment but consistent and well-studied mitigating projects and activities by the mining companies with the help of the community may lessen the impact of these damages to the environment and to the community.</p> <p>As we interviewed the leaders of indigenous people and barangay leaders, we noted that they have been benefited from the SDMP of RTNMC. Almost all of them said that it is better to have RTNMC operate than cease its operation.</p> <p>It is also clear that these mining companies contribute to our economic prosperity, directly and indirectly. The jobs they created, the taxes they pay and the programs and projects for the community they provided are among their contributions that should be appreciated. Though environment's health is the price to pay for their activities nonetheless we should also take note of its benefits to the country as a whole.</p> <p>Proper monitoring of these mining companies by concerned government agencies and strict implementation of the law will help the mining industries realized fully it's worth as catalyst in the country's economic growth.</p>
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D. Ivan P. Baje, *Audit Associate*

- Visited Rio Tuba Nickel Mining Corp. mine site and worked with Rio Tuba, Bataraza, Palawan LGUs

Questions	Benguet and Palawan
<p>1. Was there reluctance from the company people or the LGU's in handing over data to you?</p> <p>2. Where do you think this came from?</p> <p>3. How did your team overcome this?</p>	<p>Yes, on the part of the officers in LGUs of Bataraza and Palawan.</p> <p>Maybe because they doubt on what authority we have to obtain such information from them. They are not even aware of the said project and the organizations we mentioned such as EMERGE and Chamber of Mines. Although we have communicated our request with the local executives' offices – i.e. governor and mayor – we were only referred to the staffs in Treasury, Accounting, and Budget divisions without written endorsement or authorization.</p> <p>We discussed with the personnel involved in these agencies our objective and the information we needed, and requested to provide</p>

	us whatever data is available.
4. Did the situation improve when you finished your fieldwork? Meaning did they "relax" or "opened up" at some point?	No. Though we gave them a list of our requested data before leaving, they have made no further communication.
5. Aside from reluctance, what were the other behavioral highlights of your inter-action with the companies and LGU's? Excitement? Why? Uncertainty? Skepticism? Warmth and openness?	On the part of the LGUs, they were unmindful and they do not care enough for success of the project.
6. Were the discrepancies of receipts by LGU's only from timing of DBM releases? What could be the other factors?	None.
7. Aside from inability to assess and monitor real properties to be taxed, were there other issues related to auditing RPT payments?	Since the covered period is 2004 and 2005, documents from these periods were not readily available so we have difficulty in tracing to the records of the LGUs. Or it could be that there is no proper maintenance of records on the part of the LGUs with regards to these data.
8. What about income tax payments?	With regards to income tax payments, since it is a national tax paid thru the BIR that goes directly to the national treasury and there is no specific provision on the allocation to the local government, except only through the internal revenue allotment, it is very difficult to trace payment of a corporation if it goes to its host LGU.
9. Personal reflections on the entire process.	Sectors involved in the project should be more informed of its purpose to appreciate their roles in the process.

E. Michael K. Icaro, *Tax Associate*

- Conducted Fieldwork at Rio Tuba Nickel Mining Corporation, Brgy. Rio Tuba, Bataraza, Palawan

Questions	Benguet and Palawan
1. Was there reluctance from the company people or the LGU's in handing over data to you?	Yes, there was reluctance on the part of the LGU's in providing the necessary documents and information, which we have requested despite our written request and verbal communication to the Office of the Governor of Palawan and the Municipality of Bataraza. There was also reluctance on the part of the mining company since not all the returns were provided to us.
2. Where do you think this	We believe that they were reluctant because the representative with

<p>came from?</p>	<p>whom we spoke with were under their respective supervisors and department heads, hence, they do not have the final decision as to whether or not to provide information. However, every time we would ask if we could talk to their supervisor or department heads they would say that they are too busy and are not available for an interview.</p>
<p>3. How did your team overcome this?</p>	<p>Our initial approach was to secure an endorsement from the Governor's Office for the Provincial Treasurer's Office to accommodate us in conducting the examination and gathering of records from the LGU. We spoke with a Revenue Collection Office from the Provincial Treasurer's Office, who apparently does not know much information as to tax type applicable in the mining industry, which we believe is very unlikely. Since the collection officer could not provide any information she referred us to the Provincial Treasurer, however, at that time he was out for a meeting.</p> <p>We went to the Provincial Accountant's Office and tried if we could secure any information or document from their office. We spoke with an Accounting Officer who told us that they have the records which we were looking for, and all we need was an endorsement from the Provincial Treasurer's Office. When we had an interview with the said Accounting Officer, it suddenly turned out that there were no available records from their office, hence we went to the Budgeting Office and tried if there were any available documents. The same scenario went out when we had an interview with the representatives of the Budgeting Office, either the person responsible for the records were on leave or no records were available from their office and they even referred us back to the Provincial Accountant's Office who as they say have all the documents and information that we had been asking for.</p> <p>Since the Provincial Office, we have secured the necessary information such as the Internal Revenue Allocation from other sources such as Internet and the General Appropriations Act for the taxable years 2004 and 2005.</p>
<p>4. Did the situation improve when you finished your fieldwork? Meaning did they "relax" or "opened up" at some point?</p>	<p>On the part of the mining company, they had been stating from the beginning of the engagement that they are willing to provide all the necessary information, which we will be requesting however, that was not the case since not all the required returns were provided.</p>
<p>5. Aside from reluctance, what were the other behavioral highlights of your inter-action with the companies and LGU's? Excitement? Why? Uncertainty? Skepticism? Warmth and openness?</p>	<p>The LGU's were complaining of not receiving their rightful share from the excise taxes. The Secretary of the Sangguniang Panlalawigan of the Province of Palawan was pleased of the said project since it would encourage compliance with the taxes and fees imposed by the national and local government.</p>
<p>6. Were the discrepancies of receipts by LGU's only from timing of DBM releases? What could be the other factors?</p>	<p>Aside from the timing difference, there were discrepancies in the amount received by the LGU's from their rightful share from the excise taxes.</p>
<p>7. Aside from inability to</p>	<p>The LGU's were not able to provide any information in relation to</p>

<p>assess and monitor real properties to be taxed, were there other issues related to auditing RPT payments?</p>	<p>the real property taxes they have received from the Municipality of Bataraza.</p>
<p>8. What about income tax payments?</p>	<p>There are no issues encountered in relation to the income payments by the mining company since we did not conduct an audit.</p>
<p>9. Personal reflections on the entire process.</p>	<p>The project as a whole would be greatly appreciated if the LGU's were informed of the benefits of the project. The simulation of the EITI process would not prosper if the basis of providing the necessary information will be on a voluntary basis on the part of the mining companies and the local government units. There must be a law imposing transparency of records by mining companies and LGU's obliging them to provide the necessary information and documentation necessary to implement the entire process.</p>