Philippine President Benigno Aquino III signed on July 6th Executive Order No. 79 entitled “Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources” (“EO 79”). On the same day, the Office of the Executive Secretary issued directives to various government agencies, e.g. Department of Environment and Natural Resources (DENR), Good Governance and Anti-Corruption Cabinet Cluster, Bureau of Internal Revenue, Department of Social Welfare and Development, and the Human Development and Poverty Reduction Cabinet Cluster, tasked to implement EO 79.


On October 8, 2012, amid the clamor of clarifying certain provisions in the EO 79 IRR, DENR issued Administrative Order No. 2012-07-A2 (“EO 79 Amended IRR”) to revise Sections 3, 7 and 9 of EO 79 IRR. EO 79 IRR and its amendments took effect on October 25, 2012.

EO 79 is the Aquino Administration’s mining policy to strengthen environmental protection, promote responsible mining and provide a more equitable revenue-sharing scheme amid the projected boom in the mining sector. It aims to:

1. Increase the revenue of government from mining
2. Improve environmental standards
3. Put consistency in national and local laws pertaining to mining.

Salient features: - The mining policy’s areas of coverage include (i) mining in general; (ii) effect on existing mineral agreements; (iii) economic provisions (revenue generation); (iv) environmental protection; (v) small scale mining; and (vi) administrative provisions.

1. Mining, in general
   a. EO 79 expands the coverage of areas that are closed to mining under Section 19 of Philippine Mining Act of 1995 (the “Mining Act”)\(^3\) and the National Integrated Protected Areas Systems Law, also dubbed by the DENR as “no-go zones”, namely:

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1 EO 79 seems to be looking forward to a legislation which shall be in line with this EO. There is need to ensure that there is consistency between such new legislation and the mining policy under EO 79, i.e., taxes, bidding of mining projects, areas open/closed to mining, MICC.

2 Entitled “Amendment to Department of Environment and Natural Resources Administrative Order No. 2012-07 or the Implementing Rules and Regulations of Executive Order No. 79.

3 EO 79 IRR includes the areas expressly enumerated under DENR Administrative Order No. 2021-21, the Implementing Rules and Regulations of the Mining Act IRR. While there was no reference in EO 79 regarding the inclusion of areas closed to mining under the Mining Act IRR, there can be no question that these closed areas are justified on the basis of the authority of the Mining Act IRR.
i. prime agricultural lands – aimed at meeting one of Government’s objectives - agricultural productivity;

ii. fisheries development zones;

iii. tourism development areas (TDA’s) as identified in the National Tourism Development Plan (NTDP) – these TDA’s comprising 20 strategic thematic tourism destination clusters in 78 locations are primarily long and earlier identified natural parks, marine reserves, protected landscape, wildlife sanctuary, protected seascape, protected landscape-seascape, watershed reservation or watershed forest reservation – which are to be developed as ecotourism sites in the next 4 years.

iv. Other critical areas, island ecosystems, and impact areas of mining identified by DENR through mapping technology. (section 1, EO 79) – this is related to Section 16 where an Integrated Map System is to be created and the areas closed to mining operations shall be clearly defined and delineated.

EO 79 IRR clarified that “all pending mining applications situated within any of the above areas closed to mining shall be deemed denied upon the effectivity of the EO.”

b. Establishment of Mineral Reservations for the development of strategic industries of the potential and future mining areas with known strategic mineral reserves and resources, pursuant to the pertinent provisions of RA No. 7942, after proper consultation with all concerned stakeholders and without prejudice to existing mineral agreements, contracts, rights and obligations.4 - (section 5, EO 79) – in mineral reservations, a royalty of at least 5% of the market value of the gross output of minerals, exclusive of all other taxes, is imposed.

c. Continued moratorium on grant of mineral agreements - No new mineral agreements shall be entered into until a legislation rationalizing (increasing) existing revenue sharing schemes and mechanisms shall have taken effect.5 (Section 4, EO 79) – in a briefing to the mining industry, the MGB stated that this does not cover EPs and FTAAs which will continue to be granted. The advice to holders of pending Applications for Mineral Production Sharing Agreements (APSAs) is to convert such applications to EPAs, otherwise, they will not be granted any MPSAs until new revenue legislation is in place.

EO 79 Amended IRR clarified this provision as follows: “no expansion of existing contract areas shall be allowed by the DENR Secretary unless there is imminent and/or threatened economic disruption, such as a shortage of critical commodities and raw materials, that could adversely affect priority government

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4 This section expands the grounds for establishment of Mineral Reservations under section 5 of RA 7942 (Mining Act). Section 5 provides that the President may establish mineral reservations when the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value.

5 Existing mining permits, agreements and operations shall continue to be valid and operational.
projects and/or economic activities as determined by the Economic Development Cabinet Cluster.” The new provision now allows the grant of new mineral agreements in case of an imminent and/or threatened economic disruption that could adversely affect priority government projects or activities.

d. The DENR may continue to grant and issue Exploration Permits under existing laws, rules, and guidelines. The grantees of such permits shall be given the right of first option to develop and utilize the minerals in their respective exploration area upon the approval of the declaration of mining project feasibility and the effectivity of the said legislation. (section 4, EO 79) – this is a concern because under the Mining Act, the EP holder is given the right to be granted an MPSA once it complies with the requirements for a declaration of mining project feasibility and NOT a mere first option.

DENR will review existing mining contracts and agreements for possible mutually acceptable renegotiation of the terms and conditions thereof.

EO 79 IRR clarified the intent of EO 79 with respect to the EPs, thus:

i. While no EP shall be allowed in the National Government-Owned Mining Asset, the latter may be subject to FTAA through competitive bidding.

ii. The DENR may continue to grant and issue EPs and other forms of mining permits, such as Mineral Processing Permits, Government Seabed Quarry Permits, Special Minerals Extraction Permit, Industrial Sand and Gravel Permits as provided for in the Mining Act, subject to Section 4 of EO 79 IRR and under existing laws, rules and guidelines:

iii. The grantees of EPs shall have the following rights:

   a. Rights under applicable laws, rules and guidelines over the approved exploration area
   b. Right of first option to develop and utilize the minerals in their respective exploration areas upon the approval of the declaration of mining project feasibility and the effectivity of said legislation.

Note that holders of EPs must put their respective areas into operation within the period provided under the terms and conditions of the EP after which they automatically lose their priority over the said area and the government can bid the same.

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6 Will this be an exception to the policy that areas shall be opened to mining through competitive bidding?
e. Primacy of Constitution and national laws over local ordinances. LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations (Section 12) – existing LGU ordinances banning mining remain valid until declared otherwise by courts.

f. Creation of Mining Industry Coordinating Council (MICC)\(^7\) (sections 9 and 10, EO 79)\(^8\) – 2 Cabinet clusters, the Climate Change Adaptation and Mitigation Cabinet Cluster and the Economic Development Cabinet Cluster are joined together as an inter-agency forum known as the MICC – main function is to implement the EO but the mining industry is not represented.

g. Creating a One-stop Shop for all Mining Applications and Procedures. (section 13, EO 79) – an inter-agency body will process applications but no MPSA, FTAA, JVA or CPA shall be approved without FPIC of the concerned IPs and compliance with the social acceptability requirement of the LGUs – previous regulations imposed the FPIC as a post-approval condition.

h. Streamlining EP Application. (section 7, EO 79 IRR) An EP application shall be approved or disapproved within six (6) months from the date of its acceptance by the MGB on condition that all pertinent requirements are fully complied with.

For this purpose, EO 79 IRR imposed the following internal deadlines:

i. DENR Sector concerned, for the issuance of Area Status and Clearance – within one (1) month from date of filing the application.

ii. National Commission on Indigenous Peoples (NCIP), for the issuance of:

   a. Certificate of Non-Overlap – within three (3) months; or
   b. Compliance Certificate (Certification Precondition) – within six (6) months from the date of filing the Application.

iii. LGU concerned, for the issuance of certification of posting of the Notice of Application – within one (1) week from the last day of completion of posting

iv. Panel of Arbitrators, for the issuance of certification as to any adverse claim or opposition – within one (1) week from the date of filing the request

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\(^7\) This section creates Mining Industry Coordinating Council whose powers and functions are set forth in section 10. However, there is no process or procedure as to the manner by which MICC will act or vote on issues brought before it. This may be covered in the implementing rules and regulations.

\(^8\) One of the functions of MICC is being an oversight committee of P/CMRB’s. However, the specific powers of MICC as an oversight committee insofar as small-scale mining is concerned should be properly defined and limited in order to avoid conflict with the role of P/CMRB’s.
To put teeth to these deadlines, EO 79 IRR provided that “the above requirements shall be deemed waived if the agencies concerned are not able to issue them within the prescribed deadlines.”

2. **Effect on Existing Mineral Agreements**
   
   a. In the context of the areas that are closed to mining application, EO 79 recognizes existing Mining Agreements, Contracts and Permits, subject to strict compliance with the terms and conditions of its grant and periodic review and monitoring of such compliance. (Section 1, paragraph 2, EO 79) – *Government says that those who fail to comply with their contractual obligations will be penalized.*

   EO 79 IRR provides that the first review shall be accomplished within six (6) months from the effectivity of EO 79 with subsequent reviews conducted every two (2) years thereafter.

   b. A multi-stakeholder team led by the DENR shall conduct a review of the performance of existing mining operations and clean the mining docket of non-moving mining rights holders.9 (section 3, EO 79) – *Government urges the various private sector alliances, especially the Chamber of Mines, to join in this review and police their own ranks.*

   EO 79 IRR specifies that the “review is to be undertaken within six (6) months from the effectivity of the EO and every two (2) years thereafter.” Moreover, the Government agency(ies) concerned was directed to immediately take the appropriate action against proven violators based on the findings and recommendations of the review.

   c. The DENR shall likewise undertake a review of existing mining contracts and agreements for possible renegotiation of the terms and conditions of the same, which shall in all cases be mutually acceptable to the government and the mining contractor. (section 4, paragraph 2, EO 79)

   d. The establishment of mineral reservations shall be without prejudice to the agreements, contracts, rights and obligations previously entered into by and between the government and mining contractors/operators. (section 5, EO 79)

   e. All other mining rights and tenements applications shall be processed and approved through existing procedures. (section 6, EO 79)

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9 The composition and power of the multi-stakeholder team was not specified, defined and limited. “Appropriate action” was not defined.
3. **Economic provisions (revenue generation)**

a. No new mineral agreements shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect. (Section 4, EO 79) – Government aims to develop a fiscal regime on the mining industry that is easy to administer, provides greater share to the government, streamlines the process of revenue sharing with local communities, and maintains the competitiveness of our country as an investment destination and the long term growth potential of the mining industry.

b. Opening of areas for mining through competitive public bidding. (section 6, EO 79) – MGB is tasked to prepare the bid packages and guidelines and procedures which shall contain such vital technical information as technical description, geology, mineral commodities, volume/tonnage and grade of resource/reserve, assay results, feasibility study, and details of resource estimation, among others; social acceptability of the project is a factor to be considered.

EO 79 IRR laid down the legal basis for the use of competitive public bidding as a method of opening areas for mining. It provides that “Section 2, Article XII of the Constitution provides that the exploration, development, and utilization of natural resources shall be under the full control of the State”.

EO 79 IRR further clarified the scope of the competitive public bidding that it shall be made applicable to the grant of mining right and mining tenements over areas with known and verified mineral resources and reserves, including those owned by the government and all expired tenements.

c. **Disposition of Abandoned Ores and Valuable Metals in Mine Wastes and Mill Tailings.** (section 7, EO 79).

i. Those found in previous and now defunct mining operations belong to the State and will be bid out to the public;

ii. In the case of existing mining operations, these will automatically belong to the State upon the expiration of the pertinent mining contracts and shall be similarly bid out. – while the State will assume responsibility over the mine structures and facilities – liability for any environmental damages caused by previous operations shall be on the mining contractors.

d. **Value-Adding Activities and the Development of Downstream Industries for the Mineral Sector.** (section 8, EO 79) – a national program and roadmap is to be prepared by government agencies, the mining industry, and other stakeholders, based on the Philippine Development Plan and a National Industrialization Plan for the development of value-adding activities and downstream industries for strategic metallic ores, which shall be submitted to the MICC for review and
endorsement to the President. *This will have an impact on Direct Shipping Ore (DSO) operations.*

e. The national government shall ensure the timely release of the share of LGUs in the taxes generated from mining and study the possibility of increasing LGUs’ share as well as granting them direct access similar to existing arrangements with PEZA (section 12, EO 79)

4. **Environmental provisions**

a. EO 79 echoes the current stand of the Aquino administration of full and strict implementation of environmental standards in mining.\(^{10}\) (section 2, EO 79) *appropriate sanctions will be imposed on violators.*

These sanctions were laid down in EO 79 IRR, thus:

i. The MGB Director/Regional Director shall require the mining contractor/permittee/permit holder/operator concerned to undertake the necessary remediation measures for the affected areas, including any communities involved, and shall summarily issue pertinent suspension order/s until the danger is removed.

ii. the Environmental Management Bureau (EMB) Director/Regional Director shall issue Notice of Violation/s, Cease and Desist Order/s (CDO/s), and/or impose fines and penalties from the mining contractor/permittee/permit holder/operator concerned for violation/s of the Environmental Compliance Certificate (ECC) and/or other environmental laws.

iii. Mining rights shall be granted only to those who are able to strictly comply with the environmental management record requirement. Thus, all mining applicants, including the individual owners/officials of juridical entities, with record(s) of environmental incidents, where the required remediation measures for the affected areas under applicable laws and regulations were not implemented by the mining applicant, such as, but not limited to, destructive tailings spill and indiscriminate mining operation, shall be permanently disqualified from acquiring mining rights and operating mining projects. This shall not be required in cases where the applicant has no previous experience in resource use ventures, locally or internationally.

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\(^{10}\) The “full enforcement” clause will be used by LGUs to continuously promulgate and implement their respective environmental laws or ordinances, including ban on mining or open-pit mining. This should be tempered by section 12.
b. Strict implementation and prohibition in small-scale mining activities. (section 11, EO 79)

5. Small-scale mining activities (section 11, EO 79)

a. Reiteration of compliance with RA No. 7076 (People’s Small Scale Mining Act) and its Implementing Rules and Regulations (DAO 34 series of 1992) and PD No. 1586 (Environmental Impact Statement System).

EO 79 IRR adds that for purposes of compliance with Environmental Impact Statement System, the following documents shall be among the requirements prior to issuance of SSMC:

   i. ECC for the Minahang Bayan secured thru an Environmental Impact Statement from the EMB;

   ii. Potential Environmental Impact Report, which is a simplified Environmental Protection and Enhancement Program, and a Final Mine Rehabilitation/Decommissioning Plan duly approved by the MGB Regional Office concerned; and

   iii. Community Development and Management Program, a simplified Social Development and Management Program, duly approved by the MGB Regional Office concerned.

Also, DENR was directed to issue an amendment to DAO No. 34, Series of 1992, within one (1) month after the effectivity of EO 79 IRR.

b. Small-scale mining operations shall be undertaken only within the declared People’s Small-Scale Mining Areas or Minahang Bayan – this now limits the authority of Provincial Governors under the Small Scale Mining Decree. Any existing Small Scale Mining Permits (SSMPs) granted by the provincial governors under the Decree will be allowed to last until their expiry but henceforth, only Small Scale Mining Contracts granted by the Provincial Mining Regulatory Boards (PMRBs) will be granted.

EO 79 IRR further provides:

   i. Small-scale mining operations under Small-Scale Mining Permits (SSMP) issued under PD No. 1899 shall be recognized until their expiration unless the same are earlier revoked, cancelled or terminated with cause: Provided, that the affected small-scale miners operating under SSMPs involving gold, silver and chromite and non-metallic minerals may have the option to continue small-scale mining operations thru a Small-scale Mining Contract (SSMC) issued pursuant to the provisions of RA No. 7076:
ii. Holders of SSMPs with a remaining term of less than one (1) year may be given a temporary SSMCs by Governor/City Mayor concerned upon the recommendation by the P/CMRB concerned to continue small scale mining operations within a period of six (6) month or until their area is declared as a Minahang Bayan, whichever comes first.

c. Creation of P/CMRBs in provinces and cities where they have not been constituted within three (3) months from the effectivity of EO 79.

d. Small-scale mining shall not be applicable for metallic minerals except gold, silver, and chromite

e. The use of mercury in small-scale mining shall be strictly prohibited

f. Training and capacity building measures in the form of technical assistance for small-scale mining cooperatives and associations shall be conducted by the concerned government agencies

g. LGUs, DENR, and the MGB working together shall strictly implement RA No. 7076, to ensure the protection of the environment, address various issues in small-scale mining, and ensure that violators thereof are subjected to appropriate administrative and criminal liability. (Section 12, EO 79)

EO 79 IRR further adds:

a. Large-scale mining tenement holders shall not be allowed to undertake small-scale mining operations in their contract areas.

b. Hydraulicking (water jetting), compressor mining and the use of mercury in small-scale mining operations shall be strictly prohibited. Due to the serious safety, health and environmental impacts, the conduct of hydraulicking, compressor mining, and the possession, sale and/or use of mercury in small-scale mining and milling operations shall be prohibited. Any violation thereof shall cause the cancellation of the small-scale mining contract/permit.

c. Sale of gold obtained in through small-scale mining shall only be to Bangko Sentral ng Pilipinas and its accredited buyers.

d. Administrative provisions

i. Improving transparency in the Mining Industry by joining the Extractive Industries Transparency Initiative (EITI) (section 14, EO 79) – this relates to the global standard for promoting transparency of revenue payments from the extractive industry.
ii. Creation of Centralized Database for the Mining Industry. (Section 15, EO 79)

iii. Creation of Integrated Map System to Include Mining Related Maps. (Section 16, EO 79) – this is related to the identification of “no-go zones” or areas closed to mining.

EO 79 IRR provides that “The agencies concerned shall submit to the NAMRIA within one (1) month after the 1st meeting of the Mining Industry Coordinating Council (MICC) on July 25, 2012, the list and the corresponding maps with technical descriptions of the areas closed to mining for inclusion in the integrated map”.

iv. Use of the Programmatic Environmental Impact Assessment. (Section 17, EO 79) – this is defined under existing rules as documentation of comprehensive studies on environmental baseline conditions of a contiguous area that includes an assessment of the carrying capacity of the area to absorb impacts from co-located projects such as those in industrial estates or economic zones (ecozones)

Implementing Rules and Regulations of EO 79


On October 8, 2012, amid the clamor of clarifying certain provisions in the EO 79 IRR, DENR issued Administrative Order No. 2012-07-A with the following revisions, thus:

1. Section 3 (c) – Inclusion of the definition of “Expired mining tenements”.

“Expired mining tenements” refer to mining contracts/agreements which 25- or 50-year term has lapsed: Provided, that in case of the initial 25-year term, the mining contract/agreement shall be considered expired if the parties concerned fail to agree on the terms of the renewal pursuant to Sections 32 and 38 of Republic Act (RA) No. 7942, the Philippine Mining Act of 1995, and other pertinent laws.

The concept of the automatic renewal of the 25-year mining tenements is doubtful at this time. In various interviews, Malacanang stated that there is no automatic renewal of mining tenements which means that the parties should agree on the terms and conditions of the renewal. This presents a problem that if the

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11 Entitled “Amendment to Department of Environment and Natural Resources Administrative Order No. 2012-07 or the Implementing Rules and Regulations of Executive Order No. 79.”
government no longer wants to renew the mining permit or agreement, it may offer unreasonable terms to prevent an agreement for a renewal.

The mining industry has been questioning the renewal provision under EO 79 and its IRR because section 32 of the Mining Act provides that “Mineral agreements (does not include FTAA) shall have a term not exceeding twenty-five (25) years to start from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties.”

It is argued that while terms and conditions of FTAA may be renegotiated during renewal process, such is not the case in case of Mineral Agreements where the renewal should be made “under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties”.

EO 79 Amended IRR further advised that “mining contractors whose tenements are expiring from 01 September 2012 to 30 April 2013, shall be given thirty (30) calendar days from the effectivity of these implementing rules and regulations to file renewal applications: Provided, further, that those mining contractors whose tenements expire after 30 April 2012, shall file their renewal application not later than six (6) months prior to the expiry of their mining contract/agreements.”

2. Section 7 – Grant of Mineral Agreements Pending New Legislation

3. Section 9 – Opening of Areas for Mining through Competitive Public Bidding