

# Redressing the balance

INTERVIEW WITH LITO ATIENZA, JR

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**The DENR has lined up policy reforms to encourage mining investments while improving the social acceptability of the industry**

**The mining sector is set to account for an increasing percentage of the Philippines' GDP over the coming decade. What is your strategy for establishing and maintaining the growth of this vital industry?**

Following President Arroyo's directive of a policy shift from tolerance to promotion of mining in 2003, the DENR launched the Revitalisation of the Minerals Industry Programme aimed at promoting responsible mining, anchored on the principles of sustainable development – that is, with equal consideration on economic benefits, social development, and environmental protection. In doing so, the government envisions a minerals industry that is not only prosperous but also socially, economically, and environmentally sustainable; one that enjoys broad community and political support, while positively and progressively assisting the government's poverty alleviation programme and contributing to the general economic well-being of the nation. To achieve this, the government has lined up critical policy reforms and an agenda that will encourage mining investments, while at the same time improving the social acceptability of the industry. To this end, measures implemented to date include:

- Identification of priority minerals development and exploration projects to set the stage for investment opportunities;
- Issuance of policy reforms to entice more investors into the country, including the simplification of procedures in the granting of mining tenements, and the establishment of a competitive Fiscal Regime for FTAA projects;
- Establishment of the Minerals Development Council and implementation of the Minerals Action Plan to better address the concerns raised by the industry and various stakeholders;
- Continuous dialogue with local government units, civil society groups and other stakeholders.

**The Philippines has a long history of mining production, including chromite, copper, nickel and gold. What fine-tuning of the legislative framework is needed to encourage further rises in investment in the sector?**

Although the Philippines has a long history of mining, its contribution to societal development and economic growth in the past has remained debatable. The sins of past mines have also left a bad legacy for the mining industry, which for decades has been successfully used

to propagate anti-mining sentiments in the country and, in effect, drive away investors. Unfortunately, a major cause of all these was the lack, if not absence, of environmental and social provisions that should have safeguarded the interests of our people and the environment from the impacts of mining operations.

With the enactment of the Philippine Mining Act of 1995, these policy gaps were primarily considered. The Mining Act provided for a competitive fiscal regime, equitable sharing of the benefits of mining among stakeholders, built-in protection for Indigenous Peoples and communities, and environmental and social provisions that are comparable to, if not better than similar provisions in the mining laws of more established countries. More importantly, the revised rules and regulations contained in its governing principles helped develop the concept of sustainable mining, which essentially defines the new regime of mining in the Philippines, providing the backbone that stabilises the country's mining policy while also allowing further necessary reforms.

Responding to the needs of the time, the implementing rules and regulations of the Mining Act have been continuously fine-tuned since 1996. Among those that have undergone a series of amendments are the procedures in the processing of mining tenements to streamline the permitting process, and the revisions to improve provisions on environmental protection and development. Overall, these kinds of amendments have significantly contributed to the rising level of investments in the sector.

**The ownership and control of mining and natural resource reserves is a highly sensitive issue in many parts of the world. To what extent are these resources viewed as a strategic asset in the Philippines?**

The 1987 Constitution of the Philippines espouses the Regalian Doctrine, which holds the state to be the owner of mineral lands, minerals and mineral resources. Thus, the exploration, development, and utilisation of mineral resources in the country are under the full control and supervision of the state. As such, in granting permits, mining companies are considered partners of the government in developing our mineral resources.

Because the country is very rich in natural resources – including minerals – and we are aware that the responsible use of these natural resources has a big impact on economic development, the government ►

The government envisions a minerals industry that is not only prosperous but also socially, economically, and environmentally sustainable, with broad community and political support

◀ views such natural resources as a critical strategic asset. The government's view is that their exploration, development and utilisation, if done responsibly, can be a catalyst for national development and can significantly contribute to alleviating poverty, particularly in the countryside where basic services provided by government are not always accessible to the people.

**The preservation of the environment and fragile ecosystems has become a global priority. How are you addressing this issue in the natural resource sector? What steps is the DENR taking to ensure responsible exploration and to encourage companies to protect the communities in which they operate?**

While the government recognises the critical role of investments in promoting mining in the country, we have clearly enunciated the need for environmental protection and social development. The government also firmly believes that these objectives can co-exist to achieve genuine economic and human development. We refer to this as "responsible and sustainable mining." We are revitalising mining, not at all cost, but with due respect to the concerns and needs of



Drill rig at Xstrata Copper's Tampakan project site

other stakeholders; and not only the generation of today but also those of the future.

The government's direction in balancing the interests of stakeholders is well expressed in the two mining industry policy foundations – The Philippine Mining Act of 1995 and its implementing rules and regulations (IRR), and Executive Order No. 270 of President Arroyo, the National Policy Agenda on Revitalising Mining in the Philippines.

Both these policies place strong focus on the environmental, health and safety, and social responsibilities of mining operations, from exploration to development to post-rehabilitation management. Enshrined therein are the principles of sustainable mining and the concept of integrated mine closure planning, where the environmental, social and economic considerations associated with projects are integrated as early as the project planning phase, through the operating life of the mine, before the final relinquishment of a 'new resource' to the government and community. These are consistent with the government's stated objective that mining projects that cannot absorb the environmental and social costs of modern mining shall not be allowed to proceed and that mining operators shall internalise the full costs of mining, following the Owner Pays Principle, whereby the operator is responsible for the completion of rehabilitation, unless relieved of liability.

On the environmental front, we have established and institutionalised the Environmental Impact Assessment (EIA), which ensures that potential impacts on ancestral lands and the biodiversity of a mining project are addressed; the Environmental Work Programme and Environmental Protection and Enhancement Programme, which ensures that the environment is protected and enhanced throughout all stages of mining; and the Final Mine Decommissioning and Rehabilitation Plan, which covers not only the physical rehabilitation of the mine-affected areas but also the socio-economic well-being of communities after the mine has ceased to operate.

In terms of social and community development, the mining operator is mandated to provide community assistance, just compensation to landowners, royalty to Indigenous Peoples, to establish a social plan as part of the Mine Closure process, and to establish a Social Development and Management Programme toward the sustained improvement in the living standards of the host and neighbouring communities.

The bottom line is to establish a responsible and sustainable local minerals industry.

**What role can foreign companies play in the country's natural resources sector?**

The Philippine government is encouraging foreign mining investors to bring in the needed capital to build

responsible mines. We are hoping to entice the biggest global mining players, who are known for their best practices in mining technology, environment, safety and health, and social development.

**What do you regard as the guiding principles of mining policy in the Philippines?**

Executive Order No. 270 or The National Policy Agenda on Revitalising Mining in the Philippines emphasised that the exploration, development, and utilisation of the country's mineral resources should be pursued within the framework of sustainable development and must therefore contribute to economic growth, environmental protection, and social equity and development. There are twelve principles that guide the revitalisation programme for mining:

1. Recognise the critical role of investments in the minerals industry;
2. Institute clear, stable and predictable investment and regulatory policies;

3. Pursue value-adding of minerals and mineral products;
4. Recognise and formalise the small-scale mining sector;
5. Adopt efficient technologies in the extraction and utilisation of minerals;
6. Integrate environmental protection, mitigation and progressive rehabilitation in mining projects;
7. Safeguard the ecological integrity of areas affected by mining, including biodiversity and small-island ecosystems;
8. Pursue mining within the framework of multiple land use and sustainable utilisation of minerals;
9. Remediate and rehabilitate abandoned mines;
10. Ensure equitable sharing of economic and social benefits from mining;
11. Enhance public awareness and respect for the rights of communities; and
12. Institutionalise continuous and meaningful consultation process with the industry and other stakeholders.

**The sins of past mines have left a bad legacy for the mining industry in the Philippines**

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