Philequity Corner (July 16, 2012)
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Exploring the Mining EO

After a very long wait, the controversial mining EO was finally released last July 6. Hailed and criticized by both pro and anti-mining groups, Executive Order 79 laid out the framework for the implementation of mining reforms in the country. In order to shed light on this much awaited EO, the mining analyst of Wealth Securities was able to interview Mining and Geosciences Bureau Director Leo Jasareno. Below are a series of questions and the answers to them based on the analyst's reading of the executive order in conjunction with Director Jasareno's guidance.

What are the general objectives of EO 79?

1. Full enforcement of environmental standards and delineation of protected areas and mineral reservations
2. Review of existing mining operations and cleansing of non-moving mining rights holders
3. Development of value-adding downstream industries
4. Formation of a Mining Industry Coordinating Council (MICC)
5. Improvement of small-scale mining
6. Creation of a one-stop shop for mining applications

Will EO 79's provisions be retroactive in nature?

As a general rule, EO 79 will be applied prospectively except when explicitly stated otherwise. For instance, if an area with existing operations is declared as a mineral reservation, the contractor will not have royalties levied against him. However, all future operations in the area will be subject to a 5% royalty. However, as far as a compliance of existing mining operations with environmental standards are concerned, EO 79 may be applied retroactively.

In what areas will mining be banned?

Section 1 enumerates 5 areas, namely:

1. Areas enumerated under Section 19 of RA 7942 (Mining Act of 1995)
2. Protected areas established by the National Integrated Protected Areas System (NIPAS) under RA 7586
3. Prime agricultural lands, lands covered by RA 6657 (Comprehensive Agrarian Reform Law of 1998), including agricultural and fisheries development zones declared as such by the Department of Agriculture (DA)
4. Tourism development areas as identified in the National Tourism Development Plan (NTDP)
5. Other critical areas that the Department of Environment and Natural Resources (DENR) may identify pursuant to existing laws, rules and regulations

The NTDP defines broad swathes of land as eco-tourism areas, such as Palawan. Will mining be banned in Palawan as a whole?

It is not the intent of EO 79 to declare the Philippines to be mining-free, so there is a need to delineate the exact boundaries of areas mentioned in Section 1. No existing mining operations were affected by this provision.

Why is EO 79 silent on the exact percentage of mining royalties that mining companies will have to pay in the future?

EO 79 leaves the determination of the nature and amount of additional mining taxes to Congress. Thus, the exact details of any future revenue-sharing scheme will be a product of legislation. However, it seems that Congress is leaning towards a royalty of 5-7% of revenues across the board, regardless of geographic location.

All mining companies are currently required to pay an excise tax equivalent to 2% of their revenue, while companies operating in mineral reservations pay an additional 5% of their revenues as royalties to the government.

Does EO 79 require legislation to become enforceable?
Other than the revenue-sharing agreements, all other provisions of EO 79 are implementable and do not require legislation. However, Section 19 states that the DENR, working with the MICC, has 60 days to issue implementing rules and regulations.

When will the moratorium on the issuance of mining licenses be lifted?
The moratorium will be lifted once legislation regarding revenue-sharing becomes effective. Unfortunately, EO 79 is silent on when Congress should do this. Therefore, companies applying for mining licenses of whatever form may have to wait for some time before their applications can be considered.

Will mining companies be required to have downstream processing facilities?
Section 8 directs various agencies of government to draft a roadmap for the development of downstream industries. While mining companies are not required to construct processing facilities, it is likely that a future law may incentivize companies to do so. This will work to the advantage of companies that already have existing processing facilities or have concrete plans to put up one.

Will small-scale mining be banned?
While EO 79 does not ban small-scale mining, it will be heavily regulated. For one, only certain areas, dubbed as “Minahang Bayan”, will be open for small-scale mining. In addition, only gold, silver and chromite may be extracted. The use of mercury will also be banned because of the harm it poses to both people and the environment.

Will mayors and governors still be able to ban mining in their jurisdiction?
Section 12 states that local government units (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. The intent of this provision is to reiterate the primacy of national laws over local government ordinances.

How will the EO 79 affect the mining stocks?
On the additional royalties that may be imposed, companies that currently pay the 5% royalty tax will not be significantly affected since they already pay for it anyway. However, the profitability of companies operating outside mineral reservations may be significantly affected since the tax comes straight out of your topline, whether or not the company is actually making money. As for companies that do not have mining licenses for sites they want to explore, the wait may become a bit more excruciating since their plans may have to be pushed forward. In addition, if their internal models only imputed a 2% excise tax, the viability of the projects may have to be re-examined.

Which will mining companies will be affected?
You can visit Wealth Securities' website, **www.wealthsec.com,** and view the mining analyst's report on Executive Order 79.

A Tough Balancing Act

The executive order that was issued has put in place a tough balancing act. It ensured that the government mining taxes will be fair to both the government and the mining companies. Government mining revenues should be fair, significant and at par with other countries but not too exorbitant as to cripple the operations of mining contractors. A delicate balance between environmentalists and mining companies was promulgated. EO 79 states that the environment must be protected while still allowing for responsible mining. It also guaranteed the coexistence of both large mining companies and small-scale miners, thus eliminating haphazard, illegal and irresponsible mining operations. The supremacy of national laws over local government ordinances was also clarified in EO 79, while at the same time allowing LGUs to regulate the conduct of mining in their jurisdiction.

The importance of mining to this country should not be forgotten. Once the IRR of EO 79 and mining tax law are clarified and implemented, we expect this move to reform the mining sector to be a boon to stock market.

Finally, we would like to congratulate President Benigno Aquino, Jr., his entire Cabinet, DENR Secretary Ramon Paje, and MGB Director Leo Jasareno and all other persons who contributed to the crafting of EO 79. We would also like to thank Director Jasareno for his valuable time and inputs which contributed greatly to this article and the mining analyst's research report. More power to all of you!

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