

Is Philippine mining still competitive?

By Patricia A. O. Bunye

One thing that struck me as a participant at the Asia Mining Congress in Singapore last April was how presentations on projects in Indonesia and Mongolia appeared to dominate the three-day program. While the Philippines had several well-received presentations – by SMI, CGA, Crazy Horse, TVI Pacific, Intex Resources, Mindoro Resources and OceanaGold – I could not help but feel that we have suffered by comparison in terms of our country's competitiveness as an investment destination, due to challenges that our mining industry continues to battle.

Indonesia, for example, passed its new mining law in 2009 to encourage foreign mining investment, derive maximum benefit from mining investments and introduce greater control, order and transparency to the mining sector. Although the implementing rules issued about a year later were viewed negatively by some, the Indonesian government's initiative in abolishing the Contract of Work and Kuasa Pertambangan system was seen as calculated to improve the investment climate in that country.

There is even greater optimism for Mongolia's mining sector, if we are to go by the number of Mongolia-focused investment bankers present at the congress. Such are expectations for this



Our competitors on the world mining stage are getting ever more investor-friendly – for instance Mongolia has warmly welcomed Ivanhoe's Oyu Tolgoi venture, the world's biggest undeveloped copper-gold project. But the Philippines seems to be doing the reverse.

country that many believe it could have a world class mining industry in the next five to ten years that will rival those of Chile and Brazil. The enthusiasm is evident in recent mega-deals in Mongolia, including Ivanhoe Mines' Oyu Tolgoi project. These are attributed to the Mongolian government's efforts to offer a favorable investment environment by

reducing red tape, concentrating on mining-related infrastructure and striving to ensure transparency and international standards.

While our competitors on the world mining stage, particularly Indonesia and Mongolia, appear to be taking steps to be more investor-friendly, the Philippines seems to be doing the reverse. It is disheartening to see proposals now being made affecting mining that have the potential of raising the cost of doing business here and shaking investor confidence.

Earlier this year we saw the proposal by government's Mines and Geosciences Bureau to establish mineral reservations and to impose a five percent royalty on gross revenue of mining operations, on top of the existing two percent excise tax. This proposal is covered by a draft Executive Order that is currently being considered.

Now an expanded Executive Order is being considered that not only includes this proposal but also has additional provisions covering full enforcement of environmental standards in min-

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Continued on page 31 >

Philippines slipping behind international competitors

< Continued from page 30

ing, increasing revenue collection through higher or additional fees and taxes, and opening of areas for mining through public bidding.

Even without the looming expanded Executive Order, mining companies already face issues such as the ban by the South Cotabato local government on open pit mining which has emboldened other local government units (LGUs) to follow suit. The actions taken by these LGUs plainly contravene national law, but there has yet to be decisive action to address the antagonism between mining companies and LGUs as a result of these bans. Projects continue to hang in the balance in areas affected by these LGU bans.

As a result of these continuing uncertainties and the threat of further shifts in policy, the Philippines ranks only 66th out of 79 countries in the Policy Potential Index of the Fraser Institute Survey of Mining Companies for 2010/2011. This annual survey ranks the overall policy attractiveness of each country/jurisdiction. In particular, the Policy Potential Index is considered a "report card" to governments on the attractiveness of their mining policies on: administration, interpretation and enforcement of existing regulations; environmental regulations; regulatory duplication and inconsistencies; taxation; uncertainty about native land claims and protected areas; infrastructure; socioeconomic agreements; political stability; labor issues; geological data bases; security; and reliability of legal systems, i.e. "legal processes that are fair, transparent, non-corrupt, timely, efficiently administered."

In the 2008/2009 Fraser Institute Survey, just as Philippine mining was gaining momentum a few years after the constitutionality of the Mining Act was settled, and due in large part to the government's shift from a policy of mere tolerance to active promotion of mining, the country managed to climb to a rating of 59th out of 71. Unfortunately, due to a seeming change in direction in policy, our rating has declined since then.

The basic principle underlying mineral investments allowed by the Philippine constitution is that the government and the private sector are partners, and it is presumed that the government has the same interest as the private sector in ensuring the success of mining projects. More than just being a regulator and crafter of policies, government must also be mindful that investors will not remain in the country simply because of the attractiveness of our mineral deposits. Due regard must be given to the impact of proposed policies on these investors' bottom lines, and ultimately their willingness to risk their capital investment here.

It is therefore imperative that genuine consultations, with the opportunity to participate in their actual drafting, are conducted before any new policies are introduced and implemented in order to gain understanding of, and more importantly, support for, these initiatives. Otherwise, all efforts to promote mining investments in the Philippines will be overshadowed by the lack of stability or predictability of our investment environment. ■

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