

CLIENT ALERT

DENR increases minimum capital requirements for mining applicants

The Department of Environment and Natural Resources (**DENR**) issued DENR Memorandum Order No. 2013-01 (the **Memorandum Order**), which increased the minimum capital requirements for mining applicants. Under the Memorandum Order, the minimum authorized capital stock and paid-up capital of mining applicants were increased as follows:

	From	To
Authorized Capital	PhP10 million	PhP100 million
Paid-Up Capital	PhP2.5 million	PhP6.25 million

The Memorandum Order applies to applicants for an exploration permit (**EP**), a Mineral Agreement (**MA**), and a Financial or Technical Assistance Agreement (**FTAA**). With respect to an FTAA applicant, the applicant must have a minimum paid up capital of PhP500 million upon the grant of the FTAA by the President and prior to the registration of the FTAA with the Mines and Geosciences Bureau (**MGB**).

Under the Corporation Code, at least 25% of the authorized capital stock must be subscribed at the time of incorporation and at least 25% of the total subscription must be paid upon subscription (see section 13). In case of an increase in authorized capital stock, at least 25% of the increased capital stock must be subscribed and at least 25% of the amount subscribed must be paid (see section 38). To comply with the new capitalization requirements, a mining company may have an authorized capital stock of PhP100 million, with PhP25 million subscribed, and PhP6.25 million paid up.

While the DENR sets the minimum paid-up capital to PhP6.25 million, the Foreign Investments Act of 1991 provides that domestic market enterprises with paid-in equity capital of less than US\$200,000 are reserved for Philippine nationals. Thus, mining companies that do not qualify as Philippine nationals (such as companies where foreign-owned equity exceeds 40%) must have a minimum paid-in equity capital of US\$200,000 (or its peso equivalent), notwithstanding the lower paid-up capital provided in the Memorandum Order.

Under the Memorandum Order, all mining applicants with pending applications for EP, MA and FTAA are required to comply with the Memorandum Order within sixty (60) days from its effectivity. Failure of the mining applicants to comply with the Memorandum Order shall cause the denial of their mining applications as deemed appropriate by the MGB.

The Memorandum Order provides that it will take effect 15 days upon its complete publication in a newspaper of general circulation and 15 days after registration with the Office of the National Administrative Register. The newspaper *Philippine Daily Inquirer* published the Memorandum Order on 22 February 2013.

About SyCip Salazar Hernandez & Gatmaitan

Founded in 1945, SyCip Salazar Hernandez & Gatmaitan is one of the most established and largest law firms in the Philippines. Although its work centers on business activity, the firm has offered a broad and integrated range of legal services that cover such areas as family relations, constitutional issues, and other matters of law unrelated to commerce.

Client alerts are for general informational purposes and should not be regarded as legal advice.

FOR MORE INFORMATION

Please contact your account partner
or the author of this Client Alert:

Hector M. de Leon Jr. hmdeleon@syciplaw.com

MAKATI OFFICE

SyCipLaw Center, 105 Paseo de Roxas
Makati City 1226, Metro Manila
The Philippines

Phone +632 982-3500, 982-3600, 982-3700

Fax +632 817-3896, 817-3567

Email sshg@syciplaw.com