



# CONTRACTS



# MINING CONTRACTS

Christine Antoniette Ramos

# What is a Mining Contract

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- An agreement between the government and a private company wherein the State allows the company to explore, extract, utilize and develop the minerals found underneath the surface land.
- While a private individual may own the surface of the land, it is the State which owns the minerals and resources beneath it.



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- Thus, it is the State and not the private land owner who has the authority to enter into mineral agreements.



# Different Types of Mining Contracts

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- Mineral Agreements
- Financial or Technical Assistance Agreement (FTAA)



# Mineral Agreements

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- The Government gives the Contractor exclusive right to conduct mining operations within a contract area, but withholds title over it.
- Aside from this, auxiliary rights such as timber, water and easement rights are also granted



# ***Classification of Mineral Agreements***

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- Mineral Production Sharing Agreement (MPSA)
- Co-Production Agreement
- Joint Venture Agreement (JVA)



# MPSA

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- The Contractor acquires the exclusive right to mine a particular area, shouldering the financing, technology, management and personnel needed for such endeavor. The gross output is then shared with the Government





# ***Co-Production Agreement***

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- In a co-production agreement, it is the government which provides the inputs and tools to the mining operation.



# JVA

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- A JVA is one where the Government and a Contractor come together to form a joint-venture company. They each hold equity shares, and the Government is entitled to a share in the gross output.



# Financial or Technical Assistance Agreement (FTAA)

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- An FTAA may be entered into between a Contractor and the Government for large-scale exploration, development and utilization of gold, copper, nickel, chromite, lead, zinc and other minerals except for cement raw materials, marble, granite, sand and gravel and construction aggregates.



# **PETROLEUM and COAL CONTRACTS**

Jo Ann Frances Madarang





# ***Oil and Gas Contracts***

# What are oil and gas contracts

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- In 1973, Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972 became effective.
  - This law established the current Philippine Petroleum Service Contract System.
- Under the current system, service contracts for petroleum exploration and extraction are obtained through the *Philippine Energy Contracting Round (PECR)*.



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- The Government may directly explore for and produce indigenous petroleum or indirectly undertake the same under service contracts as approved by the President after due notice, pre-qualification and public bidding or concluded through negotiations.



# Scope of a Service Contract

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- The Service Contract contains the scope, terms and conditions between the government and the contractor.
- It holds that the exploration period under this SC shall only be for seven (7) years, extendible for a maximum period of three (3) years.





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- If any crude oil or natural gas is discovered within the contract area, the contractor shall promptly report such discovery to the department.
  - The contract specifies the procedures to be observed upon discovery of crude oil, associated gas, and non-associated gas.



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- The contract stipulates that the contractor shall market the government share of petroleum.
  - The contractor shall have the right and privilege of receiving in kind and disposing of the contractor 's portion of the petroleum produced and saved from the contract area.



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- If, however, the contractor has not been authorized to market the government's entire share, the government shall be entitled to receive in kind and shall take petroleum equal in value to sixty percent (60%) of the net proceeds.
  - The contractor shall retain its share of petroleum as service fee equivalent to forty percent (40%) of the net proceeds from petroleum operations.



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- If the Department of Energy and the contractor elect to take their respective share of petroleum in kind, the parties will enter into separate agreements.





# ***Coal operating contracts***

# What are Coal Operating Contracts

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- PD 972 divided the country into coal regions where exploration and exploitation programs can be implemented.
- The Department of Energy is given the duty to establish these regions and to undertake the active EDU of coal resources, as well as enter into Coal Operating Contracts (COC) with private parties.



# Scope of Coal Operating Contracts

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- The Coal Operating Contract contains the scope, rights and obligations, terms and conditions between the government and the operator.
- It holds that the exploration period under this COC shall only be for two (2) years, after which time this contract shall automatically terminate, unless coal reserves in commercial quantity is delineated by both parties; and the exploration phase is extended with the approval by the department for a maximum period of two (2) years.



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- The Contractor or the Operator is responsible for all the necessary services, technology and financing of the operation.
  - If both the operator and the government have measured and agreed on the existence of coal reserves in commercial quantity, this Contract shall proceed to the development and production phase of up to ten (10) years.





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- The operator may request the department to extend the term of this Contract for a maximum of another ten (10) years, provided that the operator is not in default of its obligations.
  - Thereafter, the operator may request for the extension of the contract term for a series of three (3)-year periods, the total of which shall not exceed twelve (12) years.



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- The operator shall acquire for the coal operation only such assets as are reasonably estimated to be required in carrying out the coal operation and approved in the work program and budget.
  - The Department shall have the ownership of any cost recovered assets and materials, equipment and facilities which it elects to retain after the termination of this contract.



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- The operator is entitled to a fee, the net amount of which shall not exceed forty percent (40%) of the net operating income.
  - In addition, the operator shall be granted a special allowance the amount of which shall not exceed thirty percent (30%) of the net operating income.



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- The balance of the gross income after deducting all operating expenses, operator's fee and special allowance shall be the share of the government.

