

ANNEX D: Peru Decree for Stakeholder Working Group

Page 318554

EL PERUANO

Legal Guidelines

Lima, Friday, May 12, 2006

Energy and Mines

Establishment of a Working Committee to implement the "Extractive Industries Transparency Initiative — EITI"

Supreme Decree No. 027-2006-EM¹

The President of Peru, WHEREAS:

On March 16, 2005, the Government of Peru, through its representatives, expressed its support for the Declaration of the London Conference on the Extractive Industries Transparency Initiative - EITI, promoted by the Government of the United Kingdom, within a G8 context;

By means of a public communiqué of May 15, 2005, the Ministry of Energy and Mines of Peru, on behalf of the Government of Peru, indicated the agreement of the Government of Peru with EITI principles as well as its implementation process, which calls for a commitment to systematic and joint work among civil society organizations, State institutions, and extractive industry enterprises, in particular, in the energy and mining sector;

The participation of the Government of Peru in the EITI is intended to lend transparency to revenue and payments from the oil, gas, and mining sectors to the State, and from the State to end-recipient public expenditure entities, based on the belief that transparency and anti-corruption efforts are key to democratic governance and work targeting development and poverty reduction, given the historical and growing importance of extractive industries in the Peruvian economy;

In April 2005, with the participation of the Ministry of Energy and Mines, representatives of die various state entities, enterprises, and civil society organizations with ties to the extractive industries, formulated an "Action Plan for Implementation of the EITI," which was submitted for consultation and dissemination on the electronic portal of the Ministry of Energy and Mines;

The aforementioned plan outlines the immediate tasks to be performed in order to begin implementation of the EITI in Penh among them: (i) at the national level, enhancing the transparency, clarity, and reconciliation of payments originating in the extractive industries (natural gas, petroleum, and mining), and the revenue that the State receives from these industries; and (ii) at the regional level, increasing transparency in the

¹ This is a reproduction of the Peru Decree.

calculation and distribution of revenue generated by the extractive industries to regional and local governments, as well as transparency in the use of this revenue;

The initial tasks related to the EITI implementation process will be performed with the assistance of the World Bank, the institution that is also providing sponsorship for the EITI. To this end, the Ministry of Energy and Mines has signed a Memorandum of Understanding setting forth the reciprocal commitments for the viable execution in Peru of the "Action Plan for Implementation of the EITI."

In order to honor the commitments assumed by the Government of Peru and under the terms of the aforementioned Memorandum of Understanding, it is necessary to approve the "Action Plan for Implementation of the EITI" and to establish a Working Committee that will provide an institutional and permanent framework For the EITI implementation process, as well as the effective execution of this Plan, given that guidelines must be established with respect to its organization, functions, and powers;

Pursuant to the provisions of Article 118(24) of the Constitution of Peru and Article 3 of Legislative Decree No. 560, approving the Executive Branch Law;

HEREBY DECREES:

Article 1. Approval of the Action Plan for Implementation of the EITI

The approval of the "Action Plan for Implementation of the Extractive Industries Transparency Initiative – EITI," which is an integral part of this Supreme Decree, with provisions being made for its implementation and execution within the framework of the commitments assumed by the Government of Peru.

Article 2. Establishment of the EITI Working Committee

The establishment of the EITI Working Committee to execute the "Action Plan for Implementation of the EITI," within the framework of the Memorandum of Understanding mentioned in the preamble to this Supreme Decree, to be composed of nine members, with three persons coming from each of the following entities: the State, extractive industries enterprises, and civil society.

Article 3. Composition of the EITI Working Committee

The State representatives shall be selected in the following manner:

- Two representatives from the hydrocarbon and mining subsectors, selected by the Ministry of Energy and Mines. One of these two representatives shall chair the Committee.
- One representative involved with issues of taxation and other payments made by the extractive industries, appointed by the Ministry of Economy and Finance.

The extractive industries representatives shall be selected as follows:

- One representing the extractive industries to be appointed by the National Mining, Petroleum and Energy Company.
- One representative selected by the mining enterprises.
- One representative selected by the hydrocarbon enterprises.

Civil society representatives will be chosen in the following manner:

- One elected representative, from those public and private universities comprising faculties or institutes addressing the topics of transparency and civil society oversight of extractive industries.
- Two elected representatives from civil society organizations involved with transparency and civil society oversight of the extractive industries, which shall be registered on a list of interested parties drawn up by the Ministry of Energy and Mines. One of these representatives must come from an organization domiciled outside of Lima.

An alternate could be considered for each representative

Article 4. Mission of the Committee

The mission of the EITI Working Committee is to implement the "Action Plan for Implementation of the EITI," and to support and actively contribute to the institutionalization and sustainability of the EITI implementation process.

The EITI has the following specific objectives:

- a. To independently clarify and reconcile the amount of payments made by the extractive industries and the revenues received by State entities from these industries.
- b. To develop transparent knowledge of how these resources are channeled toward end-recipient public expenditure entities and used at all levels, particularly in regions where extractive industries play an important role in the economy.
- c. To disseminate the findings of the work conducted.

Article 5. Functions of the Committee

The Committee shall perform the following functions:

- a. Lead, organize, supervise and promote the execution of the "Action Plan for Implementation of the EITI," building the working relations necessary for intersectoral and regional cooperation, adherence to corresponding timetables, and synchronization with approved budgets.
- b. Form and organize working sub-groups that are necessary for the execution of the "Action Plan for the Implementation of the EITI," including pilot programs in regions with major extractive industries.
- c. Develop and approve the terms of reference necessary for the selection and contracting of corporations or private individuals providing services.
- d. Select consultants or consulting firms needed to execute the Action Plan, including the supervisory and auditing functions, and those related to the dissemination of results. Contracting will take place through the mechanism agreed upon in the Memorandum of Understanding with the World Bank, or others that may be established for implementing the EITI.
- e. Execute expenditure audits and give a public account of expenditure. Ensure ongoing tripartite participation and a decision-making process that strikes a balance among the interests of the parties involved.

- f. Ensure and promote public, open, clear, and periodic dissemination of information, as well as access to information regarding the progress and outcomes in the technical and budgetary execution of the "Action Plan for the Implementation of the EITI," particularly with respect to the actors involved.
- g. Monitor and evaluate activities executed, in order to measure the outcomes and effects of the EITI.
- h. Propose and approve its Operational Rules and Regulations, as well as the Work Plan, which outlines the main aims and objectives to be used for assessing the results of the "Action Plan for the Implementation of the EITI"
- i. Draft proposals and recommendations for actions or measures to be adopted by the various entities involved in the execution of the Plan or any other institution that could contribute to improved execution of the Plan.
- j. Identify and commit other sources of funding for EITI implementation that ensure its sustainability.
- k. Oversee, through sub-groups, the execution of the regional pilot programs, beginning with the program defined in the Action Plan for the Cusco Region. The Committee may also participate in the monitoring and coordination of projects of similar content and scope in other regions.

Article 6. Appointment of Representatives

Regular and alternate representatives from the Public Sector shall be appointed through official Resolutions. The other regular and alternate representatives of the Committee shall be appointed through written communication to the Technical Secretariat of the Working Committee of the EITI.

These appointments must be made within ten (10) working days following publication of this Supreme Decree.

Committee members shall exercise or perform their duties on a part-time basis and in an ad honorem capacity.

Article 7. The Technical Secretariat

The Committee shall have a Technical Secretariat within the Ministry of Energy and Mines and that shall be under the oversight of a Technical Secretary, appointed by Ministerial Resolution, within five (5) working days of publication of this Supreme Decree. The Technical Secretary may be one of the Committee members appointed by the Ministry.

The Technical Secretariat, under the authority of the Committee, shall carry out those coordination activities necessary for its operations and fulfillment of its specific functions, including representation in organizations sponsoring and supporting the EITI. These will be set out in detail in the Operational Rules and Regulations of the Committee.

Article 8. Inter-Institutional Cooperation

The EITI Working Committee may invite representatives from the Ombudsman, PERUPETRO, the National Tax Administration Superintendency, the National

Commission on Decentralization, and public or private entities, so that they may provide information or contribute to EITI implementation within the framework of the law.

Article 9. Procedure for Contracting Support Professionals and Entities

In order to achieve its objectives, the Committee shall hire consultants or consulting firms through the mechanisms established in the Memorandum of Understanding with the World Bank referred to in the preamble to this Supreme Decree.

Article 10. Operational Rules and Regulations

The Committee shall approve its Operational Rules and Regulations, on the recommendation of the Technical Secretariat. This approval shall be provided within fifteen (15) working days of the commencement of the Committee's operations.

Article 11. Establishment and Term of the Committee

The Committee shall be established within ten (10) working days following the period for appointment of its representatives, when convened by the Technical Secretariat.

The Working Committee of the EITI shall be functional and operational through December 2006, at which time it must submit a Complementary Action Plan.

Article 12. Funds and Rendering of Accounts

The Committee established by this Supreme Decree shall not require funds from the Treasury.

The funds needed to begin implementing the EITI in Peru shall initially come from those indicated in the Memorandum of Understanding with the World Bank.

The Committee shall render accounts that shall be open to the public, as shall the entities sponsoring and supporting the EITI, regarding use of funds for EITJ implementation, and shall be responsible for providing information on the results obtained and the progress made in the execution of the "Action Plan for the Implementation of the EITI"

Article 13. Approval

This Supreme Decree shall be approved by the President of the Council of Ministers and the Ministers of Energy and Mines, and Economy and Finance.

Signed at the official headquarters of the Government in Lima, May 9, 2006.

ALEJANDRO TOLEDO
President of the Republic

PEDRO PABLO KUCZYNSKI GODARD
President of the Council of Ministers

GLODOMIRO SANCHEZ MEJIA
Minister of Energy and Mines

FERNANDO ZAVALA LOMBARDI
Minister of Economy and Finance

08593