



Republic of the Philippines
Department of Environment and Natural Resources
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December 27, 1999

**MEMORANDUM ORDER
NO. 99 - 34**

SUBJECT : CLARIFICATORY GUIDELINES IN THE IMPLEMENTATION OF DENR ADMINISTRATIVE ORDER NO. 96-40 OR "REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942 OTHERWISE KNOWN AS THE 'PHILIPPINE MINING ACT OF 1995'"

In order to achieve a consistent implementation of DENR Administrative Order No. 96-40 or the Revised Implementing Rules and Regulations of Republic Act No. 7942, the following clarificatory guidelines are hereby promulgated:

Section 1. Area Status and Clearance of Applications for Exploration Permit, Mineral Agreement and Financial or Technical Assistance Agreement

Before securing the Area Status and Clearance from the pertinent DENR Sectors, the Bureau/concerned Regional Office(s) shall first check in its control maps if the area is free/open for mining applications. Only cleared mining applications shall be forwarded to the pertinent DENR Sectors for Area Status and Clearance in accordance with DENR Memorandum Order No. 98 - 03.

Section 2. "Duly Authorized Representative" of Permittee

Under the terms and conditions of an Exploration Permit, the duly authorized representative of a Permittee refers to entities/service contractors to whom the Permittee has entered into an operating agreement or other similar forms of agreement duly approved by the Secretary.

Section 3. Renewal of Exploration Permit

The failure of a Permittee to apply for a renewal of the Exploration Permit within the prescribed period shall automatically open the area to mining applications upon the expiration of the said Permit.

Section 4. Mandatory Requirements by a Permittee for an Application for MA/FTAA (Section 30)

The Exploration and Environmental Work Programs are not applicable as mandatory requirements for an application for a Mineral Agreement or Financial or Technical Assistance Agreement by a Permittee, hence, these documents shall not be required in the filing of said application.



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December 27, 1999

**ADMINISTRATIVE ORDER
No. 99 - 56**

SUBJECT : GUIDELINES ESTABLISHING THE FISCAL REGIME OF FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENTS

Pursuant to Section 81 and other pertinent provisions of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Mining Act"), the following guidelines establishing the fiscal regime of Financial or Technical Assistance Agreements (FTAA) are hereby promulgated.

Section 1. Scope

This Administrative Order is promulgated to:

- a. Establish the fiscal regime for FTAA's which the Government and the FTAA Contractors shall adopt for the large-scale exploration, development and commercial utilization of mineral resources in the country; and
- b. Provide for the formulation of a Pro Forma FTAA embodying the fiscal regime established herein and such other terms and conditions as provided in the Mining Act and the Implementing Rules and Regulations (IRR) of the Mining Act.

Section 2. Objectives

The objectives of this Administrative Order are:

- a. To achieve an equitable sharing among the Government, both National and Local, the FTAA Contractor and the concerned communities of the benefits derived from mineral resources to ensure sustainable mineral resources development; and
- b. To ensure a fair, equitable, competitive and stable investment regime for the large scale exploration, development and commercial utilization of minerals.

Section 3. Fiscal Regime of a Financial or Technical Assistance Agreement

The Financial or Technical Assistance Agreement which the Government and the FTAA Contractor shall enter into shall have a Fiscal Regime embodying the following provisions:

- a. General Principles. The Government Share derived from Mining Opera-

- 5. All Government taxes and fees;
- 6. Payments made to local Governments and infrastructure contributions;
- 7. Payments to landowners, surface rights holders, Claimowners, including the Indigenous Cultural Communities, if any;
- 8. Expenses incurred in fulfilling the Contractor's obligations to contribute to national development and training of Philippine personnel;
- 9. Consulting fees incurred inside and outside the Philippines for work related directly to the Mining Operations;
- 10. The establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocatable to the Mining Operations and directly related to the performance of the Contractor's obligations and exercise of its rights under the FTAA;
- 11. Costs incurred in financial development, including interest on loans payable within or outside the Philippines, subject to the financing requirements required in the FTAA and to a limit on debt-equity ratio of 5:1 for investments equivalent to 200 Million US Dollars or less, or for the first 200 Million US Dollars of investments in excess of 200 Million US Dollars; or 8:1 for that part of the investment which exceeds 200 Million US Dollars: Provided, That the interests shall not be more than the prevailing international rates charged for similar types of transaction at the time the financing was arranged;
- 12. All costs of constructing and developing the mine incurred before the Date of Commencement of Commercial Production, including capital and property as hereinafter defined irrespective as to their means of financing, subject to the limitations defined by Clause 3-f-11 hereof, and inclusive of the principal obligation and the interests arising from any Contractor's leasing, hiring, purchasing or similar financing arrangements including all payments made to Government, both National and Local; and
- 13. General and administrative expenses actually incurred by the Contractor for the benefit of the Contract Area.

The foregoing recoverable Pre-Operating Expenses shall be subject to verification of its actual expenditure by an independent audit recognized by the Government and chargeable against the Contractor.

g. Government Share.

- 1. Basic Government Share. The following taxes, fees and other such charges shall constitute the Basic Government Share:
 - a) Excise tax on minerals;
 - b) Contractor's income tax;
 - c) Customs duties and fees on imported capital equipment;
 - d) Value added tax on the purchase of imported equipment, goods and services;
 - e) Withholding tax on interest payments on foreign loans;
 - f) Withholding tax on dividends to foreign stockholders;
 - g) Royalties due the Government on Mineral Reservations;
 - h) Documentary stamps taxes;
 - i) Capital gains tax;
 - j) Local business tax;
 - k) Real property tax;
 - l) Community tax;
 - m) Occupation fees;

The failure of a Permittee to apply for a renewal of the Exploration Permit within the prescribed period shall automatically open the area to mining applications upon the expiration of the said Permit.

Section 4. Mandatory Requirements by a Permittee for an Application for MA/FTAA (Section 30)

The Exploration and Environmental Work Programs are not applicable as mandatory requirements for an application for a Mineral Agreement or Financial or Technical Assistance Agreement by a Permittee, hence, these documents shall not be required in the filing of said application.

Section 5. Mandatory Requirements for Mineral Agreement Application

Mineral Agreement applications going directly into the development/operating phase shall be required to submit a Three (3)-Year Development/Utilization Work Program, instead of a Two (2)-Year Exploration Work Program. The Development/Utilization Work Program shall be accompanied by an appropriate Mining Project Feasibility Study (MGB Form No. 5-3) duly prepared, signed and sealed by a licensed Mining Engineer, Geologist or Metallurgical Engineer and the pertinent Declaration of Mining Project Feasibility duly signed by the applicant.

Section 6. Registration of Mineral Agreement

In the registration of the Mineral Agreement, it shall be first forwarded to the Bureau for numbering upon approval of the Secretary, thence, to the concerned Regional Office for registration, for areas outside Mineral Reservations. The Director/concerned Regional Director shall notify the Contractor to cause the registration of its Mineral Agreement with the Bureau for areas inside Mineral Reservations or with the concerned Regional Office for areas outside Mineral Reservations within fifteen (15) working days from receipt of the written notice.

Section 7. Availment of Multiphase Activities under the FTAA

Any two (2) or more of the periods (Exploration, Pre-Feasibility Study, Feasibility Study) provided in Section 52 of the DENR Administrative Order No. 96-40 may be simultaneously undertaken in one approved contract area, as the need of the Contractor may arise, subject to the pertinent provisions of Section 60 of the same Administrative Order: *Provided*, That the Contractor shall file a Notice to the concerned Regional Office, copy furnished the Bureau, of its intention to avail of the renewal of the Exploration Period or to advance to/avail of the Pre-Feasibility Study/Feasibility Study/Development and Construction/Operating Period, as deemed applicable, either in the whole or a portion of the Contract Area, subject to the approval of the Director.

Failure of the Contractor to file the Notice to avail of the renewal of the Exploration Period or to advance to/avail of the Pre-Feasibility Study/ Feasibility Study Period shall mean that the said periods shall not be availed of by the Contractor.

Section 8. Three (3) Letters-Notice Policy

The Mines and Geosciences Bureau shall adopt the Three (3) Letters-Notice policy in exacting compliance of mining applicants with all requirements to support mining applications. Thus, each Letter-Notice shall give the mining applicant fifteen (15) to thirty (30) days upon receipt of the Letter-Notice to comply with the pertinent requirements: *Provided*, That an interval of no more than thirty (30) days between deadlines shall be observed in sending the Letters-Notice.

The failure of the mining applicant to fully comply with the requirement as embodied in the Letters-Notice shall be a ground for denial of the mining application.

Section 9. Authorized Capitalization

The minimum authorized capital of Ten Million Pesos (P 10,000,000.00) and paid-up capital of Two Million Five Hundred Thousand Pesos (P 2,500,000.00) required for a corporation/association/cooperative/ partnership under DENR

b. To ensure a fair, equitable, competitive and stable investment regime for the large scale exploration, development and commercial utilization of minerals.

Section 3. Fiscal Regime of a Financial or Technical Assistance Agreement

The Financial or Technical Assistance Agreement which the Government and the FTAA Contractor shall enter into shall have a Fiscal Regime embodying the following provisions:

- a. General Principles. The Government Share derived from Mining Operations after the Date of Commencement of Commercial Production shall be determined in accordance with this Section.
- b. Occupation Fees. Prior to or upon registration of the FTAA and on the same date every year thereafter, the Contractor shall pay to the concerned Treasurer of the municipality(ies) or city(ies) the required Occupation Fee over the Contract Area at the rate provided for by existing laws, rules and regulations.
- c. Deductible Expenses. Allowable deductible expenses shall include all the expenses incurred by the Contractor directly, reasonably and necessarily related to the Mining Operations in the Contract Area in a Calendar Year during the Operating Phase. Allowable deductible expenses shall include the following:

1. Mining, milling, transport and handling expenses together with smelting and refining costs other than smelting and refining costs paid to third parties;
2. General and administrative expenses actually incurred by the Contractor in the Philippines;
3. Consulting fees:
 - a) incurred within the Philippines for work related to the project
 - b) incurred outside the Philippines for work related to the project: *Provided*, That such fees are justifiable and subject to the approval of the Director.
4. Environmental expenses of the Contractor including such expenses necessary to fully comply with its environmental obligations as stipulated in the environmental protection provision of the FTAA and in the IRR;
5. Expenses for the development of host and neighboring communities and for the development of geoscience and mining technology as stipulated in the FTAA and in the IRR together with the training costs and expenses referred to in the FTAA;
6. Royalty payments to Claimowners or surface land owners relating to the Contract Area during the Operating Phase;
7. Continuing exploration and mine development expenses within the Contract Area after the pre-operating period;
8. Interest expenses charged on loans or such other financing-related expenses incurred by the Contractor subject to the financing requirement in the FTAA, which shall not be more than the prevailing international rates charged for similar types of transactions at the time the financing was arranged, and where such loans are necessary for the operations; and
9. Government taxes, duties and fees.

Ongoing Capital Expenditures shall be considered as capital expenses subject to Depreciation Charges.

"Ongoing Capital Expenditures" shall mean expenses for approved acquisitions of equipment and approved construction of buildings necessary for the Mining Operations as provided in its approved Mining Project Feasibility Study.

"Depreciation Charges" means the annual non-cash deduction from the Operating Income for the use of fixed assets that are subject to exhaustion, wear and tear and obsolescence during their employment in a Mining Operation. Its applicability and computation are provided in

- c) Contractor's income tax;
- d) Value added tax on the purchase of imported equipment, goods and services;
- e) Withholding tax on interest payments on foreign loans;
- f) Withholding tax on dividends to foreign stockholders;
- g) Royalties due the Government on Mineral Reservations;
- h) Documentary stamps taxes;
- i) Capital gains tax;
- j) Local business tax;
- k) Real property tax;
- l) Community tax;
- m) Occupation fees;
- n) All other local Government taxes, fees and imposts as of the effective date of the FTAA;
- o) Special Allowance, as defined in the Mining Act; and
- p) Royalty payments to any Indigenous People(s)/Indigenous Cultural Community (ies).

From the Effective Date, the foregoing taxes, fees and other such charges constituting the Basic Government Share, if applicable, shall be paid by the Contractor: *Provided*, That above items (a) to (g) shall not be collected from the Contractor upon the date of approval of the Mining Project Feasibility Study up to the end of the Recovery Period. Any taxes, fees, royalties, allowances or other imposts, which should not be collected by the Government, but nevertheless paid by the Contractor and are not refunded by the Government before the end of the next taxable year, shall be included in the Government Share in the next taxable year. Any Value-Added Tax refunded or credited shall not form part of Government Share.

2. Additional Government Share. Prior to the commencement of Development and Construction Phase, the Contractor may select one of the formula for calculating the Additional Government Share set out below which the Contractor wishes to apply to all of its Mining Operations and notify the Government in writing of that selection. Upon the issuance of such notice, the formula so selected shall thereafter apply to all of the Contractor's Mining Operations.

- a) Fifty-Fifty Sharing of the Cumulative Present Value of Cash Flows. The Government shall collect an Additional Government Share from the Contractor equivalent to an amount which when aggregated with the cumulative present value of Government Share during the previous Contract Years and the Basic Government Share for the current Contract Year is equivalent to a minimum of fifty percent (50%) of the Cumulative Present Value of Project Cash Flow before financing for the current Contract Year, as defined below.

Computation. The computation of the Additional Government Share shall commence immediately after the Recovery Period. If the computation covers a period of less than one year, the Additional Government Share corresponding to this period shall be computed *pro-rata* wherein the Additional Government Share during the year shall be multiplied by the fraction of the year after recovery. The Additional Government Share shall be computed as follows:

Project Cash Flow Before Financing and Tax ("CF") for a taxable year shall be calculated as follows:

$$CF = GO - DE + I - PE - OC$$

Cumulative Present Value of Project Cash Flow ("CP") shall be the sum of the present value of the cumulative present value of project cash flow during the previous year (CP_{n-1} × 1.10) and the Project Cash Flow Before Financing and Tax for the cur-

cation.

Section 9. Authorized Capitalization

The minimum authorized capital of Ten Million Pesos (P 10,000,000.00) and paid-up capital of Two Million Five Hundred Thousand Pesos (P 2,500,000.00) required for a corporation/association/cooperative/ partnership under DENR Memorandum Order No. 99-10 shall apply to the principal applicant whether or not this applicant is supported by an operator or service contractor thru an operating agreement or other similar forms of agreement: *Provided*, That in the case of a mining application with two (2) or more applicants as co-applicants, the minimum authorized capital of P 10 Million and paid-up capital of P 2.5 Million may be required from just one (1) of the co-applicants.

In the case of a mining application by an individual, the minimum amount of Two Million Five Hundred Thousand Pesos (P 2,500,000.00) shall be required as proof of financial capability, which shall be in the form of a bank deposit or credit line.

Consistent with the provisions of DENR Memorandum Order No. 99-10, the foregoing requirements shall be mandatory in the acceptance of a mining application.

Section 10. Prior Approval by the Sanggunian

Prior approval or indorsement by any two (2) of the concerned Sanggunian (Panlalawigan, Bayan and Barangay) shall be required in support of mining applications intended for development and/or utilization purposes. In the case of mining applications intended for exploration, a proof of consultation with/ project presentation to any two (2) of the concerned Sanggunian shall be required.

In either case, the proof of prior approval, indorsement, consultation and/or project presentation shall be in the form of a formal Resolution or Certification by the concerned Sanggunian.


Section 11. Approval of Memorandum of Agreement/Option Agreement/ Operating Agreement and other similar forms of Agreement under Mining Rights/Applications

Memorandum of Agreement(s)/Option Agreement(s)/Operating Agreement(s) and other similar forms of Agreements under a mining application shall be registered with the Bureau/concerned Regional Office and shall form part of the supporting document of a mining application, subject to the evaluation of the Bureau/Regional Office. Such agreement shall be deemed approved upon approval of the mining application.

Memorandum of Agreement(s)/Option Agreement(s)/Operation Agreement or other similar forms of Agreement entered into under a mining permit/contract shall be registered with the Bureau/concerned Regional Office and shall be subject to the approval of the Secretary upon evaluation and recommendation by the Director. Any of such Agreement that is not duly registered and/or approved by the DENR Secretary shall be deemed void in so far as the Department is concerned.

Section 12. Effectivity

This Order shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation and fifteen (15) days after registration with the Office of the National Administrative Registrar.


ANTONIO H. CERILLES
Secretary

essary for the Mining Operations as provided in its approved Mining Project Feasibility Study.

"Depreciation Charges" means the annual non-cash deduction from the Operating Income for the use of fixed assets that are subject to exhaustion, wear and tear and obsolescence during their employment in a Mining Operation. Its applicability and computation are regulated by existing taxation laws, the Mining Act and the IRR. Incentives relating to depreciation allowance shall be in accordance to the provisions of the Mining Act and the IRR.

"Operating Income" means the Gross Output less Deductible Expenses, while "Gross Output" has the meaning ascribed to it in the National Internal Revenue Code.

d. **Payment of Government Taxes and Fees.** The Contractor shall promptly pay all the taxes and fees required by the Government in carrying out the activities covered in the FTAA and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees subject to all rights of objection or review as provided for in relevant laws, rules and regulations. In case of non-collection as covered by Clause 3-g-1 of this Section, the Contractor shall follow the prevailing procedures for availment of such non-collection in accordance with pertinent laws, rules and regulations. Where prevailing orders, rules and regulations do not fully recognize and implement the provisions covered by Clause 3-g-1 of this Section, the Government shall exert its best efforts to ensure that all such orders, rules and regulations are revised or modified accordingly.

e. **Recovery of Pre-Operating Expenses.** Considering the high risk, high cost and long term nature of Mining Operations, the Contractor is given the opportunity to recover its Pre-Operating Expenses incurred during the pre-operating period, after which the Government shall receive its rightful share of the national patrimony. The Recovery Period, which refers to the period allowed to the Contractor to recover its Pre-Operating Expenses as provided in the Mining Act and the IRR, shall be for a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first. The basis for determining the Recovery Period shall be the actual Net Cash Flows from Mining Operations and actual Pre-Operating Expenses converted into its US dollar equivalent at the time the expenditure was incurred.

"Net Cash Flow" means the Gross Output less Deductible Expenses, Pre-Operating Expenses, Ongoing Capital Expenditures and Working Capital charges.

f. **Recoverable Pre-Operating Expenses.** Pre-Operating Expenses for recovery which shall be approved by the Secretary upon recommendation of the Director shall consist of actual expenses and capital expenditures relating to the following:

1. Acquisition, maintenance and administration of any mining or exploration tenements or agreements covered by the FTAA;
2. Exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
3. Stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
4. Development within the Contract Area relating to the Mining Operations;

CF = GO - DE + I - PE - OC

Cumulative Present Value of Project Cash Flow ("CP") shall be the sum of the present value of the cumulative present value of project cash flow during the previous year ($CP_{t-1} \cdot 1.10$) and the Project Cash Flow Before Financing and Tax for the current year ("CF"), and shall be calculated as follows:

$$CP = (CP_{t-1} \cdot 1.10) + CF$$

Cumulative Present Value of Total Government Share Before Additional Government Share ("CGB") shall be the sum of: the present value of the cumulative present value of the Total Government Share during the previous year ($CGA_{t-1} \cdot 1.10$), and the Basic Government Share for the current year (BGS), and shall be calculated as follows:

$$CGB = (CGA_{t-1} \cdot 1.10) + BGS$$

The Additional Government Share ("AGS") shall be:

- If: $CGB \geq CP \cdot 0.5$ then $AGS = 0$
- If: $CGB < CP \cdot 0.5$ then $AGS = [CP \cdot 0.5] - CGB$

Cumulative Present Value of Total Government Share (CGA):

$$CGA = CGB + AGS$$

where:

- BGS = Basic Government Share shall have the meaning as described in Clause 3-g-1 hereof;
- GO = Gross Output shall have the same meaning as defined in the National Internal Revenue Code;
- DE = Deductible Expenses shall have the meaning as described in Clause 3-c hereof;
- I = Interest payments on loans included in the Deductible Expenses shall be equivalent to those referred to in Clause 3-c-8 hereof;
- PE = unrecovered Pre-Operating Expenses;
- OC = On-going Capital Expenditures as defined in Clause 3-c hereof;
- CP_{t-1} = cumulative present value of project cash flow during the previous year; and
- CGA_{t-1} = cumulative present value of total Government Share during the previous year.

b) **Profit Related Additional Government Share.** The Government shall collect an Additional Government Share from the Contractor based on twenty-five percent (25%) of the additional profits once the arithmetic average of the ratio of Net Income After Tax To Gross Output as defined in the National Internal Revenue Code, for the current and previous taxable years is 0.40 or higher rounded off to the nearest two decimal places.

Computation. The computation of the Additional Government Share from additional profit shall commence immediately after the Recovery Period. If the computation covers a period of less than a year, the additional profit corresponding to this period shall be computed *pro-rata* wherein the total additional profit during the year shall be multiplied by the fraction of the year after recovery.

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The additional profit shall be derived from the following formula:

If the computed average ratio as derived from above is less than 0.40:

Additional Profit = 0

If the computed average ratio is 0.40 or higher:

Additional Profit = [NIAT - (0.40 x GO)] / (1 - ITR)

The Additional Government Share from the additional profit is computed using the following formula:

Additional Government Share From Additional Profit = 25% x Additional Profit

where:

- NIAT = Net Income After Tax for the particular taxable year under consideration.
GO = Gross Output from operations during the same taxable year.
ITR = Income Tax Rate applied by the Bureau of Internal Revenue in computing the income tax of the Contractor during the taxable year.

c) Additional Share Based from the Cumulative Net Mining Revenue. The Additional Government Share for a given taxable year shall be calculated as follows:

(i) Fifty percent (50%) of cumulative Net Mining Revenue from the end of the Recovery Period to the end of that taxable year;

LESS

(ii) Cumulative Basic Government Share for that period as calculated under Clause 3-g-1 hereof;

AND LESS (if applicable)

(iii) Cumulative Additional Government Share in respect of the period commencing at the end of the Recovery Period and expiring at the end of the taxable year immediately preceding the taxable year in question.

"Net Mining Revenue" means the Gross Output from Mining Operations during a Calendar year less Deductible Expenses, plus Government taxes, duties and fees included as part of Deductible Expenses.

3. Failure to Notify. If the Contractor does not notify the Government within the time contemplated by Clause 3-g-2 of the formula for calculating the Additional Government Share which the Contractor wishes to apply to

The Pro Forma FTAA Contract shall be used by the DENR, the Negotiating Panel and the mining applicant for negotiation of the terms and conditions of the FTAA: Provided, That the terms and conditions provided in the Pro Forma FTAA Contract shall be incorporated in each and every FTAA.

Section 5. Status of Existing FTAA's

All FTAA's approved prior to the effectivity of this Administrative Order shall remain valid and be recognized by the Government: Provided, That should a Contractor desires to amend its FTAA, it shall do so by filing a Letter of Intent (LOI) to the Secretary thru the Director: Provided, further, That if the Contractor desires to amend the fiscal regime of its FTAA, it may do so by seeking for the amendment of its FTAA's whole fiscal regime by adopting the fiscal regime provided hereof: Provided, finally, That any amendment of an FTAA other than the provision on fiscal regime shall require the negotiation with the Negotiating Panel and the recommendation of the Secretary for approval of the President of the Republic of the Philippines.

Section 6. Repealing Clause

All orders and circulars or parts thereof inconsistent with or contrary to the provisions of this Order are hereby repealed, amended or modified accordingly.

Section 7. Effectivity

This Order shall take effect fifteen (15) days upon its complete publication in newspaper of general circulation and fifteen (15) days after registration with the Office of the National Administrative Register. Quezon City, Philippines

ANTONIO H. CERILLES Secretary

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December 27, 1999

ADMINISTRATIVE ORDER No. 99 - 57

SUBJECT : AMENDMENTS TO DEPARTMENT ADMINISTRATIVE ORDER NO. 96-40 OR THE "REVISED IMPLEMENTING RULES AND REGULATIONS

of Intent with the Bureau prior to the expiration of the Exploration Permit, copy furnished the concerned Regional Office. Said Letter shall also provide therein its intention over the area that may not be covered by the conversion to a Mineral Agreement or FTAA: Provided, That the MA or FTAA application shall be filed with the concerned Regional Office within thirty (30) days upon filing of the Letter of Intent: Provided, further, That the failure of the Permittee to file the MA or FTAA application within the prescribed period shall be construed that the Permittee elects to continue operation until the expiration of the Exploration Permit.

Upon compliance by the Permittee with all the mandatory requirements and upon payment of the required conversion fee, the application for conversion shall be evaluated and approved subject to Chapter VI and Chapter VII of DAO No. 96-40 and all other applicable provisions of the Act and DAO No. 96-40: Provided, That the term of the Exploration Permit shall be deducted from the terms of the Exploration/Pre-Feasibility Study/Feasibility Study Period of the Mineral Agreement or FTAA."

Section 6. Section 39 (Terms and Conditions of a Mineral Agreement) is hereby amended, to read as follows:

"The following terms and conditions shall be incorporated in the Mineral Agreement, namely:

- a. x x x
b. Representations and warranties that the Contractor has, or has access to, all the financing and technical capability and technology required to promptly and effectively carry out the objectives of the Agreement with the understanding to timely utilize these resources under its supervision pursuant to the periodic work programs and related budgets, and when proper, providing an exploration period up to two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of six (6) years for nonmetallic minerals exploration or eight (8) years for metallic minerals exploration, subject to annual review and approval by the Director in accordance with these implementing rules and regulations: Provided, That in cases where further exploration is warranted and on condition that the Contractor has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau/concerned Regional Office, the Secretary may further grant renewal of the Exploration Period: Provided, further, That the Contractor shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs: Provided, finally, That the conduct of feasibility studies shall be included during the term of the Exploration Period;
c. x x x
d. x x x After the exploration period and prior to or upon approval of Declaration of Mining Project Feasibility by the Director, the Contractor shall finally relinquish to the Government any portion of the x x x x x x."

Section 7. A new Section is hereby added to allow the conversion of

"Net Mining Revenue" means the Gross Output from Mining Operations during a Calendar year less Deductible Expenses, plus Government taxes, duties and fees included as part of Deductible Expenses.

3. **Failure to Notify.** If the Contractor does not notify the Government within the time contemplated by Clause 3-g-2 of the formula for calculating the Additional Government Share which the Contractor wishes to apply to all of its Mining Operations, the Government shall select and inform the Contractor which option will apply to the latter.
4. **Filing and Payment of Additional Government Share.** Payment of the Additional Government Share shall commence after the Recovery Period. The Additional Government Share shall be computed, filed and paid to the MGB within fifteen (15) days after the filing and payment of the final income tax return during the taxable year to the Bureau of Internal Revenue. Late filing and payment of the Additional Government Share shall be subject to the same penalties applicable to late filing of income tax returns. The Contractor shall furnish the Director a copy of its income tax return not later than fifteen (15) days after the date of filing.
- A record of all transactions relating to the computation of the Additional Government Share shall be maintained by the Contractor and shall be made available to the Secretary or his/her authorized representative for audit.

- h. **Sales and Exportation** - The Contractor shall endeavor to dispose of the minerals and by-products produced in the Contract Area at the highest commercially achievable market price and lowest commercially achievable commissions and related fees in the circumstances then prevailing and to negotiate for sales terms and conditions compatible with world market conditions. The Contractor may enter into long term sales and marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable notwithstanding that the sale price of minerals may from time to time be lower, or that the terms and conditions of sales are less favorable, than those available elsewhere.

The Government shall be informed by the Contractor when it enters into a marketing agreement with both foreign and local buyers. The Contractor shall provide the Government a copy of the final marketing agreement entered into with buyers subject to the confidentiality clause of the FTAA.

The Government shall be entitled to check and inspect all sales and exportation of minerals and/or mineral products including the terms and conditions of all sales commitments.

Sales commitments with affiliates, if any, shall be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such agreement would be made if the parties had not been affiliated, with due allowance for normal selling discounts or commissions. Such discounts or commissions allowed the affiliates must be no greater than the prevailing rate so that such discounts or commissions will not reduce the net proceeds of sales to the Contractor below those which it would have received if the parties had not been affiliated. The Contractor shall, subject to confidentiality clause of the FTAA, submit to the Government evidence of the correctness of the figures used in computing the prices, discounts and commissions, and a copy of the sales contract.

The Contractor undertakes that any mining, processing or treatment of Ore by the Contractor shall be conducted in accordance with such generally accepted international standards as are economically and technically feasible, and in accordance with such standards the Contractor undertakes to use all reasonable efforts to optimize the mining recovery of Ore from proven reserves and metallurgical recovery of minerals from the Ore: *Provided*, That it is economically and technically feasible to do so.

For purposes of this Clause 3-h, an affiliate of an affiliated company means:

ADMINISTRATIVE ORDER No. 99 - 57

SUBJECT : AMENDMENTS TO DEPARTMENT ADMINISTRATIVE ORDER NO. 96-40 OR THE "REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE 'PHILIPPINE MINING ACT OF 1995' "

Pursuant to Section 8 of Republic Act No. 7942, otherwise known as the "Philippine Mining Act of 1995" and Section 275 of Department Administrative Order (DAO) No. 96-40 entitled "Revised Implementing Rules and Regulations of Republic Act No. 7942, Otherwise Known as the 'Philippine Mining Act of 1995'", and in line with the policy of the Government to continuously provide for a responsive regulatory framework, DAO No. 96-40 is further revised as follows:

Section 1. Clause b.3 of Section 15 (Areas Closed to Mining Applications) is hereby amended, allowing the acceptance of Sand and Gravel Permit Applications without the consent of prior mining applicants except within Mineral Agreement (MA) applications for sand, gravel and alluvial gold, to read as follows:

"x x x.

3. Areas covered by FTAA applications which shall be opened for quarry resources mining applications pursuant to Section 53 hereof upon the written consent of the FTAA applicants: *Provided, That sand and gravel permit applications shall not require consent from the FTAA, Exploration Permit or Mineral Agreement applicant, except for Mineral Agreement or Exploration Permit applications covering sand, gravel and/or alluvial gold: Provided, further, That the Director shall formulate the necessary guidelines to govern this provision;*

x x x."

Section 2. Section 18 (Term/Maximum Areas Allowed under an Exploration Permit) is hereby amended to provide for a maximum term of six (6) years for nonmetallic minerals exploration and eight (8) years for metallic minerals exploration, to read as follows:

"The term of an Exploration Permit shall be for a period of two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of six (6) years for nonmetallic minerals exploration or eight (8) years for metallic minerals exploration: *Provided*, That no renewal of Permit shall be allowed unless the Permittee has complied with all the terms and conditions of the Permit, and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations: *Provided, further, That in cases where further exploration is warranted and on condition that the Permittee has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau/concerned Regional Office, the Secretary may further grant renewal of the Exploration Permit: Provided, furthermore, That the Permittee shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs: Provided, finally, That the conduct of feasibility studies shall be included during the term of the Exploration Permit.*

expenditure requirement of the Exploration and Environmental Work Programs: Provided, finally, That the conduct of feasibility studies shall be included during the term of the Exploration Period;

c. x x x

d. x x x After the exploration period and prior to or upon approval of Declaration of Mining Project Feasibility *by the Director*, the Contractor shall finally relinquish to the Government any portion of the x x x x x x."

Section 7. A new Section is hereby added to allow the conversion of Mineral Agreement Applications to Exploration Permit Applications

"Section 40-A. Conversion of a Mineral Agreement Application into Exploration Permit Application.

An applicant for a Mineral Agreement may, at its option, convert totally or partially its Mineral Agreement application into an Exploration Permit application by filing a Letter of Intent with the Director/concerned Regional Director without losing its priority rights over the area. Said Letter shall also provide therein its intention over the area that may not be covered by the conversion to an EP application.

Upon compliance by the applicant with all the mandatory requirements and upon payment of the required conversion fee, the application for conversion shall be evaluated and approved subject to Chapter V of DAO No. 96-40 and all other applicable provisions of the Act and DAO No. 96-40: Provided, That the date of filing of the Exploration Permit application shall be reckoned from the date when the Mineral Agreement application was filed."

Section 8. Section 42 (Temporary Exploration Permit) is hereby amended, to read as follows:

"Upon the initial evaluation by the Bureau of the Mineral Agreement application, taking into account Area Status and Clearance, financial and technical capability, Exploration and Environmental Work Programs, proof of consultation with the concerned community(ies), and absence of any adverse claim, protest or opposition as certified by the concerned Panel of Arbitrator/Mines Adjudication Board, the Director may, upon the request of the applicant, issue a one-time non-renewable Temporary Exploration Permit (TEP) with a term not exceeding one (1) year to undertake exploration subject to the applicable provisions of Chapter V of these implementing rules and regulations: Provided, That the term of the TEP shall be deducted from the exploration period of the Mineral Agreement: Provided, further, That in the event that the Mineral Agreement application is disapproved by the Secretary, the TEP is deemed automatically canceled.

Upon approval of the TEP, the Director shall cause the registration of the same with the Bureau/concerned Regional Office after payment of the required fees."

Section 9. Section 48 (Issuance of Special Mines Permit) is hereby amended, to read as follows:

"An applicant for Mineral Agreement whose application is valid and existing, has been granted an Area Status and Clearance, NCIP Precondition Certification and endorsement from the concerned Sanggunian, and has no pending mining dispute/conflict as certified by the concerned Panel of Arbitrators/Mines Adjudication Board, may file an application for Special Mines Permit with the Bureau/concerned Regional Office. A Special Mines Permit (SMP) may be issued by the Director upon clearance by the Secretary. The SMP shall be for a period of one (1) year renewable once:

generally accepted international standards as to the economic and technical feasibility, and in accordance with such standards the Contractor undertakes to use all reasonable efforts to optimize the mining recovery of Ore from proven reserves and metallurgical recovery of minerals from the Ore: *Provided*, That it is economically and technically feasible to do so.

For purposes of this Clause 3-h, an affiliate of an affiliated company means:

- a) any company in which the Contractor holds fifty percent (50%) or more of the shares;
- b) any company which holds fifty percent (50%) or more of the Contractor's shares;
- c) any company affiliated by the same definition in (a) or (b) to an affiliated company of the Contractor is itself considered an affiliated company for purposes of the FTAA;
- d) any company which, directly or indirectly, is controlled by or controls, or is under common control by the Contractor;
- e) any shareholder or group of shareholders of the Contractor or of an affiliated company; or
- f) any individual or group of individuals in the employment of the Contractor or of an affiliated company.

Control means the power exercisable, directly or indirectly, to direct or cause the direction of the management and policies of a company exercised by any other company and shall include the right to exercise control or power to acquire control directly or indirectly, over the company's affairs and the power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor. For this purpose, a creditor who lends, directly or indirectly, to the Contractor, unless he has lent money to the Contractor in the ordinary course of money-lending business, may be deemed to be a Person with power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor if the amount of the total of its loan is not less than fifty percent (50%) of the total loan capital of the company.

If a person ("x") would not be an affiliate of an affiliated company ("y") on the basis of the above definition but would be an affiliate if each reference in that definition to "fifty percent (50%)" was read as a reference to "forty percent (40%)" and the Government has reasonable grounds for believing that "x" otherwise controls "y" or "x" is otherwise controlled by "y", then, upon the Contractor being notified in writing by the Government of that belief and the grounds therefore, "x" and "y" shall be deemed to be affiliates unless the Contractor is able to produce reasonable evidence to the contrary.

- I. **Price or Cost Transfers.** The Contractor commits itself not to engage in transactions involving price or cost transfers in the sale of minerals or mineral products and in the purchase of input goods and services resulting either in the illegitimate loss or reduction of Government Share or illegitimate increase in Contractor's share. If the Contractor engages affiliates or an affiliated company in the sale of its mineral products or in providing goods, services, loans or other forms of financing hereunder, it shall do so on terms no less than would be the case with unrelated persons in arms-length transactions.

Section 4. Pro Forma FTAA Contract

The fiscal regime provided herein, and the terms and conditions provided in the Mining Act and IRR shall be embodied in a Pro Forma FTAA Contract to be prepared by the Department of Environment and Natural Resources. The Pro Forma FTAA Contract shall also incorporate such other provisions as the DENR may formulate as a result of consultations or negotiations conducted for that purpose with concerned entities.

concerned Regional Office, the Secretary may further grant renewal of the Exploration Permit: Provided, furthermore, That the Permittee shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs: Provided, finally, That the conduct of feasibility studies shall be included during the term of the Exploration Permit.

x x x."

Section 3. A new Section is hereby added to allow the transfer of Exploration Permit Applications, to read as follows:

"Section 19-A. Transfer or Assignment of Exploration Permit Application

Transfer or assignment of Exploration Permit applications shall be allowed subject to the approval of the Director/concerned Regional Director taking into account the national interest and public welfare: Provided, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation."

Section 4. Section 22 (Terms and Conditions of an Exploration Permit) is hereby amended to conform with the amendments of Section 18, to read as follows:

"An Exploration Permit shall contain the following terms and conditions:

- a. x x x
- b. x x x
- c. The term of the Permit shall be for a period of two (2) years from date of issuance thereof, renewable for like periods but not to exceed a total term of six (6) years *for nonmetallic minerals exploration or eight (8) years for metallic minerals exploration: Provided*, That no renewal of Permit shall be allowed unless the Permittee has complied with the terms and conditions of the Permit and has not been found guilty of violation of any provision of the Act and these implementing rules and regulations: *Provided, further, That in cases where further exploration is warranted and on condition that the Permittee has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau/concerned Regional Office, the Secretary may further grant renewal of the Exploration Permit: Provided, furthermore, That the Permittee shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs: Provided, finally, That the conduct of feasibility studies shall be included during the term of the Exploration Permit;*
- d. x x x
x x x."

Section 5. A new Section is hereby added to allow the conversion of Exploration Permit to an MA or FTAA

"Section 23-A. Conversion of Exploration Permit to Mineral Agreement or Financial or Technical Assistance Agreement

A Permittee who has conducted preliminary exploration activities may, at its option, convert totally or partially its Exploration Permit to a Mineral Agreement or FTAA by filing a Letter

ance, NCIP Precondition Certification and endorsement from the concerned Sanggunian, and has no pending mining dispute/conflict as certified by the concerned Panel of Arbitrators/Mines Adjudication Board, may file an application for Special Mines Permit with the Bureau/concerned Regional Office. A Special Mines Permit (SMP) may be issued by the Director upon clearance by the Secretary. The SMP shall be for a period of one (1) year renewable once: Provided, That the SMP may be further renewed depending upon the nature of the deposit, the propriety of the mining operation, the environmental and community relations track record of the applicant, faithful compliance with the terms and conditions of the SMP and diligence of the applicant in pursuing the Mineral Agreement application, subject to the approval of the Secretary.

In cases where public welfare so requires, the Secretary may, after verification and evaluation of the Bureau, grant other forms of Special Mines Permit so as to address the specific conditions in the area concerned.

The SMP shall be granted, subject to the following conditions and requirements:

- a. That the applicant is already operating or has completed the development/ construction stage and is ready to begin operations *or has a readily available ore for mining* subject to verification by the Bureau;
- b. That the applicant x x x
x x x."

Section 10. Section 53 (Filing of FTAA Applications/Mandatory Requirements) is hereby amended primarily to include a new paragraph, to read as follows:

"x x x

a. x x x

b. x x x

c. x x x

d. Prior to construction, development and/or utilization -

1. **Mining Project** Feasibility Study;
2. **Development/Construction/Utilization Work Program;**
3. Approved Survey Plan of the mining area;
4. Environmental Compliance Certificate; and
5. Environmental Protection and Enhancement Program.

Provided, That any application x x x

In the approval of the Mining Project Feasibility Study, the Director shall take into consideration, among others, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the Project to contribute the Government Share and to absorb the environmental and social costs.

Section 11. A new Section is hereby added to allow the conversion of FTAA Applications to Exploration Permit Applications, to read as follows:

"Section 57-A. Conversion of a FTAA Application into Exploration Permit Application

An applicant for a FTAA may, at its option, convert totally or partially its FTAA Application into an Exploration Permit Application by filing a Letter of Intent with the Director/concerned Regional Director without losing its priority rights over the ap-