

REPUBLIC ACT NO. 7942

[AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION]

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

INTRODUCTORY PROVISIONS

Section 1 Title

This Act shall be known as the "*Philippine Mining Act of 1995.*"

Section 2 Declaration of Policy

All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

Section 3 Definition of Terms

As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:

- a. Ancestral lands refers to all lands exclusively and actually possessed, occupied, or utilized by indigenous cultural communities by themselves or through their ancestors in accordance with their customs and traditions since time immemorial, and as may be defined and delineated by law.
- b. Block or meridional block means an area bounded by one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, containing approximately eighty-one hectares (81 has.).
- c. Bureau means the Mines and Geosciences Bureau under the Department of Environment and Natural Resources.
- d. Carrying capacity refers to the capacity of natural and human environments to accommodate and absorb change without experiencing conditions of instability and attendant degradation.
- e. Contiguous zone refers to water, sea bottom and substratum measured twenty-four nautical miles (24 n.m.) seaward from the base line of the Philippine archipelago.
- f. Contract area means land or body of water delineated for purposes of exploration, development, or utilization of the minerals found therein.
- g. Contractor means a qualified person acting alone or in consortium who is a party to a mineral agreement or to a financial or technical assistance agreement.
- h. Co-production agreement (CA) means an agreement entered into between the Government and

one or more contractors in accordance with Section 26(b) hereof.

i. Department means the Department of Environment and Natural Resources.

j. Development means the work undertaken to explore and prepare an ore body or a mineral deposit for mining, including the construction of necessary infrastructure and related facilities.

k. Director means the Director of the Mines and Geosciences Bureau.

l. Ecological profile or eco-profile refers to geographic-based instruments for planners and decision-makers which presents an evaluation of the environmental quality and carrying capacity of an area.

m. Environmental compliance certificate (ECC) refers to the document issued by the government agency concerned certifying that the project under consideration will not bring about an unacceptable environmental impact and that the proponent has complied with the requirements of the environmental impact statement system.

n. Environmental impact statement (EIS) is the document which aims to identify, predict, interpret, and communicate information regarding changes in environmental quality associated with a proposed project and which examines the range of alternatives for the objectives of the proposal and their impact on the environment.

o. Exclusive economic zone means the water, sea bottom and subsurface measured from the baseline of the Philippine archipelago up to two hundred nautical miles (200 n.m.) offshore.

p. Existing mining/quarrying right means a valid and subsisting mining claim or permit or quarry permit or any mining lease contract or agreement covering a mineralized area granted/issued under pertinent mining laws.

q. Exploration means the searching or prospecting for mineral resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit.

r. Financial or technical assistance agreement means a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources.

s. Force majeure means acts or circumstances beyond the reasonable control of contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbance, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by government or by any instrumentality or subdivision thereof, act of God or any public enemy and any cause that herein describe over which the affected party has no reasonable control.

t. Foreign-owned corporation means any corporation, partnership, association, or cooperative duly registered in accordance with law in which less than fifty *per centum* (50%) of the capital is owned by Filipino citizens.

u. Government means the government of the Republic of the Philippines.

v. Gross output means the actual market value of minerals or mineral products from its mining area as defined in the National Internal Revenue Code.

w. Indigenous cultural community means a group or tribe of indigenous Filipinos who have continuously lived as communities on communally-bounded and defined land since time

immemorial and have succeeded in preserving, maintaining, and sharing common bonds of languages, customs, traditions, and other distinctive cultural traits, and as may be defined and delineated by law.

x. Joint venture agreement (JVA) means an agreement entered into between the Government and one or more contractors in accordance with Section 26(c) hereof.

y. Mineral processing means the milling, beneficiation or upgrading of ores or minerals and rocks or by similar means to convert the same into marketable products.

z. Mine wastes and tailings shall mean soil and rock materials from surface or underground mining and milling operations with no economic value to the generator of the same.

aa. Minerals refers to all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy.

ab. Mineral agreement means a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

ac. Mineral land means any area where mineral resources are found.

ad. Mineral resource means any concentration of minerals/rocks with potential economic value.

ae. Mining area means a portion of the contract area identified by the contractor for purposes of development, mining, utilization, and sites for support facilities or in the immediate vicinity of the mining operations.

af. Mining operation means mining activities involving exploration, feasibility, development, utilization, and processing.

ag. Non-governmental organization (NGO) includes nonstock, nonprofit organizations involved in activities dealing with resource and environmental conservation, management and protection.

ah. Net assets refers to the property, plant and equipment as reflected in the audited financial statement of the contractor net of depreciation, as computed for tax purposes, excluding appraisal increase and construction in progress.

ai. Offshore means the water, sea bottom and subsurface from the shore or coastline reckoned from the mean low tide level up to the two hundred nautical miles (200 n.m.) exclusive economic zone including the archipelagic sea and contiguous zone.

aj. Onshore means the landward side from the mean tide elevation, including submerged lands in lakes, rivers and creeks.

ak. Ore means a naturally occurring substance or material from which a mineral or element can be mined and/or processed for profit.

al. Permittee means the holder of an exploration permit.

am. Pollution control and infrastructure devices refers to infrastructure, machinery, equipment and/or improvements used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailings as well as eliminating or reducing hazardous effects of solid particles, chemicals, liquids or other harmful byproducts and gases emitted from any facility utilized in mining operations for their disposal.

- an. President means the President of the Republic of the Philippines.
- ao. Private land refers to any land belonging to any private person which includes alienable and disposable land being claimed by a holder, claimant, or occupant who has already acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued.
- ap. Public land refers to lands of the public domain which have been classified as agricultural lands and subject to management and disposition or concession under existing laws.
- aq. Qualified person means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty *per centum* (60%) of the capital of which is owned by citizens of the Philippines: Provided, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.
- ar. Quarrying means the process of extracting, removing and disposing quarry resources found on or underneath the surface of private or public land.
- as. Quarry permit means a document granted to a qualified person for the extraction and utilization of quarry resources on public or private lands.
- at. Quarry resources refers to any common rock or other mineral substances as the Director of Mines and Geosciences Bureau may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clays for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass: Provided, That such quarry resources do not contain metals or metallic constituents and/or other valuable minerals in economically workable quantities: Provided, further, That non-metallic minerals such as kaolin, feldspar, bull quartz, quartz or silica, sand and pebbles, bentonite, talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semi-precious stones, and other non-metallic minerals that may later be discovered and which the Director declares the same to be of economically workable quantities, shall not be classified under the category of quarry resources.
- au. Regional director means the regional director of any mines regional office under the Department of Environment and Natural Resources.
- av. Regional office means any of the mines regional offices of the Department of Environment and Natural Resources.
- aw. Secretary means the Secretary of the Department of Environment and Natural Resources.
- ax. Special allowance refers to payment to the claim-owners or surface right-owners particularly during the transition period from Presidential Decree No. 463 and Executive Order No. 279, series of 1987.
- ay. State means the Republic of the Philippines.
- az. Utilization means the extraction or disposition of minerals.

CHAPTER II

GOVERNMENT MANAGEMENT

Section 4 Ownership of Mineral Resources

Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution.

Section 5 Mineral Reservations

When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor: Provided, That a small scale-mining cooperative covered by Republic Act No. 7076 shall be given preferential right to apply for a small-scale mining agreement for a maximum aggregate area of twenty-five percent (25%) of such mineral reservation, subject to valid existing mining/quarrying rights as provided under Section 112 Chapter XX hereof. All submerged lands within the contiguous zone and in the exclusive economic zone of the Philippines are hereby declared to be mineral reservations.

A ten *per centum* (10%) share of all royalties and revenues to be derived by the government from the development and utilization of the mineral resources within mineral reservations as provided under this Act shall accrue to the Mines and Geosciences Bureau to be allotted for special projects and other administrative expenses related to the exploration and development of other mineral reservations mentioned in Section 6 hereof.

Section 6 Other Reservations

Mining operations in reserved lands other than mineral reservations may be undertaken by the Department, subject to limitations as herein provided. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person in accordance with the rules and regulations promulgated by the Secretary. The right to develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: Provided, That the party who undertook the exploration of said reservation shall be given priority. The mineral land so awarded shall be automatically excluded from the reservation during the term of the agreement: Provided, further, That the right of the lessee of a valid mining contract existing within the reservation at the time of its establishment shall not be prejudiced or impaired.

Section 7 Periodic Review of Existing Mineral Reservations

The Secretary shall periodically review existing mineral reservations for the purpose of determining whether their continued existence is consistent with the national interest, and upon his recommendation, the President may, by proclamation, alter or modify the boundaries thereof or revert the same to the public domain without prejudice to prior existing rights.

Section 8 Authority of the Department

The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain. The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.

Section 9 Authority of the Bureau

The Bureau shall have direct charge in the administration and disposition of mineral lands and mineral resources and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered non-governmental organization (NGO) or any qualified person to police all mining activities.

Section 10 Regional Offices

There shall be as many regional offices in the country as may be established by the Secretary, upon the recommendation of the Director.

Section 11 Processing of Applications

The system of processing applications for mining rights shall be prescribed in the rules and regulations of this Act.

Section 12 Survey, Charting and Delineation of Mining Areas

A sketch plan or map of the contract or mining area prepared by a deputized geodetic engineer suitable for publication purposes shall be required during the filing of a mineral agreement or financial or technical assistance agreement application. Thereafter, the contract or mining area shall be surveyed and monumented by a deputized geodetic engineer or bureau geodetic engineer and the survey plan shall be approved by the Director before the approval of the mining feasibility.

Section 13 Meridional Blocks

For purposes of the delineation of the contract or mining areas under this Act, the Philippine territory and its exclusive economic zone shall be divided into meridional blocks of one-half (1/2) minute of latitude and one-half (1/2) minute of longitude.

Section 14 Recording System

There shall be established a national and regional filing and recording system. A mineral resource database system shall be set up in the Bureau which shall include, among others, a mineral rights management system. The Bureau shall publish at least annually, a mineral gazette of nationwide circulation containing among others, a current list of mineral rights, their location in the map, mining rules and regulations, other official acts affecting mining, and other information relevant to mineral resources development. A system and publication fund shall be included in the regular budget of the Bureau.

CHAPTER III

SCOPE OF APPLICATION

Section 15 Scope of Application

This Act shall govern the exploration, development, utilization and processing of all mineral resources.

Section 16 Opening of Ancestral Lands for Mining Operations

No ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.

Section 17 Royalty Payments for Indigenous Cultural Communities

In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well-being of the indigenous cultural community.

Section 18 Areas Open to Mining Operations

Subject to any existing rights or reservations and prior agreements of all parties, all mineral resources in public or private lands, including timber or forestlands as defined in existing laws, shall be open to mineral agreements or financial or technical assistance agreement applications. Any conflict that may arise under this provision shall be heard and resolved by the panel of arbitrators.

Section 19 Areas Closed to Mining Applications

- Mineral agreement or financial or technical assistance agreement applications shall not be allowed:
- a. In military and other government reservations, except upon prior written clearance by the government agency concerned;
 - b. Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;
 - c. In areas covered by valid and existing mining rights;
 - d. In areas expressly prohibited by law;
 - e. In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and
 - f. Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National

Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.

CHAPTER IV

EXPLORATION PERMIT

Section 20 Exploration Permit

An exploration permit grants the right to conduct exploration for all minerals in specified areas. The Bureau shall have the authority to grant an exploration Permit to a qualified person.

Section 21 Terms and Conditions of the Exploration Permit

An exploration permit shall be for a period of two (2) years, subject to annual review and relinquishment or renewal upon the recommendation of the Director.

Section 22 Maximum Areas for Exploration Permit

The maximum area that a qualified person may hold at any one time shall be:

- a. Onshore, in any one province
 1. for individuals, twenty (20) blocks; and
 - b. for partnerships, corporations, cooperatives, or associations, two hundred (200) blocks.
- b. Onshore, in the entire Philippines
 1. for individuals, forty (40) blocks; and
 2. for partnerships, corporations, cooperatives, or associations, four hundred (400) blocks.
- c. Offshore, beyond five hundred meters (500m) from the mean low tide level:
 1. for individuals, one hundred (100) blocks; and
 2. for partnerships, corporations, cooperatives, or associations, one thousand (1,000) blocks.

Section 23 Rights and Obligations of the Permittee

An exploration permit shall grant to the permittee, his heirs or successors-in-interest, the right to enter, occupy and explore the area: Provided, That if private or other parties are affected, the permittee shall first discuss with the said parties the extent, necessity, and manner of his entry, occupation and exploration and in case of disagreement, a panel of arbitrators shall resolve the conflict or disagreement.

The permittee shall undertake an exploration work on the area as specified by its permit based on an approved work program.

Any expenditure in excess of the yearly budget of the approved work program may be carried forward and credited to the succeeding years covering the duration of the permit. The Secretary, through the Director, shall promulgate rules and regulations governing the terms and conditions of the permit.

The permittee may apply for a mineral production sharing agreement, joint venture agreement, co-production agreement or financial or technical assistance agreement over the permit area, which application shall be granted if the permittee meets the necessary qualifications and the terms and conditions of any such agreement: Provided, That the exploration period covered by the exploration permit shall be included as part of the exploration period of the mineral agreement or financial or technical assistance agreement.

Section 24 Declaration of Mining Project Feasibility

A holder of an exploration permit who determines the commercial viability of a project covering a mining area may, within the term of the permit, file with the Bureau a declaration of mining project feasibility accompanied by a work program for development. The approval of the mining project feasibility and compliance with other requirements provided in this Act shall entitle the holder to an exclusive right to a mineral production sharing agreement or other mineral agreements or financial or technical assistance agreement.

Section 25 Transfer or Assignment

An exploration permit may be transferred or assigned to a qualified person subject to the approval of the Secretary upon the recommendation of the Director.

CHAPTER V

MINERAL AGREEMENTS

Section 26 Modes of Mineral Agreement

For purposes of mining operations, a mineral agreement may take the following forms as herein defined:

- a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.
- b. Co-production agreement is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.
- c. Joint venture agreement is an agreement where a joint-venture company is organized by the Government and the contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

A mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area. In addition, the contractor may be allowed to convert his agreement into any of the modes of mineral agreements or financial or technical assistance agreement covering the remaining period of the original agreement subject to the approval of the Secretary.

Section 27 Eligibility

A qualified person may enter into any of the three (3) modes of mineral agreement with the government for the exploration, development and utilization of mineral resources: Provided, That in case the applicant has been in the mining industry for any length of time, he should possess a satisfactory environmental track record as determined by the Mines and Geosciences Bureau and in consultation with the Environmental

Management Bureau of the Department.

Section 28
Maximum Areas for Mineral Agreement

The maximum area that a qualified person may hold at any time under a mineral agreement shall be:

- a. Onshore, in any one province
 1. for individuals, ten (10) blocks; and
 2. for partnerships, cooperatives, associations, or corporations, one hundred (100) blocks.
- b. Onshore, in the entire Philippines
 1. for individuals, twenty (20) blocks; and
 2. for partnerships, cooperatives, associations, or corporations, two hundred (200) blocks.
- c. Offshore, in the entire Philippines
 1. for individuals fifty (50) blocks;
 2. for partnerships, cooperatives, associations, or corporations, five hundred (500) blocks; and
 3. for the exclusive economic zone, a larger area to be determined by the Secretary.

The maximum areas mentioned above that a contractor may hold under a mineral agreement shall not include mining/quarry areas under operating agreements between the contractor and a claimowner/lessee/permittee/licensee entered into under Presidential Decree No. 463.

Section 29
Filing and Approval of Mineral Agreements

All proposed mineral agreements shall be filed in the region where the areas of interest are located, except in mineral reservations which shall be filed with the Bureau.

The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. The proposed mineral agreement will be approved by the Secretary and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary.

Section 30
Assignment/Transfer

Any assignment or transfer of rights and obligations under any mineral agreement except a financial or technical assistance agreement shall be subject to the prior approval of the Secretary. Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal.

Section 31
Withdrawal from Mineral Agreements

The contractor may, by giving due notice at any time during the term of the agreement, apply for the

cancellation of the mineral agreement due to causes which, in the opinion of the contractor, make continued mining operations no longer feasible or viable. The Secretary shall consider the notice and issue its decision within a period of thirty (30) days: Provided, That the contractor has met all its financial, fiscal and legal obligations.

Section 32 Terms

Mineral agreements shall have a term not exceeding twenty-five (25) years to start from the date of execution thereof, and renewable for another term not exceeding twenty-five (25) years under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties. After the renewal period, the operation of the mine may be undertaken by the Government or through a contractor. The contract for the operation of a mine shall be awarded to the highest bidder in a public bidding after due publication of the notice thereof: Provided, That the contractor shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

CHAPTER VI

FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT

Section 33 Eligibility

Any qualified person with technical and financial capability to undertake large-scale exploration, development, and utilization of mineral resources in the Philippines may enter into a financial or technical assistance agreement directly with the Government through the Department.

Section 34 Maximum Contract Area

The maximum contract area that may be granted per qualified person, subject to relinquishment shall be:

- a. 1,000 meridional blocks onshore;
- b. 4,000 meridional blocks offshore; or
- c. Combinations of a and b provided that it shall not exceed the maximum limits for onshore and offshore areas.

Section 35 Terms and Conditions

The following terms, conditions, and warranties shall be incorporated in the financial or technical assistance agreement, to wit:

- a. A firm commitment in the form of a sworn statement, of an amount corresponding to the expenditure obligation that will be invested in the contract area: Provided, That such amount shall be subject to changes as may be provided for in the rules and regulations of this Act;
- b. A financial guarantee bond shall be posted in favor of the Government in an amount equivalent to the expenditure obligation of the applicant for any year;
- c. Submission of proof of technical competence, such as, but not limited to, its track record in mineral resource exploration, development, and utilization; details of technology to be employed in the proposed operation; and details of technical personnel to undertake the operation;
- d. Representations and warranties that the applicant has all the qualifications and none of the disqualifications for entering into the agreement;

- e. Representations and warranties that the contractor has or has access to all the financing, managerial and technical expertise and, if circumstances demand, the technology required to promptly and effectively carry out the objectives of the agreement with the understanding to timely deploy these resources under its supervision pursuant to the periodic work programs and related budgets, when proper, providing an exploration period up to two (2) years, extendible for another two (2) years but subject to annual review by the Secretary in accordance with the implementing rules and regulations of this Act, and further, subject to the relinquishment obligations;
- f. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the contractor shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mining operations for and in the contract area;
- g. The mining operations shall be conducted in accordance with the provisions of this Act and its implementing rules and regulations;
- h. Work programs and minimum expenditures commitments;
- i. Preferential use of local goods and services to the maximum extent practicable;
- j. A stipulation that the contractors are obligated to give preference to Filipinos in all types of mining employment for which they are qualified and that technology shall be transferred to the same;
- k. Requiring the proponent to effectively use appropriate anti-pollution technology and facilities to protect the environment and to restore or rehabilitate mined out areas and other areas affected by mine tailings and other forms of pollution or destruction;
- l. The contractors shall furnish the Government records of geologic, accounting, and other relevant data for its mining operations, and that book of accounts and records shall be open for inspection by the government;
- m. Requiring the proponent to dispose of the minerals and byproducts produced under a financial or technical assistance agreement at the highest price and more advantageous terms and conditions as provided for under the rules and regulations of this Act;
- n. Provide for consultation and arbitration with respect to the interpretation and implementation of the terms and conditions of the agreements; and
- o. Such other terms and conditions consistent with the Constitution and with this Act as the Secretary may deem to be for the best interest of the State and the welfare of the Filipino people.

Section 36
Negotiations

A financial or technical assistance agreement shall be negotiated by the Department and executed and approved by the President. The President shall notify Congress of all financial or technical assistance agreements within thirty (30) days from execution and approval thereof.

Section 37
Filing and Evaluation of Financial or Technical Assistance Agreement Proposals

All financial or technical assistance agreement proposals shall be filed with the Bureau after payment of the

required processing fees. If the proposal is found to be sufficient and meritorious in form and substance after evaluation, it shall be recorded with the appropriate government agency to give the proponent the prior right to the area covered by such proposal: Provided, That existing mineral agreements, financial or technical assistance agreements and other mining rights are not impaired or prejudiced thereby. The Secretary shall recommend its approval to the President.

Section 38
Term of Financial
or Technical Assistance Agreement

A financial or technical assistance agreement shall have a term not exceeding twenty-five (25) years to start from the execution thereof, renewable for not more than twenty-five (25) years under such terms and conditions as may be provided by law.

Section 39
Option to Convert into a Mineral Agreement

The contractor has the option to convert the financial or technical assistance agreement to a mineral agreement at any time during the term of the agreement, if the economic viability of the contract area is found to be inadequate to justify large-scale mining operations, after proper notice to the Secretary as provided for under the implementing rules and regulations: Provided, That the mineral agreement shall only be for the remaining period of the original agreement.

In the case of a foreign contractor, it shall reduce its equity to forty percent (40%) in the corporation, partnership, association, or cooperative. Upon compliance with this requirement by the contractor, the Secretary shall approve the conversion and execute the mineral production-sharing agreement.

Section 40
Assignment/Transfer

A financial or technical assistance agreement may be assigned or transferred, in whole or in part, to a qualified person subject to the prior approval of the President: Provided, That the President shall notify Congress of every financial or technical assistance agreement assigned or converted in accordance with this provision within thirty (30) days from the date of the approval thereof.

Section 41
Withdrawal from Financial
or Technical Assistance Agreement

The contractor shall manifest in writing to the Secretary his intention to withdraw from the agreement, if in his judgment the mining project is no longer economically feasible, even after he has exerted reasonable diligence to remedy the cause or the situation. The Secretary may accept the withdrawal: Provided, That the contractor has complied or satisfied all his financial, fiscal or legal obligations.

CHAPTER VII

SMALL-SCALE MINING

Section 42
Small-scale Mining

Small-scale mining shall continue to be governed by Republic Act No. 7076 and other pertinent laws.

CHAPTER VIII

QUARRY RESOURCES

Section 43 Quarry Permit

Any qualified person may apply to the provincial/city mining regulatory board for a quarry permit on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground. The provincial governor shall grant the permit after the applicant has complied with all the requirements as prescribed by the rules and regulations.

The maximum area which a qualified person may hold at any one time shall be five hectares (5 has.): Provided, That in large-scale quarry operations involving cement raw materials, marble, granite, sand and gravel and construction aggregates, a qualified person and the government may enter into a mineral agreement as defined herein.

A quarry permit shall have a term of five (5) years, renewable for like periods but not to exceed a total term of twenty-five (25) years. No quarry permit shall be issued or granted on any area covered by a mineral agreement or financial or technical assistance agreement.

Section 44 Quarry Fee and Taxes

A permittee shall, during the term of his permit, pay a quarry fee as provided for under the implementing rules and regulations. The permittee shall also pay the excise tax as provided by pertinent laws.

Section 45 Cancellation of Quarry Permit

A quarry permit may be cancelled by the provincial governor for violations of the provisions of this Act or its implementing rules and regulations or the terms and conditions of said permit: Provided, That before the cancellation of such permit, the holder thereof shall be given the opportunity to be heard in an investigation conducted for the purpose.

Section 46 Commercial Sand and Gravel Permit

Any qualified person may be granted a permit by the provincial governor to extract and remove sand and gravel or other loose or unconsolidated materials which are used in their natural state, without undergoing processing from an area of not more than five hectares (5 has.) and in such quantities as may be specified in the permit.

Section 47 Industrial Sand and Gravel Permit

Any qualified person may be granted an industrial sand and gravel permit by the Bureau for the extraction of sand and gravel and other loose or unconsolidated materials that necessitate the use of mechanical processing covering an area of more than five hectares (5 has.) at any one time. The permit shall have a term of five (5) years, renewable for a like period but not to exceed a total term of twenty-five (25) years.

Section 48 Exclusive Sand and Gravel Permit

Any qualified person may be granted an exclusive sand and gravel permit by the provincial governor to quarry and utilize sand and gravel or other loose or unconsolidated materials from public lands for his own use, provided that there will be no commercial disposition thereof.

A mineral agreement or a financial technical assistance agreement contractor shall, however, have the right to extract and remove sand and gravel and other loose unconsolidated materials without need of a permit within the area covered by the mining agreement for the exclusive use in the mining operations: Provided, That monthly reports of the quantity of materials extracted therefrom shall be submitted to the mines regional office concerned: Provided, further, That said right shall be coterminous with the expiration of the agreement.

Holders of existing mining leases shall likewise have the same rights as that of a contractor: Provided, That said right shall be coterminous with the expiry dates of the lease.

Section 49 Government Gratuitous Permit

Any government entity or instrumentality may be granted a gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials needed in the construction of building and/or infrastructure for public use or other purposes over an area of not more than two hectares (2 has.) for a period coterminous with said construction.

Section 50 Private Gratuitous Permit

Any owner of land may be granted a private gratuitous permit by the provincial governor.

Section 51 Guano Permit

Any qualified person may be granted a guano permit by the provincial governor to extract and utilize loose unconsolidated guano and other organic fertilizer materials in any portion of a municipality where he has established domicile. The permit shall be for specific caves and/or for confined sites with locations verified by the Department's field officer in accordance with existing rules and regulations.

Section 52 Gemstone Gathering Permit

Any qualified person may be granted a non-exclusive gemstone gathering permit by the provincial governor to gather loose stones useful as gemstones in rivers and other locations.

CHAPTER IX

TRANSPORT, SALE AND PROCESSING OF MINERALS

Section 53 Ore Transport Permit

A permit specifying the origin and quantity of non-processed mineral ores or minerals shall be required for their transport. Transport permits shall be issued by the mines regional director who has jurisdiction over the area where the ores were extracted. In the case of mineral ores or minerals being transported from the small-scale mining areas to the custom mills or processing plants, the Provincial Mining Regulatory Board (PMRB) concerned shall formulate their own policies to govern such transport of ores produced by small-

scale miners. The absence of a permit shall be considered as *prima facie* evidence of illegal mining and shall be sufficient cause for the Government to confiscate the ores or minerals being transported, the tools and equipment utilized, and the vehicle containing the same. Ore samples not exceeding two metric tons (2 m.t.) to be used exclusively for assay or pilot test purposes shall be exempted from such requirement.

Section 54
Mineral Trading Registration

No person shall engage in the trading of mineral products, either locally or internationally, unless registered with the Department of Trade and Industry and accredited by the Department, with a copy of said registration submitted to the Bureau.

Section 55
Minerals Processing Permit

No person shall engage in the processing of minerals without first securing a minerals processing permit from the Secretary. Minerals processing permit shall be for a period of five (5) years renewable for like periods but not to exceed a total term of twenty-five (25) years. In the case of mineral ores or minerals produced by the small-scale miners, the processing thereof as well as the licensing of their custom mills, or processing plants shall continue to be governed by the provisions of Republic Act No. 7076.

Section 56
Eligibility of Foreign-owned/-controlled Corporation

A foreign-owned/-controlled corporation may be granted a mineral processing permit.

CHAPTER X

DEVELOPMENT OF MINING COMMUNITIES, SCIENCE AND MINING
TECHNOLOGY

Section 57
Expenditure for Community Development
and Science and Mining Technology

A contractor shall assist in the development of its mining community, the promotion of the general welfare of its inhabitants, and the development of science and mining technology.

Section 58
Credited Activities

Activities that may be credited as expenditures for development of mining communities, and science and mining technology are the following:

- a. Any activity or expenditure intended to enhance the development of the mining and neighboring communities of a mining operation other than those required or provided for under existing laws, or collective bargaining agreements, and the like; and
- b. Any activity or expenditure directed towards the development of geosciences and mining technology such as, but not limited to, institutional and manpower development, and basic and applied researches. Appropriate supervision and control mechanisms shall be prescribed in the implementing rules and regulations of this Act.

Section 59
Training and Development

A contractor shall maintain an effective program of manpower training and development throughout the term of the mineral agreement and shall encourage and train Filipinos to participate in all aspects of the

mining operations, including the management thereof. For highly-technical and specialized mining operations, the contractor may, subject to the necessary government clearances, employ qualified foreigners.

Section 60
Use of Indigenous Goods, Services and Technologies

A contractor shall give preference to the use of local goods, services and scientific and technical resources in the mining operations, where the same are of equivalent quality, and are available on equivalent terms as their imported counterparts.

Section 61
Donations/Turn Over of Facilities

Prior to cessation of mining operations occasioned by abandonment or withdrawal of operations, on public lands by the contractor, the latter shall have a period of one (1) year therefrom within which to remove his improvements; otherwise, all the social infrastructure and facilities shall be turned over or donated tax-free to the proper government authorities, national or local, to ensure that said infrastructure and facilities are continuously maintained and utilized by the host and neighboring communities.

Section 62
Employment of Filipinos

A contractor shall give preference to Filipino citizens in all types of mining employment within the country insofar as such citizens are qualified to perform the corresponding work with reasonable efficiency and without hazard to the safety of the operations. The contractor, however, shall not be hindered from hiring employees of his own selection, subject to the provisions of Commonwealth Act No. 613, as amended, for technical and specialized work which, in his judgment and with the approval of the Director, requires highly-specialized training or long experience in exploration, development or utilization of mineral resources: Provided, That in no case shall each employment exceed five (5) years or the payback period as represented in original project study, whichever is longer: Provided, further, That each foreigner employed as mine manager, vice-president for operations or in an equivalent managerial position in charge of mining, milling, quarrying or drilling operation shall:

- a. Present evidence of his qualification and work experience; or
- b. Shall pass the appropriate government licensure examination; or
- c. In special cases, may be permitted to work by the Director for a period not exceeding one (1) year: Provided, however, That if reciprocal privileges are extended to Filipino nationals in the country of domicile, the Director may grant waivers or exemptions.

CHAPTER XI

SAFETY AND ENVIRONMENTAL PROTECTION

Section 63
Mines Safety and Environmental Protection

All contractors and permittees shall strictly comply with all the mines safety rules and regulations as may be promulgated by the Secretary concerning the safe and sanitary upkeep of the mining operations and achieve waste-free and efficient mine development. Personnel of the Department involved in the implementation of mines safety, health and environmental rules and regulations shall be covered under Republic Act No. 7305.

Section 64

Mine Labor

No person under sixteen (16) years of age shall be employed in any phase of mining operations and no person under eighteen (18) years of age shall be employed underground in a mine.

Section 65 Mine Supervision

All mining and quarrying operations that employ more than fifty (50) workers shall have at least one (1) licensed mining engineer with at least five (5) years of experience in mining operations, and one (1) registered foreman.

Section 66 Mine Inspection

The regional director shall have exclusive jurisdiction over the safety inspection of all installations, surface or underground, in mining operations at reasonable hours of the day or night and as much as possible in a manner that will not impede or obstruct work in progress of a contractor or permittee.

Section 67 Power to Issue Orders

The mines regional director shall, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in his order, require the contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the mines regional director may summarily suspend the mining or quarrying operations until the danger is removed, or appropriate measures are taken by the contractor or permittee.

Section 68 Report of Accidents

In case of any incident or accident, causing or creating the danger of loss of life or serious physical injuries, the person in charge of operations shall immediately report the same to the regional office where the operations are situated. Failure to report the same without justifiable reason shall be a cause for the imposition of administrative sanctions prescribed in the rules and regulations implementing this Act.

Section 69 Environmental Protection

Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

Section 70 Environmental Impact Assessment (EIA)

Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national government agencies to maintain ecological balance, and prior consultation with the local government

units, non-governmental and people's organizations and other concerned sectors of the community: Provided, That a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. People's organizations and non-governmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

Section 71 Rehabilitation

Contractors and permittees shall technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean immediate suspension or closure of the mining activities of the contractor/permittee concerned.

CHAPTER XII

AUXILIARY MINING RIGHTS

Section 72 Timber Rights

Any provision of law to the contrary notwithstanding, a contractor may be granted a right to cut trees or timber within his mining area as may be necessary for his mining operations subject to forestry laws, rules and regulations: Provided, That if the land covered by the mining area is already covered by existing timber concessions, the volume of timber needed and the manner of cutting and removal thereof shall be determined by the mines regional director, upon consultation with the contractor, the timber concessionaire/permittee and the Forest Management Bureau of the Department: Provided, further, That in case of disagreement between the contractor and the timber concessionaire, the matter shall be submitted to the Secretary whose decision shall be final. The contractor shall perform reforestation work within his mining area in accordance with forestry laws, rules and regulations.

Section 73 Water Rights

A contractor shall have water rights for mining operations upon approval of application with the appropriate government agency in accordance with existing water laws, rules and regulations promulgated thereunder: Provided, That water rights already granted or vested through long use, recognized and acknowledged by local customs, laws, and decisions of courts shall not thereby be impaired: Provided, further, That the Government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof.

Section 74 Right to Possess Explosives

A contractor/exploration permittee shall have the right to possess and use explosives within his contract/permit area as may be necessary for his mining operations upon approval of application with the appropriate government agency in accordance with existing laws, rules and regulations promulgated thereunder: Provided, That the Government reserves the right to regulate and control the explosive accessories to ensure safe mining operations.

Section 75

Easement Rights

When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailings ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

Section 76

Entry into Private Lands and Concession Areas

Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

CHAPTER XIII

SETTLEMENT OF CONFLICTS

Section 77

Panel of Arbitrators

There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- a. Disputes involving rights to mining areas;
- b. Disputes involving mineral agreements or permits;
- c. Disputes involving surface owners, occupants and claimholders/concessionaires; and
- d. Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

Section 78

Appellate Jurisdiction

The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

Section 79
Mines Adjudication Board

The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

a. To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

c. To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable:

1. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

2. To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

CHAPTER XIV

GOVERNMENT SHARE

Section 80
Government Share
in Mineral Production Sharing Agreement

The total government share in a mineral production sharing agreement shall be the excise tax on mineral products as provided in Republic Act No. 7729, amending Section 151(a) of the National Internal Revenue Code, as amended.

Section 81
Government Share in Other Mineral Agreements

The share of the Government in co-production and joint-venture agreements shall be negotiated by the Government and the contractor taking into consideration the:

- a. capital investment of the project;
- b. risks involved;
- c. contribution of the project to the economy; and
- d. other factors that will provide for a fair and equitable sharing between the Government and the contractor.

The Government shall also be entitled to compensations for its other contributions which shall be agreed upon by the parties, and shall consist, among other things, the contractor's income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholders, in case of a foreign national, and all such other taxes, duties and fees as provided for under existing laws.

The Government share in financial or technical assistance agreement shall consist of, among other things, the contractor's corporate income tax, excise tax, special allowance, withholding tax due from the contractor's foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws.

The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive.

Section 82 Allocation of Government Share

The Government share as referred to in the preceding sections shall be shared and allocated in accordance with Sections 290 and 292 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991. In case the development and utilization of mineral resources is undertaken by a government-owned or -controlled corporation, the sharing and allocation shall be in accordance with Sections 291 and 292 of the said Code.

CHAPTER XV

TAXES AND FEES

Section 83 Income Taxes

After the lapse of the income tax holiday as provided for in the Omnibus Investments Code, the contractor shall be liable to pay income tax as provided in the National Internal Revenue Code, as amended.

Section 84 Excise Tax on Mineral Products

The contractor shall be liable to pay the excise tax on mineral products as provided for under Section 151 of the National Internal Revenue Code: Provided, however, That with respect to a mineral production sharing agreement, the excise tax on mineral products shall be the government share under said agreement.

Section 85 Mine Wastes and Tailings Fees

A semi-annual fee to be known as mine wastes and tailings fee is hereby imposed on all operating mining companies in accordance with the implementing rules and regulations. The mine wastes and tailings fee shall accrue to a reserve fund to be used exclusively for payment for damages to:

- a. Lives and personal safety;
- b. Lands, agricultural crops and forest products, marine life and aquatic resources, cultural resources; and
- c. Infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing caused by mining pollution.

This is in addition to the suspension or closure of the activities of the contractor at any time and the penal sanctions imposed upon the same.

The Secretary is authorized to increase mine wastes and tailings fees, when public interest so requires, upon the recommendation of the Director.

Section 86 Occupation Fees

There shall be collected from any holder of a mineral agreement, financial or technical assistance agreement or exploration permit on public or private lands, an annual occupation fee in accordance with the following schedule:

- a. For exploration permit — Five pesos (P5.00) per hectare or fraction thereof per annum;
- b. For mineral agreements and financial or technical assistance agreements — Fifty pesos (P50.00) per hectare or fraction thereof per annum; and
- c. For mineral reservation — One hundred pesos (P100.00) per hectare or fraction thereof per annum.

The Secretary is authorized to increase the occupation fees provided herein when the public interest so requires, upon recommendation of the Bureau Director.

Section 87 Manner of Payment of Fees

The fees shall be paid on the date the mining agreement is registered with the appropriate office and on the same date every year thereafter. It shall be paid to the treasurer of the municipality or city where the onshore mining areas are located, or to the Director in case of offshore mining areas. For this purpose, the appropriate officer shall submit to the treasurer of the municipality or city where the onshore mining area is located, a complete list of all onshore mining rights registered with his office, indicating therein the names of the holders, area in hectares, location, and date registered. If the fee is not paid on the date specified, it shall be increased by twenty-five *per centum* (25%).

Section 88 Allocation of Occupation Fees

Thirty *per centum* (30%) of all occupational fees collected from holders of mining rights in onshore mining areas shall accrue to the province and seventy *per centum* (70%) to the municipality in which the onshore mining areas are located. In a chartered city, the full amount shall accrue to the city concerned.

Section 89 Filing Fees and Other Charges

The Secretary is authorized to charge reasonable filing fees and other charges as he may prescribe in accordance with the implementing rules and regulations.

CHAPTER XVI

INCENTIVES

Section 90 Incentives

The contractors in mineral agreements, and financial or technical assistance agreements shall be entitled to the applicable fiscal and non-fiscal incentives as provided for under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. Provided, That holders of exploration permits may register with the Board of Investments and be entitled to the fiscal incentives granted under the said Code for the duration of the permits or extensions thereof: Provided, further, That mining activities shall always be included in the investment priorities plan.

Section 91 Incentives for Pollution Control Devices

Pollution control devices acquired, constructed or installed by contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments: Provided, however, That payment of mine wastes and tailings fees is not exempted.

Section 92 Income Tax-Carry Forward of Losses

A net operating loss without the benefit of incentives incurred in any of the first ten (10) years of operations may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the five (5) taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining four (4) years.

Section 93 Income Tax-Accelerated Depreciation

Fixed assets may be depreciated as follows:

- a. To the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is ten (10) years or less; or
- b. Depreciated over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income: Provided, That the contractor notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used.

In computing for taxable income, unless otherwise provided in this Act, the contractor may, at his option, deduct exploration and development expenditures accumulated at cost as of the date of the prospecting or exploration and development expenditures paid or incurred during the taxable year: Provided, That the total amount deductible for exploration and development expenditures shall not exceed twenty-five *per centum* (25%) of the net income from mining operations. The actual exploration and development expenditures minus the twenty-five *per centum* (25%) net income from mining shall be carried forward to the succeeding years until fully deducted.

Net income from mining operation is defined as gross income from operations less allowable deductions which are necessary or related to mining operations. Allowable deductions shall include mining, milling and marketing expenses, depreciation of properties directly used in the mining operations. This paragraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowances for depreciation.

Section 94 Investment Guarantees

The contractor shall be entitled to the basic rights and guarantees provided in the Constitution and such other rights recognized by the government as enumerated hereunder:

- a. Repatriation of investments. The right to repatriate the entire proceeds of the liquidation of the foreign investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation.
- b. Remittance of earnings. The right to remit earnings from the investment in the currency in which the foreign investment was originally made and at the exchange rate prevailing at the time of remittance.
- c. Foreign loans and contracts. The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from financial or technical assistance contracts.
- d. Freedom from expropriation. The right to be free from expropriation by the Government of the property represented by investments or loans, or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.
- e. Requisition of investment. The right to be free from requisition of the property represented by the investment or of the property of the enterprises except in case of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investments were originally made and at the exchange rate prevailing at the time of remittance.
- f. Confidentiality. Any confidential information supplied by the contractor pursuant to this Act and its implementing rules and regulations shall be treated as such by the Department and the Government, and during the term of the project to which it relates.

CHAPTER XVII

GROUND FOR CANCELLATION, REVOCATION, AND TERMINATION

Section 95 Late or Non-filing of Requirements

Failure of the permittee or contractor to comply with any of the requirements provided in this Act or in its implementing rules and regulations, without a valid reason, shall be sufficient ground for the suspension of any permit or agreement provided under this Act.

Section 96 Violation of the Terms and Conditions

of Permits or Agreements

Violation of the terms and conditions of the permits or agreements shall be a sufficient ground for cancellation of the same.

Section 97 Non-Payment of Taxes and Fees

Failure to pay the taxes and fees due the Government for two (2) consecutive years shall cause the cancellation of the exploration permit, mineral agreement, financial or technical assistance agreement and other agreements and the re-opening of the area subject thereof to new applicants.

Section 98 Suspension or Cancellation of Tax Incentives and Credits

Failure to abide by the terms and conditions of tax incentive and credits shall cause the suspension or cancellation of said incentives and credits.

Section 99 Falsehood or Omission of Facts in the Statement

All statements made in the exploration permit, mining agreement and financial or technical assistance agreement shall be considered as conditions and essential parts thereof and any falsehood in said statements or omission of facts therein which may alter, change or affect substantially the facts set forth in said statements may cause the revocation and termination of the exploration permit, mining agreement and financial or technical assistance agreement.

CHAPTER XVIII

ORGANIZATIONAL AND INSTITUTIONAL ARRANGEMENTS

Section 100 From Staff Bureau to Line Bureau

The Mines and Geosciences Bureau is hereby transformed into a line bureau consistent with Section 9 of this Act: Provided, That under the Mines and Geosciences Bureau shall be the necessary mines regional, district and other pertinent offices — the number and specific functions of which shall be provided in the implementing rules and regulations of this Act.

CHAPTER XIX

PENAL PROVISIONS

Section 101 False Statements

Any person who knowingly presents any false application, declaration, or evidence to the Government or publishes or causes to be published any prospectus or other information containing any false statement relating to mines, mining operations or mineral agreements, financial or technical assistance agreements and permits shall, upon conviction, be penalized by a fine of not exceeding Ten thousand pesos (P10,000.00).

Section 102 Illegal Exploration

Any person undertaking exploration work without the necessary exploration permit shall, upon conviction, be penalized by a fine of not exceeding Fifty thousand pesos (P50,000.00).

Section 103
Theft of Minerals

Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from Ten thousand pesos (P10,000.00) to Twenty thousand pesos (P20,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

Section 104
Destruction of Mining Structures

Any person who willfully destroys or damages structures in or on the mining area or on the mill sites shall, upon conviction, be imprisoned for a period not to exceed five (5) years and shall, in addition, pay compensation for the damages which may have been caused thereby.

Section 105
Mines Arson

Any person who willfully sets fire to any mineral stockpile, mine or workings, fittings or a mine, shall be guilty of arson and shall be punished, upon conviction, by the appropriate court in accordance with the provisions of the Revised Penal Code and shall, in addition, pay compensation for the damages caused hereby.

Section 106
Willful Damage to a Mine

Any person who willfully damages a mine, unlawfully causes water to run into a mine, or obstructs any shaft or passage to a mine, or renders useless, damages or destroys any machine, appliance, apparatus, rope, chain, tackle, or any other things used in a mine, shall be punished, upon conviction, by the appropriate court, by imprisonment not exceeding a period of five (5) years and shall, in addition, pay compensation for the damages caused thereby.

Section 107
Illegal Obstruction to Permittees or Contractors

Any person who, without justifiable cause, prevents or obstructs the holder of any permit, agreement or lease from undertaking his mining operations shall be punished, upon conviction by the appropriate court, by a fine not exceeding Five thousand pesos (P5,000.00) or imprisonment not exceeding one (1) year, or both, at the discretion of the court.

Section 108
Violation of the Terms and Conditions of the Environmental Compliance Certificate

Any person who willfully violates or grossly neglects to abide by the terms and conditions of the environmental compliance certificate issued to said person and which causes environmental damage through pollution shall suffer the penalty of imprisonment of six (6) months to six (6) years or a fine of Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00), or both, at the discretion

of the court.

Section 109
Illegal Obstruction to Government Officials

Any person who illegally prevents or obstructs the Secretary, the Director or any of their representatives in the performance of their duties under the provisions of this Act and of the regulations promulgated hereunder shall be punished upon conviction, by the appropriate court, by a fine not exceeding Five thousand pesos (P5,000.00) or by imprisonment not exceeding one (1) year, or both, at the discretion of the court.

Section 110
Other Violations

Any other violation of this Act and its implementing rules and regulations shall constitute an offense punishable with a fine not exceeding Five thousand pesos (P5,000.00).

Section 111
Fines

The Secretary is authorized to charge fines for late or non-submission of reports in accordance with the implementing rules and regulations of this Act.

CHAPTER XX

TRANSITORY AND MISCELLANEOUS PROVISIONS

Section 112
Non-Impairment
of Existing Mining/Quarrying Rights

All valid and existing mining lease contracts, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government: Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.

Section 113
Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications

Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

Section 114
Separability Clause

If any of the provision of this Act is held or declared to be unconstitutional or invalid by a competent court, the other provisions hereof shall continue to be in force as if the provision so annulled or voided had never

been incorporated in this Act.

Section 115
Repealing and Amending Clause

All laws, executive orders, presidential decrees, rules and regulations or parts thereof which are inconsistent with any of the provisions of this Act are hereby repealed or amended accordingly.

Section 116
Effectivity Clause

This Act shall take effect thirty (30) days following its complete publication in two (2) newspapers of general circulation in the Philippines.

Approved: March 3, 1995