

**Administrative Order  
No. 63  
December 12, 1991**

**SUBJECT: Guidelines for the Acceptance,  
Consideration and Evaluation of Financial  
or Technical Assistance Agreement  
Proposals**

To encourage foreign investors in the mining industry and in line with the policy of the Government in harnessing the country's mineral resources to accelerate economic recovery and development pursuant to Executive Order No. 279 of 25 July 1987, the following rules and regulations governing the acceptance, consideration and evaluation of the financial or technical assistance agreement for large scale exploration, development and utilization of mineral resources are hereby promulgated:

**Section 1. Definition of Terms** - As used in and for the purposes of this Order, the following words and terms, whether in singular or plural, shall have the following respective meanings:

- 1.a **Contract Area** means the area originally awarded under FTAA without reference to region or province.
- 1.b **Contractor** means any Filipino or foreign owned corporation to whom a Financial or Technical Assistance Agreement is awarded.
- 1.c **Date of Commencement of Commercial Production** shall mean the first day of the calendar quarter following that quarter in which production equals fifteen percent (15%) of the Project's initial annual design capacity.
- 1.d **Financial or Technical Assistance Agreement (FTAA)** means an agreement or contract which the Government enters into with any Filipino or foreign-owned corporation for the financial or technical assistance for large scale exploration, development and utilization of mineral resources.
- 1.e **Foreign-Owned Corporation** means any corporation, partnership, association or cooperative duly registered in accordance with Philippine laws in which more than forty percent (40%) of the capital is owned by non-Filipino citizens.

- 1.f **Large Scale Mining** means exploration, development and utilization of mineral resources involving a committed capital investment of at least US\$ 50 million in a single mining unit project.
- 1.g **Meridional Block** means an area of one-half (1/2) minute of latitude by one-half (1/2) minute of longitude.
- 1.h **Mining Operations** means mineral exploration, development, production and/or all other activities necessary to discover, develop and extract minerals.
- 1.i **Mining Contract** shall refer to mineral production sharing agreement, co-production, joint venture or other similar agreements.
- 1.j **Pre-operating Expenses** shall include all costs incurred by the holder of the FTAA and any of its Related Corporations on the Contract Area applied for under the FTAA up to the Date of Commencement of Commercial Production.

Such costs shall include all activities conducted toward the discovery, location and delineation of commercial ore bodies within the Contract Area including but without limitation to:

- (i) payments made to claimowners and landowners;
- (ii) all exploration programs;
- (iii) the acquisition maintenance and administration of any mining or exploration tenements;
- (iv) the establishment and administration of field offices;
- (v) the cost of administering any program of work together with any other work reasonably calculated to lead to a decision to mine together with all costs incurred in financing and insuring construction of the mine;
- (vi) feasibility studies;
- (vii) all costs of constructing and developing the mine; and
- (viii) all costs incurred at the mine towards the extraction and production of minerals from the Contract Area until the Date of Commencement of Commercial Production less:

- (a) any income received in payment for production until the Date of Commencement of Commercial Production; and
- (b) any other credits offsetting the above costs.

1.k **Project Area** means an area remaining after relinquishment which shall not be more than 5% of the contract area.

1.l **Related Corporation** shall mean a body corporate or other entity in which a shareholder in the FTAA Contractor owns an interest in excess of 40%.

1.m **Single Mining Unit Project** means mining operations per project area.

**Section 2. Fees** - Upon filing of the FTAA proposal, the proponent shall pay to the Mines and Geosciences Bureau US\$500 payable in Philippine currency at the exchange rate prevailing at the time of application for filing fee, processing fee and per P.D. 1856, as amended. Upon approval of the FTAA, the Contractor shall pay to the Mines and Geosciences Bureau the following:

a. Occupation Fee

P10.00 per hectare/year for non-reservation area

P100.00 per hectare/year for reservation area

b. Regulatory Fee for Exploration

For onshore P10.00 per hectare/year for the first year of exploration plus P5.00 yearly increment for the succeeding years

For offshore P50.00 per hectare/year

c. Registration Fee - P100.00/FTAA

d. P.D. 1856, as amended, for c - P10.00

**Section 3. Qualifications of Financial or Technical Assistance Agreement Applicant** - Any applicant, whether Filipino or foreign-owned corporation, may enter into FTAA provided that it has the financial or technical capability to undertake large scale mining as defined herein.

Without in any way limiting the tenor of and flexibility accorded by the above provision, the capabilities of the applicant may be substantiated, inter alia, by the following:

- 3.a Financial Capability of FTAA Applicant - To ensure compliance with its expenditure requirements and other obligations during the Exploration Period, the FTAA applicant shall be required to post a financial guaranty bond in favor of the Government for the amount equivalent to the expenditure obligations of the applicant for any year.

The FTAA applicant shall make a firm commitment of at least fifty million US dollars (US \$50,000,000), or its equivalent in Philippine currency in case of a Filipino applicant, that will be invested in the contract area.

After exploration and feasibility studies, but prior to construction and development, an FTAA applicant, to ensure fulfillment of its US\$50 million commitment, shall be required to submit documentary evidence from an internationally recognized offshore financial institution confirming that contractor has available, sufficient and accessible fund for the development of the mine for a capital investment in a single mining unit of US\$50 million less all exploration costs.

- 3.b Technical Competence of FTAA applicant - Proof of technical competence of the FTAA applicant shall be submitted showing its track record in mineral resource exploration, development and utilization; technology to be introduced; and names and curriculum vitae of technical men to undertake the operation.

**Section 4. Documents to be Submitted** - The FTAA applicant shall submit its proposal accompanied by the following:

- 4.a Upon filing of the proposal -

4.a.1 Letter of Intent (LOI) to enter into FTAA;

4.a.2 The documents pertaining to the juridical personality of the applicant such as Articles of Incorporation, By-laws and SEC Registration papers;

4.a.3 All information data and documents referred to or reasonably connected with the provisions of Sections 3, 3.a and 3.b hereof, as may promote and facilitate meaningful appreciation and evaluation of the proposal;

4.a.4 Certified copies, if any, of mining exploration contract, operating contract, assignment, permit or similar agreement it has entered into with any local or foreign juridical and natural persons; and

4.a.5 Financial statement of the mother company.

4.b Upon approval of FTAA - financial guarantee bond as defined in Sec. 3.a.

4.c After completion of feasibility study:

4.c.1 Technical description of the proposed Project Area, its status as known to the applicant;

4.c.2 Mining operations to be undertaken and the technology to be used and developed therein; and

4.c.3 Contributions to the economic and general welfare of the country that shall be feasibly generated by the proposed venture.

#### **Section 5. Available Areas.**

The following areas are available for Financial and Technical Assistance Agreement:

5.a Lands of the public domain and alienable and disposable lands not covered by valid and existing mining leases, permits, licenses, applications and declarations of location.

5.b Lands covered by valid and subsisting prospecting permits, exploration permits, mining claims, mining leases and similar agreements provided that the holders consented thereto in writing.

5.c Government reservations provided that the agency concerned gives its clearance.

5.d Offshore areas including the Exclusive Economic Zone.

5.e Private lands subject to P.D. 512

5.f Any combination of the above (5.a to 5.e)

#### **Section 6. Maximum Contract and Project Areas Allowed -**

The maximum contract area as shown hereunder, that may be granted under the FTAA for exploration, development and utilization shall be subject to relinquishment to the extent of ninety five percent (95%) of the contract area after five (5) years of exploration, provided, that the minimum relinquishment per year shall be ten percent (10%) of the contract area and that the maximum retained area shall be approximately 52 meridional blocks or 5,000 hectares and 800 meridional blocks or 65,000 hectares for onshore and offshore respectively.

The maximum contract area shall be:

- 6.a 1,235 meridional blocks or 100,000 hectares onshore
- 6.b 16,000 meridional blocks or 1,296,000 hectares offshore reckoned from the 100 meters from the shore waterlines at mean low tide extending seaward.
- 6.c Combination of a & b provided that it shall not exceed the maximum limits for onshore and offshore areas.

#### **Section 7. Duration of FTAA**

The duration of FTAA shall be for a maximum of 25 years renewable for another period not exceeding 25 years. The activities of each phase of mining operations must be completed within the following periods, respectively;

Exploration & Feasibility Study - 5 years from date of approval of FTAA

Construction & Development and Production/Utilization - remaining years of FTAA contract

#### **Section 8. Acceptance and Evaluation of FTAA**

All FTAA proposals shall be filed with and accepted by the Central Office Technical Secretariat (MGB) after payment of the requisite fees to the Mines and Geosciences Bureau, copy furnished the Regional Office concerned within 72 hours. The Regional Office shall verify the area and declare the availability of the area for FTAA and shall submit its recommendations within thirty (30) days from receipt. In the event that there are two or more applicants over the same area, priority shall be given to the applicant who first filed his application. In any case, the Undersecretaries for Planning, Policy and Natural Resources Management; Legal Services, Legislative, Liaison and Management of FASPO; Field Operations and Environment and Research, or its equivalent, shall be given ten (10) days from receipt of FTAA proposal within which to submit their comments/recommendations and the Regional Office, in the preparation of

its recommendations shall consider the financial and technical capabilities of the applicant, in addition to the proposed Government share. Within five (5) working days from receipt of said recommendations, the Technical Secretariat shall consolidate all comments and recommendations thus received and shall forward the same to the members of the FTAA Negotiating Panel for evaluation at least within thirty (30) working days.

#### **Section 9. Negotiation of FTAA -**

The FTAA shall be subject to the approval of the President upon recommendation of the Negotiating Panel, created by virtue of Presidential Administrative Order No. 68 Series of 1988, to be composed of the following:

- |    |  |   |               |
|----|--|---|---------------|
| 1. | The Secretary of Environment and Natural Resources or his Representative   | - | Chairman      |
| 2. | The Secretary of Socio-Economic Planning and Director-General, National Economic and Development Authority of his Representative | - | Vice-Chairman |
| 3. | The Secretary of Finance or his Representative   | - | Member        |
| 4. | The Secretary of Trade and Industry or his Representative  | - | Member        |
| 5. | The Governor, Central Bank of the Philippines or his Representative  | - | Member        |
| 6. | The Chairman, Board of Investments or his Representative   | - | Member        |
| 7. | The Director, Mines and Geosciences Bureau   | - | Member        |

In evaluating the proposed FTAA, the Panel shall take into consideration the real contributions to the economic growth and general welfare of the country that will be realized as well as the development of local scientific and technical resources.

The Panel upon being satisfied of the terms and conditions of the proposed FTAA and with the Contractor's compliance with all the requirements, shall recommend

its approval to the President. Should the Panel, however, find some of the terms and conditions unacceptable, it shall calendar the proposed FTAA for negotiation and shall make the corresponding notification to the proponent. If after the negotiation, terms and conditions, acceptable to the Panel, have been incorporated in the proposed FTAA, the Panel shall then, forthwith recommend to the President its approval.

#### **Section 10. Obligations of the Contractor**

- a. A performance guaranty shall be posted in favor of the Government before the signing of the FTAA which shall be in any foreign currency negotiable with the Central Bank of the Philippines for foreign contractors. Unless otherwise specified by the Secretary, the initial amount of the guaranty shall be equal to the first year financial commitment of the contractor. Subsequent thereto, the amount of annual guaranty may be increased or decreased depending upon the Contractor's performance of its financial and work commitments.
- b. After the Exploration period, the Contractor shall relinquish to the Government any portion of the Project Area which shall not be necessary for Mining Operations and not covered by any Declaration of Mining Feasibility.
- c. Perform its activities within the periods expressed in this Agreement, Plans and Work Programs, save as may be excused by force majeure.
- d. The Contractor shall give preference to products and services produced and offered in the Philippines of comparative quality. In particular, the Contractor shall give preference to Filipino construction enterprises and use buildings which can be constructed by using materials and skill available in the Philippines, employ Filipino sub-contractors for road constructions and transportation, and purchase Philippine household equipment, furniture and food.
- e. The Contractor shall, to the extent feasible and acceptable in view of the rates and conditions available, maximize the use of Filipino vessels and other means of transport available in the Philippines.
- f. The Contractor shall keep accurate technical records about the operations as well as financial and marketing accounts and make them available to Government representatives authorized by the Secretary for purposes of assessing performance and compliance of the Contractor with the terms of this Agreement. Authorized representatives of other Government agencies may also have access to such accounts in accordance with existing laws, rules and regulations.
- g. Pay taxes or obligations in accordance with existing laws, rules and regulations.



- h. Conform to laws and regulations regarding, among others, labor, safety, demarcation of the Project Area, and non-interference with the rights of other mining operators.
- i. Recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands.
- j. Contribute to national development by helping develop the host and neighboring communities of the Project Area, local geoscience and mining technology, and mitigating environmental effects of mining operations.
- k. Undertake restoration and/or protection of the environment in compliance with the requirements of Environmental Compliance Certificate (ECC).
- l. Provide a provision on Consultation and Arbitration with respect to interpretation and implementation of the agreement.

#### **Section 11. Option to Convert into MPSA -**

The Contractor has the option to convert the FTAA to MPSA at any stage of exploration if the economic viability of the ores located in the contract area is found to be inadequate to justify large scale mining operations. As such, the Contractor shall notify the Government in writing within thirty (30) days of its intention to convert the FTAA to MPSA. All revisions to the FTAA, required by its conversion to MPSA, shall be submitted to the Government within sixty (60), days from filing of the applicant's intention to convert to MPSA.

The Contractor shall be given a period of one (1) year within which to satisfy the equity requirement of sixty (60%) Filipino capital for MPSA, subject to an extension of another one (1) year as may be approved by the Secretary taking into consideration the economic factors. Failure to convert the FTAA into MPSA within the prescribed period shall cause automatic forfeiture of the Contractor's right to such conversion and the area subject of such FTAA shall be disposed of in accordance with Section 12 hereof.

#### **Section 12. Area Relinquishment**

Where the Contractor originally derived its rights to the Contract Area from then claimowners or mineral rights owners, such part of the Project Area relinquished pursuant to the provision of Sections 6 and 11 hereof, shall revert to the claimowners or mineral rights owners shall have preferential rights over the area, provided, that within thirty (30) days from notification of relinquishment by the FTAA Contractor, the former shall

signify its intention to enter into a mining contract with the Government. And, provided, further, that all documents necessary for applications for a specific mining contract shall be submitted within sixty (60) days from receipt of such intention.

### **Section 13. Revenue Sharing**

- a. The net revenue shall be shared by the Government and Contractor on a 60-40 basis, of which 60% of the net will be the Government Contractor. The collection of government's share shall commence after the Contractor has fully recovered its pre-operating expenses.

Net revenue mean gross revenue derived from operations less allowable deductions which are attributed to exploration, development and actual commercial production. Commercial production shall include mining, utilization/processing, marketing expenses and depreciation of properties directly used in the operations.

- b. In each year, contractor may recover from the gross proceeds resulting from the sale of minerals produced under the FTAA an amount equal to all operating expenses.

### **Section 14. Divestment Period**

After ten (10) years from the Contractor's recovery of pre-operating expenses, it shall be given a period of one (1) year to divest its equity to at least 60% Filipino equity subject to an extension of another one (1) year as may be approved by the Secretary taking into consideration the economic factors. Failure to meet the 60-40 equity requirement within the prescribed period shall cause the automatic cancellation of the FTAA and the area subject of such FTAA shall be disposed of in accordance with Section 12 hereof.

### **Section 15. Revocation and Termination of FTAA**

The FTAA may be terminated for any of the following reasons:

- a. Any falsehood or omission of facts made in support of the proposal
- b. Default or substantial breach of the terms and conditions of the agreement by the Contractor.
- c. By mutual consent of the parties.

- d. Upon revocation/termination of the FTAA and liquidation of the Contractor' obligations and liabilities, the financial guaranty/performance guaranty bond shall be released.

#### **Section 16. Disposal of Property**

All materials, equipment, plant and other installations erected or placed on the project area by the Contractor shall remain the property of the Contractor and upon the termination of the Agreement, the Contractor shall have the right to remove and export such materials, equipment, plant and other installations except buildings, bridges, warehouses, and other social infrastructures, subject to existing rules and regulations. All materials, equipment, plant and other installations not removed within twelve (12) months from the termination of the Agreement shall belong to the Government.

#### **Section 17. Adoption of DENR A.O. 57, As Amended, and Other Related Orders.**

The provisions of DENR A.O. 57, as amended, and all administrative orders, rules and regulations related thereto, which are not inconsistent with the provisions of these guidelines shall be adopted.

#### **Section 18. Effectivity**

This DENR Order shall take effect after fifteen (15) days from publication in at least two (2) newspapers of general circulation.

**FULGENCIO S. FACTORAN, JR.**  
Secretary