

AN ACT TO AMEND SECTIONS TWO, THREE, FIVE, SIX AND EIGHT OF REPUBLIC ACT NUMBERED ONE THOUSAND EIGHT HUNDRED TWENTY-EIGHT.

REPUBLIC ACT NO. 2077, June 13, 1958

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

SECTION 1. Section two of Republic Act Numbered One thousand eight hundred twenty-eight is hereby amended to read as follows:

"SEC. 2. There is hereby created the Surigao Mineral Reservation Board, hereinafter referred to as the Board, composed of the Chairman of the National Economic Council, as chairman, the Secretary of Agriculture and Natural Resources, the Secretary of Finance, the Secretary of Justice, and the Governor of the Central Bank, as members, who shall carry out and implement the provisions of this Act. It shall have the power and authority to represent the Government in the operations and to insure compliance with the terms and conditions of the operating contract or contracts.

"The Board is hereby authorized to organize an office and appoint the necessary staff, whose salaries and emoluments shall be fixed by the Board, and to secure the assistance of the personnel of the National Economic Council and other government offices.

"In order to carry out the policy declared in section one hereof, the President of the Philippines is hereby authorized to determine, upon previous advice and recommendation of the Board, whether the development, exploitation and utilization of the said mineral deposit and the processing and disposition of the minerals that may be produced therefrom:

"(1) shall be undertaken by the Government itself, in which case he is authorized to contract loans and/or float bonds in such amounts as he may deem necessary and adequate to carry out effectively the undertakings contemplated in this Act, but not exceeding two hundred million pesos, after consultation with the Monetary Board of the Central Bank and upon recommendation of the National Economic Council; or

"(2) shall be undertaken by the Government jointly with private enterprise, in which case he is also authorized to contract loans and/or float bonds in the amount and in the manner stipulated in the preceding subparagraph (1): Provided, however, That the Government shall, at any one time, own not less than fifty-one per centum of the capital stock of such enterprise; or

"(3) shall have the operation undertaken as hereinabove provided through an independent contractor or contractors who are qualified pursuant to the provisions hereunder, for the entire operation or any part or phase thereof.

"Unless there are clear advantages in favor of the third mode, either of the first two modes shall be preferred: Provided, That, in any case, the Board shall implement the policy herein declared.

"Should the President of the Philippines decide to have the operation undertaken through an independent contractor or contractors, as hereinabove provided, the Board may engage and utilize the services of persons or corporations, as independent contractor or contractors, with the approval of the President, by calling for bids to

undertake or perform for the Government any phase or phases of all the operations authorized in this Act covering any particular area or areas within the Surigao Mineral Reservation, and the processing of the minerals produced therefrom, negotiating and entering for such purpose into a contract or contracts of service with any party or parties, domestic or foreign, fully qualified as to organization, finances, resources, experience and technical competence, and which may offer such terms and conditions as determined by the Board, subject to the approval of the President of the Philippines, to be most advantageous to the Government: Provided, That should there be no bid submitted, or the bid or bids submitted are unacceptable, the Board, with the approval of the President, is hereby authorized to negotiate with such party or parties, domestic or foreign, as may be fully qualified as to organization, finances, resources, experience and technical competence, for the operation of the whole or part of the Surigao Mineral Reservation under the provisions of this Act.

"For the purpose of this Act, a contract of service shall mean an operating contract in which the Operator is an independent contractor of service, entitled as such to compensation for services rendered: Provided, That any contractor or contractors of service shall not, by virtue of the contract, acquire any title or interest in the area or areas affected, nor, except as hereinafter provided in section five hereof, in any of the minerals from the Surigao Mineral Reservation produced or processed by it. The Operator shall furnish all materials, labor, equipment, plants and other installations that may be acquired for carrying on the operations herein authorized, or necessary or incident to those herein authorized, and all such operations, processes, work or acts shall be carried out at Operator's own cost and expenses, without prejudice to the Government and Operator agreeing on other terms regarding materials, equipment, plants and other installations."

SEC. 2. Section three of the same Act is hereby amended to read as follows:

"SEC. 3. The President may grant to the Government entity which may operate the Reservation under paragraph one or two of section two, or to the operator under paragraph three of- the same section, as the case may be, the following rights and privileges:

"(1) Necessary rights over an area or areas for investigation within the Surigao Mineral Reservation;

"(2) Exemption from laws and regulations relating to: (a) importation of machinery, equipment, accessories, spare parts, and/or supplies and materials necessary for or in connection with said operation or processing of minerals; (b) construction, installation and operation of power plants, including importation of machinery and equipment, accessories, spare parts and/or operating supplies and materials, should the National Power Corporation fail to supply within a reasonable period and at reasonable cost the power needed in the operation; (c) exportation of such machinery and equipment which were imported solely for construction and installation purposes in connection with the aforesaid operation and processing, and which are no longer needed in the operation;

"(3) Exportation of mineral products produced by the operations: Provided, That all domestic requirements for same shall have first been satisfied;

"(4) Importation of highly technical and specialized personnel and executive staff, who may exercise without examination or certification their profession solely for this undertaking subject to such regulations as may be prescribed by the office or agency to be created and designated, and who may receive not more than fifty per centum of their annual compensation in foreign exchange: And provided, That if the alien technicians lose their employment, the applicable laws and regulations on immigrants shall apply to such alien technicians and their immediate families; and

"(5) Gratuitous use of timber and water for mining and processing purposes from the Surigao Mineral Reservation."

SEC. 3. Section five of the same Act is hereby amended to read as follows:

"SEC. 5. The following provisions shall guide the relationship between the Government and the private

enterprise holding the minority capital stock and/or its approved contractor as provided for in section two hereof:

"(1) Any minority stockholder and/or contractor may be authorized to repatriate not more than eighty per centum of the duly authorized and recognized foreign capital investments, plus interest, within five years or longer, in the discretion of the Board, from the first year of actual commercial production, depending upon operation circumstances, and to remit to non-resident investors abroad profits or dividends, out of current and annual profits or dividends: Provided, That the total repatriation of foreign investments herein authorized plus the total remission of profits or dividends for any year shall not exceed fifty per centum, of the percentage contribution to the total capital investment: And provided, further, That the repatriation of the remaining duly authorized and recognized foreign capital investment shall be subject to the existing Central Bank regulations at the time: And provided, finally, That repatriations and remissions as herein provided may, at any time during the terms of the contract, be done under the provisions of this paragraph or under such regulations as may from time to time be promulgated by the Central Bank on the matter, at the election of the minority stockholder or operator;

"(2) The final area or areas in compact block or blocks, irrespective of water separation of portions, shall be selected sufficient to meet his reasonable needs of the operation as to ore reserves, plant sites, timber and water resources, to assure commercial operations, but in no case to exceed a total land area of twenty-five thousand hectares;

"(3) The rights and obligations of the Government and the minority stockholders shall be governed by the shares by each;

"(4) Philippine citizens shall be given preference in types of 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; and effective programs of training and advancement commensurate with the demonstrated abilities of such citizens to perform satisfactorily the various types of work involved in the operation shall be maintained."

SEC. 4. Section six of the same Act is hereby amended to read as follows:

"SEC. 6. Should the President of the Philippines decide to have the operations or any part thereof authorized in this Act done through the services of an independent contractor or contractors, the same shall be, among others, under the following terms and conditions:

"(1) The Operator shall be paid for services rendered and expenditures incurred beginning with the end of the first year after the effective date of the contract the sum of one peso (P1.00) per year, and the Operator shall receive, by way of additional compensation, an amount equivalent to a portion of the net profit or of the gross annual receipts from all minerals, mineral and metal products, and by-products resulting from the operation, processing, and disposition thereof computed such that the Government shall retain not less than thirty-five per centum of the annual net profit, realized from such operation, processing and disposition, or not less than three and one-half per centum of the gross annual receipts, f. o. b. point of export, whichever is higher: Provided, That the Operator may be exempt from all taxes, duties, fees and charges, both national and local, directly payable by it, until recovery of seventy-five per centum of the capital invested: Provided, however, That the Operator shall put the area or areas covered by the contract into actual production within five years from the effective date of the contract. Thereafter, penalties may be applied against the Operator for failure to effect such production, and/or reach certain levels of production within specific time period, as may be agreed upon: And provided, further, That exemption from taxes shall not extend to taxes due from contractor's personnel in their personal capacities;

"(2) The Operator shall file a bond to guarantee full and faithful compliance with all its obligations;

"(3) The Operator may be authorized to repatriate within five years or longer, in the discretion of the Board, from the first year of actual commercial production, depending upon operational circumstances, not more than eighty per centum of the duly authorized and recognized foreign capital investment, plus interest, and to remit to non-resident investors abroad profits or dividends, out of current and annual profits or dividends: Provided, That the repatriation of the remaining duly authorized and recognized foreign capital investment shall be subject to the existing Central Bank regulations at the time: And provided, further, That repatriations and remissions as herein provided may, at any time during the terms of the contract, be done under the provisions of this paragraph or under such regulations as may from time to time be promulgated by the Central Bank on the matter, at the election of the Operator: And provided, finally, That the total repatriation of foreign investments herein authorized plus the total remission of profits or dividends for any year shall not exceed fifty per centum of the total gross receipts for that particular year;

"(4) Within one year from the first date of commercial production, the Operator shall select a final area or areas in compact block or blocks, irrespective of water separation of portions to be retained by him sufficient to meet his reasonable needs as to ore reserves, plant sites, timber and water resources to ensure commercial operation, but, in no case to exceed a total land area of twenty-five thousand hectares;

"(5) The Operator shall give preference to Philippine citizens in all types of 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; and shall maintain effective programs of training and advancement commensurate with the demonstrated abilities of such citizens to perform satisfactorily the various types of work involved in the operation. The Operator, however, shall not be hindered from using officials of its own selection for executive or technical work and for all other work which, in its judgment, and with the approval of the Board, requires highly specialized training and/or long experience;

"(6) The Operator and/or its personnel shall be subject to the jurisdiction of the Philippine Courts;

"(7) If and when the Government shall decide to have the renounced area operated by an independent contractor, the preferential right of the operator of the parcel already being operated to operate the same shall be recognized under such terms and conditions as may be fixed by the Government at the time: Provided, That said Operator shall be qualified and shall have been diligent in the prosecution of its operation' and in the compliance with its obligations.

"In case said operator shall fail to qualify or to exercise its preferential right, then said renounced area shall be open to operation in the manner provided by existing law at the time.

"(8) If and when the Government shall decide to have the other parcel or parcels of the Surigao Mineral Reservation operated by independent contractor or contractors in accordance with section two numbered (3) hereof, the preferential right of the Operator of the parcel already being operated to operate the same shall be recognized under such terms and conditions as may be fixed by the Government at that time: Provided, That said Operator shall be qualified and shall have been diligent in the prosecution of its operation and in the compliance with its obligations.

"In case said Operator shall fail to qualify or to exercise its preferential right, then said parcel or parcels shall be open to operation in the manner provided by existing law at the time."

SEC. 5. The whole provision of section eight of the Act is hereby deleted and in lieu thereof the following new provision is inserted:

"SEC. 8. For the purpose of carrying out the provisions of this Act, the amount equivalent to three per centum of whatever the Government shall receive from the operation of the Surigao Mineral Reservation is hereby set aside to cover the expenses, including salaries, wages, and per diems of the members of the Board and its staff and personnel."

SEC. 6. This Act shall take effect upon its approval.

Approved, June 13, 1958.

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