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GUIDELINES IN THE DETERMINATION OF QUALIFIED PERSON FOR MINING APPLICATIONS AND MINING RIGHTS

DENR MEMORANDUM ORDER NO. 99-10, March 10, 1999

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Pursuant to the pertinent provisions of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Act) and Department Administrative Order No. 96-40 known as the Revised Implementing Rules and Regulations of the Act (the "IRR"), the specific policy and guidelines in the determination of a Qualified Person with respect to Mining Applications and the grant of Mining Rights are hereby promulgated.

Section 1. Rationale. —

- It is the declared policy that the state shall promote the rational and equitable distribution, exploration, development, utilization and conservation of all mineral resources, through the combined efforts of the Government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities.

- Pursuant to the Act, the State may grant Exploration Permits ("EP") and enter into Mineral Agreements ("MA") and Financial or Technical Assistance Agreements ("FTAA") with Qualified Persons for the exploration, development and utilization of mineral resources. The Act further provides for the maximum areas that a Qualified Person may hold at any one time or be granted under an EP, MA or FTAA.

- The Act and the IRR further provide that a corporation, partnership, association or cooperative shall be deemed a Qualified Person if it is organized or authorized for the purpose of engaging in mining and duly registered in accordance with law, having the technical and financial capability to undertake mineral resources development.

- In order to implement the expressed intent of the Act to limit the areas that may be held or granted to a single Qualified Person, the guidelines are herein provided to determine whether or not two or more mining applicants are deemed as one and the same Qualified Person for purposes of applying for and being granted EPs, MAs or FTAAs.

Section 2. Definition of Terms. —As used in this Order, the following terms, whether singular or plural, shall mean:

- "Qualified Person" means any Filipino citizen of legal age and 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 percent (60%) of the capital of which is owned by Filipino citizens; Provided, That a legally organized Foreign-owned Corporation shall be deemed a Qualified Person for purposes of granting an Exploration Permit, FTAA or Mineral Processing Permit only.

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

- "Juridical Persons" means a corporation, partnership or association for private interests or purposes to which the

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law grants a juridical personality, separate and distinct from that of each shareholder, position or member.

All other terms used in this Order shall be consistent with and have their meaning as defined in Section 3 of the Act and Section 5 of the IRR.

Section 3. Maximum Areas Per Qualified Person. —As provided in the Act and the IRR, each Qualified Person shall be entitled to hold or apply for the maximum area at any one time for each of the following mining rights:

a. Exploration Permit

- Onshore, in any one province

1.1 For an individual — twenty (20) blocks or approximately one thousand six hundred twenty (1,620) hectares and

1.2 For a corporation, partnership, association or cooperative — two hundred (200) blocks or approximately sixteen thousand two hundred (16,200) hectares.

- Onshore, in the entire Philippines

2.1 For an individual — forty (40) blocks or approximately three thousand two hundred forty (3,240) hectares and

2.2 For a corporation, partnership, association or cooperative — four hundred (400) blocks or approximately thirty-two thousand four hundred (32,400) hectares.

- Offshore, in the entire Philippine, beyond five hundred meters (500 m) from the mean low tide level.

3.1 For an individual — one hundred (100) blocks or approximately eight thousand one hundred (8,100) hectares and

3.2 For a corporation, partnership, association or cooperative — one thousand (1,000) blocks or approximately eighty-one thousand (81,000) hectares.

b. Mineral Agreements

- Onshore, in any one province

1.1 For an individual — ten (10) block or approximately eight hundred ten (810) hectares and

1.2 For a corporation, partnership, association or cooperative one hundred (100) blocks or approximately eight thousand one hundred (8,100) hectares.

- Onshore, in the entire, Philippines

2.1 For an individual — twenty (20) blocks or approximately one thousand six hundred twenty (1,620) hectares and

2.2 For a corporation, partnership, association or cooperative — two hundred (200) blocks or approximately sixteen thousand two hundred (16,200) hectares.

- Offshore, in the entire Philippines, beyond five hundred meters (500 m) from the mean low tide level

3.1 For an individual — fifty (50) blocks or approximately four thousand fifty (4,050) hectares.

3.2 For a corporation, partnership, association or cooperative — five hundred (500) blocks or approximately forty thousand five hundred (40,500) hectares and

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- For the Exclusive Economic Zone — a larger area to be determined by the Secretary upon the recommendation of the Director.

The determination of the total area that a mining applicant /Contractor may apply for or holds under a Mineral Agreement shall not include mining/quarry areas under operating agreements between the mining applicant/Contractor and a claim owner/Leasee/Permittee/Licensee entered into under P.D. No. 463.

c. Financial or Technical Assistance Agreement

- One thousand (1,000) meridional blocks or approximately eighty-one thousand (81,000) hectares onshore,

- Four thousand (4,000) meridional blocks or approximately three hundred twenty four thousand (324,000) hectares offshore or

- Combination of one thousand (1,000) meridional blocks onshore and four thousand (4,000) meridional blocks offshore.

Section 4. Guidelines in the Determination of a Qualified Person. —In line with the principle of a rational and equitable distribution and utilization of mineral resources, the total aggregate area that may be held by or granted to a single Qualified Person for an EP, MA or FTAA at any one time is limited to the maximum areas provided in the Act and the IRR.

In the case of Juridical Person duly registered in the Philippines in accordance with law, a mining applicant shall be deemed to be one and the same in relation to other mining applicant(s) /Contractor(s)/Permittee(s) if more than seventy percent (70%) of their authorized capital stock are held by the same stockholders, and hence, shall be limited to the maximum area that may be applied or granted for an EP, MA or FTAA.

For the above purposes, the mining applicant shall execute and submit an Affidavit (see Annex "A") declaring therein:

- The list of all mining applications he/she/it has filed and the mining permits(s)/Contract(s) granted to it including the corresponding hectarage and location of the areas, disaggregated on a per province basis; and

- The list of other applicant(s)/Contractor(s)/Permittee(s) in which more than seventy percent (70%) of the authorized capital stock is held by stockholders of the applicant, including the corresponding hectarage and location of the area, disaggregated on a per province basis.

Such Affidavit shall be an additional mandatory requirement in the acceptance of a Mining Application.

Each Qualified Person must have the financial and technical capability to undertake the submitted Exploration/Development/Utilization Work Program and Environmental Work Program/Environmental Protection and Enhancement Program under the EP, MA or FTAA. As further mandatory requirement in the acceptance of the Mining Application, the mining applicant for an EP, MA and FTAA shall be required to have a minimum authorized capital stock of Ten Million Philippine Pesos (PhP10,000,000.00) and a minimum paid-up capital of Two Million Five Hundred Thousand Philippine Pesos (PhP2,500.000.00) as further proof of its financial capability; Provided, That in the case of applicants for FTAA, they shall be required to have a minimum authorized capital stock of Four Million US Dollars (US$ 4,000,000.00) or its Philippine Peso equivalent, after approval of the President of the Republic of the Philippines and prior to registration of the FTAA as provided in the IRR.

The submission of curricula vitae and track of records in mining operations and environmental management of the technical personnel who shall undertake the activities in the submitted Work Programs shall be strictly required as

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a mandatory requirement as provided in the IRR.

The determination of a mining applicant for an EP, MA or FTAA as a single and separate Qualified Person shall not be construed as approval or grant of its Mining Application, but is merely one (1) procedural requirement in the evaluation of such application. Said application is still subject to further processing and evaluation, and if granted, it shall be subject to such other and further requirements under the Act IRR and other pertinent laws, rules and regulations.

Section 5. Transitory Provision. — All mining applicants with pending applications for EPs, MAs and FTAAs shall be required to comply with this Order within a period of nine (9) months from the effectivity hereof; Provided, That the mining applicant shall submit a Letter notifying the Bureau/Regional Office of his/her/its intent to comply with the provisions of this Order; Provided further, That failure to comply with this Order shall cause the denial/rejection of the EP, MA or FTAA application(s) as deemed appropriate by the Bureau/Regional Office.

Section 6. Effectivity. — This Order shall take effect fifteen (15) days following its complete publication in a newspaper of general circulation.

Adopted: 10 Mar. 1999

(SGD.) ANTONIO H. CERILLES
Secretary

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