

AMENDING CERTAIN SECTIONS OF PRESIDENTIAL DECREE NO. 463, OTHERWISE KNOWN AS "THE MINERAL RESOURCES DEVELOPMENT DECREE OF 1974";.

PRESIDENTIAL DECREE NO. 1385, May 25, 1978

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WHEREAS, the speedy exploration, development and exploitation of our mineral resources is a matter of national concern;

WHEREAS, in the implementation of Presidential Decree No. 463, the implementing agencies concerned have noted that certain provisions thereof are not in keeping with the objectives for which the said Decree was promulgated; and

WHEREAS, there is a need to amend the said provisions to attain optimum development of the mineral resources and minimize the impact of mineral resources development to the national economy;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the amendment of Presidential Decree No. 463, as follows:

SECTION 1. Section 2 of Presidential Decree No. 463 is hereby amended by amending paragraphs (f) and (o) thereof and by adding a new paragraphs (g) after paragraph (p) thereof, to read as follows:

"SEC. 2. Definition of Terms. As used in and for the purpose of this Decree, the following terms, whether in the singular or plural, unless the context indicates otherwise, shall have the following meanings:

"x x x x x

"(f) "Minerals" means all naturally occurring inorganic substances in solid, liquid, or any intermediate state. Soil which supports organic life, sand and gravel guano, coal, petroleum, geothermal energy and natural gas are included in this term but are governed by special laws or by regulations promulgated by the Secretary.

"(o) "Lessee" means a qualified person issued a mining lease contract by the Secretary.

"(g) "Claimowner" means a qualified person who has registered mining claims under previous mining laws or under the Decree."

SEC. 2. Section 6 of the same Decree is hereby amended to read as follows:

"SEC. 6. Establishment and Reversion of Mineral Reservations. Upon the recommendation of the Secretary, based on the report submitted by the Director, the President may set aside and establish an area of the public domain as a mineral reservation and prescribe the terms and condition for its disposition and operation, or may alter or modify the boundaries thereof from time to time or revert any mineral reservation to the public domain without prejudice to any prior subsisting rights.

"When lands within reservations which have been established for purposes other than mining are found more valuable for their mineral contents, they may, upon recommendation of the Secretary, be withdrawn from such reservation by the President and established as a mineral reservation."

SEC. 3. Section 8 of the same Decree is hereby amended to read as follows:

"SEC. 8. Prospecting, Exploration and Exploitation of Minerals in Reserved Lands. Prospecting, exploration and exploitation of minerals in reserved lands other than mineral reservation may be undertaken by the proper Government agencies. In the event that the said agencies cannot undertake the prospecting exploration and exploitation of minerals in reserved lands, qualified persons may be permitted to undertake such prospecting, exploration and exploitation, in accordance with the rules and regulations promulgated by the Secretary. The right to exploit 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 prospecting, exploration and exploitation of said area shall be given priority.

"Notwithstanding the provisions of the preceding paragraph, a special permit may be issued by the Director to the exploration permittee to extract, remove and dispose of minerals in limited quantities as verified by the Bureau of Mines."

SEC. 4. Section 9 of the same Decree is hereby amended to read as follows:

"SEC. 9. Exploration and Exploitation of Minerals in Mineral Reservations. The Management of mineral reservations established under Section 6 hereof and the manner of the disposition of the minerals found therein shall be under the jurisdiction of the Mineral Reservation Development Board. Mineral reservations are closed to mining location from the time of their establishment."

SEC. 5. Section 11 of the same decree is hereby amended to read as follows:

"SEC. 11. Location in Public and Private Lands. A qualified person may locate mining claims within public and private lands. However, a person may locate and register mining claims for another: Provided, That the former is first authorized by the latter by means of a public instrument duly registered with the Mines Regional Officer concerned before the registration of such mining claims."

SEC. 6. Section 12 of the same decree is hereby amended to read as follows:

"SEC. 12. Entry into Public and Private Lands. Subject to the provisions of Presidential Decree No. 512, a qualified person and/or his authorized representative shall not be prevented from entry into private lands by surface owners and/or occupants thereof when prospecting, exploring and exploiting for minerals therein. No prospecting, exploration and exploitation of mineral resources inside a forest concession shall be allowed unless proper notice has been served upon the licensee thereof."

SEC. 7. Section 13 of the same decree is hereby amended to read as follows:

"SEC. 13. Areas Closed to Mining Location. No prospecting and exploration shall be allowed:

"(a) In military or other Government reservations except when authorized by the proper Government agency concerned;

"(b) In mineral reservations;

"(c) In lands covered by valid and subsisting mining claims located, and leases acquired, under previous mining laws and in accordance with the provisions of this Decree; and

"(d) Near or under buildings, cemeteries, bridges, highways, waterways, railroads, reservoirs, dams or any other public or private works unless otherwise authorized by the agencies concerned.

"The Secretary shall, upon recommendation of the Director, prescribe in detail the regulations implementing the various restrictions under this Section.

x x x x x"

SEC. 8. Section 15 of the same Decree is hereby amended to read as follows:

"SEC. 15. Declaration of Location of a Mining Claim. The declaration of location covering the meridional block or fraction thereof constituting the mining claim shall be filed with the Mining Regional Officer concerned in a form prescribed for the purpose."

SEC. 9. Section 16 of the same decree is hereby amended to read as follows:

"SEC. 16. Recording of Declaration of Location Ministerial. Upon payment of the prescribed fees and compliance with the requirements under existing rules and regulations on the matter, recording of a duly accomplished and notarized declaration of location of a mining claim shall be ministerial on the part of the Mining Recorder concerned."

SEC. 10. Section 21 of the same decree is hereby amended to read as follows:

"SEC. 21. Voluntary Abandonment of a Mining Claim. A claimowner may, before the grant of the mining lease contract, totally or partially abandon his mining claim by filing with the Mines Regional Officer an affidavit of abandonment. From the date of the recording of such affidavit all his rights and interests in such claim or to the portion thereof abandoned shall be deemed to have ceased: Provided, That in case of partial abandonment in any one claim, the area so retained shall be contiguous and the same shall be duly surveyed and the survey returns submitted within one (1) year from date of abandonment: Provided, Further, That the original locator or his successors or assigns shall not be allowed to relocate directly or indirectly the abandoned area."

SEC. 11. Section 22 of the same Decree is hereby amended to read as follows:

"SEC. 22. Creation of Positions of Mines Regional Recorders. The Mines Regional Officer shall be responsible for the proper recording of mining instruments and documents, and to ensure effective and proper recording of the same, the positions of mines regional recorders are hereby created in every mining region."

SEC. 12. Section 23 of the same Decree is hereby amended to read as follows:

"SEC. 23. Mining Regions. The existing mining regions with offices at Baguio City, Metro Manila, Daet, Cebu City and Surigao City shall be retained. Upon the recommendation of the Director, the Secretary shall establish other mining regions as the need for them arises, the boundaries of which shall so far as practicable coincide with the boundaries of the corresponding provisions: Provided, However, That mineral districts may be established by the Secretary in existing mining regions subject to such rules and regulations as he may promulgate."

SEC. 13. Section 24 of the same Decree is hereby amended to read as follows:

"SEC. 24. Expenditures Required. A claimowner/lessee under this Decree and under the Mining Act (Commonwealth Act No. 137), as amended, shall perform annual work obligations on his mining claim, the value of which shall not be less than the following amounts:

"Before the lease contract is granted,

per hectare per calendar year P 20.00

"After the lease contract is granted,

per hectare per calendar year P100.00

"The annual work obligations for each mining claim registered under this Decree shall start from the date of

recording thereof.

"Holders of mining claims required to file lease application under Presidential Decree No. 1214 shall perform annual work obligations (the value of which is as stated above) on the mining claims from the date of filing of said applications."

x x x x x x x x x

SEC. 14. Section 25 of the same decree is hereby amended to read as follows:

"SEC. 25. Group Development. The claimowner/lessee may concentrate all the annual work obligations on any one or more of several contiguous or geologically related mining claims in one province if it can be shown to the Director that such concentration of work will be most advantageous and beneficial in the development and operation of said mining claims: Provided, That any expenditure in any calendar year in excess of the minimum amount required for work obligations per hectare may be carried forward and credited to the work obligations of the group claims for the succeeding year of years: Provided, Further, That if the expenditure incurred for any claim is less than that required in any year, the difference shall be paid and accrue to the Bureau of Mines to be used exclusively for the purpose mentioned in Section 95 of the Decree.

"x x x x"

SEC. 15. Section 27 of the same Decree is hereby amended to read as follows:

"SEC. 27. Proof of Annual Work Obligations. The claimowner/lessee shall submit proof of compliance with the annual work obligations by filing an affidavit therefor and the statement of expenditures and technical report in the prescribed form in support thereof with the Mines Regional Officer within sixty (60) days from the end of the year in which the work obligation is required: Provided, That failure of the claimowner to comply therewith for two (2) consecutive years shall constitute automatic abandonment of the mining claims: Provided, Further, That, if it is found upon field verification that no such work was actually done on the mining claims, the claimowner/lessee shall likewise lose all his rights thereto notwithstanding submission of the aforesaid documents."

SEC. 16. Section 32 of the same Decree is hereby amended to read as follows:

"SEC. 32. Period for Submittal of Lease Survey Returns. A geodetic engineer ordered to survey mining claims shall submit the survey returns thereof to the Director within one (1) year from receipt of the survey order. Failure to submit the same within said period shall cause the automatic forfeiture of the surveyor's surety bond and the cancellation of the survey order. No extension of the period within which to submit the survey returns shall be allowed unless for reasons of force majeure."

SEC. 17. Section 33 of the same Decree is hereby amended to read as follows:

"SEC. 33. Mines Temporary Permit. Pending the issuance of a mining lease contract, a claimowner may, upon proper application duly filed with the Mines Regional Officer concerned, be issued a mines temporary permit by the Director upon compliance with all the obligations due on the mining claims subject thereof and the posting of the surety bond in an amount to be approved by the Director. The Mines temporary permit shall be for a period of one (1) year, renewable once only for a like period.

"A special permit may be issued by the Director for the removal, extraction and disposal of minerals found to exist in limited quantities. Subject to the approval of the Secretary, the Director shall issue rules and regulations to ensure proper removal, extraction and disposition of such minerals."

SEC. 18. Section 40 of the same Decree is hereby amended to read as follows:

"SEC. 40. Issuance of Mining Lease Contract. Except protests pending at the time of publication, it shall be

conclusively presumed that no adverse claim exists if no such adverse claim is filed within fifteen (15) days after the first date of publication of the notice of the application and thereafter, no objection from third parties to the grant of the lease shall be heard. Adverse claims based on mining claims registered on or after the first publication of the notice of application shall not be entertained. After the mining claim has been verified as to its mineral contents and its actual location on the ground as determined through reports submitted to the Director, the Secretary shall approve and issue the corresponding mining lease contract, which shall be for a period not exceeding twenty-five (25) years, renewable upon the expiration thereof for another period not exceeding twenty-five (25) years under such terms and conditions as provided by law. After the expiry of the renewal period, the operation of the mine may be undertaken by the Government through one of its agencies or through a qualified independent contractor. The contract for the operation of the mine by an independent contractor shall be awarded to the highest bidder in a public bidding held after due publication of the notice thereof; Provided That the lessee shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

"x x x x"

SEC. 19. Section 42 of the same Decree is hereby amended to read as follows:

"SEC. 42. Mining Lease on Private Lands. A Mining lease may be granted on mining claims located on private lands subject to the submittal of proof of compliance with Section 2 of Presidential Decree No. 512."

SEC. 20. Section 44 of the same Decree is hereby amended to read as follows:

"SEC. 44. Mining Lease Rights. A mining lease contract shall grant to the lessee, his heirs, successors and assigns, the right to extract all mineral deposits found on or underneath the surface of his mining claims covered by the lease, continued vertically downward; to remove, process and otherwise utilize the mineral deposits for his own benefit and to use the lands covered by the lease for the purpose or purposes specified therein: Provided, That the Secretary shall reserve the right to grant and use easements in, over, through or upon on the said claims as may be needed by other leases for right-of-way to enable them to have access to and/or facilitate the operation of their mining claims: Provided, Further, That in case of conflict of interest between the lessees for this purpose, the Director is hereby authorized to mediate: Provided, Furthermore, That in granting any lease under this Decree, the Government reserves the right to lease or otherwise dispose of the surface of the lands embraced within such lease which is not needed by the lessee in extracting and removing the mineral deposits from his mining claims or in the beneficiation of the ores extracted therefrom: Provided, Finally, That a lessee may on his own or through the Government, enter into a service contract with a qualified domestic and/or foreign contractor for the exploration, development and exploitation of his claims and the processing and marketing of the products thereof, subject to such rules and regulations that shall be promulgated by the Director with the approval of the Secretary.

"Service contracts entered into pursuant to this Section shall contain, among others, the following salient features, to wit:

"a) A stipulation that the foreign service contractor shall not be entitled to any other fee except a service fee which shall in no case exceed forty percent (40%) of the net proceeds of the operations, and in case the foreign service contractor or another foreign company holds an equity in the local mining corporation involved in a service contract the equity participation including the service fee shall in no case exceed forty percent (40%) of the net proceeds of the operations;

"b) The financing, technical, management and other services committed to be rendered under the service contract, specifying a minimum amount of expenditures, which should be over and above the minimum work obligations of the lease and acceptable to the Secretary of Natural Resources as recommended by the Director of Mines;

"c) Scheme for the repayment of service fees and repayment of advances which may include the following:

"i) Foreign exchange payments duly approved by the Central Bank;

"ii) Except for repayment of pre-production expenses which shall adhere as closely as possible to international practice, a provision that the interest charged on the fair value of the services rendered and actual funds advanced by the foreign entity shall not be more than the prevailing international interest rates charged for similar types of transaction; and

"iii) A stipulation allowing payment of service fees in cash or in allotment of production which may be exported subject to domestic requirements of the country, or in equity which shall not exceed the constitutional limits: Provided, That such stipulation shall not defeat the citizenship requirement of the Constitution in the exploration, development, exploitation and utilization of the natural resources;

"d) A stipulation that the foreign entity shall not acquire any title or interest in the leased area;

"e) A commitment by the service contractor to pay the Government the amount which should have been spent, but was not, in direct prosecution of the approved work program;

"f) A stipulation that the service contract shall be cancelled for repeated failure to comply with the terms and conditions thereof;

"g) A preference for Filipinos in employment in all phases of operations for which they are qualified;

"h) A stipulation that alien employees shall be limited to technologists and executives requiring highly specialized training and long experience, and whose employment shall be subject to the required approval under existing decrees, laws and regulations on the matter; and

"i) In every case where foreign technologists and executives are employed, an effective program of training of understudies.

"Service contracts shall be approved by the Secretary upon recommendation of the Director."

SEC. 21. Section 47 of the same Decree is hereby amended to read as follows:

"SEC. 47. Removal of Improvements. The lessee shall within one (1) year from the abandonment, termination or cancellation of the lease, remove all improvements on the mining premises found on public lands, except roads and bridges; otherwise, said improvements shall become the property of the Government."

SEC. 22. Section 50 of the same Decree is hereby amended to read as follows:

"SEC. 50. Appeals. Any party not satisfied with the decision or order of the Director, may, within five (5) days from receipt thereof, appeal to the Secretary. Decisions of the Secretary are likewise appealable within five (5) days from receipt thereof by the affected party to the President whose decision shall be final and executory.

"In all cases, the decision or order of the Director and the Secretary shall be immediately executory notwithstanding the appeal, unless the President of the Philippines directs otherwise, and the prevailing party has the right to immediately take possession, exploration and exploitation of the mining claims: Provided, However, That the provisions of Section 3 of Presidential Decree No. 1000, pertaining to the deposit in escrow of the prescribed percentage of the proceeds of the gross sales of the mines produced, shall be complied with for the protection of the interest of the party to whom the mining claims are ultimately and finally awarded."

SEC. 23. Section 78 of the same Decree is hereby amended to read as follows:

"SEC. 78. Theft of Minerals. Any person who, without a mining lease or a temporary permit or any other permit granted by the Secretary or the Director under existing mining decrees, laws and regulations to mine,

shall extract, remove and/or dispose of minerals belonging to the Government or from a mining claim or claims leased, held or owned by other persons, shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from one hundred pesos (P100.00) to ten thousand pesos (P10,000.00) or both, in the discretion of the court, besides paying compensation for the minerals removed, extracted and disposed of, the royalty and the damage caused thereby."

SEC. 24. Section 94 of the same Decree is hereby amended to read as follows:

"SEC. 94. Mine Evaluation. The appraisal or reappraisal, evaluation or re-evaluation of any mine, mining claim or claims with improvements thereon whether patented, leased or otherwise, for the purpose of raising capital for the formation or organization of a partnership or corporation or for determining the present net value of the mines shall be made by the Director or his duly authorized representative. No mine, mining claim or claims without improvements thereon, whether patented, leased or otherwise, shall be accepted as asset or basis of any asset in any formation or organization of a partnership or corporation without the value thereof having been first appraised or determined by the Director as herein provided."

SEC. 25. Repealing Clause. The provision of laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

SEC. 26. Effectivity Clause. This Decree shall take effect immediately.

Done in the City of Manila, this 25th day of May in the year of Our Lord, nineteen hundred and seventy-eight.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) JACOBO C. CLAVE
Presidential Executive Assistant

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