

Legal *finesse*

QUARTERLY NEWSLETTER OF FORTUN NARVASA & SALAZAR

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PHL'S NEW MINING POLICIES AND GUIDELINES ISSUED

President Benigno Aquino III signed on July 6th Executive Order No. 79 entitled “Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources” (EO 79).

EO 79 is the Aquino Administration’s mining policy to strengthen environmental protection, promote responsible mining and provide a more equitable revenue-sharing scheme amid the projected boom in the mining sector. It aims to:

1. Increase the revenue of government from mining
2. Improve environmental standards
3. Put consistency in national and local laws pertaining to mining.

Implementing Rules

To implement EO 79, the Department of Environment and Natural Resources (DENR) issued on September 10, 2012 Administrative Order No. 2012-07 (EO 79 IRR). On October 8, 2012, because of the clamor to clarify certain provisions in

the EO 79 IRR, DENR issued Administrative Order No. 2012-07-A (EO 79 Amended IRR) and revised Sections 3, 7 and 9 of EO 79 IRR. EO 79 IRR and its amendments took effect on October 25, 2012.

Among the salient features of EO 79 are:

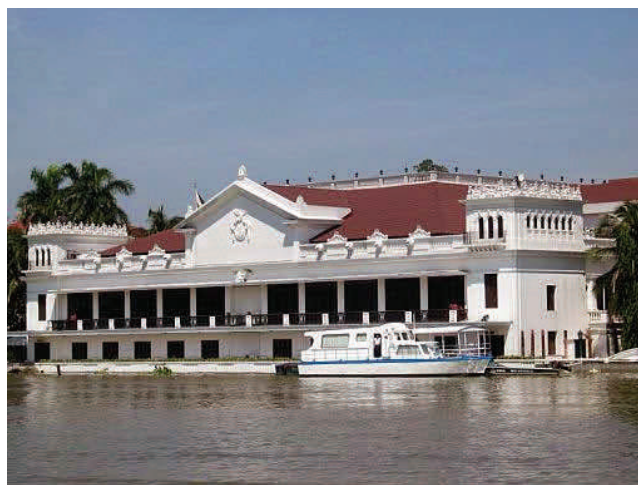
1. EO 79 expanded the coverage of areas that are closed to mining under Section 19 of Philippine Mining Act of 1995 (the Mining Act) and the National Integrated Protected Areas Systems Law, also dubbed by the DENR as “no-go zones”, namely:

i. prime agricultural lands – aimed at meeting one of Government’s objectives - agricultural productivity;

ii. fisheries development zones;

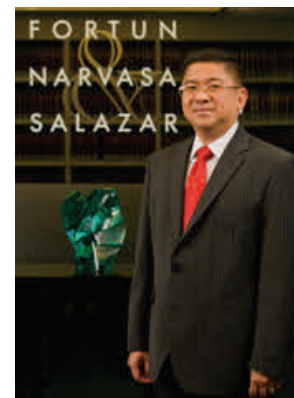
iii. tourism development areas (TDA’s) as identified in the National Tourism Development Plan (NTDP) – these TDA’s comprising 20 strategic thematic tourism destination cluster in 78 locations are primarily long and earlier identified natural parks, marine reserves, protected landscape, wildlife sanctuary, protected seascape, protected landscape-seascape, watershed reservation or watershed forest reservation, which are to be developed as ecotourism sites in the next 4 years.

iv. Other critical areas, *(continued to next page)*



Malacanang Palace, the official residence of the Philippine President. *Source: LordAntagonist at en.wikipedia*

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WHAT'S INSIDE:

9th FINL LIST...3

X'MAS PICS...4

EO 79 “NO-GO” ZONES:

1. PRIME AGRICULTURAL LANDS;
2. FISHERIES DEVELOPMENT AREAS;
3. TOURISM DEVELOPMENT AREAS;
4. CRITICAL AREAS, ISLAND ECOSYSTEMS, AND IMPACT AREAS IDENTIFIED BY THE DENR

Mining Policy cont.

island ecosystems, and impact areas of mining identified by DENR through mapping technology.

EO 79 IRR clarified, however, that all pending mining applications situated within any of these areas closed to mining shall be deemed denied upon the effectivity of the EO.

Mineral reservations

2. EO 79 also established mineral reservations for the development of strategic industries of the potential and future mining areas with known strategic mineral reserves and resources after proper consultation with all concerned stakeholders and without prejudice to existing mineral agreements, contracts, rights and obligations.

3. The moratorium on the grant of mineral agreements will be continued under EO 79. No new mineral agreements shall be entered into until a legislation rationalizing the existing revenue sharing schemes and mechanisms shall have taken effect. In a briefing to the mining industry, the DENR’s Mining and Geosciences Bureau (MGB) stated that this does not cover Exploration Permits (EPs) and Financial or Technical Assistance Agreements (FTAAs) which will continue to be granted. The advice to holders of pending Applications for Mineral Production Sharing Agreements (APSAs) is to convert such applications to

EPs, otherwise, they will not be granted any MPSAs until new revenue legislation is in place.

EO 79 Amended IRR clarified this provision as follows: “no expansion of existing contract areas shall be allowed by the DENR Secretary unless there is imminent and/or threatened economic disruption, such as a shortage of critical commodities and raw materials, that could adversely affect priority government projects and/or economic activities as determined by the Economic Development Cabinet Cluster.” The new provision now allows the grant of new mineral agreements in case of an imminent and/or threatened economic disruption that could adversely affect priority government projects or activities.

Mining Project

Feasibility

4. The DENR may continue to grant and issue EPs under existing laws, rules, and guidelines. The grantees of such permits shall be given the right of first option to develop and utilize the minerals in their respective exploration area upon the approval of the declaration of mining project feasibility and the effectivity of the said legislation. However, under the Mining Act, an EP holder is given the right to be granted an MPSA once it complies with the requirements for a declaration of mining project feasibility and not a mere first option.

The DENR will review existing mining contracts and agreements for possible mutually acceptable renegotiation of the terms and conditions thereof.

5. EO 79 assures the primacy of Constitution and national laws over local ordinances. Local government units (LGUs) shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations. However, existing LGU ordinances which ban mining activities shall remain valid until voided by the courts.

One-Stop Shop

6. A One-Stop Shop for all Mining Applications and Procedures was created under EO 79. Under EO 79, an inter-agency body will process applications but MPSA, FTAA, JVA or CPA shall be approved only with the Free Prior and Informed Consent (FPIC) of the concerned indigenous peoples (IPs) and compliance with the social acceptability requirement of the LGUs. Prior to EO 79, FPIC is only a post-approval condition.

7. EO 79 also streamlined the EP Application. An EP application shall be approved or disapproved within six (6) months from the date of its acceptance by the MGB on condition that all pertinent requirements are fully complied with. *LF©December 30, 2012*

9TH REGULAR FOREIGN INVESTMENT NEGATIVE LIST (FINL) NOW IN PLACE

Executive Secretary Paquito Ochoa, Jr. issued Executive Order No. 98 last October 29, 2012, the 9th FINL. The FINL provides for investment areas/activities which are only reserved for Filipinos or may be opened to foreign investments.

The following are the changes in the 9th FINL vis-à-vis the 8th FINL:

List A- Foreign Ownership is limited by mandate of the constitution and specific laws

No Foreign Equity

The 9th FINL added the following professions/calling as reserved purely to Filipinos:

Real estate service (Republic Act No. 9646);

Respiratory therapy (Republic Act No. 10024);

Psychology (Republic Act No. 10029).

Up to 20% Foreign Equity

The 9th FINL retained the private radio communications network as the only activity allowed with maximum of 20% foreign equity.

Up to 25% Foreign Equity

No changes/additions were made from the 8th FINL.

Up to 30% Foreign Equity

Advertising was retained as the only activity allowed with up to 30% foreign equity.

Up to 40% Foreign Ownership

No changes/additions were made from the 8th FINL.

Up to 49% Foreign Ownership

The 9th FINL allowed up to 49% foreign equity on lending companies. Note that no foreign national may be allowed to own stock in lending companies, financing companies or investment houses unless the country of which he is a national accords the same rights to Filipinos.

Up to 60% Foreign Equity

No changes/additions were made from the 8th FINL.

List B- Foreign Ownership is

Limited for Reasons of Security, Defense, Risk to Health and Morals and Protection of Small- and Medium- Scale Enterprises

Up to 40% Foreign Equity

The 9th FINL included in the exemption from 40% limit on foreign equity all forms of gambling covered by the PAGCOR charter (Republic Act No. 9487). The provision on all forms of gambling in relation to the 40% limit on foreign equity now reads:

"5. All forms of gambling, except those covered by investment agreements with PAGCOR pursuant to RA 9487, or the PAGCOR Charter (RA 7042 as amended by RA 8179)." *LF* © October 30, 2012



PAGCOR plans to build an Entertainment City fronting Manila Bay by 2016. Source: <http://www.pagcor.ph/the-manila-bay-resorts.php>

FNS CHRISTMAS PARTY 2012 HIGHLIGHTS



Messrs. Roderick R.C. Salazar III, Philip Sigfrid A. Fortun and Gregorio Y. Narvasa II (L-R)

In almost two decades of providing legal services to the public, FNS has evolved to become one of the more distinguished and prominent law firms in the Philippines, hurdling legal battles of historical importance with its innovative and ingenious approach to client-problems.

Housed at the 23rd Floor of Multinational Bancorporation Centre at the heart of the Makati Business District, FNS opened its first branch office in Cavite, Philippines in 1999 and a liaison and referral office in Hongkong known as the Fortun Narvasa & Salazar (H.K.) Services Limited in 2002.

With its diversified practice ranging from the prosecution of individual and corporate civil and criminal actions to assisting clients in commercial transactions to providing valued advice in the fast-growing global field of electronic commerce and telecommunications, the Firm provides individualized and cost-effective legal service without compromising the exacting demands of professional excellence and quality.

With FNS, you are assured of quality legal service done through efficient and economically sound processes.

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Sig Fortun (second from left) with his *Hairspray* dancing troupe.



Ogie Narvasa, dressed as Captain Hook with an eye-patch, hamming it up with his pirate team.



The partners of the Firm giving their appreciation to the staff. From left: Bay Loste, Myls Creencia, Ogie Narvasa, Sig Fortun, Dicky Salazar, Maricar Lazaro and Karl Castillo.