

MALACANANG  
RESIDENCE OF THE PRESIDENT  
OF THE PHILIPPINES  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 353

PROMULGATING THE GUIDELINES TO GOVERN THE REVIEW BY GOVERNMENT AGENCIES CONCERNED OF SERVICE AGREEMENTS BETWEEN LOCAL PETROLEUM CONCESSIONAIRES AND FOREIGN OIL EXPLORATION COMPANIES.

WHEREAS, in recent years, the number of service agreements between local petroleum concessionaires and foreign oil exploration companies submitted for approval to the respective government agencies concerned has greatly increased;

WHEREAS, there is now a pressing need to define the guidelines for the review of these agreements, of such great importance to the discovery and development of a strategic natural resources;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby promulgate these guidelines, in the manner hereinafter specified.

Guidelines

The following shall govern the review of service agreements between local petroleum concessionaires and foreign oil exploration companies. They are promulgated with a view to attracting significant amounts of risks capital into petroleum exploration ventures in the Philippines, consistent with Constitutional and legal requirements on the exploration, exploitation and disposition of petroleum resources.

Compliance with Qualification and Application Procedures

1. In cases where applications for concessions are presented contemporaneously with service agreements,

proof of qualification of both the concessionaire and the foreign entity under Republic Act No. 387 (the Petroleum Act) and pertinent rules and regulations, and of compliance with the application procedures established by the Bureau of Mine for concessions, shall be required before any service agreement is reviewed. More specifically, applicants for concessions shall fulfill the qualifications under Article 31 of the Petroleum Act, briefly as follows:

- 1.1. For an individual: Filipino citizenship, legal age, capacity to contract;
- 1.2. For a corporation or partnership: at least 60% ownership;
- 1.3. Proof of sufficient financial, organizational and technical resources to undertake the operations contemplated.

2. The foreign entity must be registered with the Board of Investments, and registered with, or licensed by, the Securities and Exchange Commission. It must be, qualified, financially and technically, to undertake and complete the agreed-upon program of work, which shall include, but not be limited to, the completion of predrilling exploration work within two years for either onshore or offshore areas from the time of the approval of the service agreement by the Secretary of Agriculture and Natural Resources.

3. All applications for concessions shall be submitted to the Bureau of Mines and shall comply with the requirements of applicable laws and regulations.

4. In accordance with Article 24 of the Petroleum Act, an efficient and economic program of work shall be submitted for prior approval to the Secretary of Agriculture and Natural Resources.

#### Service Agreements

1. Service agreements may be entered into between local petroleum concessionaires and foreign oil

exploration companies with the prior approval of the Secretary of Agriculture and Natural Resources, under the following guidelines:

- 1.1. In addition to the services to be rendered, the foreign entity may elect to bear part of the costs incurred in exploration of petroleum deposits. This should not give the foreign entity equity participation; however, the foreign entity may, in addition, become an equity participant in the Philippine entity holding the concession, to the extent of the 40% participation allowed by the Constitution, in the absence of other considerations which would defeat the intent of the Constitution and pertinent laws.
- 1.2. The effective management of the activities authorized the concessionaire under the terms of the concession cannot be transferred or assigned to the foreign entity under the service agreement.
- 1.3. The provisions of Section 13 of the Corporation Law shall be observed in the review of agreements entered into between a foreign entity and more than one Filipino entity.

#### Repayment of Service Contractor

1. The service agreement must incorporate a repayment scheme for all advances in services and financing supplied by the foreign entity, which shall include the following terms:

- 1.1. Approval of foreign exchange payments by the Central Bank;
- 1.2. A fixed period of repayment less than the life of the concession;
- 1.3. 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 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.

2. Repayment to the foreign entity may be in cash or in allotments of production, the latter subject to the condition that domestic requirements of petroleum and its products are first satisfied.

#### Work Obligations

1. As earlier indicated, the service agreement must show that predrilling exploration work will be completed within two years from the approval of such contract by the Secretary of Agriculture and Natural Resources.

Furthermore, if predrilling exploration work warrants drilling, the foreign entity shall drill at least one exploratory test well within one year from the completion of the predrilling exploration work.

2. The service agreement must provide that the Government may revoke the approval of the service agreement upon failure of the foreign entity to fulfill the agreed-upon program of work. The agreement shall thereafter be null and void.

#### Labor

1. The provisions of the service agreement must indicate that Filipinos are to be given preference in employment in all phases of operations for which they are qualified.

2. Alien employees shall be limited to technicians and executives requiring highly specialized training or long experience, whose duties shall be clearly specified, and whose employment shall be subject to the required approvals under existing laws.

3. In every case where foreign technicians and executives are employed, an effective program of understudies is to be instituted, which shall be the responsibility of the concessionaire to implement. The concessionaire shall submit to the Bureau of Mines and to the Department of Labor semi-annual reports on the progress of the training programs for Filipino understudies.

#### General Guidelines for Interpretation

In the review of service agreements between local concessionaires and foreign entities, the agreements are to be interpreted so as to ensure not only the continued inviolability of the Constitution and the laws, but also the attraction of significant amount of risk capital, both foreign and domestic, into oil exploration and development ventures in the Philippines.

Done in the City of Manila, this 22nd day of November, in the year of Our Lord, nineteen hundred and seventy-one.

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

By the President:

(SGD.) ALEJANDRO MELCHOR  
Executive Secretary