



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City



SEVENTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. **6259**

Introduced by

Representatives Pantaleon D. Alvarez, Rodolfo C. Fariñas, Danilo E. Suarez, Frederick F. Abueg, Ferdinand L. Hernandez, Romero S. Quimbo, Raneo E. Abu, Joel Mayo Z. Almario, Abdullah D. Dimaporo, Allen Jesse C. Mangaoang, Arnel U. Ty, Juliet Marie D. Ferrer, Manuel Jose Dalipe, Arnolfo A. Teves, Jr., Emmanuel A. Billones, Luis Raymund F. Villafuerte, Jr., Luis Jose Angel N. Campos, Jr., Erlpe John M. Amante, Jose L. Atienza Jr., Raul A. Daza, Rolando B. Zamora, Johnny Ty Pimentel

AN ACT

AMENDING CERTAIN PORTIONS OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE "PHILIPPINE MINING ACT OF 1995" BY PROHIBITING MINING IN WATERSHEDS, REQUIRING A LEGISLATIVE FRANCHISE FOR MINING OPERATIONS, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The Philippines is very rich in natural resources. With an estimated worth of 1.4 trillion US Dollars in minerals, it is among the top five most mineralized countries in the world. From 2009 to 2014 alone, PhP 650 billion worth of minerals were extracted with gold and nickel accounting for 70%. From 2012-2014, the oil and gas sector contributed PhP 125 billion to the government treasury.

The challenge for government is to ensure proceeds translate into sustainable development, environmental protection, and greater transparency and accountability in the mining industry.

Watershed Protection

Watersheds serve a critical function for the environment and the Philippine society as a whole. A mining disaster that affects a watershed creates a crisis of immense proportion. Hence, it is imperative to adopt a preemptive approach in protecting said watersheds. To allow mining in those areas is too risky.

There are different classifications of watersheds. The Mining Act of 1995 includes *proclaimed* watersheds as an area closed to mining applications. In order to clarify the extent of said protection, this bill explicitly includes watersheds, in general, as well as critical watersheds, as part of the enumerated areas closed to mining applications.

Legislative Franchise for Mining Operations

With the liberalization of the mining industry in the country, it is important to note that it is among the least contributors to the country's wealth which only peaked at 1.63% in 2007. The present mining companies are not performing at par with the potential of the industry. By requiring mining firms to acquire a legislative franchise, the people, through their elected representatives, would be able to scrutinize the applicants, their capability and track record, in order to make sure that only responsible mining firms are allowed to operate in the country.

Thus, the proposed measure requires the acquisition of a legislative franchise from Congress for mining operations in the Philippines. Hopefully, this creates a more rigid and transparent process which weeds out the undeserving companies from securing a mining permit. As a result, the country and its people shall be the first to benefit from the extracted minerals.



Greater Transparency and Accountability

The mining industry can contribute more to the government in terms of providing the latter its fair share in the revenue generated. This can only be achieved in an atmosphere of transparency which facilitates accountability. Unfortunately, there have been reports that permits and agreements have confidentiality clauses which preclude watchdogs from examining the arrangements entered into by the government with the mining firms.

To stop this practice, this bill clarifies that the contents of said permits and agreements are considered public information. Further, confidentiality clauses which shroud in secrecy the contents of the permits and agreements are null and void.

Mandatory Domestic Processing of Mineral Ores

This bill seeks to provide for the mandatory domestic processing of all mineral ores in the Philippines and banning of the exportation of unprocessed mineral ores, as determined by the Department of Environment and Natural Resources ("DENR").

According to Economic Planning Secretary Ernesto Pernia, *"the Philippines, despite its relatively small land area, is one of the world's most well-endowed countries in terms of mineral resources."* The Mines and Geosciences Bureau of the DENR also reported that about 30% or 9 million hectares of the country's total land area have high mineral potential. In addition, from 2011 to 2015, the mining sector generated an average of 236,400 jobs annually. Despite this, the mining sector's contribution in terms of gross value-added remains relatively low at an average of 0.7% of the country's gross domestic product.

One of the reasons pointed out for the insignificant contribution of the mining industry to the country's economy is the fact that mineral ores in the country after being mined or extracted, while still unprocessed, are already exported directly to foreign countries as raw materials. Downstream mining



industry has not been developed. Thus, the benefits of added value through the value-chain of mineral processing from mining cannot be maximized.

This proposed measure requires the processing of all mineral ores, as determined by the DENR, within the Philippines and in the province where the minerals were extracted. As a result, it imposes the ban on the export of unprocessed mineral ores to help develop the mineral processing industry in the Philippines and to benefit the localities where the minerals came from.

The country and its people should be the first to benefit from the extracted minerals through employment, business opportunities and share in the profits. This will enable the mining sector to realize its full potential and increase its role in nation-building.

Repeal of Creditable Activities

Lastly, an area of reported abuses lies in the credited activities provided for in Section 58 of the Mining Act of 1995. The value of these activities can easily be bloated and then credited as an expenditure. As a result, the basis from which the share of the government shall be computed is greatly reduced. To prevent this from happening, this bill repeals Section 58.

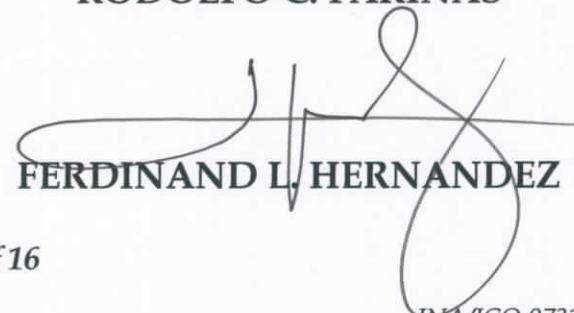
In view of the foregoing, approval of this bill is highly and earnestly recommended.

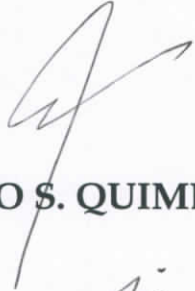

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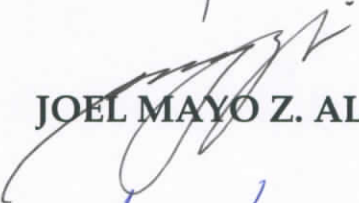

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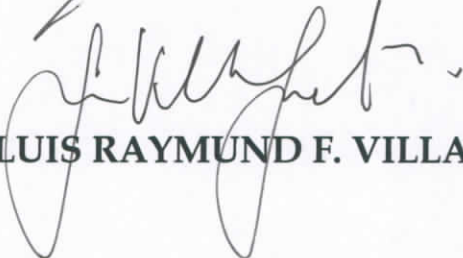
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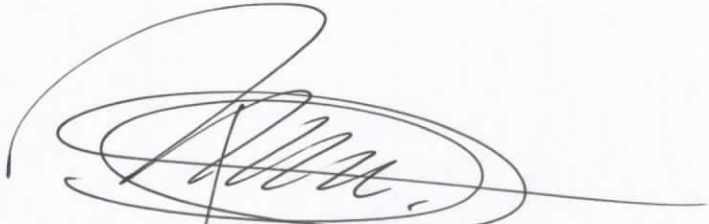
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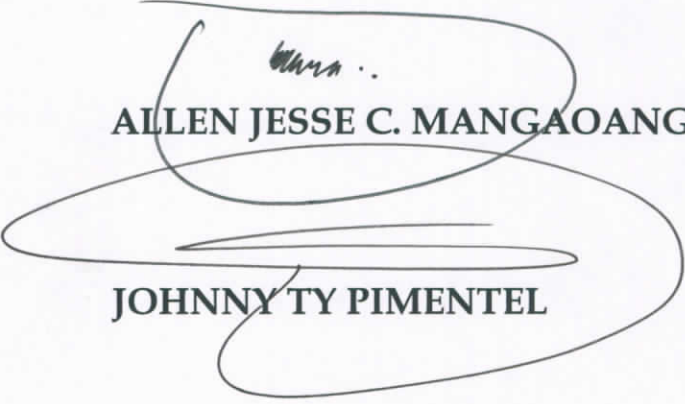
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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 5 of Republic Act No. 7942 is hereby amended to read as follows:

"SEC. 5. *Mineral Reservations.* - When the national interest so requires, such as when there is a need to preserve strategic raw materials for industries critical to national development, or certain minerals for scientific, cultural or ecological value, the President may establish mineral reservations upon the recommendation of the Director through the Secretary. Mining operations in existing mineral reservations and such other reservations as may thereafter be established, shall be undertaken by the Department or through a contractor: *Provided, THAT PRIVATE CONTRACTORS MUST FIRST SECURE A LEGISLATIVE FRANCHISE AS A PREREQUISITE BEFORE THEY COULD APPLY FOR AN EXPLORATION PERMIT, MINERAL AGREEMENT UNDER SECTION 26 OF REPUBLIC ACT. 7942, OR FINANCIAL AND/OR TECHNICAL ASSISTANCE AGREEMENT. FURTHER, THE TERMS AND CONDITIONS OF SAID PERMITS AND AGREEMENTS ARE CONSIDERED PUBLIC INFORMATION. ANY CLAUSE OR PROVISION PROVIDING FOR THE CONFIDENTIALITY OF THE CONTENTS, ESPECIALLY THE FINANCIAL TERMS AND CONDITIONS, ARE NULL AND VOID.*

EXPLORATION PERMITS, MINERAL AGREEMENTS AS ENUMERATED IN SECTION 26 OF REPUBLIC ACT. 7942, AND FINANCIAL AND/OR TECHNICAL ASSISTANCE AGREEMENTS APPLIED FOR AND THEREAFTER APPROVED WITHOUT FIRST SECURING A LEGISLATIVE FRANCHISE SHALL BE NULL AND VOID.

PRIVATE CONTRACTORS PRESENTLY HOLDING EXPLORATIONS PERMITS, MINERAL AGREEMENTS UNDER SECTION 26 OF REPUBLIC ACT. 7942, AND FINANCIAL AND/OR TECHNICAL ASSISTANCE AGREEMENTS, HAVE ONE (1) YEAR FROM THE TIME THIS LAW TAKES EFFECT TO SECURE A LEGISLATIVE FRANCHISE OTHERWISE SAID PERMITS AND AGREEMENTS SHALL EXPIRE.

PROVIDED, FURTHER, That a small-scale mining cooperative covered by Republic Act No. 7076 shall be given preferential right to apply for a small-scale mining agreement for a maximum aggregate area of twenty-five **HECTARES** [(25%)] of such mineral reservation, subject to valid existing mining/quarrying rights as provided under Section 112 Chapter XX hereof, **AND PROVIDED THAT THERE IS NO ENCROACHMENT INTO AREAS OUTSIDE THE MINING AGREEMENT.** All submerged lands within the contiguous zone and in the exclusive economic zone of the Philippines are hereby declared to be mineral reservations.

A ten per centum (10%) share of all royalties and revenues to be derived by the government from the development and utilization of the mineral resources within mineral reservations as provided under this Act shall accrue to the Mines and Geosciences Bureau to be allotted for special projects and other administrative expenses related to the exploration and development of other mineral reservations mentioned in Section 6 hereof."

SEC. 2. Section 19 is hereby amended to read as follows:

"Section 19
Areas Closed to Mining Applications

Mineral agreement or financial or technical assistance agreement applications shall not be allowed:

- a. In military and other government reservations, except upon prior written clearance by the government agency concerned;
- b. Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except

upon written consent of the government agency or private entity concerned;

c. In areas covered by valid and existing mining rights;

d. In areas expressly prohibited by law;

e. In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and

f. Old growth or virgin forests, **WATERSHEDS**, proclaimed watershed forest reserves, **CRITICAL WATERSHEDS**, wilderness areas, mangrove forests, mossy forests, national parks provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.

PUBLIC OFFICERS OR EMPLOYEES WHO FACILITATE THE APPROVAL OF PERMITS IN AREAS WHICH ARE CLOSED TO MINING OPERATIONS SHALL SUFFER THE PENALTY OF IMPRISONMENT FOR A PERIOD NOT LESS THAN SIX (6) YEARS BUT NOT MORE THAN TWELVE (12) YEARS, AND PAY THE FINE AMOUNTING TO TWO MILLION PESOS (PHP 2,000,000.00) PER VIOLATION. SAID PUBLIC OFFICER OR EMPLOYEE SHALL LIKWISE BE ABSOLUTELY AND PERPETUALLY DISQUALIFIED FROM HOLDING PUBLIC OFFICE.

PRIVATE PERSONS ACTING IN CONSPIRACY WITH THE PUBLIC OFFICERS OR EMPLOYEES DESCRIBED IN THE IMMEDIATELY PRECEDING PARAGRAPH, SHALL

**LIKWISE SUFFER THE SAME PERIOD OF IMPRISONMENT
AND AMOUNT OF FINE.**

SEC. 3. Section 27 of Republic Act No.7942 is hereby amended to read as follows:

*"SEC. 27. Eligibility. - A qualified person may enter into any of the three (3) modes of minerals agreement with the government for the exploration, development and utilization of mineral resources: **Provided, THAT THE APPLICANT HAS ACQUIRED A LEGISLATIVE FRANCHISE PRIOR TO ITS APPLICATION FOR A MINERAL AGREEMENT:** *Provided, further,* That in case the applicant has been in the mining industry for any length of time, he should possess a satisfactory environmental track record as determined by the Mines and Geosciences Bureau and in consultation with the Environmental Management Bureau of the Department.*

SEC. 4. Section 30 of Republic Act No.7942 is hereby amended to read as follows:

"SEC. 30. Assignment/Transfer - Any assignment or transfer of rights and obligations under any mineral agreement [except a financial or technical assistance agreement] shall be subject to the prior approval of CONGRESS AND the Secretary. [Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal.]"

SEC. 5. Section 31 of Republic Act No.7942 is hereby amended to read as follows:

"SEC. 31. - Withdrawal from Mineral Agreements. - The contractor may, by giving due notice at any time during the term of the agreement, apply for the cancellation of the mineral

agreement due to causes which, in the opinion of the contractor, make continued mining operations no longer feasible or viable. The Secretary shall consider the notice and issue its decision within a period of thirty (30) days: *Provided*, That the contractor has met all its financial, fiscal and legal obligations: **PROVIDED, FURTHER, THAT THE SECRETARY SHALL INFORM CONGRESS BEFORE ANY ACTION IS TAKEN WITH REGARD TO THE WITHDRAWAL OR CANCELLATION OF A MINERAL AGREEMENT."**

PRIVATE CONTRACTORS MUST FULLY REHABILITATE THE AREAS THEY UTILIZED AND/OR OPERATED IN BY RESTORING THE ENVIRONMENTAL AND ECOLOGICAL BALANCE OF SAID AREA WITHIN TEN (10) YEARS RECKONED FROM THE EXPIRATION DATE OF THE EXPLORATION PERMITS, THE MINERAL AGREEMENTS, AND THE FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT, WHICHEVER IS APPLICABLE.

VIOLATIONS OF THE IMMEDIATELY PRECEDING PARAGRAPH SHALL BE PUNISHABLE WITH THE PENALTY OF ONE HUNDRED MILLION PESOS (PHP 100,000,000.00) PER HECTARE THAT HAS NOT BEEN REHABILITATED. THE MEMBERS OF THE BOARD OF DIRECTORS, PARTNERS, OR SOLE PROPRIETOR OF THE PRIVATE CONTRACTOR/S SHALL BE DIRECTLY LIABLE FOR SAID PENALTY.

SEC. 6. Section 32 of Republic Act No.7942 is hereby amended to read as follows:

"SEC. 32. *Terms.* – Mineral agreements shall have a term not exceeding **TEN (10)** [twenty-five (25)] years to start from the date of execution thereof, and renewable for another term not exceeding **TEN (10)** [twenty (25)] years under the same terms and conditions thereof, provided that no violations were committed, without prejudice to changes mutually agreed upon by the

parties. After the renewal period, the operation of the mine may be undertaken by the Government or through a contractor **WITH A LEGISLATIVE FRANCHISE**. The contract for the operation of a mine shall be awarded to the highest bidder in a public bidding after due publication of the notice thereof: Provided, That the contractor shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder."

SEC. 7. Section 33 of Republic Act No.7942 is hereby amended to read as follows:

"SEC. 33. *Eligibility.* – Any qualified person with technical and financial capability to undertake large-scale exploration, development, and utilization of mineral resources in the Philippines may enter into a financial or technical assistance agreement directly with the Government through the Department: **PROVIDED, THAT A LEGISLATIVE FRANCHISE SHALL BE OBTAINED BY THE PERSON PRIOR TO THE APPROVAL OF THE FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT.**"

SEC. 8. Section 39 of Republic Act No.7942 is hereby amended to read as follows:

"SEC. 39. *Option to Convert into a Mineral Agreement.* – The contractor has the option to convert the financial or technical assistance agreement to a mineral agreement at any time during the term of the agreement, if the economic viability of the contract area is found to be inadequate to justify large-scale mining operations after proper notice to the Secretary **AND CONGRESS** as provided for under the implementing rules and regulations: Provided, That the mineral agreement shall only be for the remaining period of the original agreement. In the case of a foreign contractor, it shall reduce the equity to forty percent (40%) in the corporation, partnership, association, or cooperative. Upon compliance with this requirement by the contractor, the Secretary

shall approve the conversion and execute the mineral production-sharing agreement, **AND SHALL INFORM CONGRESS OF THE CHANGE IN AGREEMENT.**"

SEC. 9. Sec. 41 of Republic Act No.7942 is hereby amended to read as follows:

*"SEC. 41. Withdrawal from Financial or Technical Assistance Agreement. - The contractor shall manifest in writing to the Secretary **AND CONGRESS** his intention to withdraw from the agreement, if in his judgement, the mining project is no longer economically feasible, even after he has exerted reasonable diligence to remedy the cause or the situation. The Secretary may accept the withdrawal: *Provided*, That the contractor has complied or satisfied all his financial, fiscal or legal obligations. **PROVIDED, FURTHER, THAT THE SECRETARY SHALL INFORM CONGRESS BEFORE ANY ACTION IS TAKEN WITH REGARD TO THE WITHDRAWAL OR CANCELLATION OF A MINERAL AGREEMENT.**"*

THE LEGAL OBLIGATIONS AND LIABILITIES IMPOSED IN SEC. 31 OF THIS ACT SHALL LIKEWISE BE APPLICABLE TO THE IMMEDIATELY PRECEDING PARAGRAPH.

SEC. 10. Sec. 53. of Republic Act No.7942 is hereby repealed.

SEC. 11. Section 55 of Republic Act No.7942 is also hereby amended to read as follows:

*"SEC. 55. **Minerals Processing Permit.** - No person shall engage in the processing of minerals without first securing a minerals processing permit from the Secretary. Minerals processing permit shall be for a period of **TEN (10)** [five (5)] years renewable for like period but not to exceed a total term of **TEN (10)** [twenty-five (25)] years. In the case of mineral ores or minerals produced by*

the small-scale miners, the processing thereof as well as the licensing of their custom mills, or processing plants shall continue to be governed by the provisions of Republic Act No. 7076."

MINERAL ORES EXTRACTED UNDER THE PROVISIONS OF THIS ACT SHALL BE PROCESSED WITHIN THE PHILIPPINES AND IN THE PROVINCE WHERE THE EXTRACTION OCCURRED AND THOSE GRANTED A MINING PROCESSING PERMIT SHALL NOT EXPORT THE UNPROCESSED MINERAL ORES."

SEC. 12. Section 58 of the same Act relating to "Credited Activities" is hereby repealed.

SEC. 13. Section 70 of the same Act is hereby amended to read as follows:

Section 70A. Environmental Impact Assessment (EIA) – Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national agencies to maintain ecological balance, and prior consultation with the local government units, non-governmental and people's organizations and other concerned sectors of the community: Provided, that a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. People's organizations and nongovernmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.

SECTION 70B. PERIODIC ASSESSMENT OF WASTE DISPOSAL – PRIVATE CONTRACTORS SHALL SYSTEMATICALLY DISPOSE THEIR WASTE IN A MANNER

NOT HARMFUL TO THE ENVIRONMENT AND SHALL SUBMIT ANNUAL WASTE DISPOSAL RESPORTS TO THE ENVIRONMENTAL MANAGEMENT BUREAU AND MINES AND GEOSCIENCES BUREAU OF DENR. FURTHER, SAID PRIVATE CONTRACTORS ARE COVERED BY REPUBLIC ACT 6969, ALSO KNOWN AS "AN ACT TO CONTROL TOXIC SUBSTANCES AND HAZARDOUS AND NUCLEAR WASTES, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES" WHENEVER APPLICABLE.

SEC. 14. Section 103 of the same Act is hereby amended to read as follows:

"SEC. 103. *Theft of Minerals; ILLEGAL EXPORT OF UNPROCESSED MINERAL ORES.* – Any person who, ALONE OR IN CONSPIRACY WITH OTHERS, extracts minerals and disposes of the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years **AND pay a fine ranging from Five Hundred Thousand pesos (Php 500,000.00) **AND AN ADDITIONAL** One Million pesos (Php 1,000,000.00) **PER TON OF ORE ILLEGALLY EXPORTED. THE SAME PENALTIES SHALL APPLY FOR THOSE WHO ATTEMPT TO ILLEGALLY EXPORT THE UNPROCESSED MINERAL ORES.** In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. **FURTHER, THE CORPORATION, AS WELL AS ITS DIRECTORS, PARTNERS IN A PARTNERSHIP, OR THE REGISTERED OWNER OF THE SOLE PROPRIETORSHIP, SHALL BE SOLIDARILY LIABLE FOR PENALTIES APPLIED AGAINST THEIR PERSONNEL WHO ENGAGED IN ACTS PUNISHABLE UNDER THIS ARTICLE.****

ANY PERSON WHO, ACTING ALONE OR IN CONSPIRACY WITH OTHERS, WHO EXPORTS OR ATTEMPTS TO

EXPORT UNPROCESSED MINERAL ORES SHALL, UPON CONVICTION, BE PUNISHED BY IMPRISONMENT OF NOT LESS THAN SIX (6) YEARS AND ONE (1) DAY BUT NOT MORE THAN TWELVE (12) YEARS, AND A FINE AMOUNTING TO THRICE THE HIGHEST MARKET VALUE OF THE SEIZED UNPROCESSED MINERAL ORES, AS DETERMINED BY THE COURT, BUT IN NO CASE LOWER THAN ONE MILLION PESOS (PHP 1,000,000.00) PER VIOLATION. IN ADDITION, SEIZED UNPROCESSED MINERAL ORES SHALL BE CONFISCATED BY THE GOVERNMENT.

In the case of sole-proprietorships, associations, partnerships, or corporations, the president and each of the directors, the partners, and the registered owner, shall be **SOLIDARILY** responsible for the acts committed by their personnel who are convicted under this section."

SEC. 15. *Separability Clause*. If any provision of this law or the application thereof to any person or circumstances is held invalid, the remainder of the law or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SEC. 16. *Repealing Clause*. All laws, decrees, orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 17. *Effectivity*. This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,