
THE MINISTRIES

INTER-MINISTERIAL

THE MINISTRY OF FINANCE - THE MINISTRY OF INDUSTRY - THE MINISTRY OF SCIENCE, TECHNOLOGY AND ENVIRONMENT

JOINT CIRCULAR No. 126/1999/TTLT-BTC- BCN-BKHCNMT OF OCTOBER 22, 1999 GUIDING THE ESCROW DEPOSITING FOR ENVIRONMENTAL REHABILITATION IN MINERAL EXPLOITATION ACTIVITIES

Pursuant to the March 20, 1996 Minerals Law;

*Pursuant to the December 27, 1993 Law on the
Environmental Protection;*

*Pursuant to the Government's Decree No. 68/
CP of November 1st, 1996 detailing the
implementation of the Minerals Law;*

*The Ministry of Finance, the Ministry of Industry
and the Ministry of Science, Technology and
Environment hereby guides the escrow depositing
for environmental rehabilitation in mineral
exploitation activities as follows:*

I. SUBJECTS AND PURPOSE OF ESCROW DEPOSITING

1. Subjects to the escrow depositing: Organizations and individuals licensed to exploit minerals (as stipulated in Article 15 and Article 16 of the Government's Decree No. 68/CP of November 1st, 1996), before conducting the exploitation of minerals, are obliged to deposit a sum of money or precious metal, gemstone or papers that can be valued in money (hereinafter collectively referred to as escrow) in a blocked account at a Vietnamese credit institution or a foreign credit institution operating in Vietnam (referred collectively to as credit institution) to secure their fulfillment of the obligation to rehabilitate the environment degraded by mineral exploitation activities.

2. Purpose of the escrow depositing: The depositing of an escrow into a blocked account at a credit institution aims to secure the fulfillment of the obligation to rehabilitate the environment degraded

by mineral exploitation activities in accordance with the legislation on mineral activities and the guidance of this Circular.

II. BASIS FOR AND METHOD OF DETERMINING THE ESCROW AMOUNT:

1. Basis for determining the escrow amount:

The escrow amount shall be determined on the basis of the total estimate of rehabilitation expenses, the exploitation duration stated in the feasibility study report, the mine design and the environmental impact assessment report already evaluated and approved by the competent agencies, as well as the effective term of the mineral exploitation license.

2. Method of determining the escrow amount:

a/ Cases of one-time escrow depositing: For cases where the exploitation duration stated in the feasibility study report on mineral exploitation is less than three years, the one-time escrow depositing is required. The escrow amount shall be equal to 100% (one hundred per cent) of the total estimate of environmental rehabilitation expenses stated in the feasibility study report, the mine design and the environmental impact assessment report (excluding expenses for the production technology and environmental treatment technology plan implemented right during the exploitation process of the unit) already evaluated and approved by the competent State agencies.

b/ Cases of multiple escrow depositing:

b.1/ For cases where the exploitation duration stated in the feasibility study report on mineral exploitation is three years or more, the multiple escrow depositing is permitted.

b.2/ The escrow amount (coded as A) shall be determined according to the exploitation duration stated in the feasibility study report, the exploitation duration stated in the granted mineral exploitation license and the total estimate of environmental rehabilitation expenses stated in the feasibility study report, the mine design and the environmental impact assessment report already evaluated and approved by the competent State agencies, and calculated according to the following formula:

$$A = \frac{T_g \times M_{cp}}{T_b}$$

In which:

A: The escrow amount required from one subject licensed to exploit minerals (Vietnam dong).

T_g: The exploitation duration stated in the granted mineral exploitation license (year).

T_b: The exploitation duration stated in the feasibility study report, the mine design and the environmental impact assessment report already evaluated and approved by the competent State agencies (year).

M_{cp}: The total estimate of environmental rehabilitation expenses stated in the feasibility study report, the mine design and the environmental impact assessment report (excluding expenses for the production technology and environmental treatment technology plan implemented right during the exploitation process of the unit) already evaluated and approved by the competent State agencies (Vietnam dong).

b.3/ The first escrow amount (coded as B) in each case is as follows:

b.3.1/ For projects with the exploitation duration stated in their granted mineral exploitation licenses (T_g) being less than 10 years, the first escrow amount depositing shall be equal to 25% (twenty five per cent) of the escrow amount (A) calculated according to the above-mentioned formula.

b.3.2/ For projects with the exploitation duration stated in their granted mineral exploitation licenses (T_g) being between 10 years and less than 20 years, the first escrow amount shall be equal to 20% (twenty per cent) of the escrow amount (A) calculated according to the above-mentioned formula.

b.3.3/ For projects with the exploitation duration stated in their granted mineral exploitation licenses (T_g) being 20 years or more, the first escrow amount shall be equal to 15% (fifteen per cent) of the escrow amount (A) calculated according to the above-mentioned formula.

b.4/ The subsequent escrow amounts (coded as C) shall be calculated on the basis of the remainder of the required escrow amount and the exploitation duration stated in the granted mineral exploitation license and according to the following formula:

$$C = \frac{(A - B)}{(T_g - 1)}$$

c/ Cases of extension, addition of the exploitation duration:

c.1/ In cases where the exploitation activities during the extended or added duration exert no adverse environmental impacts due to low exploitation capacity, no more escrow amount shall be required if so approved by the agency in charge of State management over environmental protection.

c.2/ In cases where the exploitation activities during the extended or added duration exert adverse environmental impacts, one-time escrow depositing shall be required according to the total estimate of expenses for rehabilitating the environment degraded by extended or added exploitation activities, already evaluated and approved by the competent State agencies.

3. Time for escrow depositing

a/ For one-time escrow depositing and first escrow depositing amount in multiple escrow depositing: The escrow depositing must be completed before the date of commencement of the mineral exploitation already registered by the organization or individual licensed to exploit minerals with the competent State agency in accordance with the provisions of the Minerals Law and documents guiding its implementation.

b/ For multiple escrow depositing (from the second time on): The escrow depositing must be made annually (no later than December 31st every year), counted from the date of registration of the commencement of mineral exploitation activities till the expiry of the exploitation duration stated in the granted license. Subjects eligible for multiple escrow depositing may choose the form of one-time escrow depositing for the entire mineral exploitation duration stated in the granted mineral exploitation license.

c/ For cases of extension or addition of the exploitation duration: The escrow depositing must be completed within 15 days from the date of receipt of the written approval of the competent agency to permit the extension of the exploitation duration.

III. ORDER AND PROCEDURES FOR ESCROW DEPOSITING

1. Right after granting the mineral exploitation licenses, the agency competent to do so shall have to issue a notice requesting the licensees to deposit an escrow at a credit institution as prescribed in this Circular.

2. Within 30 days from the date of receipt of the escrow depositing requesting notice, the licensees shall have to deposit an escrow at a credit institution and inform in writing the following agencies thereof:

- The People's Committee of the province or centrally-run city where they carry out mineral exploitation activities;

- The Ministry of Industry (the Vietnam Geology and Minerals Department);

- The Ministry of Science, Technology and Environment (the Environment Department).

3. Subjects obliged to make escrow deposits shall have to pay for all expenses incurred from the escrow-depositing service at the credit institution in accordance with the legislation on operation of credit institutions.

4. All procedures for escrow depositing at a credit institution shall comply with the guidance of the credit institution where the escrow is deposited, and the provisions of the legislation on credit institutions' operations regarding the escrow depositing.

5. An escrow shall be deposited, paid and accounted in Vietnam dong. In cases where there is a need to deposit an escrow in a foreign currency, it shall be converted into Vietnam dong according to the regulations of the credit institution where the escrow is deposited.

IV. ESCROW MANAGEMENT AND USE

1. Agencies competent to grant, extend, supplement and withdraw mineral exploitation licenses (defined in Article 9 of the Government's Decree No. 68/CP of November 1st, 1996) shall have the competence and responsibility:

- To monitor, urge and inspect the escrow depositing by mineral-exploiting organizations and individuals according to the guidance of this Circular;

- To give consent for escrow-depositing organizations or individuals to withdraw money for environmental rehabilitation according to the guidance of this Circular;

- To decide to return the unused amount of the deposited escrow to the escrow depositors as prescribed in the legislation on minerals, environmental protection and according to the guidance of this Circular.

2. Agencies that exercise the State management over the environmental protection shall have the

responsibility to evaluate and certify:

- Cases of extension or addition of the duration of those exploitation activities that cause no adverse environmental impacts;

- Organizations and individuals that have fulfilled the environmental rehabilitation.

3. Escrow-depositing organizations and individuals shall be entitled to withdraw their escrow after fulfilling their environmental rehabilitation obligation, which has been evaluated and certified by the agency exercising the State management over the environmental protection.

4. In cases where a mineral-exploiting organization or individual has deposited an escrow but failed to carry out environmental rehabilitation or was bankrupt or dissolved, the competent agency (defined in Article 9 of the Government's Decree No. 68/CP of November 1st, 1996) shall decide to permit the use of the deposited escrow for environmental rehabilitation and select (through bidding) a unit(s) to carry out environmental rehabilitation with such escrow. The deposited escrow must be used for the right purpose and in line with the content, work volume as well as estimated expenses for environmental rehabilitation already evaluated and approved by the competent State agencies. In cases where the deposited escrow is not used up, the remainder shall be returned to the escrow depositors; if an escrow depositor has been dissolved or bankrupt, it shall be fully remitted to the State budget as prescribed in the legislation on management and handling of properties when there is a decision to confiscate them into the State's fund and State ownership is established over such properties. The used amount of the deposited escrow must be examined and settled according to the finance legislation currently in force.

V. ORGANIZATION OF IMPLEMENTATION

1. The Vietnam Geology and Minerals Department, the Industry Services, the Science, Technology and Environment Services and the Finance Services of the provinces and centrally-run cities shall have to assist the Minister of Industry, the Minister of Science, Technology and Environment, the Minister of Finance and the presidents of the People's Committees of the provinces and centrally-run cities in performing the tasks specified in this Circular.

2. Credit institutions where mineral exploiters deposit escrow to secure the environmental

rehabilitation as prescribed in this Circular shall be allowed to collect an escrow depositing service charge in accordance with the legislation on credit institutions' operations and have to:

- Complete such escrow-depositing procedures as: accepting escrow deposits, opening blocked escrow accounts, making written certification of the escrow depositing for escrow depositors, keeping documents related to escrow depositing, repayment of deposited escrow... in accordance with the provisions of the legislation on credit institutions' operations and on finance, and this Circular.

- Repay deposited escrow to units permitted to withdraw deposited escrow as prescribed in this Circular.

3. For subjects obliged to deposit escrow as prescribed in this Circular, if they fail to deposit escrow they shall not be allowed to exploit minerals or shall have their mineral exploitation licenses withdrawn under the provisions of the legislation on mineral activities.

4. Subjects that return their licenses or have them withdrawn shall have to fulfill their escrow-depositing obligation as prescribed in this Circular until the time their licenses are returned or withdrawn. The return of the remainder of the deposited escrow used for environmental rehabilitation to these subjects shall be effected after there is certification of their completion of environmental rehabilitation or after there is the official final settlement for the rehabilitation of environment degraded by these subjects' mineral exploitation activities.

5. The State agencies competent to evaluate and approve environmental impact assessment reports shall have to coordinate with the Ministry of Finance or the provincial Finance Services (if the agency that evaluates and approves environmental impact assessment reports is the local State management agency) in evaluating and approving the projected environmental rehabilitation expenses in the environmental impact assessment reports. If there are no estimated environmental rehabilitation expenses in an environmental impact assessment report, the State agency competent to evaluate and approve environmental impact assessment reports shall have to request the subject applying for evaluation of the environmental impact assessment report to add this content. The finance agency and the environmental impact assessment report-approving agency shall have to coordinate with each other in managing,

checking and settling the used amount of deposited escrows.

6. All regimes of inspection, examination, commendation and handling of violations of the provisions in this Circular shall comply with the laws currently in force.

7. This Circular takes effects 15 days after its signing. For subjects that were granted mineral exploitation licenses prior to the effective date of this Circular which have not yet expired, if they have the obligation to rehabilitate the environmental degradation caused by their mineral exploitation activities, they shall have also to make escrow deposits as prescribed in this Circular. All previous regulations of the Ministry of Finance, the Ministry of Industry and the Ministry of Science, Technology and Environment which are contrary to this Circular are now annulled. If, in the course of implementation, any problems arise, the concerned units are requested to report them directly to the Ministry of Finance, the Ministry of Industry and the Ministry of Science, Technology and Environment for study and supplement.

For the Minister of Finance
Vice Minister
PHAM VAN TRONG

For the Minister of Industry
Vice Minister
LE HUY CON

*For the Minister of Science,
Technology and Environment*
Vice Minister
PHAM KHOI NGUYEN