

DENR Administrative Order
No. 98 - 01
January 06, 1998

SUBJECT : Establishing the Forest Resource Securitization Strategy for Mobilization of Private Capital to Support Sustainable Forestry in the Philippines.

Whereas, pursuant to Executive Order No. 192, and in accordance with the Philippine Agenda 21, and the Master Plan for Forest Development of the Philippines, the DENR is mandated to lead the way for institutionalizing the means for attaining sustainable forestry in the Philippines;

Whereas, the attainment of sustainable forest management in the Philippines requires the mobilization of the expertise and capital of the private sector, through the integration of viable forestry enterprises under joint venture agreements and similar modes;

Whereas, the disincentive of long payback periods in forestry enterprises can be countered by a Forest Resource Securitization Strategy (FRSS) to provide the capital market mechanism that can mobilize private sector expertise and capital in the scale and terms needed for sustainable forestry =] projects;

Whereas, the DENR recognizes that, in order for market forces to operate, there must be assurance that long term contracts and trust agreements between rights holders over forest lands and resources on the one hand, and buyers of forest products and services and other investors, on the other hand, can be formulated in accordance with international financing and legal standards in an unhampered manner; the DENR further recognizes that such contracts and agreements should

be implemented faithfully by the contracting parties with minimum interference from Government;

Whereas, in order to institutionalize the Securitization strategy, the Department of Environment and Natural Resources (DENR) commits to develop a policy framework that will assure the operation of market forces in capital mobilization for forest cooperators, proponents and the general public interest linked with the Securitization Strategy;

Whereas, the Department recognizes the need to pump prime or catalyze private investments by prioritizing the flow of development assistance funds under the supervision of DENR into project areas where there is need of forest plantation development, industrial forestry and reforestation.

Section 1. Basic Policy

The Department of Environment and Natural Resources shall promote the extensive mobilization of private capital, both domestic and foreign, that will invest in integrated reforestation, forest management and forestry enterprises that are sustainable and financially viable through a Forest Resource Securitization Strategy (FRSS).

The FRSS shall provide the necessary legal, policy and institutional framework that will allow market forces to function in the field of forestry, in such manner that will attract investors and long term buyers of forest products to provide adequate capitalization in Philippine forestry, for such investors and buyers to enter into mutually-beneficial relationships with use-rights holders in Philippine forest resources, including forest-dependended communities and indigenous peoples.

The FRSS provides a facility or mechanism to enable holders of tenurial and/or use rights to forest lands and resources, as well as for DENR itself and its authorized agencies or corporations, to access

additional funds for the sustainable development of forest lands and resources, through Joint Venture Agreements (JVA) with appropriate Partners willing to work under the policies, terms and authorities of the FRSS.

The FRSS shall be limited to forest plantation development, industrial forestry and reforestation areas.

Sec. 2 Specific Objectives

The Forest Resource Securitization Strategy has the following specific objectives:

- (1) Provision for a stable legal and policy framework**
-- Provide a stable legal and policy basis by establishing the Securitization Strategy that will ensure the formulation and faithful implantation of viable Forest Management Plans and corresponding Business Plans and Trust Agreements entered into by the Joint Venture Agreement (JVA) partners in the Securitization Strategy in accordance with Revised Securities Act and other pertinent laws rules and regulations; guarantee the stability of the relationship and contractual commitments of the DENR, use-rights holders, and the securitization proponents; protect the rights of the investors and the general public who have purchased financial securities issued through the securitization process, and assure the fulfillment of obligations of all parties under contracts established in the securitization process.

- (2) Develop a capital market for sustainable forestry and environmental protection program/projects --**
Institutionalize a reliable capital market mechanism that will evoke confidence on the part of the general public

and institutions to invest in Forest Resource Securities, and thereby develop a new and long-term source of funding to support forest plantation development and industrial forestry and reforestation.

- (3) **Encourage the development of a globally competitive Philippine forestry industry** -- Create a viable market that will motivate private enterprises, both foreign and local, to invest and development a world class Philippine forestry industry, gain the commitment of long term buyers of forest products, and sustain investment in forest plantation development, industrial forestry and reforestation.

- (4) **Promote the empowerment of forest-based communities and indigenous peoples** -- empower organized forest-based communities and indigenous peoples to participate actively and share in the returns of a competitive Philippine forestry industry by providing the means to secure adequate capitalization, technology transfer, training, and assurances of long term markets for forestry resource products, through the Securitization Strategy.

- (5) **Develop market-based incentive systems** -- Provide motivation and market-based incentive systems for rights holders of forest resources to be efficient in their forest management work in order to attract investors and long term buyers to consider working with them under the Securitization Strategy.

- (6) **Focus, integrate, and organize environmental protection efforts** -- Enable independent environmental initiatives to be more focused and unified, by providing a mechanism for pooling public and private resources (through the Trust Fund created by securitization process) to provide adequate capitalization, a more sustainable approach to these projects, and a more effective impact of environmental protection initiatives.

Sec. 3 Principal Features of the Strategy

- 3.1 **Purpose of Forest Resources Securitization Strategy** -- The FRSS is a strategy that defines the legal basis, provides the economic environment and policy conditions, and guarantees the institutional arrangements, whereby a forest rights holder with an existing agreement with DENR, or DENR, by itself, or through its qualified agency or corporate arm, enters a joint venture agreement with a Service Consortium for the purpose of securitization of forest assets, through the process defined in this Order but limited to forest plantations, industrial plantations, and reforestation areas.
- 3.2 **DENR Authorizations to Support the Securitization Strategy** -- The strategy provides the policy, consent, authorities and permits from DENR that may be required to implement a Securitization Project, and to attract the participation and investments of the domestic and international forest industry, long term buyers of forest products, processors, financial institutions, and the general public.

- 3.3 **Basic Output of the Strategy** -- The Strategy provides right holders of forestry areas, or DENR, by itself, or through its qualified agency or corporate arm, a mechanism for raising funds from the forestry industry, financial institutions and the capital market in general, for the total development of forest lands and resources.
- 3.4 **Key Policy Requirement of the Strategy** -- The Strategy recognizes that the key to attract private capital into sustainable forestry and other environmental concerns is to create a stable legal and policy framework responsive to the workings of the markets for forest products and services, that will enable forestry enterprises, reforestation and forest management programs, to be economically and financially viable, while adhering to sound environmental standards and “best” forestry practices.
- 3.5 **Participation of Upland Communities** -- A basic policy thrust of the FRSS is to ensure the active participation of economic empowerment of the upland communities, in the project areas, based on the principle of prior informed consent; to ensure that technology, training, an economic resources be channeled to them to develop their capabilities as caretakers and beneficiaries of the forest to share in the earnings of the project, and to become active participants in the development of a globally competitive Philippine forestry industry.

Sec. 4 Key Components of the Strategy

The FRSS has key components designed to address the critical needs of securitization and required by market conditions, industry and banking standards. These are:

- (1) DENR authorization of the Joint Venture and guarantee on the stability of the legal and policy framework governing the Project Trust Agreement -- in order assure investors, industry and financial players, both local and international, and the general public of the implementability and adherence to the Project Trust Agreement, and the protection of their interests.
- (2) Integrated Business Plan for Securitization Projects and the necessary DENR authorizations -- A total plan for the development, operations and management of commercial and non-commercial components of the Project as well as the fund raising and marketing activities, will be formulated to be included in the Project Trust Agreement to be authorized and supported by the DENR with the necessary consent, authorities, and permits to ensure its implementability.
- (3) Independent valuation of forest assets and investments in the project areas, which will serve as the basis for recovery of costs and compensation to equity holders, and for the issuance of the financial securities.

- (4) Preparation of Forest Development Plan -- a Forest development plan shall be prepared for each Securitization Project; the Plan shall be a comprehensive forest rehabilitation, development, and maintenance plan in accordance with accepted forestry practices and sound environmental standards, which shall be formulated for the Project Area based on DENR's sustainable forest management objectives, and agreed upon with the forest use-rights holder in case there be any. In case the Project Area is covered by existing community-based forest management tenure instruments, the Forest Development Plan shall define the relationship and participation of the community in the joint venture, including provisions for training, livelihood and other socio-economic development needs of the upland community concerned.
- (5) Modification of DENR agreement with rights holder in accordance with the requirements of a bankable securitization project -- The Department recognizes that there may be need to modify its original agreement with existing rights holder to ensure a bankable securitization project, and such modifications may be considered by DENR upon its approval of the Business Plan and the Project Trust Agreement.
- (6) Conveyance of rights and responsibilities by Rights Holder to the Project Trust -- The DENR may allow the rights holder to assign to the Project Trust the rights, interests or benefits that it has over the forest areas, to enable the Trust to function in accordance with its contractual commitments and

undertake necessary remedies in case of default in order to assure investors, creditors, and the general public of the full implementability and protection of their rights under the Trust Agreement.

- (7) Economic empowerment and active participation of upland communities in securitization projects -- This is a basic policy of the FRSS and shall be provided as a major program component in the Forest Development Plan and Business Plan for Securitization Project.
- (8) Special Fund for Developmental Objectives -- A Special Purpose Fund will be accumulated from allocations made from Project earnings and or from funds specially invested for developmental or non-commercial objectives such as the replication of integrated reforestation in other areas, rehabilitation and management of protect forest or watershed areas, development of water resources and wildlife habitat, and other similar environmental projects identified by the Project Trust.
- (9) Programming of Official Development Assistance (ODA) funds to support FRSS -- DENR shall negotiate for, and program, where appropriate and feasible, ODA funds where these are available to support Securitization Projects, in order to catalyze the launching of these projects and in recognition of the developmental purposes supported by the strategy.

Sec. 5 Coverage of the Strategy

- (1) **Forest Areas with Tenurial or Use-Rights Agreements.** The FRSS may be applied to all forest plantations, industrial plantation and reforestation areas with tenurial or use-rights agreements with DENR under any of its programs and use-rights allocation modes (e.g., IFMA, SIFMA, CBFM) provided the rights holder agrees, and is able by itself, to perform or secure a working agreement with a Service Consortium that has the necessary credentials, track record and competence to undertake the critical tasks required by securitization. Provided further that the proponent(s) are authorized by the DENR to undertake a securitization project, as evidenced by DENR's concurrence on the Project Trust Agreement.

- 2) **Forest Areas without Tenurial Agreements and/or under DENR entities.** The FRSS is also available for forest plantation, industrial plantation and reforestation areas that are presently not covered by tenurial arrangements or use-rights allocations, and such are under the direct management of DENR or any of its agencies or corporations, provided that a joint venture agreement is entered into between DENR and its assigns for the purpose of undertaking a Securitization Project. Provided further, that should the DENR-assigned entity be abolished, all the rights, interests, assets and benefits shall remain entrusted with the Project Trusts, and the DENR shall step into the role of responsibilities of the Joint

Venture Partner vis-a-vis the Service Consortium and the Trustee Bank.

- (3) **Piloting the Securitization Strategy** -- The DENR shall undertake securitization projects initially for three years in specifically defined areas in order to pilot and learn from the experience and develop the market and institutions for the Securitization Strategy.

Sec. 12 Effectivity. This Strategy shall be effective upon signing of this Department Administrative Order and supersedes any administrative rule or regulations inconsistent with the provisions of this issuance.

(Sgd.) VICTOR O. RAMOS
Secretary