

# Joint Foreign Chambers of the Philippines

American Chamber of Commerce of the Phils., Inc. ♦ Australian-New Zealand Chamber of Commerce (Phils.), Inc.  
Canadian Chamber of Commerce of the Phils., Inc. ♦ European Chamber of Commerce of the Phils., Inc.  
Japanese Chamber of Commerce & Industry of the Phils., Inc. ♦ Korean Chamber of Commerce of the Phils., Inc.  
Philippine Association of Multinational Companies Regional Headquarters, Inc.

February 9, 2012

**H.E. Benigno Simeon C. Aquino III**

President

Republic of the Philippines

Malacañang, Manila

Dear President Aquino:

**Re: Maintaining regulatory certainty for investors in the Philippine mining sector**

The Joint Foreign Chambers (“JFC”) have been made aware through media of a draft Executive Order (“EO”) being presented to the Office of the President for consideration, entitled “institutionalizing and implementing reforms in the Philippine mining sector, providing policies and guidelines therefore, and for other purposes.”

The JFC is of the view that as presented, such an EO would significantly alter and damage the mining investment climate in the Philippines, and disadvantage existing companies which have made large investments in exploration and feasibility. Further, the draft carries highly disturbing retrospective legislative implications and inferred sovereign risk.

Following the 2004 Supreme Court validation of the highly-regarded 1995 Mining Act and various BOI incentives, the Philippines actively encouraged Foreign Direct Investment in mining via major conferences and representations in North America, Africa, China, Australia, Japan and other nations or regions. As a direct result of Philippine encouragement and representation, many companies have made multi-million dollar investments in the Philippines.

The draft EO as presented is profoundly disturbing in that it creates great uncertainty for established and potential investors into the Philippines. It proposes to review all existing contracts, and renegotiate or impose an increased Government tax or royalty share, and potentially close out granted contracts completely.

The JFC understands and encourages Government’s desire to improve its economic standing, and understands Government’s desire to optimize its tax take. In doing so, the JFC urges Government to work more closely, co-operatively and systematically with industry to determine a fair and competitive financial sharing arrangement that is globally competitive and does not deter investment. In this context, there should be a mutually-beneficial way forward.

Any new policy that is retrospective in nature generates investment uncertainty not only in mining but also in all FDIs. It also unnecessarily damages sovereign credibility on the global stage, and in some cases violates the Foreign Investment Protection Agreements (FIPAs) signed by the Philippines with many countries. Such uncertainty would have a major and lasting impact on the Philippines’ ability to attract responsible investors – particularly as it would come at a time when global and regional competition to attract foreign investment is so competitive.

There is a perception in Government circles that the Philippines’ share of mining revenue is small compared to the liabilities. Whilst this is definitely the case in unregulated small-scale mining, we respectfully suggest that it is not so with large-scale, responsible mining. The MPSA and FTAA contracts, for example, compare favorably with advanced mining jurisdictions such as Australia, Chile and Canada. The FTAA component is a world-class mechanism. It provides at least a 50% share to the Government in circumstances where little or



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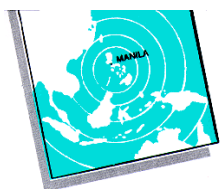
EUROPEAN



JAPANESE



KOREAN



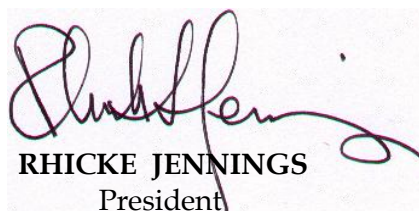
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no Government capital outlay is required and where the explorer or investor carries the cost and financial risk of exploration, discovery and potential development. The world-class Tampakan Copper-Gold Project alone, for example, could provide an extra 1% to national GDP once given the go-ahead.

The JFC acknowledges the good governance in reviewing policy in all areas. However, the JFC urges Government to embrace a broad range of views in reviewing mining policy at this time, and emerge with a position that encourages a blend of FDI and responsible mining that will reward both the investor and the people of the Philippines.

In light of the President's commitment, at the January 26 Arangkada Forum, to develop a policy statement by the end of February of this year, the Joint Chambers respectfully request an opportunity for its mining representatives to meet with the policy team of the Executive Secretary to discuss and expand on, the above views.

Regards



**RHICKE JENNINGS**  
President

American Chamber of Commerce  
of the Philippines, Inc.



**JOHN CASEY**  
President

Australian-New Zealand Chamber  
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**JULIAN PAYNE**  
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Korean Chamber of Commerce  
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**SHAMEEM QURASHI**  
President

Philippine Association of Multinational Companies  
Regional Headquarters, Inc.

CC: Hon. Paquito N. Ochoa Jr., Executive Secretary of the Republic of the Philippines  
Hon. Gregory Domingo, Secretary of the Department of Trade & Industry  
Hon. Jesse Robredo, Secretary of the Department of Interior & Local Government  
Hon. Cesar Purisima, Secretary of the Department of Finance  
Hon. Albert F. Del Rosario, Secretary of the Department of Foreign Affairs  
Hon. Jose Rene Almendras, Secretary of the Department of Energy  
Hon. Ramon Paje, Secretary of the Department of Environment and Natural Resources  
Hon. Manuel Roxas, Secretary of the Department of Transportation and Communications  
Hon. Speaker Feliciano Belmonte Jr., Philippines House of Representatives  
Hon. Florencio Barsana Abad, Secretary of Department of Budget and Management  
Hon. Julia Abad, Chief of Presidential Management Staff  
Hon. Delia Albert