

Joint Foreign Chambers of the Philippines



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PHILIPPINES**



ANZCHAM

AUSTRALIAN-NEW ZEALAND



CANADIAN



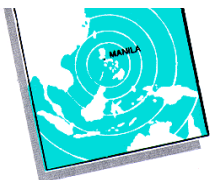
EUROPEAN



JAPANESE



KOREAN



PAMURI

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MEDIA ANNOUNCEMENT
July 11, 2012

JOINT FOREIGN CHAMBERS STATEMENT ON EXECUTIVE ORDER NO. 79, s. 2012

The Joint Foreign Chambers (JFC) welcomes the release of the new Executive Order (EO) implementing reforms in the Philippine mining sector, issued under the authority of the Office of the President and appreciates it as a constructive framework upon which responsible mining can move forward in the Philippines.

The JFC's interest is on securing a favourable investment environment in which foreign as well as local investors are encouraged to establish and build business ventures in the Philippines. While the implementation detail for the EO is still to be elaborated, the JFC believes this new mining policy has the potential to advance the objective of delivering a more favourable Philippine investment environment and direction for responsible mining.

The JFC applauds the Government's commitment to honour existing agreements or contracts. While renegotiation of existing contracts remains open within the new EO, the JFC notes that renegotiation would only occur through mutually acceptable agreement between the government and the contractor. The JFC is of the view that retrospective or retroactive rulings or legislation by any government is detrimental to both domestic and foreign investment – and unnecessarily damaging to sovereign credibility in the international investment community. In addition, the JFC believes that the new mining policy should be implemented in line with the Philippines' obligations under highly-regarded and well-considered Foreign Investment Protection Agreements (FIPAs).

However the JFC has concerns about section 4 of the EO which states that while the government will continue to grant and issue exploration permits, it will decouple such agreements from the granting of mineral agreements which government says will not be entered into until a legislation rationalizing revenue sharing takes effect. The JFC sees such a decoupling as a deterrent to investment. The EO states that those with exploration permits will have the first option to develop, should an economic deposit be discovered. The JFC is of the view that no mining company can be expected to spend extremely large amounts of money on exploration without certainty, the grant of a mining title and without first knowing the fiscal regime.

The JFC noted several areas within the 22-point EO of particular interest, including:

- ***Enforce environmental standards (section 2):*** While provision for this already exists within Philippine law, the JFC welcomes the renewed commitment by government to enforce the law and protect the natural environment and strongly endorses the government's position on this important principle.
- ***Formation of a Mining Industry Coordinating Council (MICC–section 9):*** The creation of an inter-agency forum with a range of powers including dialogue with stakeholders as well as capacity and institutional-building programs for policy implementation is a positive step in the right direction. An important aspect of the MICC will be to manage not just the relationships between national government departments, but also with LGUs and other stakeholders to ensure effective implementation of this new EO. The JFC welcomes the high-level structure of MICC membership and believes the opportunity should be taken to include other key stakeholders such as the mining industry which in all instances acts as the contractor to government. Further, while the MICC is tasked with facilitating capacity and institutional building within government agencies, for implementation to be effective the MICC needs also to address departmental funding requirements.
- ***Streamlined permitting process (section 13):*** The JFC also welcomes the Government's commitment to establish an inter-agency one-stop shop for all mining-related applications and processes within six months from coming into effect of the new EO. In this context and with the issuance of the EO, the JFC looks forward to the DENR restarting and fast-tracking the processing of permit applications and environmental certification.
- ***Adherence to national law (section 12):*** The JFC welcomes the decision of the Aquino Administration to direct (through DILG and the LGUs) that provincial ordinances conform to the regulations, decisions and policies of the national government. To attract and deliver certainty of investment into the Philippines, the JFC urges the Government to make resolution of this long-running issue a major priority. The JFC awaits clearer advice from the Government as to how it plans to implement this very important test of investor confidence.
- ***Revenue sharing to LGUs (section 12):*** The JFC welcomes commitment to provide a timely release and even an increase in the share of national wealth from mining to the LGUs in which mining operations take place for the benefit of the people in these areas.
- ***Tackling illegal mining (section 10e):*** The JFC considers creating of a task force to tackle illegal mining activities which invariably damage the environment, offer little or no benefit to the local communities, harm the reputation of the overall mining industry, fly in the face of responsible

mining, and return little or no revenue through legitimate taxation streams to the people of the Philippines through acknowledged government structures is a positive initiative by the Administration. The JFC also welcomes government steps (*section 11*) to regulate small-scale mining activities and hold them to account.

- ***Establish mineral reservations (section 5)***: The EO calls for the establishment of mineral reservations in potential and future mining areas. The JFC welcomes the Government's clear statement that existing agreements or contracts will be honoured. The JFC calls on the Government to ensure that in defining mineral reservations, the Government adopts a transparent process and uses as its basis the globally-acknowledged resource and reserve estimate statements such as the Australian JORC guidelines, the Canadian NI 43-101 classification or an MGB-sanctioned Philippine equivalent. Further, bidders should be qualified under Philippine Mining Act 1995 IRR definitions. The JFC notes the criteria for opening areas for mining through competitive public bidding, which is limited to areas with "known and verified mineral resources and reserves". However, the JFC is concerned that a competitive public bidding system is relatively untried in other regimes around the world, and is open to self-serving manipulation. Further, the JFC suggests that the Government consults with the stakeholders as to how it implements its plan (*section 1*) to close certain areas to mining applications in situations that are not genuinely high-value areas of conservation, tourism or agriculture/aquaculture significance.

The JFC would like to take this opportunity to congratulate President Benigno Aquino III on what has been a broad consultation process as he continues to show strong and nation-building leadership. Speedy implementation of the key components of the EO will help the Philippines return to the center stage as an attractive place to do business under the banner of responsible mining.

In a related matter, while acknowledging the Government's desire to improve its revenue share from mining production, the JFC congratulates the Government, through the Department of Finance, on inviting the International Monetary Fund (IMF) to come to the Philippines (as they did recently) to analyse and make recommendations on the fiscal regime for mining in the Philippines. The JFC met with the IMF team, and notes with pleasure the commitment of the Secretary of Finance to publicly release the IMF's findings.

In conclusion, the JFC encourages the Government to build on the initiative it has taken with EO 79. The JFC will continue to work closely, co-operatively and systematically with the Government to help ensure a fair and competitive financial sharing arrangement – one that is globally competitive and does not deter investment.

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