**Talking Points on the Alternative Mining Bills**

● We must stress the point that the current Mining Act (RA7942) is a world-class piece of legislation that already balances the interests not only of the mining industry and the State, but also fully considers the rights of host communities, indigenous peoples, and the environment.

● The concerns raised by proponents as the rationale for repealing/amending the Mining Act are already more than adequately addressed by the existing law. In fact, the Mining Act and its IRR have laid down a well thought-out and detailed environmental protection plan that already more than adequately addresses the perceived environmental concerns.

THERE IS THEREFORE NO NEED TO REPEAL THE EXISTING MINING ACT.

Below are the key talking points on the alternative mining bills that should be discussed --

|  |  |
| --- | --- |
| **Proposed amendment** | **Comment** |
| ● The power to declare areas open to mining, and to approve mining applications is given to a Multi-Sectoral Minerals Council; | These provisions are contrary to the Regalian Doctrine enshrined in the Constitution which states that all mineral resources, whether found on public or private lands, ARE OWNED BY THE STATE.  By providing that ownership over these mineral resources are now with the ICCs/IPs, and that control over the development and use of these resources are now with a Multi-Sectoral Minerals Council is a clear violation of the constitution.  The delegation in favor of a Council is clearly **indefensible**. The composition of the Council shows that there is no minimum educational or professional requirement for the members. Neither is experience in mining required. As the number of the Council is also not fixed in the law, the proposed size of the Council appears to be impractical and unwieldy. |
| ● Mineral resources found within ancestral domains are declared the collective private property of the indigenous cultural communities that claim these ancestral lands as their own. |
| ● In principle, all areas are closed to mining unless declared “*open*” by the Council; |
| ● Fiscal incentives under the Mining Act have been eliminated and limited only to pollution control devices; | *Section 1, Article 3* of the Philippine Constitution provides:  *No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.*  The Bill seeks to limit the government incentives given to mining contractors to pollution control or mitigation devices or infrastructure, mineral, processing plants and development of downstream industries.‖  While the Chamber shares the importance to national development of pollution control/mitigation, infrastructure development, and adding value to mineral output, we believe that the aforementioned limitation of incentives against mining contractors, considering mining’s contribution to the national economic development, violates the equal protection clause of the Philippine Constitution.  The Bill also provides for a moratorium on all mining activities until all the systems are in place for the proper implementation of the law. In addition, the Bill provides that ―[a]ll existing mining permits, licenses and agreements are deemed cancelled.‖  **This not only violates the aforementioned due process clause of the Philippine Constitution, but also the non-impairment clause under Section 10, Article III of the Philippine Constitution which provides that ―[n]o law impairing the obligation of contracts shall be passed.** |
| ● Prohibits the assignment and transfer of mineral rights agreements; |
| ● Increased royalty for the National Government, LGUs and IPs; *(from 2% of gross revenues to 10%)* |
| Removal of foreign investment via FTAA. Only Filipino citizen/s or corporation/s 60% of whose equity is owned or controlled by Filipino will be allowed to engage in mining activities. | The proposal is effectively a re-trial and a repudiation of the decision of the Supreme Court in the *La Bugal Blaan case* **where the Supreme Court has already ruled that FTAAs are valid and constitutional**.  The Philippine Constitution provides that (i) the State can directly undertake the exploration, development, and utilization of natural resources, or (ii) the State may enter into agreements with contractors for the conduct of the same, provided that the State shall always that the exploration, development, and utilization activities are under the full control and supervision of the State.  In the *La Bugal Blaan Case*, the Supreme Court ruled that the provisions of the Mining Act comply with this Constitutional requirement on full control and supervision. The Supreme Court held that ―**[f]ull control is not anathemic to day-to-day management by the contractor, provided that the State retains the power to direct overall strategy…[The State] need not micro-manage mining operations and day-to-day affairs of the enterprise**.‖ As noted above, the Mining Act does not prevent government from conducting exploration activities but because this entails significant cost and substantial risks that exploration will not result in economically viable mineral development, it makes no sense to prevent private entities from conducting this activity. The country actually benefits from private entities including foreign companies assuming the exploration risk instead of the government. The Supreme Court, in upholding the validity of the FTAA, cited the inadequacy of Filipino capital and technology in large-scale mining activities and the need for foreign investments in mining endeavors. |
| Exploration to be exclusively and directly undertaken by the MGB. **Private individuals/corporations will no longer be allowed to conduct exploration activities**. | MGB has neither the resources nor the technical capacity to be the sole entity authorized to conduct exploration activities. If this provision is allowed to proceed, it will take years, if not decades, for the MGB to delineate and demarcate areas within the country with commercially-viable quantities of mineral resources. |
| The process outlined in the proposed Alternative Mining Bills for *(i)* determining the areas open or closed to mining, and *(ii)* deliberating and approving mineral agreements are overly complicated and is not in tune with the President’s pronouncement that the Philippines in now *“open for business”*.  *[The Alternative Mining Bills propose the following process for determining the areas open for mining: firstly, an inventory of existing minerals must be conducted, a mining plan formulated, and baseline information on affected watershed areas must be determined.*  *It is only after these data become available that the Multi-Sectoral Minerals Council shall convene their respective constituents to determine whether or not their respective territories may be opened for mining.*  *Secondly, a 2/3 vote shall be required among the sanggunians of the affected LGUs for the purpose of opening a particular area for mining.*  *Thirdly, where ICCs/IPs will also be affected, their consent to the opening of the area to mining must also be secured.*  *It is only after an area is decreed open for mining by the MSMC that mining proposals may be accepted thereon. The top three (3) proposals shall be recommended by the MGB to the MSMC concerned for deliberation. The deliberation process, in turn, entails another round of consultations and consents from the affected LGUs, NGOs, and stakeholders. After the consent processes are complied with, the MSMC shall then meet to decide which of the three proposals, if any, is the most acceptable, and notify the MGB of their choice.]* | The process is problematic. **It is unwieldy, protracted, repetitive, and impractical**. *Firstly*, while *Sections 2(c), 26, and 27* of the Local Government Code only provides for prior *consultation* with affected LGUs and communities, **the proposed Alternative Mining Bills have taken it a step further by requiring antecedent *consent* by affected LGUs before an area or areas may be opened for mining**.  *Secondly*, while the proposed bills give *“guidelines”* for the MSMC to consider, **the fact remains that the matter will still be resolved by popular vote.** Given therealities of Philippine politics, the Chamber is concerned that the vote will be swayed, not by rational environmental and/or economic guidelines, but by the emotional campaigns and appeals by interest groups vehemently opposed to mining. Clearly, subjecting the question to a vote will not necessarily guarantee that the decision will be the correct one. The standard should always be that the proposed mining activity must have a real contribution to the economic growth and general welfare of the country.  *Thirdly*, the process incorporates a long process of *repeated* consultations and consents with perceived stakeholders that does nothing but discourage investor interest, both local and foreign. **All areas, save for those enumerated under the Mining Act of 1995, should be open to mining**. This is only consistent with the provision of the Constitution that *all lands of the public domain and the natural resources found therein are owned by the State, and that the exploration, development, and utilization of these natural resources shall be under the full control and supervision of the State*. To increase the number of areas closed to mining, and to even subject the matter to the discretion of a select few is clearly contrary to the intent of the Constitution. |
| **Maximum areas for mineral agreements is capped at 500 hectares**, with maximum cumulative amount of 750 hectares within a particular watershed | The 500-hectare limit is too small in order to operate a commercially viable mining operation.  The proposed Multi-Sectoral Mineral Council does not have the technical capability to make decisions involving maximum areas to be held under mineral agreements, terms, capitalization requirements, and other technical matters. This fact will undermine and prejudice the State’s capacity to direct the development and use of strategic mineral resources. |
| **Maximum term for any mineral rights contract is FIFTEEN (15) YEARS;** | Not only is the 15-year term limit too short, it also violates *Section 2, Article XII* of the Philippine Constitution which states that ―such agreements may be for a period not exceeding twenty–five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.‖ A law may not disallow what the Philippine Constitution permits, i.e., the term of a mineral agreement may exceed 15 years (which is the limit under the Bill), but should not be more than 25 years, renewable for not more than 25 years. |