



The Canadian Chamber of Commerce of the Philippines

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La Chambre de
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CANADIAN CHAMBER OF COMMERCE OF THE PHILIPPINES POSITION ON MINING & DECLARATION OF MINING-FREE ZONES

The position of the Canadian Chamber of Commerce of the Philippines (CanCham) on mining and on declaration of mining-free zones in the Philippines was sent by CanCham President Julian Payne to the Senate Committee on Environment and Natural Resources on February 20.

This followed his attendance at the meeting of the Senate Committee on February 17 at which House Bills Nos. 45, 670, 3667, 3780, 4363, 5260, 5261 and 5262 that proposed the declaration of mining-free zones in certain provinces and cities were considered by the Senate Committee.

The Senate Committee also requested copies of the speeches by Mr. Payne on mining given on July 10, 2014 at the Development Academy of the Philippines (DAP) on *"A foreign Investors view of mining in the Philippines"* and given on September 17, 2014 at the Annual Conference of the Chamber of Mines of the Philippines (COMP) on *"Realizing the potential of Philippines mining"*.

The position of CanCham on mining and the Bills declaring mining-free zones for various provinces and cities, was submitted by Mr. Payne in addition to and consistent with the position of the Joint Foreign Chambers of Commerce of the Philippines (JFC) that had also been submitted earlier by him in representing the JFC at the same Senate Committee meeting.

The position of CanCham on mining and declaration of mining-free zones submitted in a letter to the Senate Committee is as follows:

In general with respect to mining in the Philippines

(1) The Canadian Chamber of Commerce of the Philippines supports environmentally and socially responsible mining given its very significant potential value to the Philippines in contributing to longer-term, sustainable and inclusive economic growth as well as increased employment and poverty reduction, particularly in remote and less developed areas of the country where poverty is most prevalent. Such mining has contributed significantly to the development and growth of major economies such as Australia, Canada and USA.

(2) We note that mineral reserves of the Philippines are a national resource and that by Constitutional mandate are owned by the Philippine State, not just by the specific provinces and LGUs wherein they are physically located. Therefore we believe all mining should be regulated at the national level for the benefit of the State and all Filipinos and not be controlled by specific provinces and LGUs solely in the interests of their resident populations.

(3) We support the Philippines Mining Act 1995 (RA 7942) being maintained in its present form as a most progressive and also a world-leading regulatory framework for environmentally and socially responsible mining. The main challenge has been for the national government to effectively implement and enforce all its provisions and to ensure realization of all the potential benefits possible with this existing comprehensive legislative framework.



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(4) We do not agree with the opinion that the Philippines receives very little revenue from mining. On the contrary, the IMF has completed an exhaustive analysis with international comparisons and reported that, when counting all revenues collected by all levels of government over the life of a mine, the Philippines already has an AETR (Average Effective Tax Rate) of more than 60% that is one of the highest amongst developing as well as developed countries. We do note that provinces, LGUs and IPs often do not get a fair share of the total AETR in a timely fashion, with their share collected by the national government and not remitted expeditiously to them. We are on record proposing the share of total government receipts from mining for provinces, LGUs, and IPs should be increased to 50% and be remitted directly to them.

(5) We do not agree with the generalization that agriculture and mining are necessarily mutually exclusive. On the contrary, there is convincing evidence in countries such as Australia and Canada that demonstrates both sectors can be developed and productive in an environmentally sustainable manner in the same geographic area. In Saskatchewan in Canada, one of the world's most productive agricultural areas co-exists above one of the world's largest potash mines.

(6) We do not agree with the opinion that benefits of mining are necessarily short-lived. On the contrary, most large-scale mining operations generally last at the very least for a generation and, in being developed and operated, stimulate growth of supportive local businesses which then evolve with the addition of other economic activities to build wider based local economies. The evolution of some local economies in the UK from being based on coal mining to being more modern technology-based local economies demonstrates this is very possible and can be the case.

(7) We do not agree with the opinion that mining necessarily leaves permanent destruction of the physical landscape. Evidence demonstrates that open pit quarries and mines can be transformed after their depletion into gardens and lakes with great tourist potential. The Buchart Gardens in British Columbia in Canada is an example of such a transformation that attracts millions of tourists annually. Such transformation requires enforcement of requirement and imagination. Other depleted quarries have been used as land-fills and then covered over with "green" material to be made available for other use.

(8) We strongly support others in opposing mining when this in a particular case is demonstrated to be harmful environmentally and/or socially, regardless whether this is by large or by small-scale mining operations and/or this is by domestic or foreign mining operators. In particular, we support more effective control and regulation of the devastating illegal mining that is prevalent in many parts of the country as well as other supposedly "small-scale" mining that is ineffectively regulated by provincial authorities and is a major cause of extensive environmental degradation, health and safety risks for workers, and local corruption.



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In general with respect to declarations of mining-free zones

(9) **We are concerned** that such declarations of mining-free zones will not only ban irresponsible and illegal mining but will also ban all desirable and environmentally and socially responsible mining. In banning all environmentally and socially responsible mining, these declarations will also ban potential contributions of such mining to the economic growth, employment-generation and poverty reduction that is so needed in the Philippines, particularly in remote areas where poverty is most extensive and extreme.

(10) **We are concerned** that such declarations of mining-free zones will, by ad hoc piece-meal steps, further expand the 65% of the Philippines land area already closed to mining given other no-go zones, restricted areas etc., without reference to a national land-use plan and pre-empting the potential relevance and value of such a plan.

(11) **We strongly support** the preparation of a nation-wide land-use policy and plan before any mining-free zones are to be declared. Such a policy and plan with a nation-wide approach would enable the Philippines to realize the maximum economic potential it has with all its major natural resources, including its vast mineral reserves of valuable metals, for the economic and social development of the Philippines and benefit to all Filipinos.

(12) **Given these general opinions regarding declarations of mining-free zones, we respectfully suggest** that the Committee recommend no bills for declarations of any mining free zones be further approved until after a national land-use plan has been first approved and then it has also been confirmed that any such declaration is consistent with the approved national land-use plan.

With respect to the eight House Bills declaring mining-free zones:

(13) All eight Bills include the Repeal Clause that “All laws, orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly”.

(a) **We are concerned** there is no indication about what provisions in other legislation and IRRs etc. would be repealed with some of those to be repealed very possibly being of national significance that would outweigh local views that support such declarations; and

(b) **We are also most concerned** that these Repealing Clauses could be used as the basis for another legal challenge to the Mining Act and result in extended judicial proceedings that could then further delay the development of environmentally and socially responsible mining everywhere in the Philippines and thus realization of the potential benefits of such mining.

In this regard, we respectfully suggest that the Committee recommend that the following words be added to the Repealing Clause in all such Bills: “...except in the case of the Mining Act and its Implementing Rules and Regulations which shall override and prevail if the declaration of a mining free zone is inconsistent with the Mining Act and its IRRs.”



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(14) We are concerned that the substantive content of the Bills are not consistent. While we recognize this may be due to the legislative process of drafting and submitting individual separate Bills, we are concerned that if these inconsistencies remain, they will confuse and discourage those considering investments in environmentally and socially responsible mining and compromise effective regulation of mining across the nation. In this respect we note the following specific inconsistencies:

- (a) On the range of penalties for violations in different provinces and LGUs;
- (b) About possible termination of existing contracts; and
- (c) On deportation of ex-patriates who violate the ban.

(15) We are concerned that not all Bills mandate DENR to prepare the Implementing Rules and Regulations (IRRs) which could ensure consistency of the applicable IRRs with the Mining Act IRR that is already applicable nationwide. One Bill mandates the Mayor of a city to prepare the IRR which would set a precedent for further such devolutions and lead to a fragmented province-by-province framework of IRRs. **In this regard we respectfully suggest that the Committee recommend** that DENR be mandated to prepare the IRRs for all Bills.

(16) Last and most important, we are most concerned that these Bills would be the first time separate legislation is used to declare specific provincial and city mining free-zones. Approval of the Bills would set a major precedent for the future development of the country's regulatory framework for mining and, indeed, potentially for other sectors for which provinces and LGUs may in the future wish to declare similar-types of blanket restrictions. **In this regard, we respectfully suggest that the Committee further consider** the Constitutional, other legal and administrative implications of such a precedent in addition to the adverse impact of the Bills on the potential benefits for the nation's overall development.

(17) In conclusion, we emphasize our opinion that, while these eight Bills may be considered by some to be just small steps to address purely local concerns, they in fact and in potential impact will be a major stride in setting a new and very different fragmented regulatory approach for mining and possibly for other sectors. This different and fragmented approach is, in our considered view, the wrong direction to go in the development, management and control of the natural resources of the Philippines and will be to the detriment of national economic development, employment-generation, and poverty reduction over the long term.

For further information on the Canadian Chamber of Commerce of the Philippines and its advocacies, including with respect to mining, please contact Ms. Jam Arellano, Communications & Special Events Manager at the National Secretariat of the Canadian Chamber at Commerce of the Philippines by email at jarellano@cancham.com.ph or by telephone at +63 (02) 843-6471.