15 June 2015

Hon. Romero S. Quimbo
Chairman
Committee on Ways and Means
House of Representatives
Batasan Complex
Philippines

Dear Congressman Quimbo:

The Joint Foreign Chambers (JFC) of the Philippines, comprising the American, Australia-New Zealand, Canadian, European, Japanese and Korean Chambers of Commerce and PAMURI, is pleased to submit its position paper on House Bills 5367 and 3586.

As a summary, we submit the following key points for your utmost consideration:

1. JFC supports the Philippines Mining Act 1995 RA 79421 being maintained in its present form as a most progressive and also a world-leading regulatory framework for environmentally and socially responsible mining. The Mining Act was enacted to resuscitate the industry. It opened the doors to potential developers of mining projects. By providing significant social and environmental safety nets, the law is considered to be a model legal framework for sustainable development and among the best in the world.;

2. The JFC firmly believes that mining can support poor rural areas through a mixture of high quality jobs, as well as manual labor, training and education, local tax payments, and community development through a balanced policy framework that promotes equitable and mutual benefits for government, mining communities and investors;

3. The JFC does not support Section 7 of the HB5367 proposing a fiscal policy levying a 10% royalty on gross receipts, or 55% of adjusted net mining revenue, whichever is greater, plus either a windfall profits tax or surcharge on residual profits. The JFC firmly urges the government to develop a Fiscal Regime and Revenue Sharing Arrangement that is equitable and, internationally competitive and benchmarked in order to attract mining investment and to compensate the Philippines fairly for the extraction of natural resources.

4. It is worthwhile to point out that several studies undertaken by independent, credible and renowned think-tanks such as Asian Institute of Management (AIM) and UP School of Economics (UPSE) already pointed out the negative and discouraging effects of the proposed AETR to the industry. A

Third party tax study done by Prof. Mendoza and Canare of the Asian Institute of Management (AIM), in Jan. 2013, on two publicly listed Philippine mining firms[1] in comparison with select multinational mining firms using published financial data for 2011 resulted in the following conclusion concluded:

> "A comparison of several Philippine versus foreign mining firms in our sample indicates that there is not much difference in their average tax payments (expressed as a share of total company revenue). Furthermore, these average tax payments are actually much higher than the industry-wide average reported by the government."

Another study authored by Dr. Ramon Clarete, former dean of the UP School of Economics, expressed the following observations in his assessment of the Mining Tax Policies and Investments in the Philippines (using HB 5367 proposed fiscal regime and revenue sharing for MAs and FTAAs):

> "Proposed tax reform bill raises AETR by 19%-82% for copper; 15%-89% for gold; and 0.00%-73% for nickel. This will result in a weighted average AETR increase of 16%-81% for the three metals. The simulation notes a significant decline in mining investments from 13% to 67% as a result of the application of the AETR."

5. Whilst the JFC supports the potential reduction in administrative processes by having MIZ administered by the PMDC, the JFC does not support the exclusivity of any such mining area designation nor the rationale regarding the establishment of GO/NO-GO zones. Therefore, the JFC affirms that the development of Mining Industry Zones is complementary to the growth and development of other vital sectors supporting employment generation and poverty alleviation (i.e agriculture and tourism and their value chain activities);

6. JFC believes that a socially, environmentally responsible mining policy warrants provision of monetary resources to empower communities and support sustainable programs particularly employment generation and poverty reduction in remote and less developed areas of the country;

7. The JFC supports the timely and efficient remittance of the Government Share as well as the distribution of the LGU share, and royalties allocated to Indigenous Cultural Communities (ICC) where relevant. Furthermore, the national government should extensively look into substantially increasing the share of LGUs to enable more benefits to local communities.

8. The JFC urges government to continuously ensure the application of streamlined procedures for licensing and administrative processes relating to the minerals industry.

JFC urges the adoption of a "whole-of-government approach" where national and local government units are in sync in interpreting, developing and undertaking policies and administrative processes that help investors realise their business plans and implement programs at the ground. Unclear designation of authorities and lack of unitary system of government—where local ordinances directly oppose national laws—causes tremendous uncertainty to investors. While certain agencies of the Philippine Government have affirmed in certain issuances the principle that local ordinances must conform to national laws, and that local officials must act accordingly, the same have fallen on deaf ears. With urgency and commitment, the Philippine Government needs to take the next step of initiating the necessary legal challenges to the validity of local ordinances that contravene national laws.

In conclusion, with bills such as HB 5367 and 3586 being deliberated in Congress, it is imperative for legislators to undertake thorough and robust analyses—both economic and regulatory impact based—to determine how effective and consistent these new policies will be with the overall socio-economic development thrust of the government. Furthermore, such assessment requires policy-makers to work with the industry, academe and multilateral trading partners to examine existing best practices and ensure that these policies are consistent and at par with international competitive benchmarks and standards for the country to reap the ideal benefits and support inclusive growth.

For the Philippine mining industry to realize the potential for enormous wealth creation from its mineral resource base, a revised and internationally-competitive revenue sharing mechanism needs to be studied more intently. The JFC also urges the Philippine Government to arrest the downtrend and spur investments in the mineral resource industry and to act decisively and promptly to resolve the issues on revenue sharing, and make them truly fair and equitable, lift the moratorium on new mining agreements and build the capacity of the bureaucracy to efficiently process the same, and enforce a clear national policy to promote responsible minerals development.

The JFC is ready to sit down with your Committee in studying further the bills and looking into specific amendments that will determine the most equitable and realistic mining fiscal regime framework for government and industry to work on.

Thank you for giving us the opportunity to provide our feedback on these important bills.

Very truly yours,

Rhicke Jennings
President
American Chamber of Commerce of the Philippines

Tom Grealy
President
Australian-New Zealand Chamber of Commerce of the Philippines

Michael Raeuber
President
European Chamber of Commerce of the Philippines

Yoshio Amano
President
Japanese Chamber of Commerce & Industry of the Philippines

Ho-Ik Lee
President
Korean Chamber of Commerce of the Philippines

Julian Payne
President
Canadian Chamber of Commerce of the Philippines

Shameem Qurashi
President
Philippine Association of Multinational Companies Regional Headquarters, Inc.

JFC Position Paper on HB 5367and HB 3586

I. JFC supports progressive policies on socially and environmentally responsible mining

1. **The Joint Foreign Chambers 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. JFC supports the Philippines Mining Act 1995 RA 79421 being maintained in its present form as a most progressive and also a world-leading regulatory framework for environmentally and socially responsible mining. The Mining Act was enacted to resuscitate the industry. It opened the doors to potential developers of mining projects. By providing significant social and environmental safety nets, the law is considered to be a model legal framework for sustainable development and among the best in the world. Mining must respect the community and environment, which proper implementation of the Philippine Mining Act will achieve. In comparison to other mining laws of other countries like the UK, US, Australia, and Canada where mining plays a strong role in the growth of their first world economies, the Mining Act is deemed as being at par, if not better, in including social and environmental obligations of mining companies.

3. Thirty percent of the Philippine land area with a total of 9 million hectares has high mineral potential. Of this, only 60,000 hectares – about 35 percent the size of Quezon City – are occupied by large-scale miners. The Fraser Institute of Canada has ranked the Philippines in the top ten countries most attractive for mineral development based on mineral potential alone. However, the country ranks within the bottom ten least attractive locations because of policy and bureaucratic obstructions and the lack or government support for mineral development. Current government policy has imposed an official moratorium, following by two years a *de facto* moratorium on the approval of new mining contracts. This has stalled growth of the industry.[1]

4. 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. Legal challenges delayed implementation of the Mining Act

[1] Mining Policy Brief. *Arangkada* Philippines – a project of the Joint Foreign Chambers. September 2014. See attached.

for a decade until the Supreme Court in 2005 ruled with finality that the law is constitutional. Under the law, foreign investors can enter into Financial and/or Technical Assistance Agreements (FTAA) and be granted permits for exploration and mineral processing. Given the very significant capital requirements and long lead-times to develop large mines, this ruling opened the way for the industry to grow. In recent years, most of world's largest mining companies have expressed serious interest to invest in the Philippines, with target investments ranging from hundreds of millions to several billion dollars.

5. It is in this light that the JFC believes that the benefits of mining are not necessarily short-lived. 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.

6. The JFC does 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.

7. The JFC strongly oppose 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, the JFC supports 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.

II. JFC calls for the development of a balanced policy framework that promotes equitable and mutual benefits for government, mining communities and investors

1. **The JFC firmly believes that mining can support poor rural areas through a mixture of high quality jobs, as well as manual labour, training and education, local tax payments, and community development.**

2. The national government receives substantial royalty and tax payments. Government revenue from mining more than doubled to PhP 22.2 billion in 2011 from PhP 10.4 billion in 2007. However, full development of the sector continues to face significant policy challenges. Lengthy approvals for Exploration Permits (EPs) continue to impede investment. Several local government units (LGU) have closed their provinces to mining in clear violation of RA 7942. Likewise, the industry is concerned that the Writ of Kalikasan, injudiciously applied, may disrupt local mining activities.

3. Since 2010, minerals development in the Philippines has dramatically slowed down in response to an uncertain and even negative Philippine minerals policy environment, a lingering and flawed “no-go” mining map process, extended tenement granting moratoria and permitting issues, and national laws not being enforced in the face of provincial mining bans and rampant illegal small-scale mining. The negative policy toward mining has coincided with a major slowdown in international mining investment markets. The now-smaller pot of worldwide investment capital has been for the most part withdrawn from the Philippines, and is being spent elsewhere. Many of these issues are the result of national and local government departments operating independently of each other, and not meaningfully engaging stakeholders.

4. The issuance of Executive Order 79 in 2012 further exacerbated the prospects for the industry with the imposition of a moratorium on new mining permits, pending a new law on the revenue sharing scheme between industry and government coming into effect. In addition, designation of over nearly 85% of the country as new “no-go” zone may severely undervalue areas thereby closed to mining in favor of minimum tourist or agricultural value.

5. Mining industry is high-risk and highly capital intensive. Therefore, the Philippines needs a competitive fiscal regime to encourage foreign as well as domestic capital to develop the country’s mining potential. According to Mines and Geosciences Bureau (MGB) estimates, aggregate domestic and foreign investment in the mining sector increased by 61 percent in 2013, totaling USD $1.311 billion. These investments were 60 percent greater than the government’s target of USD $818 million. MGB expects a total of $1.3 billion USD in investments in 2014.16 However, these investments are in projects already initiated and committed to in past years, highlighting the need to support the industry now in order to realize for future growth.

III. JFC urges the determination of an internationally-competitive and globally-benchmarked fiscal regime and revenue sharing

1. **The JFC does not support Section 7 of HB5367 proposing a fiscal policy levying a 10% royalty on gross receipts, or 55% of adjusted net mining revenue, whichever is greater, plus either a windfall profits tax or surcharge on residual profits.**

2. **<u>The JFC firmly urges the government to develop a Fiscal Regime and Revenue Sharing Arrangement that is equitable and, internationally competitive and benchmarked in order to attract mining investment and to compensate the Philippines fairly for the extraction of natural resources.</u>** The structure must adequately reward mining investors for the large, high-risk investments they make. It should also be fiscally consistent with the mining fiscal regimes in comparator countries at similar stages of economic development. A competitive and equitable fiscal regime should provide substantial revenue to the government resulting from increased investment by responsible mining firms, and include timely remittances to Local Government Units of their share of total government revenue. This can only be achieved by the maximization of tax revenues over the longer term through encouraging investments to further broaden the tax base.

3. In a report prepared by the IMF titled "Reform of the Fiscal Regimes for Mining and Petroleum" on behalf of the Philippine Government in June 2012, it found the existing fiscal regimes to be "not competitive internationally" and "tough for investors compared to fiscal regimes in other countries." IMF noted that the Philippines fiscal regime is already uncompetitive compared with other developing countries such as Peru, Chile, South Africa, Indonesia and Papua New Guinea.

4. The report also stated that the Philippines should adopt a single fiscal regime for the mining sector that is simple, predictable and transparent. It further stated this regime should ensure a fair distribution between mining companies and the government of the economic benefits from mining with fiscal rules that are complemented by an efficient and transparent tax administration. The IMF has also observed that the current Philippine fiscal regime is regressive. The proposed regime in the mining industry for the Philippines desires to meet the following criteria:
    a. is internationally competitive, thereby encouraging investments in the Philippines' mineral resource industry, and enabling the country to realize its resource potential;
    b. achieves an equitable share of proceeds between government and investors;
    c. delivers a higher and steady revenue stream to government;
    d. is progressive in nature; and,
    e. is streamlined, enabling government to collect revenues in an efficient and transparent manner.

5. Similar to the IMF, the Chamber of Mines of the Philippines (COMP) has also undertaken a comprehensive study of the fiscal regimes of various mining countries around the world. It provided to the Philippine Government such data, which are independently verifiable. On this basis, COMP has presented to the Philippine Government a regime that the industry firmly believes would meet the criteria set out above.

6. Whilst the JFC recognises the objective of HB 5367 is to increase revenues to promote sustainable economic development and social growth, the proposed fiscal regime may in fact work against this objective largely due to fact that the proposed Government Share will result in an Average Effective Tax Rate (AETR) which will effectively make the Philippines one of the highest mining tax jurisdictions in the world. In addition, proposals to tax based on gross revenue are unrealistic, because they are insensitive to risk, price and profitability. An uncompetitive fiscal regime will discourage and prevent new investment, particularly if the volatility of commodity prices is not considered, and reduce overall government revenue.

7. It is worthwhile to point out that several studies undertaken by independent, credible and renowned think-tanks such as Asian Institute of Management (AIM) and UP School of Economics (UPSE) already pointed out the negative and discouraging effects of the proposed AETR to the industry.

    a. A Third party tax study done by Prof. Mendoza and Canare of the Asian Institute of Management (AIM), in Jan. 2013, on two publicly listed Philippine mining firms[1] in comparison with select multinational mining firms using published financial data for 2011 resulted in the following conclusion concluded:

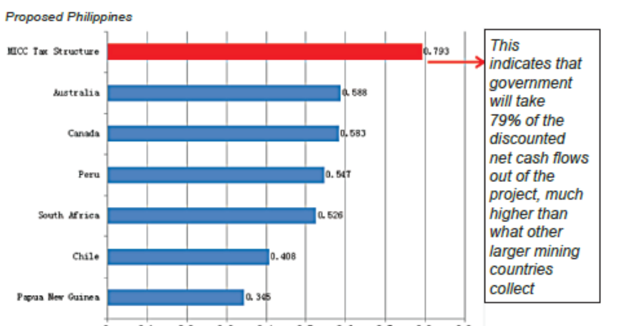
        "A comparison of several Philippine versus foreign mining firms in our sample indicates that there is not much difference in their average tax payments (expressed as a share of total company revenue). <u>Furthermore, these average tax payments are actually much higher than the industry-wide average reported by the government.</u>"

b. Another study authored by Dr. Ramon Clarete, former dean of the UP School of Economics, expressed the following observations in his assessment of the Mining Tax Policies and Investments in the Philippines (using HB 5367 proposed fiscal regime and revenue sharing for MAs and FTAAs):

> "Proposed tax reform bill raises AETR by 19%-82% for copper; 15%-89% for gold; and 0.00%-73% for nickel. This will result in a weighted average AETR increase of 16%-81% for the three metals. <u>The simulation leads to a significant decline in mining investments from 13% to 67% as a result of the application of the AETR</u>."

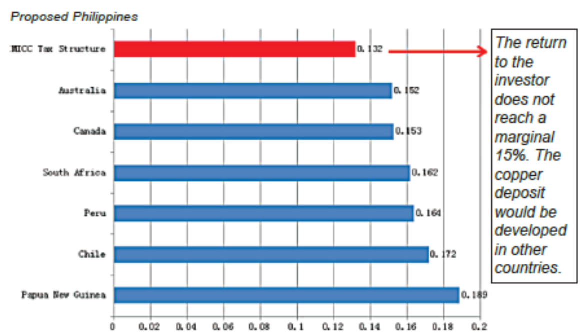
8. A study by the mining industry affirms the abovementioned findings. Based on a copper mine model, the application of the proposed formula will result in an Average Effective Tax Rate (AETR) of 79%, currently the highest AETR in the world. Similarly it is expected that such a fiscal policy will result in an Internal Rate of Return (IRR) to industry of approximately 13%, below the standard threshold of 15% used as a standard benchmark for investment decisions. The ultimate result will be a reduction in mining investment and subsequent reduction in overall government revenue. Compounding the above is the abrogation of the government's previous commitment to allow a five-year cost recovery period, through a Revenue Memorandum Circular of the Bureau of Internal Revenue. Detailed modeling has indicated this would result in an even more uncompetitive AETR of 96%.

Figure 8: A Comparison of Tax Regimes for Mining with Proposed MICC Tax Structure
AVERAGE EFFECTIVE TAX RATE (AETR)
Copper Mine Model



Source: Chamber of Mines of the Philippines. 2014. "Proposed MICC Tax Structure." Tax Presentation

Figure 9: Comparison of Tax Regimes for Mining with Proposed MICC Tax Structure
Internal Rate of Return (IRR)
Copper Mine Model



Source: Chamber of Mines of the Philippines. 2014. "Proposed MICC Tax Structure." Tax Presentation

IV. JFC underscores the development of Mining Industry Zones complementary to the growth and development of other vital sectors supporting employment generation and poverty alleviation (i.e agriculture and tourism and their value chain activities)

1. **Whilst the JFC supports the potential reduction in administrative processes by having MIZ administered by the PMDC, the JFC does not support the exclusivity of any such mining area designation nor the rationale regarding the establishment of GO/NO-GO zones.**

2. JFC's analysis of the proposed zones indicates that at least 65% (or up to 85%) of the Philippines has been designated as NO-GO zones. Much of the exclusion zones contain areas of significant geological, mineral prospectivity and/or contain existing mineral applications, granted tenements and producing mines. The following figure shows these NO-GO zones shaded in green. Such designations will constitute a major obstacle to mining investment. Furthermore, JFC believes that there is no point in having GO zones in areas of limited geological prospectivity or where it is impractical to have mining development. For example, the city of Manila is currently designated a GO zone.

3. The JFC believes that mining, tourism, agriculture and nature conservation are not mutually exclusive. There are numerous examples around the world where these industries have coexisted and where these industries have been developed in a productive and environmentally and socially sustainable manner. 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 for instance, one of the world's most productive agricultural areas co-exists above one of the world's largest potash mines.

4. JFC asserts that the executive process adopted by the Philippine government in adopting the NO-GO zone would be more effective if it were done in conjunction with current efforts in the Philippines Congress to ratify a National Land Use Law that will enable an effective land use management system.

5. Thus, a more sensible process of determining an integrated land use management system is to determine the 'best land use' option for the country. The Philippines is already a signatory to the Wealth Accounting and Valuation of Ecosystem Services ("WAVES"), a five-year global partnership program (from 2011 to 2016) initiated by the World Bank as well as Australia, Vietnam, Laos, Northern India, Madagascar, Botswana, Costa Rica, Colombia, Canada, the United Kingdom, Norway, France Germany, and Spain. Through WAVEs, the country can leverage its effective policy framework in instituting an integrated land use policy that is sector-inclusive for long term development planning rather exclusive-driven for the benefit of short-term development priorities.

Source: Map compiled from data gathered from MGB/DENR

V. JFC believes that a socially, environmentally responsible mining policy warrants provision of monetary resources to empower communities and support sustainable programs

1. **The JFC supports the Section 8 of HB 5367on instating environmentally and social responsible mining given the 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.**

VI. JFC urges transparent, timely and efficient distribution of government share from mining activities

1. **The JFC supports the timely and efficient remittance of the Government Share as well as the distribution of the LGU share, and royalties allocated to Indigenous Cultural Communities (ICC) where relevant. Furthermore, the national government should extensively study on substantially increasing the share of LGUs to enable more benefits to local communities.**

2. The JFC also supports the Extractive Industry Transparency Initiative (EITI), which establishes international standards for mining and accurately measures how much revenue local and national governments should receive.

2. In addition, supplementary resources, expert staffing, and capacity should be allocated to the National Commission on Indigenous Peoples (NCIP). Most access to the lands of IPs in the Philippines is determined by mandated interactions between mining companies and the NCIP. The Free Prior Informed Consent (FPIC) process with IPs, under management of an under-resourced NICP, has proved difficult and time consuming beyond a reasonable period. Additional funding would create more efficiency in the granting of access to land.

VII. JFC supports efforts to streamline licensing and administrative processes pertaining to the minerals industry.

1. **As a general principle, the JFC urges government to continuously ensure the application of streamlined procedures for licensing and administrative processes relating to the minerals industry.**

2. Such process should demonstrate proactive steps by DENR in reviewing tenurial applications that have been denied in the implementation of regulation reforming the Tenement Mining System, but which were appealed by the applicant; a quick and fair resolution of these appeals would resolve the cloud hanging over these applications which has further stalled the mining industry and its ability to contribute to growth in the Philippine economy.

3. Furthermore, JFC urges the adoption of a "whole-of-government approach" where national and local government units are in sync in interpreting, developing and undertaking policies and administrative processes that help investors realise their business plans and implement programs at the ground. Unclear designation of authorities and lack of unitary system of government—where local ordinances directly oppose national laws—causes tremendous uncertainty to investors. While certain agencies of the Philippine Government have affirmed in certain issuances the principle that local ordinances must conform to national laws, and that local officials must act accordingly, the same have fallen on deaf ears. With urgency and commitment, the Philippine Government needs to take the next step of initiating the necessary legal challenges to the validity of local ordinances that contravene national laws.

Conclusion

In conclusion, the JFC believes that the experience of the Philippines in the development of the mining industry continues to raise questions as to the ability of the government to assure investors—existing and prospective alike—that it will continue to honour agreements and treaties it signed particularly when local government units' policies are at odds with national legislated regulations.

With bills such as HB 5367 and 3586 being deliberated in Congress, it is imperative for legislators to undertake thorough and robust analyses—both economic and regulatory impact based—to determine how effective and consistent these new policies will be with the overall socio-economic development thrust of the government. Furthermore, such assessment requires policy-makers to work with the industry, academe and multilateral trading partners to examine existing best practices and ensure that these policies are consistent and at par with the competitive benchmarks and standards for the country to reap the ideal benefits and support inclusive growth.

For the Philippine mining industry to realize the potential for enormous wealth creation from its mineral resource base, a revised and internationally-competitive revenue sharing mechanism needs to be studied more intently. The JFC also urges the Philippine Government to arrest the downtrend and spur investments in the mineral resource industry and to act decisively and promptly to resolve the issues on revenue sharing, and make them truly fair and equitable, lift the moratorium on new mining agreements and build the capacity of the bureaucracy to efficiently process the same, and enforce a clear national policy to promote responsible minerals development.

The JFC is ready to sit down with your Committee in studying further the bills and looking into specific amendments that will determine the most equitable and realistic mining fiscal regime framework for government and industry to work on.