

10 July 2012



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## PHILIPPINE GOVERNMENT DELIVERS NEW MINING POLICY

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Indophil Resources advises its shareholders that the Philippine Government has issued a new and long-awaited Mining Policy in the form of an Executive Order under the authority of the President, His Excellency Benigno S. Aquino III.

The new Executive Order, based on a broadly-communicated six-point Mining Policy, addresses 22 agenda items which include a detailed direction requiring local government ordinances to be brought into line with the Philippine Constitution and national laws.

This conformity issue is of considerable importance to Indophil, its shareholders and the Tampakan Copper-Gold Project, in which Indophil holds a 37.5% interest under a Financial and Technical Assistance Agreement (FTAA) with the Philippine Government.

The new Executive Order in part says: *"The Department of Interior and Local Government and the LGUs (Local Government Units) are hereby directed to ensure that the exercise of the latter's powers and functions is consistent with and conform to the regulations, decisions and policies already promulgated and taken by the National Government relating to the conservation, management, development and proper utilization of the State's mineral resources . . ."*

In 2010, and under pressure from anti-mining and anti-foreign investment lobby groups, the province of South Cotabato in which the Tampakan deposit is located, adopted a local ordinance that purports to ban open pit mining. The most environmentally-friendly and economical method of mining the Tampakan deposit is by open pit mining, a form of mining method permitted under Philippine national law. The issuance of the new Executive Order should be a catalyst to removing the open pit mining ban in South Cotabato.

Indophil's CEO, Richard Laufmann, has welcomed the new Mining Policy and the National Government's commitment implied in the section of the Executive Order that directs LGUs to conform to national law.

"Indophil commends the National Government for confirming the primacy of Philippine national mining law. This directive is a valuable step on the path to achieving the necessary approvals for the Tampakan Project from both the national and provincial governments," Mr Laufmann said.

"The Tampakan Project study process has been comprehensive and world-class. It has involved extensive community and government consultation, addressed the technical, environmental and community concerns, and detailed the many benefits for stakeholders."

Mr Laufmann went on to say: "The issuing of this Executive Order is a strong sign that the Philippines welcomes those who advocate responsible mining. This initiative, led by President Aquino, will be appreciated by those seeking to invest in the future of the Philippines."

Despite a direction that existing mining contracts and agreements shall be subjected to possible renegotiation if mutually acceptable to government and the contractor, international investors are expected to welcome the Philippine Government's reaffirmation that existing agreements, contracts, rights and obligations will be honoured.

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“Indophil looks forward to working with the Aquino Administration to follow through on this new Mining Policy and delivering a development-friendly investment environment; one that will allow us, our partners and other companies to do business successfully, while at the same time contributing to the growth of the Philippine economy and the Government’s fight against poverty,” Mr Laufmann added.

**Note: The detailed Executive Order, signed on 6 July 2012 and issued on 9 July 2012, appears below.**

## **ABOUT INDOPHIL AND TAMPAKAN**

The Tampakan Copper-Gold Project, located in the southern Philippines, is among the most attractive undeveloped long-life, large-scale and low-cost copper deposits in the world. Indophil’s key asset is a 37.5% interest in that project, with 62.5% partner Xstrata Copper.

The Tampakan Project was discovered, and is being developed, under formal agreement (known as the Columbio FTAA) with the Philippine Government, on behalf of the people of the Philippines.

The Tampakan Project is operated by Philippine-based Sagittarius Mines, Inc. (SMI) and is estimated to require a US\$5.9 billion capital investment. The Tampakan deposit contains an estimated 2.94 billion tonne mineral resource of approximately 15 million tonnes of copper and 18 million ounces of gold.

Tampakan is projected to produce 375,000 tonnes of copper and 360,000 ounces of gold per year in the initial mine-life of 17 years, with considerable and realistic potential for mine-life extension.

To date, more than A\$400 million has been spent on exploration and development at Tampakan. Its direct contribution to the Philippine economy over the known mine-life is estimated at US\$37 billion, with an estimated US\$8 billion being paid in Philippine taxes and royalties. Estimated direct employment during construction is 10,000 people, with a workforce of 2,000 during the operational period.

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# Executive Order No. 79, s. 2012

MALACAÑAN PALACE  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 79

## INSTITUTIONALIZING AND IMPLEMENTING REFORMS IN THE PHILIPPINE MINING SECTOR PROVIDING POLICIES AND GUIDELINES TO ENSURE ENVIRONMENTAL PROTECTION AND RESPONSIBLE MINING IN THE UTILIZATION OF MINERAL RESOURCES

**WHEREAS**, Section 16, Article II of the 1987 Constitution provides that the State shall protect and advance the right of the Filipino people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

**WHEREAS**, Section 1, Article XII of the 1987 Constitution seeks a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; an expanding productivity as the key to raising the quality of life for all, especially the underprivileged; and that in the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop;

**WHEREAS**, Section 2, Article XII of the 1987 Constitution provides that the exploration, development, and utilization of mineral resources shall be under the full control and supervision of the State;

**WHEREAS**, further to Section 2, Article XII of the 1987 Constitution, which recognizes the small-scale utilization of resources by Filipino citizens, small-scale mining shall be recognized as a formal sector of the industry;

**WHEREAS**, Section 22, Article II of the 1987 Constitution provides that the State recognizes and promotes the right of indigenous cultural communities within the framework of national unity and development, and Republic Act (RA) No. 8371, or the Indigenous Peoples Rights Act (IPRA) of 1997, recognizes further the indigenous peoples' (IPs) right to develop their lands and natural resources within their ancestral domains, subject to their free, prior, and informed consent (FPIC);

**WHEREAS**, Section 7, Article X of the Constitution provides that local government units (LGUs) are entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their jurisdiction, and the Local Government Code of 1991 provides that LGUs have the duty and authority to protect and co-manage the environment and enhance the right of the people to a balanced ecology;

**WHEREAS**, Section 2 of RA No. 7492, otherwise known as the Philippine Mining Act of 1995, provides that it shall be the responsibility of the State to promote the rational exploration, development, utilization, and conservation of the country's mineral resources through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities; and,

**WHEREAS**, as recommended by the Climate Change Adaptation and Mitigation and Economic Development Cabinet Clusters in a Joint Resolution dated 16 March 2012, a six-point agenda was adopted, which sets the direction and lays the foundation for the implementation of Responsible Mining Policies, foremost among which is to improve environmental mining standards and increase revenues to promote sustainable economic development and social growth, both at the national and local levels,

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**NOW THEREFORE, I, BENIGNO S. AQUINO III**, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order the following:

**SECTION 1. Areas Closed to Mining Applications.** Applications for mineral contracts, concessions, and agreements shall not be allowed in the following:

- a) Areas expressly enumerated under Section 19 of RA No. 7942;
- b) Protected areas categorized and established under the National Integrated Protected Areas System (NIPAS) under RA No. 7586;
- c) Prime agricultural lands, in addition to lands covered by RA No. 6657, or the Comprehensive Agrarian Reform Law of 1988, as amended, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries declared as such by the Secretary of the Department of Agriculture (DA);
- d) Tourism development areas, as identified in the National Tourism Development Plan (NTDP); and,
- e) Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter identify pursuant to existing laws, rules, and regulations, such as, but not limited to, the NIPAS Act.

Mining contracts, agreements, and concessions approved before the effectivity of this Order shall continue to be valid, binding, and enforceable so long as they strictly comply with existing laws, rules, and regulations and the terms and conditions of the grant thereof. For this purpose, review and monitoring of such compliance shall be undertaken periodically.

**SECTION 2. Full Enforcement of Environmental Standards in Mining.** The Government in general, and the Department of Environmental and Natural Resources (DENR) in particular, in coordination with concerned LGUs, shall ensure that environmental standards in mining, as prescribed by the various mining and environmental laws, rules, and regulations, shall be fully and strictly enforced, and appropriate sanctions meted out against violators thereof.

In line with the above, only those who are able to strictly comply with all the pertinent requirements shall be eligible for the grant of mining rights, pursuant to the applicable provisions of RA No. 7942.

**SECTION 3. Review of the Performance of Existing Mining Operations and Cleansing of Non-Moving Mining Rights Holders.** To ensure compliance with environmental standards, laws, rules and regulations, and to rationalize the management and utilization of minerals toward sustainable development, a multi-stakeholder team led by the DENR shall conduct a review of the performance of existing mining operations. The said review shall be based on guidelines and parameters set forth in the specific mining contract or agreement and on other pertinent or applicable laws, rules and regulations, such as the Mining Act of 1995 and the Labor Code. Appropriate action shall be immediately taken against proven violators based on the findings and recommendations of the review.

**SECTION 4. Grant of Mineral Agreements Pending New Legislation.** No new mineral agreements shall be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect. The DENR may continue to grant and issue Exploration Permits under existing laws, rules, and guidelines. The grantees of such permits shall have the rights under the said laws, rules, and guidelines over the approved exploration area and shall be given the right of first option to develop and utilize the minerals in their respective exploration area upon the approval of the declaration of mining project feasibility and the effectivity of the said legislation.

The DENR shall likewise undertake a review of existing mining contracts and agreements for possible renegotiation of the terms and conditions of the same, which shall in all cases be mutually acceptable to the government and the mining contractor.

**SECTION 5. Establishment of Mineral Reservations.** Potential and future mining areas with known strategic mineral reserves and resources shall be declared as Mineral Reservations for the

development of strategic industries identified in the Philippine Development Plan and a National Industrialization Plan, pursuant to the pertinent provisions of RA No. 7942, after proper consultation with all concerned stakeholders such as, but not limited to, residents of affected communities, LGUs, the business sector, and non-government and civil society organizations.

This shall be without prejudice to the agreements, contracts, rights and obligations previously entered into by and between the government and mining contractors/operators.

**SECTION 6. Opening of Areas for Mining through Competitive Public Bidding.** The grant of mining rights and mining tenements over areas with known and verified mineral resources and reserves, including those owned by the Government and all expired tenements, shall be undertaken through competitive public bidding. The Mines and Geosciences Bureau (MGB) shall prepare the necessary competitive bid packages and formulate the proper guidelines and procedures to conduct the same, which shall include ensuring that the social acceptability of the proposed project has been secured.

All other mining rights and tenements applications shall be processed and approved through existing procedures.

**SECTION 7. Disposition of Abandoned Ores and Valuable Metals in Mine Wastes and Mill Tailings.** All valuable metals in abandoned ores and mine wastes and/or mill tailings generated by previous and now defunct mining operations belong to the State and shall be developed and utilized through competitive public bidding in accordance with the pertinent provisions of law.

In the case of existing mining operations, all valuable metals in mine wastes and/or mill tailings shall automatically belong to the State upon the expiration of the pertinent mining contracts and shall be similarly developed and utilized through public bidding; *provided*, that where two or more mine sites, covered by their respective mining contracts, share a single tailings pond, both or all mining contracts must expire before the State can claim ownership over the said tailing pond.

The State's assumption of responsibility over the structures and facilities relating to mine wastes and mine tailings shall be without prejudice to any liability/liabilities that may be found against mining contractors for any harm or damage caused by said structures and facilities, mine wastes and mine tailings prior to the said assumption of responsibility in accordance with existing laws, rules, regulations and the terms of the grant of the mining rights.

**SECTION 8. Value-Adding Activities and the Development of Downstream Industries for the Mineral Sector.** The DENR, in coordination with the Department of Trade and Industry (DTI), Department of Science and Technology (DOST), National Economic and Development Authority (NEDA), other government agencies concerned, the mining industry, and other stakeholders, shall submit within a period of six (6) months a national program and road-map, based on the Philippine Development Plan and a National Industrialization Plan, for the development of value-adding activities and downstream industries for strategic metallic ores.

**SECTION 9. Constituting the Climate Change Adaptation and Mitigation and Economic Development Cabinet Clusters as the Mining Industry Coordinating Council (MICC).** The Climate Change Adaptation and Mitigation and Economic Development Cabinet Clusters, shall constitute themselves into an interagency forum to be known as the Mining Industry Coordinating Council (MICC).

The MICC shall be co-chaired by the Chairpersons of the two (2) clusters and shall have the following additional members: Secretary, Department of Justice (DOJ), Chairperson, National Commission on Indigenous Peoples (NCIP), and President, Union of Local Authorities of the Philippines (ULAP).

**SECTION 10. Powers and Functions of the Council.** The Council shall have the following powers and functions:

a) Submit a work plan within sixty (60) days from the effectivity of this Order for the implementation of this Order and other reforms related to the mining industry;

- b) Ensure continuing dialogue and coordination among all stakeholders in the industry;
- c) Conduct and facilitate the necessary capacity and institutional building programs for all concerned government agencies and instrumentalities;
- d) Conduct an assessment and review of all mining-related laws, rules and regulations, issuances, and agreements with the view to formulating recommendations to improve the allocation of revenues and risk between the government and the mining sector, to enhance coordination between the National Government and LGUs to ensure implementation of mining laws and regulations, and to properly regulate small-scale mining participants and ensure that they are accountable to the same environmental and social obligations as large-scale mining companies;
- e) As may be directed by the President, constitute and create a Task Force Against Illegal Mining and seek the assistance of all law enforcement agencies, such as, but not limited, to the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) to ensure strict compliance with relevant laws, rules and regulations;
- f) Serve as the Oversight Committee over the operations of Provincial/City Mining Regulatory Boards (P/CMRBs);
- g) Request the assistance of any government agency or instrumentality, including government-owned and controlled corporations and local government units (LGUs), in the implementation of this Order;
- h) Submit periodic reports to the President on the status of the implementation of this Order; and,
- i) Perform such other functions and acts as may be necessary, proper or incidental to the attainment of its mandates and objectives, or as may be directed by the President.

**SECTION 11. Measures to Improve Small-Scale Mining Activities.** To improve and address issues on small-scale mining, the following measures shall be undertaken:

- a) Small-scale mining activities shall comply with RA NO. 7076, or the People's Small-Scale Mining Act of 1991, and the Environmental Impact Statement System requirements under Presidential Decree (PD) No. 1586;
- b) Pursuant to RA No. 7076, small-scale mining operations shall be undertaken only within the declared People's Small-Scale Mining Areas or *Minahang Bayan*;
- c) Pursuant to Section 24 of RA No. 7076, P/CMRBs in provinces and cities where they have not been constituted shall be operationalized within three (3) months from the effectivity of this Order;
- d) Small-scale mining shall not be applicable for metallic minerals except gold, silver, and chromite, as provided for in RA No. 7076;
- e) The use of mercury in small-scale mining shall be strictly prohibited; and,
- f) Training and capacity building measures in the form of technical assistance for small-scale mining cooperatives and associations shall be conducted by the concerned government agencies.

**SECTION 12. Consistency of Local Ordinances with the Constitution and National Laws/LGU Cooperation.** The Department of the Interior and Local Government (DILG) and the LGUs are hereby directed to ensure that the exercise of the latter's powers and functions is consistent with and conform to the regulations, decisions, and policies already promulgated and taken by the National Government relating to the conservation, management, development, and proper utilization of the State's mineral resources, particularly RA No. 7942 and its implementing rules and regulations, while recognizing the need for social acceptance of proposed mining projects and activities.

LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.

Concerned government agencies, in particular the DENR, the Department of Budget and Management (DBM), and the Department of Finance (DOF), are hereby directed to ensure the timely release of the share of LGUs in the National Wealth pursuant to Section 289 of RA No. 7160, or the Local Government Code of 1991. These agencies are likewise directed to study the possibility of increasing LGUS' share as well as granting them direct access similar to existing arrangements with the Philippine Export Zone Authority (PEZA).

LGUs, DENR, and the MGB working together shall strictly implement RA No. 7076, to ensure the protection of the environment, address various issues in small-scale mining, and ensure that violators thereof are subjected to appropriate administrative and criminal liability.

**SECTION 13. Creating a One-stop Shop for all Mining Applications and Procedures.** The DENR is hereby directed to establish an inter-agency one-stop shop for all mining related applications and processes within six (6) months from the effectivity of this Order. The DENR shall issue authority to verify mineral deposits only for areas open to mining, as defined in this Order; *provided*, that no Mineral Production Sharing Agreement (MPSA), Financial and Technical Assistance Agreement (FTAA), Joint Venture Agreement (JVA), or Co-Production Agreement (CPA) shall be approved without the FPIC of the concerned IPs and compliance with the social acceptability requirement of the communities affected. All concerned government agencies and instrumentalities, including but not limited to the DENR-MGB, NCIP, DOF, and concerned LGUs are hereby directed to ensure an efficient and effective consolidation of functions, and to cooperate and render assistance as may be necessary.

**SECTION 14. Improving Transparency in the Industry by Joining the Extractive Industries Transparency Initiative.** In order to improve transparency, accountability, and governance in the sector, the government shall support and commit participation in the Extractive Industries Transparency Initiative (EITI). The DENR is mandated to ensure that mechanisms are established to operationalize the EITI in the mining sector, in consultation and coordination with the mining industry and other concerned stakeholders.

**SECTION 15. Creation of a Centralized Database for the Mining Industry.** The DENR is hereby directed to create a centralized database of all mining-related information. The database shall initially include all available data on the industry from all government agencies and instrumentalities. The database shall be publicly accessible, transparent, complete, and comprehensive. The database shall be created within six (6) months from the effectivity of this Order.

Information and data gathered from the conduct of Resource Accounting or Full-Cost Benefit Analysis Studies, in line with the Wealth Accounting and Valuation of Ecosystem Services (WAVES) and the National Climate Change Action Plan (NCCAP), shall also be made part of the centralized database.

**SECTION 16. Integrated Map System to Include Mining Related Maps.** Current and existing efforts to create an integrated map system for the common and uniform use of all government agencies and instrumentalities shall include all mining-related maps, such as, but not limited, to mining tenement maps, geo-hazard and multi-hazard maps, ancestral lands and domains, and protected areas under the NIPAS, among others. The maps in the system, including the mining-related maps, shall guide all planning and decision-making processes.

Areas closed to mining operations, as provided for in Section 2 of this Order and in other pertinent laws, rules, and regulations, shall be clearly defined and delineated under the integrated map system.

**SECTION 17. Use of the Programmatic Environmental Impact Assessment.** The DENR and the Environmental Management Bureau (EMB) shall study the adoption of the Programmatic Environmental Impact Assessment (PEIA) in the implementation of the Philippine Environmental Impact Statement System (PEISS) under PD No. 1586, for mining projects and related activities. The necessary amendatory rules and regulations shall be issued for the implementation of this Section.

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The DENR-EMB is also hereby directed to study the use and implementation of the PEIA for other industries and activities covered by the PEISS.

**SECTION 18. Funding.** All government agencies involved in the implementation of this Order are authorized to allocate from their existing funds such amounts as may be necessary for the budgetary requirements that may be needed to pursue the objectives of this Order, subject to the usual government accounting and auditing rules and regulations.

**SECTION 19. Implementing Rules and Regulations (IRRs).** The DENR, working with the MICC, shall issue the pertinent IRRs within sixty (60) days from the effectivity of this Order.

**SECTION 20. Separability Clause.** If any provision of this Order is declared invalid and unconstitutional, all other provisions unaffected shall remain valid and subsisting.

**SECTION 21. Repealing Clause.** All other rules, regulations and issuances or parts thereof that are inconsistent with this Executive Order are hereby repealed or modified accordingly.

**SECTION 22. Effectivity.** This Order shall take effect immediately upon its publication in a newspaper of general circulation.

**DONE**, in the City of Manila, this 6th day of July in the year of our Lord Two Thousand and Twelve.

(Sgd.) **BENIGNO S. AQUINO III**

By the President:  
(Sgd.) **PAQUITO N. OCHOA, JR.**  
Executive Secretary

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