

# The Foreign Chambers of the Philippines

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Philippine Association of Multinational Companies Regional Headquarters, Inc.

April 10, 2008



**Honorable Reynato S. Puno**  
**Chief Justice of the Philippines**  
**Supreme Court of the Philippines**  
**Padre Faura, Manila**



Dear Chief Justice Puno:

The Joint Foreign Chambers wish to bring a major concern to your attention, involving the decision-making process of local government units (LGUs) in general and the Supreme Court decision granting the petition of the Social Justice Society (SJS) and Vladimir Cabigao against Shell, Petron and Chevron (“oil companies”) and ordering the enforcement of Ordinance 8027, which reclassified the area of the Pandacan terminals from industrial to commercial .



While the foreign chambers in the past mainly focused on actions of the national government, more and more attention is given the performance or non-performance of LGUs. In recent years, we have seen many abuses where mayors, town counselors and local government offices have dishonored decisions of the predecessors, have withdrawn commitments made before factories, hotels and resorts were built, and have made ridiculous tax claims, scaring away existing and potential investors.



Allow us to highlight the ‘Pandacan case’ which could have quite disastrous implications:



The local government unit in Pandacan issued Ordinance 8027 which reclassified the area of the Pandacan terminals from industrial to commercial. The tank farm in Pandacan has been there for a long time. Shell, Petron and Chevron deliver oil products by barges, using the Pasig River. Shell, Petron and Chevron objected to the rezoning; the case entered the courts and finally reached the Supreme Court.



1. March 7, 2007 - the Supreme Court granted the petition of the Social Justice Society (SJS) and Vladimir Cabigao against Shell, Petron and Chevron (“oil companies”) and ordered the enforcement of Ordinance 8027, which reclassified the area of the Pandacan terminals from industrial to commercial .
2. March 12, 2007 - Shell, Petron and Chevron filed its Motion for Reconsideration In Intervention together with the Department of Energy.



3. February 13, 2008 - The Supreme Court denied the Motion for Reconsideration of the oil companies and ruled, among others that:
  - a. Ordinance 8027 is valid and applicable to the Pandacan terminals despite the passage of the subsequent Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006
  - b. Decision was based on safety /security concerns\*
  - c. Local governments have vast police powers to enact zoning ordinances to promote general welfare, safety and security of its constituents
  - d. Ordinance 8027 is a special law covering ONLY Pandacan and since this is a spot zoning, it need not pass review process by MMDA and HLURB
  - e. Oil companies were given 90 days to submit relocation plan
4. February 28, 2008 - The oil companies filed its Motion For Reconsideration with Prayer for Referral to the Honorable S. Ct. EN BANC.

\* if the Pandacan terminals posed safety / security concerns, companies like Shell, Petron and Chevron which have international reputations to protect, would have moved their tank farms a long time ago. They had a 'safety check' undertaken by independent international experts and followed the recommendations by these experts.

#### Legal Implications of Spot Zoning Precedent by the Supreme Court:

1. While the oil companies have advised the Supreme Court that an indefinite and permanent stay in Pandacan is not the objective and that they will submit a relocation plan within 90 days from receipt of the decision, it has requested that the Court take a second hard look on its resolution considering the disastrous effects of some of its pronouncements on tenure of businesses and industries in areas within the jurisdiction of aggressive local government officials.
2. Of particular concern to the industry is the Court's finding on the legality of spot zoning. A zoning ordinance is defined as local legislation which logically arranges, prescribes and apportions a given political subdivision into specific land uses for present and future needs. The area where Pandacan terminal is situated is not a political subdivision which should be subject to zoning ON ITS OWN. In this case, Ordinance 8027 effectively spot zoned! It carved out the terminal from its environs and rezoned the same for a different, less favorable treatment than its neighboring community. By ruling that Ordinance 8027 is valid, spot zoning or that which narrowly focuses on a particular property to the economic detriment of its land owner now becomes a legitimate exercise of police power by local government. It has practically legitimized discrimination against a particular parcel of land or property and will encourage taking of private property without due compensation by government!
3. While cities have the power to reclassify land, such must be consistent with an integrated, comprehensive land use plan and must not be discriminatory. If left unreversed, this Supreme Court decision will open the floodgates to spot zoning ordinances all over the country by way of local government ordinances and resolutions. This subjects not only the oil industry but also other industries as well, to closure and forced relocation on the whims and caprices of local governments and on the strength of imagined and unproven conclusions of facts – threat to safety, security,

health, well-being, etc. Legitimate businesses and industries not declared to be illegal, hazardous or illegitimate may then be summarily abated and their operations stopped on the basis of purported zoning ordinances. If local governments spot zone everywhere, industries will not be assured of continuous tenure in the areas in which they operate and this will be a serious disincentive to investments. Why spend millions of pesos in a particular city or province if a local government can effectively kick you out by reclassifying the area where your office, factory, or establishment is located?

These are the issues which the oil companies have raised in their Motion for Reconsideration now pending with the Supreme Court. These are the issues the local and foreign business community needs to raise with all three branches of government. The foreign chambers will have a much more difficult task in future to advise potential investors where to locate.

In conclusion, it is sincerely trusted that the Supreme Court en banc will reverse its earlier decision. As it stands, it would be difficult to make an investment decision anywhere for any facility as we may be zoned out anytime.

Sincerely Yours,



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