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Senate Bill No. **2755**

Introduced by Senator **EDGARDO J. ANGARA**

EXPLANATORY NOTE

Emerging market economies worldwide have been faced with a number of external and internal trends and developments that affect the fiscal sector: the recent global economic crisis, liberalization, a marked shift from state to market and from the public to the private sector, and the increasing demands for greater transparency, accountability, and participation.

As a consequence of these trends and developments, emerging economies like the Philippines are presented with the challenge of implementing fiscal reforms necessary to help sustain the country's economic growth.

The proposed bill on the Rationalization of Fiscal Incentives seeks to harmonize the existing incentive system which is provided under different laws with differing provisions. It specifically intends to eliminate competition among ecozone administrators on account of their unequal investment incentive regimes and grants incentives that are at par with regional neighbors.

It further aims to promote countryside development by granting appropriate tax incentives to investors that would choose to locate in the poorest provinces of the country. It is likewise geared to promote exports equally, regardless of location, whether outside or inside economic zones.

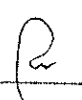
The measure introduces institutional reforms by enhancing capacities and clarifying the mandates and roles of concerned government agencies while strengthening the monitoring processes and mechanisms in implementing the incentive system, thus, generally improving the effectiveness of fiscal institutions and procedures, respectively.

The proposed legislative measure has long been under consideration in both Houses of Congress. There is urgency to pass this piece of legislation in order to provide for a more effective policy framework that would promote consistency, transparency, and predictability in the country's investment regime.


EDGARDO J. ANGARA

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SENATE
Senate Bill No. **2755**

RECEIVED BY: 

Introduced by Senator Edgardo J. Angara

THE INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

PRELIMINARY TITLE

CHAPTER I

TITLE AND DECLARATION OF POLICY

1 SECTION 1. *Title.* – This Act shall be known as “The Investments and Incentives Code of the
2 Philippines”.

3
4 SECTION. 2. *Declaration of Investment Policies.* – The national economy shall be developed so
5 as to enhance its competitiveness in the global economy and geared towards investment and
6 employment generation and countrywide development, through industry development, policy
7 formulation, investment promotion and investor servicing. Accordingly, the following are the
8 declared policies of the State:

- 9
10 a. The State shall pursue a market-responsive investment regime;
11 b. The State shall formulate industry and sectoral development programs;
12 c. The State shall undertake investment promotion activities;
13 d. The State shall grant incentives that are simple to administer, time-bound and
14 performance-based; and
15 e. The State recognizes that industrial peace is essential to attracting investments.

CHAPTER II

ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

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20 SECTION. 3. *The Board of Investments (BOI).* – The Board of Investments hereinafter referred
21 to as the “BOI” shall implement the provisions of this Act except as otherwise provided therein.

1
2 SECTION. 4. *Relationship of IPAs with the BOI and Other Government Agencies.* – IPAs shall
3 maintain their functions as provided for in their respective Charters except to the extent modified
4 by the provisions of this Act. *Provided*, however that, the IPAs not covered by this Act may opt
5 to administer the incentives provided hereunder and apply the relevant policies adopted by the
6 Board.

7
8 For purposes of efficient database on investment statistics and other investment data and
9 information, all IPAs are required to submit to the BOI all investment data and information and
10 such other related data semi-annually or as often as may be required.

11
12 SECTION. 5. *Composition of the BOI Board of Governors.* – The BOI Board of Governors,
13 hereinafter referred to as the “Board”, shall be composed of nine (9) governors: the Secretary of
14 the Department of Trade and Industry (DTI), the Secretary of the Department of Finance (DOF),
15 the Director General of the National Economic Development Authority (NEDA), the DTI
16 Undersecretary for Investments and Industry Group (IIG), the DTI Undersecretary of
17 International Trade Group (ITG), the DTI Undersecretary of Regional Operations Group (ROG)
18 and three (3) representatives from the private sector. The Secretary of the DTI shall concurrently
19 be the Chairman of the BOI and the DTI Undersecretary for Investments and Industry Group
20 shall be the concurrent Vice Chairman and Managing Governor of the BOI. The three (3)
21 representatives from the private sector shall be appointed by the President for a term not
22 exceeding four (4) years: *Provided*, That a governor may be reappointed: *Provided, further*, That
23 a governor shall serve as such until his successor shall have been appointed and qualified.

24
25 The Managing Governor of the BOI shall be assisted by four (4) career officials with the rank of
26 Deputy Managing Governor, who shall be appointed by the Board, upon the recommendation of
27 the Managing Governor.

28
29 Members of the Board shall receive a reasonable *per diem* for every meeting attended.

30
31 SECTION. 6. *Qualifications of the BOI Board of Governors.* – The governors of the BOI shall
32 be citizens of the Philippines, at least thirty-five (35) years old, with proven probity and integrity,
33 of good moral character and of recognized competence in law, economics, business, marketing,
34 advertising, management or its equivalent.

35
36 SECTION. 7. *Powers and Functions of the Board.* – The Board shall be responsible for industry
37 development, policy formulation, investment promotion, and investment facilitation and
38 aftercare services. It shall hold meetings at least once a week for the conduct of business or as

1 often as may be necessary upon the instance of the Chairman or the Managing Governor. The
2 notice of regular and special meetings shall be given to all the members of the Board and the
3 presence of five (5) members shall constitute a quorum and the affirmative vote of five (5)
4 members in a meeting validly held shall be necessary to exercise its powers and perform its
5 functions which shall include the following:

- 6
- 7 a. Formulate an evolving National Framework for Investment Promotions (NFIP) and
8 promulgate its rules, regulations and policies that will govern all Investments Promotion
9 Agencies (IPAs);
- 10 b. Formulate an evolving National Framework for Industrial Development (NFID) and
11 promulgate its rules, regulations and policies in consultation with the private sector. The
12 NFID shall identify key emerging markets or industries that will substantially enhance
13 the competitiveness of the country, which include among others, research and
14 development, agricultural technology, biomedical devices and systems, renewable
15 energy, logistics and information communications and technologies;
- 16 c. Promulgate rules, regulations and policies on the administration of incentives which the
17 IPAs are mandated to implement;
- 18 d. Plan and implement industrial programs to hasten economic development including those
19 relating to the implementation of international trade, investment and industry-related
20 environmental agreements and protocols;
- 21 e. Prepare the Investments Priorities Plan (IPP) in accordance with Title III, Chapter I of
22 this Act;
- 23 f. Formulate rationalization programs for certain industries whose operation may result in
24 dislocation, oversupply or inefficient use of resources that impedes economic growth. In
25 the interest of national development and upon approval of the President, the Board may
26 restrict, either totally or partially, the importation or exportation of any equipment, raw
27 materials, intermediate goods or finished goods;
- 28 g. Formulate and negotiate positions for bilateral, multilateral and regional investments and
29 investment-related trade agreements and/or arrangements;
- 30 h. Establish the Investment Promotion Action Center (*i*-PAC);
- 31 i. Establish and operate regional investment centers in the Philippines, and establish and
32 operate overseas investment offices;
- 33 j. Extend assistance to micro and small enterprises in the preparation of feasibility and
34 other pre-investment project studies;
- 35 k. Process and approve, deny, suspend, revoke applications for registration, imposing terms
36 and conditions as it may deem necessary to promote the purposes of this Act, including
37 the refund and forfeiture of incentives when appropriate, restricting availment of
38 incentives not needed by the project as determined by the Board, requiring performance

bonds from BOI-accredited bonding companies, and payment of application, registration, publication and other fees and when warranted may limit the availment of Income Tax Holiday incentive to the extent that the investors' country law or treaties with the Philippines allows credit for taxes deemed paid in the Philippines;

1. Recommend to the President the suspension of the nationality requirement provided for in this Act in appropriate cases such as those involving bilateral, multilateral, or regional investments, or other trading agreements of the Philippines with other countries; or when the existing laws of another country where the investor comes from provides no nationality restrictions for Filipino investors or provides for reciprocal nationality accommodations;
- m. In meritorious cases, waive, condone or reduce fines or penalties imposed on registered enterprises, *provided, that* in case of reduction, the minimum compromise rate shall not be less than 40 % of the basic assessed fines or penalties;
- n. Enter into agreements with other agencies for the simplification of systems and procedures involved in the promotion of investments, operation of zones and registered enterprises, and other activities necessary for the effective implementation of this Act;
- o. Gather, consolidate and monitor incentives data and information from all IPAs and other concerned government agencies for submission to the President and Congress;
- p. Regulate the implementation of Regional Operating Headquarters, Retail Trade Law, Long-Term Lease and other laws as mandated;
- q. Cancel registration or suspend the availment incentives of a registered enterprise and/or require the refund of incentives, including interests and monetary penalties, when warranted;
- r. Mediate controversies and/or disputes involving investors;
- s. After due hearing, decide controversies that may arise between BOI-registered enterprises therein arising from the implementation of this Act. The Board shall have the power to subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence, and to cite for contempt any person or organization that fails to comply with the aforestated processes: *Provided*, That the Board may grant immunity from prosecution to any person whose testimony or documents or other evidence is necessary or relevant to the case: *Provided further*, That a registered enterprise may file a motion for reconsideration of a decision or final order within fifteen (15) days from notice thereof, with proof of service on the parties affected. No second motion for reconsideration of a decision or final order by the same party shall be entertained;
- t. Act on investment projects covered by bilateral, multilateral, and regional agreements subject to rules and guidelines to be formulated by the Board;
- u. Determine the organizational structure of the BOI; and

- 1 v. Exercise all the powers necessary or incidental to attain the purposes of this Act and other
2 laws vesting additional functions on the Board.

3
4 SECTION. 8. *Powers and Duties of the Managing Governor.* – The Managing Governor shall
5 have the following powers and duties:

- 6
7 a. Preside over the meetings of the Board in the absence of the Chairman;
8 b. Prepare the Agenda for the meetings of the Board and submit for its consideration and
9 approval the policies and measures which the Chairman deems necessary and proper to
10 carry out the provisions of this Act;
11 c. Recommend to the Board such policies and measures he may deem necessary to carry out
12 the objectives of this Act;
13 d. Assist registered enterprises and prospective investors to have their papers processed with
14 dispatch by all government offices, agencies, instrumentalities and financial institutions;
15 e. Act as liaison to investors, government, affiliated organizations and other stakeholders;
16 f. Coordinate the policies, plans and programs of the BOI. As such, he shall exercise
17 overall supervision and general direction on the operations and affairs of the BOI;
18 g. Perform the other duties of the Chairman in the absence of the latter, and such other
19 duties as may be assigned to him by the Board of Governors; and
20 h. Generally, to exercise such other powers and perform such other duties as may be
21 directed by the Board from time to time.

22
23 SECTION 9. *BOI Personnel.* – All positions in the BOI shall be governed by compensation,
24 position classification systems, and qualification standards approved by the Board based on a
25 comprehensive job analysis and audit of actual duties and responsibilities. The compensation
26 plan shall be comparable with the prevailing compensation plan of other IPAs such as Philippine
27 Economic Zone Authority (PEZA) and shall be subject to periodic review by the Board without
28 prejudice to yearly merit reviews or increases based on productivity. The BOI shall therefore be
29 exempt from existing laws, rules and regulations on compensation, position classification and
30 qualification standards.

31
32 For this purpose, the current BOI shall be reorganized in accordance with its mandate provided
33 under this Act. Those who will opt to retire from government service shall be entitled to three (3)
34 months pay for every year of service and to gratuities and benefits provided for under existing
35 laws. The Department of Budget and Management shall allocate an appropriate budget for the
36 retirement and separation pay.

37
38 SECTION. 10. *The Investment Promotion Action Center, (i-PAC).* – There is hereby created an i-

PAC at the BOI that shall serve as the link to all government agencies to facilitate entry, retention, expansion and diversification of investments. The BOI shall serve as the Coordinator of the i-PAC.

The *i*-PAC shall be composed of all government agencies involved in the establishment or operation of business including, but not limited to, all IPAs, the Securities and Exchange Commission (SEC), the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), the Bureau of Immigration (BI), the Department of Trade and Industry (DTI), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), the Department of Labor and Employment (DOLE), the Department of Foreign Affairs (DFA), the Department of Energy (DOE), the Department of Public Works and Highways (DPWH), the Department of Agrarian Reform (DAR) and such other agencies as may be determined by the Board. The government agencies involved shall designate representatives to the *i*-PAC that are clothed with authority to act and approve/deny any matter relative to their respective agencies.

SECTION. 11. *Powers and Functions of the i-PAC.* – The *i*-PAC shall exercise and perform the following powers and functions:

- a. Provide advice, guidance, information and procedure on various laws, rules and regulations governing investments and the conduct of business in the Philippines.
- b. Ensure that all investment-related requirements are acted upon within ten (10) working days.
- c. Recommend the streamlining of existing procedures to ensure that all frontline agencies, dealing with the operation of business, perform their tasks for identified government to business transactions.
- d. Establish an on-line investment facilitation system.
- e. Act, in coordination with appropriate government offices or agencies, such as the Office of the Ombudsman and the Civil Service Commission (CSC), on complaints filed by any investor or potential investor against any public official or employee or any office, agency or instrumentality, including local government units (LGUs) and officials, as well as any government-owned and -controlled corporation (GOCC), in connection with any act or duty required by law to facilitate the entry of local and foreign investments.
- f. Perform such other functions as may be directed by the Board.

SECTION. 12. *Honoraria and Allowances.* – The Board shall provide for reasonable honoraria and allowances for the *i*-PAC members and its personnel.

1 TITLE II

2 DEFINITION OF TERMS

3
4 SECTION. 13. *Definition of Terms.* – As used herein, the following shall mean:

- 5
6 a. “*BOP*” or the “*Board*” shall refer to the Board of Investments created under this Act.
7
8 b. “*Investments Promotion Agencies (IPAs)*” shall include the BOI, the Philippine
9 Economic Zone Authority (PEZA), the Bases Conversion Development Authority
10 (BCDA), the Subic Bay Metropolitan Authority (SBMA), the Clark Development
11 Corporation (CDC), the John Hay Management Corporation (JHMC), the Poro Point
12 Management Corporation (PPMC), and all other IPAs that may be created by law.
13
14 c. “*Registered Enterprise*” shall mean any individual, partnership, corporation, Philippine
15 branch of a foreign corporation or other entity incorporated and/or organized and existing
16 under Philippine laws and registered with an IPA, in accordance with this Act: *Provided,*
17 *however,* That the term “registered enterprise” shall not include any of the following
18 service enterprises such as, but not limited to, those engaged in customs brokerage,
19 trucking/forwarding services, janitorial services, security services, insurance and/or
20 banking and other financial services, consumers cooperatives, credit unions, consultancy
21 services, restaurants or such other services, within the economic zones, as may be
22 determined by the IPA Board, duly accredited and/or licensed by any of the IPAs and
23 whose income derived within the economic zones shall be subject to taxes under the
24 National Internal Revenue Code (NIRC) of 1997, as amended.
25
26 d. “*Investments Priorities Plan (IPP)*” shall refer to the list of industries, services and other
27 economic activities, which will be eligible for incentives under this Act, prepared and
28 determined as priority or preferred activities in accordance with Title III, Chapter 1 of
29 this Act.
30
31 e. “*New product or service*” shall refer to any product or service not locally or not
32 sufficiently manufactured/rendered to meet the demand.
33
34 f. “*Gross income earned*” refers to gross sales or gross receipts derived from the registered
35 activity less sales returns, discounts and allowances and cost of goods sold.
36
37 g. “*Tax credit*” shall mean any credits against taxes and/or duties equal to those actually
38 paid or would have been paid. Tax credit certificate shall be issued by the Secretary of

Finance or his representative, or the concerned IPA, if so delegated by the Secretary of Finance. The tax credit certificate issued pursuant to this Act shall not be transferable to another registered enterprise under this Act. In case the industry is in a state of distress, as declared by the Board, the tax credit certificate held by enterprises of such distressed industry shall be freely transferable. The tax credit shall be valid only for a period of five (5) years from the date of issuance. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government, except withholding tax.

- h. *“Export sales of goods”* shall mean the sales revenues paid for in freely convertible foreign currency, determined from invoices, bills of lading, inward letters of credit, landing certificates, or other commercial documents, of the following:
- 1) the sale and actual shipment of goods from the Philippines to a foreign country by a registered enterprise;
 - 2) sales of goods to an export enterprise registered in accordance with this Act; to diplomatic missions and to agencies or institutions allowed to import said goods tax and duty-free; to international shipping or international air transport operations; and to foreign military aircraft or seacraft;
 - 3) sales to a nonresident buyer for delivery to a resident local export enterprise of capital equipment, raw materials, production supplies, packaging materials and other production requirements needed for the registered activity of the export enterprise; or
 - 4) sales of goods to a nonresident buyer, except automobiles and non-essential goods, manufactured or processed in the Philippines, for delivery to a resident in the Philippines: *Provided*, That they are paid for in acceptable foreign currency.

Provided, That in the case of paragraph (2) above, only sales to an export enterprise of capital equipment, raw materials, production supplies, packaging materials and other production requirements needed for the registered activity of the export enterprise; and sales to international sea or air transport operations of goods, equipment, spare parts and supplies, except fuel, to be used in the aircraft or seacraft and capital equipment needed for the shipping or air transport operations, shall be entitled to incentives for export enterprises under this Act.

Sales of locally manufactured or assembled goods for household and personal use under the Internal Export Program and similar programs of the government shall be deemed as “export sales”.

1 i. “*Export sales of services*” shall mean the sales revenues or receipts, determined from
2 contracts, invoices, vouchers, official receipts, or other commercial documents of the
3 following:

- 4 1) services rendered for clients abroad by registered enterprises;
5 2) services rendered for an export enterprise registered in accordance with this Act; to
6 diplomatic missions and to other agencies or institutions with tax and duty-free
7 privileges;
8 3) services rendered to international airlines or shipping lines, or foreign military
9 aircraft or seacraft, or information and communication technology enterprises, even
10 if rendered locally.

11
12 *Provided*, That in the case of paragraph (2) above, only services for an export enterprise
13 performed by subcontractors and/or contractors in the manufacture or processing of
14 goods; other services necessary for the registered activity of an export enterprise; and in
15 the case of paragraph (3), only services for the overhaul, repair and maintenance for
16 international shipping or air transport operations, and foreign military aircraft or seacraft,
17 shall be entitled to incentives for export enterprises under this Act.

18
19 The foregoing notwithstanding, services rendered locally by registered enterprises that
20 are paid for in freely convertible foreign currency shall be considered as “export sales”.

21
22 j. An “*export enterprise*” shall mean a registered enterprise which is a manufacturer,
23 processor or service provider and whose export sale of its products or services exceeds
24 seventy percent (70%) of its total annual production of the preceding taxable year. The
25 export requirement herein provided may be reduced, but shall not be less than fifty
26 (50%), in meritorious cases under such conditions as the Board may determine.

27
28 An export trader that buys and sells for its own account products of micro and small
29 enterprises and earns one hundred percent (100%) of its annual sales from exports of the
30 same shall be deemed to be an export enterprise.

31
32 k. A “*domestic enterprise*” shall mean a registered enterprise, which produces goods for
33 sale or renders services exclusively to the domestic market or does not comply with the
34 minimum export requirement of an export enterprise.

35
36 l. “*Service enterprise*” is an enterprise engaged or proposing to engage in rendering
37 technical, professional or other services listed in the IPP.
38

1 Service enterprise that earns its revenues in foreign currency generated from nonresident
2 clients shall be entitled to the incentives provided to an “export” enterprise.

3
4 m. “*Source documents*” shall refer to input materials and documents reasonably needed by
5 the registered enterprise such as, but not limited to, books, directories, magazines,
6 newspapers, brochures, pamphlets, medical records or files, legal records or files,
7 instruction materials, drawings, blueprints or outlines.

8
9 n. “*Processing*” shall mean converting raw materials into marketable form through physical,
10 mechanical, chemical, electrical, biochemical, biological or other means, or by a special
11 treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or
12 desiccating, quick freezing, that results in a change in the nature or state of the products.
13 Processing shall include assembly provided that a distinct or new product is formed.
14 Mere packing or packaging shall not constitute processing.

15
16 o. “*ECOZONES*” or “*Special Economic Zones (SEZ)*” shall refer to selected areas with
17 highly developed or which have the potential to be developed into agro-industrial,
18 industrial, supply chain city, information technology, tourist/recreational, commercial,
19 banking, investment and financial centers, retirement and medical zones whose metes and
20 bounds are fixed or delimited by presidential proclamations. An ecozone may contain
21 any or all of the following: industrial estates (IEs), export processing zones (EPZs),
22 supply chain cities, ICT parks and centers, free trade zones and tourism estates: *Provided,*
23 *however,* That areas where mining operations are undertaken shall not be declared as
24 ecozones.

25
26 p. “*Ecozone developer*” shall refer to a business entity duly registered with the PEZA or the
27 BOI, as the case may be, to develop, operate and maintain an ecozone that will put up the
28 required infrastructure facilities and utilities, to include among others, light and power
29 system, water supply and distribution system, sewerage and drainage system, pollution
30 control devices, communication facilities, paved road network, administration building,
31 standard factory buildings, and other facilities as may be required by enterprises
32 registered with the PEZA.

33
34 q. “*Export Processing Zone (EPZ)*” or “*Export Zone*” shall refer to a specialized industrial
35 estate located physically and/or administratively outside the customs territory and
36 predominantly oriented to export production.

- 1 r. “*Freeport*” is an isolated and policed area adjacent to a port of entry as defined by
2 Section 3519 of the Tariff and Customs Code, which shall be operated and managed as a
3 separate customs territory to ensure free flow or movement of goods, except those
4 expressly prohibited by law, within, into and exported out in the freeport zone where
5 imported goods may be unloaded for immediate transshipment or stored, repacked,
6 sorted, mixed or otherwise manipulated without being subject to taxes and duties.
7
- 8 s. “*Tourism estate*” is a tract of land with defined boundaries, suitable for development into
9 an integrated resort complex to render tourism services for both local and foreign tourists,
10 travelers and investors, with prescribed carrying capacities, of tourist facilities and
11 activities such as, but not limited to, sport, gaming and recreation centers,
12 accommodations including hotels, apartelles, tourist inns/villas, pension houses,
13 convention and cultural facilities, food and beverage outlets, commercial establishments
14 and other special interest and attraction activities/establishments, and provided with
15 roads, water supply facilities, power distribution facilities, drainage and sewage systems,
16 and other necessary infrastructures and facilities. A tourism estate shall be under unified
17 and continuous management, and can either be a component of an ecozone or the whole
18 ecozone itself.
19
- 20 t. “*Information and Communications Technology (ICT) park*” or “*ICT park*” shall refer to
21 an area which has been developed into an integrated development complex capable of
22 providing infrastructure and other support facilities required by ICT enterprises, as well
23 as amenities required by professionals and workers involved in ICT enterprises, or easy
24 access to such amenities.
25
- 26 u. “*ICT center*” shall refer to a building which has been developed by public or private
27 corporate entities to provide infrastructure and other support facilities required by ICT
28 enterprises, as well as amenities required by professionals and workers involved in ICT
29 enterprises, or easy access to such amenities.
30
- 31 v. “*Capital equipment*” refers to machinery, equipment, major components thereof, spare
32 parts, accessories, tools, devices, apparatus, fixtures, fittings and accompaniments which
33 are directly and/or reasonably needed in the registered activity of the enterprise and those
34 required for pollution abatement and control, cleaner production and water reduction/
35 conservation.
36
- 37 w. “*Less Developed Area (LDA)*” shall refer to an area that is included in the list prepared by
38 the BOI, after consultation with appropriate government agencies. Such listing shall take

1 into consideration the following criteria: low per capita gross domestic product, low level
2 of investments, high rate of unemployment and/or underemployment and low level of
3 infrastructure development including its accessibility to developed urban centers.

4
5 TITLE III
6 INVESTMENTS WITH INCENTIVES
7 CHAPTER I
8 QUALIFIED ACTIVITIES
9

10 SECTION. 14. *Investments Priorities Plan (IPP)*. – The BOI, upon consultation with the Office
11 of the President, concerned IPAs and appropriate government agencies and the private sector,
12 shall formulate the IPP to be submitted to the President for his/her approval.

13
14 In the listing of the activity in the IPP, the following shall be complied with:

- 15
16 a. The activity shall be covered by the current Medium Term Philippine Development Plan
17 (MTPDP) and Medium Term Philippine Investment Plan (MTPIP) or its equivalent;
18
19 b. The activity shall satisfy the following conditions:
20 1) Substantial amount of investments;
21 2) Considerable generation of employment;
22 3) Use of modern or new technology; or
23 4) Installation of adequate environmental protection systems;
24

25 *Provided*, That items b(1) and b(4) above shall be present in all activities, and the
26 threshold amount of investments and employment generation required for a specific
27 activity shall be subject to a periodic review every three (3) years taking into
28 consideration international standards and other indicators.

- 29
30 c. The activity must comply with the specific qualification requirements and/or conditions
31 for a particular sector or industry as set by the appropriate government agency and such
32 other conditions as may be determined.
33

34 SECTION. 15. *Amendments*. – Subject to publication requirements and the criteria for
35 investment priority determination, the Board may, at any time, include additional areas in the
36 IPP, alter any of the terms of the declaration of an investment area, and temporarily or
37 permanently suspend activities on the IPP if it considers that such activity is no longer a priority.
38 In no case, however, shall any amendment of the IPP impair the incentives conferred on a

1 registered enterprise. The Board shall not accept applications in an area of investment prior to
2 the approval of the same as a preferred area or after approval of its deletion as a preferred area of
3 investment in the IPP.

4
5 SECTION. 16. *Publication.* – Upon approval of the IPP, in whole or in part, or upon approval of
6 an amendment thereof, the IPP or the amendment, specifying and declaring the areas of
7 investment shall be published in at least one (1) newspaper of general circulation and all such
8 areas shall be open for application until publication of an amendment or deletion thereof.

9
10 SECTION. 17. *Strategic Projects.* – The President, upon recommendation of the Board, may
11 allow registration of a strategic project that may not be listed in the IPP, but will locate in the
12 country as a result of stiff competition with other countries.

13
14 A strategic project is a project that exhibits high social economic returns and requires large
15 investments that will significantly contribute to the country's economic development. In the
16 exercise of this authority, any three (3) of the following criteria shall be taken into account: (1)
17 large capital investments; (2) generate sizeable employment; (3) use of new and internationally
18 accepted high level of technology; and (4) creation of value-added.

19
20 Notwithstanding the preceding paragraphs of this Section or any law to the contrary, a project
21 which shall lead to significant improvements in productivity and value added and that will (a)
22 produce or manufacture new, emerging and technologically advanced product, or (b) involve
23 breakthrough process innovation, or (c) involve new and innovative service, shall also be
24 deemed as "strategic project".

25
26 CHAPTER II
27 INCENTIVES TO REGISTERED ENTERPRISES

28 SECTION 18. *General Incentive Provision.*– The incentives provided in this Act may be availed
29 of by the registered enterprise to the extent of their registered activity to be reckoned from the
30 start of commercial operation; *Provided that*, the election of income tax-based incentives shall be
31 at the time of application for registration; *Provided further*, that such election, once made, shall
32 be final; *Provided finally*, that the incentives may be limited based on the project's net value-
33 added, job generation, multiplier effect and measured capacity as determined by the Board or
34 IPAs.

35 SECTION. 19. *Incentives to Registered Export Enterprises.* – Registered Export Enterprises
36 shall have the following incentives; *Provided that*, they meet the minimum export requirement:

1 a. *Income tax-based incentive options for registered export enterprises located inside or*
2 *outside ecozones or free ports. -*

- 3 1) Income Tax Holiday (ITH) for a period of six years (6) years and thereafter, five
4 percent (5%) tax on Gross Income Earned (GIE), in lieu of all national and local taxes
5 except real property tax (RPT) on land owned by private developers, for a period of
6 nineteen (19) years; or
- 7 2) Five Percent (5%) Tax on GIE, in lieu of all national and local taxes except RPT on
8 land owned by private developers, for a period of twenty five years (25) years; or
- 9 3) Fifty Percent (50%) reduction from corporate income tax for a period of twenty-five
10 (25) years.

11
12 b. *Value-added Tax (VAT) and Customs Duty treatment on Importation of Capital*
13 *Equipment and Raw Materials. -*

14 1) Located Inside an Economic Zone and/or Freeport Zone

- 15 i. Exemption from VAT and customs duty on importation of capital equipment,
16 including consignment thereof subject to Section 29 of this Act;
- 17 ii. Exemption from VAT and customs duty on importation of raw materials,
18 supplies, spare parts and semi-finished products used exclusively by the
19 registered export enterprise in its registered activity;

20
21 2) Located Outside Economic and/or Freeport Zones

- 22 i. Exemption from VAT and customs duty on importation of capital equipment,
23 including consignment thereof subject to Section 29 of this Act.
- 24 ii. Exemption from VAT and customs duty on importation of raw materials,
25 supplies, spare parts and semi-finished products used exclusively by the
26 registered export enterprise in its registered activity provided that such
27 registered export enterprise is operating a Customs Bonded Manufacturing
28 Warehouse (CBMW) or an accredited user of a Customs Common Bonded
29 Manufacturing Warehouse (CCBMW).
- 30 iii. Refund of VAT and customs duty on importation of raw materials, supplies,
31 spare parts and semi-finished products used exclusively by the registered export
32 enterprise in its registered activity if the registered export enterprise is not
33 operating a CBMW or an accredited user of a CCBMW.

34
35 c. *Tax and Duty Free Importation of Source Documents. -* The importation of source
36 documents by registered export enterprises shall be eligible for VAT and customs duty
37 exemption. The tax incentive may be granted to the registered export enterprise for a
38 period of ten (10) years.

1
2 *d. Zero Percent (0%) Rate of VAT on the Sale by a Domestic Enterprise to a Registered*
3 *Export Enterprise.* – The provisions of law to the contrary notwithstanding, the sale by a
4 domestic enterprise of goods and/or services to a registered export enterprise, regardless
5 of the latter's location and whether enjoying the ITH, the Reduced Income Tax or the five
6 percent (5%) tax on GIE shall be subject to zero percent (0%) VAT rate: *Provided, That*
7 *such goods and/or services are required by registered export enterprise's activity.*

8
9 *e. Exemption from Wharfage Dues.* – The provisions of law to the contrary notwithstanding,
10 exports by a registered export enterprise shall be exempted from wharfage dues and
11 export taxes.

12
13 *f. Employment of Foreign Nationals.* – Subject to the provisions of Commonwealth Act No.
14 613, as amended, a registered export enterprise may employ foreign nationals in
15 managerial, technical or advisory positions.

16
17 Foreign nationals under employment contract within the purview of this incentive, their
18 spouses and unmarried children under twenty-one (21) years of age, who are not
19 excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted
20 to enter and reside in the Philippines during the period of employment of such foreign
21 nationals.

22
23 A registered enterprise shall train Filipinos as understudies of foreign nationals in
24 administrative, supervisory and technical skills and shall submit annual reports on such
25 training to the Board.

26
27 Notwithstanding any provision of the law to the contrary, the practice of profession by
28 foreign nationals shall be allowed inside an Ecozone or Freeport, subject to the following
29 conditions:

- 30 1) The foreign national shall secure the required permit from the Professional
31 Regulatory Commission to practice his profession;
32 2) The law of the country of that foreign national allows genuine reciprocity for
33 Filipinos to practice their profession thereto;
34 3) There is no competent, able and willing at the time of application to perform the
35 profession for which the foreign national is desired;
36 4) The foreign national shall train two Filipino understudies;

- 5) The ratio of foreign nationals *viz-a-viz* Filipinos practicing the same profession in a registered enterprise shall not exceed 1:5 and shall not in any case exceed 5% of the total workforce of the said registered enterprise;
- 6) The foreign national meets the conditions set forth under Section 25 (b), (c) and (d); and
- 7) The practice of profession of the foreign national in the Philippines shall not exceed a total of five years extendible for a limited period as determined by the Board.

SECTION. 20. *Tax Treatment and Other Incentives for Registered Enterprises in Ecozones and Freeport Zones.* – In addition to the applicable incentives provided under the preceding section on export incentives, registered enterprises locating in the Special Economic Zones and Freeport Zones shall be entitled to the following incentives:

a. *Tax Treatment of Merchandise in Ecozones or Freeports.* –

- 1) Except as otherwise provided in this Act, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the ecozones or freeports to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly, related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.
- 2) Merchandise purchased by a registered enterprise located in the ecozones or freeports from the customs territory, and subsequently brought into the ecozones or freeports, shall be considered as export sales and exportation thereof shall be entitled to the benefits allowed by law for such transaction.
- 3) Merchandise sent from the ecozones or freeports to the customs territory shall, whether or not combined with or made part of other articles likewise of local origin or manufactured in the Philippines while in the ecozones or freeports, be subject to internal revenue and customs laws of the Philippines as domestic goods sold, transferred or disposed of for local consumption. If the finished goods have imported components, the duties shall be based on the value of said imported materials, except when the final product is exempt.
- 4) Qualified merchandise or articles manufactured by registered ecozone or freeport locators, which are made available for sale in the domestic market shall be imposed the applicable ASEAN Common Effective Preferential Tariff (CEPT) rate, if qualified, or applicable tariff rates under bilateral or regional trade agreements, if qualified, or Most Favoured Nation (MFN) rate on imported raw materials and

MFN rates on non-qualified raw materials used in the manufacture of the qualified merchandise or articles. In case of bilateral agreements, the applicable rate shall be the agreed rate.

- 5) Domestic merchandise on which all internal revenue taxes have been paid, if subject thereto, and foreign merchandise previously imported on which duty or tax has been paid, or which have been admitted free of duty and tax, may be taken into the ecozones or freeports from the customs territory of the Philippines and be brought back thereto free of quotas, duty or tax.
- 6) Subject to such regulations respecting identity and safeguarding of the revenue as the concerned IPA may deem necessary when the identity of an article entered into the ecozones or freeports under the immediately preceding paragraph has been lost, such article when removed from the ecozones or freeports and taken to the customs territory shall be treated as foreign merchandise entering the country for the first time, under the provisions of the Tariff and Customs Code of the Philippines, as amended.
- 7) Articles produced or manufactured in the ecozones or freeports and exported therefrom shall, on subsequent importation into the customs territory, be subject to the import laws applicable to like articles manufactured in a foreign country.
- 8) Articles regulated by law for sale to the domestic market shall only be allowed to be used or consumed within the ecozones or freeports.
- 9) Unless the contrary is shown, merchandise taken out of the ecozones or freeports shall be considered, for tax purposes, to have been sent to customs territory.

Special Economic Zones declared by presidential proclamations or created by law may avail of the incentives provided herein as conferred by the appropriate IPA subject to such terms and conditions as may be provided by law.

b. *Tax Treatment of Services in the Ecozones or Freeports.* —

- 1) Sale of service by an entity from the customs territory to a registered ecozone or freeport enterprise or by a registered ecozone or freeport enterprise to another ecozone or freeport enterprise shall be treated as indirect export, and hence, shall not be subjected to internal revenue taxes for such transaction.
- 2) Sale of service by a registered ecozone or freeport enterprise to the customs territory shall be subject to the applicable internal revenue laws and regulations.

c. *Exemption from Local Taxes and Licenses.* — Notwithstanding the provisions of law to the contrary, zone and freeport registered enterprises shall, to the extent of their construction, operation or production inside the zone or freeport be exempt from the

1 payment of any and all local government imposts, fees, licenses or taxes except real
2 estate taxes which shall be collected by the Province/City/Municipality responsible for
3 the collection thereof under the provisions of the Real Property Tax Code: Provided,
4 That machineries owned by zone and freeport registered enterprises which are actually
5 installed and operated in the Zone for manufacturing, processing or for industrial
6 purposes shall not be subject to the payment of real estate taxes for the first three (3)
7 years of operation of such machineries: Provided, further, That fifty percent (50%) of the
8 proceeds of the real estate taxes collected from all real properties located in the Zone and
9 such other areas owned or administered by the Authority shall be remitted to the
10 Authority by the province/city/municipality responsible for the collection of such taxes
11 under the provisions of the Real Property Tax Code. All real estate taxes accruing to the
12 Authority as herein provided shall be expended for such community facilities, utilities
13 and/or services as the Authority may determine.
14

15 SECTION. 21. *Incentives for Registered Domestic Enterprises.* – Registered domestic
16 enterprises shall be qualified to the following incentives to the extent of their registered activity:
17

18 a. *Income tax-based incentive options*

- 19 1) ITH for a period of four (4) years; or
20 2) Fifty Percent (50%) reduction from corporate income tax for a period of fifteen (15)
21 years.
22

23 b. *VAT and Customs Duty Treatment on Importation of Capital Equipment*

- 24 1) Exemption from customs duty on importation of capital equipment, including
25 consignment subject to Section 29 of this Act; and
26 2) Refund of VAT on importation of capital equipment.
27

28 c. *Preferential Access to Financing and Acceptable Form of Collaterals.* – Registered
29 SMEs shall be accorded access to financing from government financial institutions at
30 preferential rates below the market rates. Further, capital goods acquired from loans
31 secured from government financial institutions shall be an acceptable form of collateral
32 for the same loan.
33

34 d. *Assistance in the Preparation of Project Study.* – Registered SMEs may be provided
35 assistance in the preparation of project study for purposes of registration under this Act.
36

1 e. *Employment of Foreign Nationals.* – Subject to the provisions of Section 25 of
2 Commonwealth Act No. 613, as amended, a registered domestic “strategic” enterprise
3 may employ foreign nationals in managerial, technical or advisory positions.
4

5 Foreign nationals under employment contract within the purview of this incentive, their
6 spouses and unmarried children under twenty-one (21) years of age, who are not
7 excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted
8 to enter and reside in the Philippines during the period of employment of such foreign
9 nationals.
10

11 A registered enterprise shall train Filipinos as understudies of foreign nationals in
12 administrative, supervisory and technical skills and shall submit annual reports on such
13 training to the Board.

14 SECTION. 22. *Incentives for Domestic “Strategic” Enterprises.* – Registered domestic
15 enterprises engaged in strategic projects, as defined under Section 17 of this Act may avail of the
16 following incentives, whenever applicable, to the extent of their registered activity:
17

18 a. *Income based incentive.* -

19 ITH for a period of eight (8) years and then fifty percent (50%) reduction from corporate
20 income tax for a period of seventeen (17) years.
21

22 b. *VAT and Customs Duty Treatment on Importation of Capital Equipment.* –

23 1) Exemption from customs duty on importation of capital equipment, including
24 consignment thereof subject to Section 31 of this Act; and

25 2) Refund of VAT on importation of capital equipment.
26

27 Notwithstanding (a) above, the President, upon recommendation of the Board, may grant to
28 highly strategic projects ITH for a period up to fifteen (15) years and thereafter, five percent
29 (5%) tax on GIE, in lieu of all national and local taxes except RPT on land owned by private
30 developers and such other incentives as may be determined; Provided that, such projects meets
31 all the following criteria:
32

33 a. Large capital investments of at least two billion US dollars (USD2 billion);

34 b. Generate sizeable employment of at least ten thousand (10,000) direct employees;

35 c. Use of new and internationally accepted high level of technology; and

36 d. Creation of value-added.
37

The amount of capital investment and employment generation shall be reviewed every five (5) years. In no case shall the requirements prescribed above be reduced.

SECTION. 23. *Incentives for Registered Domestic Enterprises in Less Developed Areas (LDAs).*

– Registered domestic enterprises located in LDAs shall have the following incentives:

a. Income based incentive options.-

- 1) ITH for a period of six (6) years; then ten percent (10%) Corporate Income Tax (CIT) rate for ten (10) years if located in 1st to 3rd class municipalities; twelve 12 years if located in 4th to 6th class municipalities; or
- 2) Five Percent (5%) Tax on GIE in lieu of all national and local taxes, except RPT on land owned by private developers, for a period of twenty five (25) years;

b. VAT and Customs Duty Treatment on Importation of Capital Equipment.--

- 1) Exemption from VAT and customs duty on importation of capital equipment, including consignment thereof subject to Section 29 of this Act; and
- 2) Refund of VAT on importation of capital equipment

c. Special Realty Tax Rates on Equipment and Machinery.- Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered enterprises actually and exclusively used shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value.

SECTION. 24. *Non-fiscal Incentives.* – Registered enterprises shall be entitled to the following non-fiscal incentives:

a. Time-bound Processing of Requirement for Doing Business. – All application for permits, licenses, authorization and other requirements necessary for doing business including application for renewals thereof shall be acted upon by the government agency concerned within ten (10) working days from official acceptance thereof, otherwise, the same shall be considered automatically approved. For this purpose, all government agencies shall be mandated to post in their respective offices, the procedural process, documentation requirements and the imposable fees to be paid to facilitate the processing of the application.

b. Simplification of Customs and Internal Revenue Procedures. – Customs procedures for the importation of equipment, spare parts, raw materials and supplies, exports of processed products by registered enterprises shall be simplified by the BOC.

1 The BIR shall simplify internal revenue procedures for the availment of incentives
2 provided herein for registered enterprises.

3
4 c. *Reduction and Harmonization of Documentary Requirements Submitted to Government*
5 *Agencies.* – The Board shall formulate guidelines for the reduction and harmonization of
6 related documentary requirements submitted to government agencies.

7
8 d. *Employment of Foreign Nationals.* – Subject to the provisions of Section 25 of
9 Commonwealth Act No. 613, as amended, a registered domestic “strategic” enterprise
10 may employ foreign nationals in managerial, technical or advisory positions.

11
12 Foreign nationals under employment contract within the purview of this incentive, their
13 spouses and unmarried children under twenty-one (21) years of age, who are not
14 excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted
15 to enter and reside in the Philippines during the period of employment of such foreign
16 nationals.

17
18 A registered enterprise shall train Filipinos as understudies of foreign nationals in
19 administrative, supervisory and technical skills and shall submit annual reports on such
20 training to the Board.

21
22 SECTION. 25. *Entitlement to Investor’s Visa by a Foreign National.* – A foreign national who
23 invests an amount of at least US\$150,000, either in cash and/or equipment, in a registered
24 enterprise shall be entitled to an Investor’s Visa: *Provided, That:*

- 25
26 a. He is at least eighteen (18) years of age;
27 b. He has not been convicted of a crime involving moral turpitude;
28 c. He is not afflicted with any loathsome, dangerous or contagious disease; and
29 d. He has not been institutionalized for any mental disorder or disability:

30
31 *Provided, further,* That as a holder of the Investor’s Visa, an alien shall be entitled to reside in
32 the Philippines while his investment subsists. For this purpose, he should submit an annual
33 report, in the form duly prescribed for the purpose, to prove that he has maintained his
34 investments in the country. Should said alien withdraw his investments from the Philippines,
35 then the Investor’s Visa issued to him shall automatically expire.

1 The minimum amount for investment provided for under this Act shall be made applicable to
2 visas granted to investors by the BOI, the PEZA, the SBMA, the CDC, the JHMC, the PPMC,
3 and other IPAs that may be created under the law.

4
5 The investment amount heretofore stated shall be subject to a periodic review every three (3)
6 years by the BOI.

7
8 CHAPTER III
9 AVAILMENT OF INCENTIVES

10 SECTION. 26. *Income Tax-Based Incentives.* – On availing the income tax-related incentives,
11 the BIR shall require a registered enterprise to secure a Certificate of Eligibility from the
12 appropriate IPA and attach the same to its Income Tax Return (ITR) or Annual Information
13 Return (AIR), whichever is applicable. Thereafter, the registered enterprise shall file its claim
14 with the appropriate IPA for validation. The IPA shall endorse the result of its validation to the
15 BIR after one year from the filing of a claim for ITH by the registered enterprise.

16 Failure to secure and attach the certification to the ITR or AIR, and/or file the ITH availment for
17 validation by the appropriate IPA shall cause the forfeiture of the ITH availment for the taxable
18 period.

19 Within six (6) months from the effectivity of this law, the BIR shall review its regulations on the
20 computation of GIE to ensure that only direct costs, or cost of goods sold and/or services
21 rendered, shall be deductible from gross revenues, and recommend stricter rules to the Secretary
22 of Finance if warranted.

23 SECTION 27. *Fifty Percent (50%) Reduction from Corporate Income Tax.* - In computing the
24 net taxable income for this incentive, the enterprise may be entitled to deduct the following
25 expenses, in addition to ordinary and necessary business expenses allowed under the NIRC of
26 1997, as amended:

27 a. *Enhanced Net Operating Loss Carry-over (NOLCO)* – The net operating loss of the
28 registered activity during the first five (5) years from the start of commercial operation
29 which had not been previously offset as deduction from gross income may be carried
30 over as deduction from gross income for the next five (5) consecutive taxable years
31 immediately following the year of such loss.

32
33 b. *Accelerated Depreciation* – Plant, machinery, and equipment that are reasonably needed
34 and actually used for the production and transport of goods and services may be
35 depreciated using a rate not exceeding twice the rate which would have been used had

the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of the NIRC of 1997, as amended.

c. *Double Deduction for Training Expenses* – Expenses incurred for local training given to employees for the development of skills, identified as necessary by the appropriate government agencies and approved by the concerned IPA, may be claimed as deduction from gross income to the extent of two hundred (200%) percent of the actual amount of expenses incurred: *Provided*, that the training expense shall be deductible on the taxable year the said training expenses were incurred: *Provided further*, that the concerned IPA shall issue the corresponding certificate of entitlement for its incentive upon filing of an application, otherwise, the training incentive shall be deemed waived.

d. *Double Deduction for Research and Development* – Expenses incurred for research and development conducted in the Philippines relating to the business shall entitle the registered enterprise to a special deduction from taxable income equivalent to two hundred (200%) percent of the total expenses over and above the allowable ordinary and business deductions for said expenses under the NIRC of 1997, as amended, *Provided*, that the expenses for research and development shall be deductible from gross income on the taxable year the said research and development expenses were incurred, *Provided further*, that the concerned IPA shall issue the corresponding certificate of entitlement for this incentive upon filing of an application, otherwise, the research and development incentive shall be deemed waived.

SECTION. 28. *VAT and Customs Duties Exemption on Capital Equipment*.- Importation of capital equipment, including consignment thereof, by registered enterprises may be exempted to the extent of one hundred percent (100%) of the VAT and customs duties provided that the following conditions are complied with:

- a. The capital equipment is directly and/or reasonably needed and will be used exclusively in the registered activity of the registered enterprise unless prior approval of the IPA is secured for the part time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on a specific equipment and machinery being permanently used for non-registered activities; They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices; and
- b. The approval of the IPA was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

1 Approval of the IPA must be secured before any sale, transfer or disposition of the
2 imported capital equipment is made: *Provided*, That if such sale, transfer or disposition
3 is made within the first five (5) years from date of importation, any of the following
4 conditions must be present:

- 5 1) If made to another enterprise enjoying tax and duty exemption on imported capital
6 equipment;
- 7 2) If made to another enterprise, upon payment of any taxes and duties due on the net
8 book value of the capital equipment to be sold;
- 9 3) Exportation of capital equipment, machinery, spare parts or source documents or
10 those required for pollution abatement and control; or
- 11 4) For reasons of proven technical obsolescence.

12 When the aforementioned sale, transfer or disposition is made under any of the
13 conditions provided for in the foregoing paragraphs other than paragraph (ii), the
14 registered export enterprise shall not pay the taxes and duties waived on such items:
15 *Provided further*, That if the registered enterprise sells, transfers or disposes the
16 aforementioned imported items without prior approval within five (5) years from the
17 date of importation, the registered enterprise and the vendee, transferee, or assignee shall
18 be solidarily liable to pay twice the amount of the tax and duty exemption given it:
19 *Provided finally*, That even if the sale, transfer or disposition of the capital equipment is
20 approved after five (5) years from the date of importation, the registered enterprise is
21 still liable to pay the taxes and duties based on the net book value of the capital
22 equipment if it has violated any of its registration terms and conditions. Otherwise, it
23 shall no longer be subject to the payment of the taxes and duties waived thereon.

24 SECTION. 29. *VAT Refund Mechanism on Importation of Capital Equipment and/or raw*
25 *materials.* – The VAT paid on imported capital equipment and/or raw materials may be
26 refunded provided that the imported items are used exclusively by the registered enterprise
27 pursuant to its registered activity.

28 In order to facilitate the immediate processing, clearance and release of VAT refund as provided
29 in this Act, a Trust Liability Account (TLA) is hereby authorized to be established in the Bureau
30 of Treasury (BTr). All VAT payments pertaining to the importation of registered enterprises of
31 capital equipment or raw materials shall be deposited in the TLA for the purpose of funding valid
32 VAT refund claims. The claims for VAT refund shall be made by the registered enterprise to the
33 DOF – One Stop Shop Tax Credit and Duty Drawback Center (DOF-OSS) which, in turn, will
34 process, approve and release the VAT refund.

1 A registered enterprise shall file a claim for VAT refund within one (1) year from the date of
2 actual exportation. All amounts paid but no longer allowed for refund shall immediately accrue
3 to the general fund of the National Government.

4 All applications for VAT refund shall be processed and acted upon within thirty (30) days after
5 submission of complete documents. The refund shall be in a form of cash or managers/cashiers
6 check payable to the registered export enterprise.

7 In cases of dispute under the VAT refund mechanism provided in this section, the pertinent
8 provisions of the National Internal Revenue Code of 1997, as amended, and the Tariff and
9 Customs Code of the Philippines, as amended, shall apply.

10 SECTION. 30. *Allocation of the Five Percent (5%) tax on GIE.* – The 5% tax on GIE shall be
11 paid and remitted by registered enterprises located inside the ecozone or freeport in accordance
12 with the existing sharing allocations provided in the IPAs respective charters. For registered
13 enterprises located outside the ecozones or free ports, the tax on GIE shall be paid and remitted
14 as follows:

15 2% to the National Government

16 2% to the Province or City where the project is located

17 1% to the Municipality or City where the project is located

18
19 CHAPTER IV
20 REGISTRATION OF ENTERPRISES
21

22 SECTION. 31. *Qualifications of a Registered Enterprise.* – To qualify for registration and be
23 entitled to avail of incentives, an applicant must satisfy the following conditions:
24

- 25 a. He is a citizen of the Philippines. In case the applicant is a natural person, or in case of a
26 corporation or partnership or any other association, regardless of nationality, it must be
27 organized and/or registered and existing under Philippine laws and that it must comply
28 with all the qualifications provided under this Act: *Provided, however,* That for purposes
29 of this Act and any law to the contrary notwithstanding, a natural-born ASEAN citizen or
30 a corporation effectively controlled by ASEAN citizens, or a corporation organized in
31 any ASEAN country shall be considered as a Philippine investor: *Provided, further,* That
32 the investment is made in an activity where the Constitution does not specifically require
33 Filipino participation;
- 34 b. The activity it will engage in is not within the activities reserved by the Constitution to
35 Philippine citizens or corporations owned and controlled by Philippine citizens;

- 1 c. It will engage in an activity included in the IPP or in an export activity;
- 2 d. It will infuse new investments. For this purpose “new investments” shall mean a new
3 enterprise infusing new investments and undertaking new activity. However, an
4 enterprise with an existing operation may be qualified for registration if it will undertake
5 new activity. Further, an existing enterprise undertaking the same activity that shall
6 infuse additional investments of at least fifty percent (50%) of its present actual
7 investments shall be deemed to be “new investments” but only to the extent of such
8 additional investments; and
- 9 e. If the applicant is engaged or proposes to engage in undertakings or activities other than
10 the registered projects, it shall install an accounting system adequate to identify the
11 investments, revenues, costs, and profits or losses of each registered project undertaken
12 by the enterprise separately from the aggregate investment, revenues, costs and profits or
13 losses of the whole enterprise, or to establish a separate corporation for each registered
14 project if the IPAs should so require to facilitate proper implementation of this Act.

15 16 CHAPTER V

17 BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

18
19 SECTION. 32. *Protection of Investments.* – All investors and registered enterprises are entitled
20 to the basic rights and guarantees provided in the Constitution. Among other rights recognized
21 by the Government of the Philippines are the following:

- 22
23 a. *Repatriation of Investments.* – In the case of foreign investments, the right to repatriate
24 the entire proceeds of the liquidation of the investment in the currency in which the
25 investment was originally made and at the exchange rate prevailing at the time of
26 repatriation, subject to the provisions of Section 74 of Republic Act No. 265, otherwise
27 known as the “Central Bank Act”, as amended.

28
29 For investments made pursuant to Executive Order No. 32, series of 1986, entitled
30 “Directing the Establishment of a Program for the Conversion of Philippine External
31 Debt into Equity Investments”, and its implementing rules and regulations, the
32 repatriation of investments shall be as provided therein.

- 33
34 b. *Remittance of Earnings.* – In the case of foreign investments, the right to remit earnings
35 from the investment in the currency in which the investment was originally made and at
36 the exchange rate prevailing at the time of remittance, subject to the provisions of Section
37 74 of Republic Act No. 265, as amended.

1 For investments made pursuant to Executive Order No. 32, series of 1986, and its
2 implementing rules and regulations, the remittance of earnings shall be as provided
3 therein.

4
5 c. *Foreign Loans and Contracts.* – The right to remit at the prevailing rate at the time of
6 remittance such sums as may be necessary to meet the payments of interest and principal
7 on foreign loans and foreign obligations arising from technological assistance contracts at
8 the exchange rate prevailing at the time of remittance, subject to the provisions of Section
9 74 of Republic Act No. 265, as amended.

10
11 d. *Freedom from Expropriation.* – There shall be no expropriation by the government of the
12 property represented by investments or of the property of the enterprise except for public
13 use, public interest, lawful purpose, or in the interest of national welfare or defense and
14 upon payment of just compensation. In such cases, foreign investors or enterprises shall
15 have the right to remit sums received as compensation for the expropriated property in
16 the currency in which the investment was originally made and at the exchange rate at the
17 time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as
18 amended.

19
20 e. *Requisition of Investment.* – There shall be no requisition of the property represented by
21 the investment or of the property of enterprises, except in the event of war or national
22 emergency and only for the duration thereof. Just compensation shall be determined and
23 paid either at the time of requisition or immediately after cessation of the state of war or
24 national emergency. Payments received as compensation for the requisitioned property
25 may be remitted in the currency in which the investment was originally made and at the
26 exchange rate prevailing at the time of remittance, subject to the provisions of Section 74
27 of Republic Act No. 265, as amended.

28 29 CHAPTER V

30 ADMINISTRATION OF INCENTIVES

31
32 SECTION 33. *Application for Registration.* – Applications shall be filed with an IPA or any
33 other government office authorized by the BOI to accept applications, recorded in a registration
34 book and the date appearing therein and stamped on the application shall be considered the date
35 of official acceptance.

1 All applications and their supporting documents filed under this Act shall be confidential and
2 shall not be disclosed to any person except with the consent of the applicant or upon an order of
3 a court of competent jurisdiction.

4
5 SECTION 34. *No Double Registration of Enterprises.* – Export or domestic enterprises shall not
6 be allowed to register their export or domestic activity in more than one (1) IPA. In the event that
7 an enterprise shall transfer to another IPA, only the remaining unutilized incentives shall be
8 granted to the enterprise or the transferee.

9
10 SECTION 35. *Criteria for Evaluation of Application.* – The following criteria shall be
11 considered in the evaluation of applications for registration under a preferred Act area:

- 12 a. Impact of the project on the overall economy;
- 13 b. Overall viability of the project;
- 14 c. The extent of employment generation;
- 15 d. The extent to which technological advances are applied and adopted to local conditions;
- 16 and
- 17 e. Such other criteria as the Board may determine.

18
19 SECTION 36. *Environmental Protection and Corporate Social Responsibility.* – Every
20 registered enterprise shall prepare a Program for Environmental Protection and Corporate Social
21 Responsibility (CSR) covering the period for its entitlement to fiscal incentives. Such Program
22 shall be undertaken on a per registration basis and shall be submitted as an accompanying
23 document to the application for registration to be submitted to the appropriate IPA.

24
25 The environmental program shall include activities such as, but not limited to, requiring
26 registered firms to plant trees.

27
28 For the CSR activities, the registered enterprise shall align such activities with the priority
29 programs and projects of the National Anti-Poverty Commission and other special laws such as
30 Republic Act No. 7942 or the Philippine Mining Act of 1995, as amended and DOE Energy
31 Regulation 1-94.

32
33 The amount spent for the CSR activities shall be reflected in the Notes to the Audited Financial
34 Statements.

35
36 SECTION 37. *Approval and Registration Procedures.* – The IPA is authorized to adopt rules and
37 regulations to facilitate action on applications filed with it; prescribe criteria for the evaluation of
38 applications; devise standard forms for the use of applicants and delegate to the regional offices

1 of the DTI the authority to receive and process applications for enterprises located in their
2 respective regions.

3
4 Applications filed shall be considered automatically approved if not acted upon by the IPA
5 within ten (10) working days from official acceptance thereof. Deferment by the IPA shall be
6 considered as an official action: *Provided, however,* That the IPA may defer action to a specific
7 application not more than twice: *Provided, finally,* That the IPA shall act upon the application
8 within ten (10) working days from compliance with the cause of the last deferment.

9
10 SECTION 38. *Certificate of Registration.* – A registered enterprise under this Act shall be issued
11 a Certificate of Registration under the seal of the IPA and the signature of its Chairman and/or
12 such other official or officer of the IPA as it may empower and designate for the purpose. The
13 certificate shall be in such form and style as the IPA may determine and shall state, among other
14 matters:

- 15 a. The name of the registered enterprise;
16 b. The activity in which the registered enterprise is proposing to engage; and
17 c. The terms and conditions to be observed by the registered enterprise by virtue of the
18 registration.

19
20 SECTION 39. *Extension of Period of Availment of Incentives.* – The availment period of the
21 incentives provided herein may be extended by the concerned IPA in the event that the registered
22 enterprise has suffered operational *force majeure* or losses that have impaired the viability of the
23 registered activity.

24
25 SECTION 40. *Administration of Incentives.* – The BOI and the other IPAs shall be responsible
26 for the administration of incentives granted to their respective registered enterprises.

27
28 TITLE IV
29 FINAL PROVISIONS

30
31 SECTION 41. *Vested Right.* – Registration of enterprises under existing investment laws shall
32 continue to be legally binding in accordance with the terms and conditions stated in their
33 respective certificates of registration. The registered enterprise may opt to be governed by the
34 provisions of this Act, provided that, only the remaining unutilized incentives shall be granted to
35 the said enterprise. In such case, said enterprise shall be required to surrender its certificate of
36 registration, which shall be deemed as an express waiver of their privilege to apply for and avail
37 of incentives under the incentives law under which they were previously registered.

1 SECTION 42. *Authority to Retain Funds.* – Registered enterprises availing of fiscal incentives,
2 except those located in LDAs, shall be assessed with a maximum fee of one percent (1%) of the
3 amount of incentives granted. Said amount shall automatically accrue to the BOI to be allotted
4 for investment promotions activities and other special projects to achieve the objectives of this
5 Act, subject to the usual accounting and auditing rules and procedures.

6
7 SECTION 43. *Protection of the Environment.* – The IPAs, in coordination with the appropriate
8 agencies, shall take appropriate steps to enact the proper measures for the protection of the
9 environment, and shall coordinate with the Environmental Management Bureau of the
10 Department of Environment and Natural Resources (EMB-DENR) to avoid undue delay in the
11 issuance of the required Environmental Compliance Certificate (ECC): *Provided, however,* That
12 applications for environmental clearances, permits, and/or licenses of registered enterprises shall
13 be acted upon by the appropriate government agency within thirty (30) days from date of official
14 acceptance. In the event that the appropriate government agency failed to act within the
15 aforementioned date, the application for the said environmental requirement shall be deemed
16 complied with for purposes of operation of the registered activity.

17
18 SECTION 44. *Appeals.* – All orders or decisions of the IPA in cases involving the provisions of
19 this Act shall immediately be executory. No appeal from the order or decision of the IPA by the
20 party adversely affected shall stay such order or decision, unless a *supersedeas* bond equivalent
21 to the amount stated in the order or decision is posted by the appellant.

22
23 All appeals involving cases decided by the IPA, except as provided in the next succeeding
24 paragraph, shall be filed with the Court of Appeals within fifteen (15) days from receipt of notice
25 of the order or decision or of the denial of the appellant's motion for new trial or reconsideration.
26 Within the same period, the aggrieved party may file a motion for reinvestigation or
27 reconsideration. Only one (1) motion for reconsideration shall be allowed, subject to the posting
28 of the aforementioned *supersedeas* bond which shall be limited to cash and/or surety bond from
29 a BOI-accredited bonding company.

30
31 In cases involving the denial of an application for registration, the party adversely affected by
32 such denial may appeal the same to the Office of the President within thirty (30) days from
33 receipt of notice of the order denying the application for registration. Where an appeal has been
34 filed, said order or decision shall be final and executory ninety (90) days after the perfection of
35 the appeal, unless reversed.

36
37 SECTION 45. *Suspension and Forfeiture of Incentives of Registered Enterprises, Refund and*
38 *Penalties.* – When there is probable cause to believe that the registered enterprise has violated its

1 registration terms and conditions, the BOI or the IPA may suspend its availment of incentives,
2 until proven otherwise.

3
4 The BOI or the IPA may impose fines and penalties and/or forfeit the incentives granted to its
5 registered enterprises whenever there are violations of the registration terms and conditions by
6 the latter, without prejudice to the cancellation of the registration of said enterprise.

7
8 In case of cancellation of the Certificate of Registration granted under this Act, the BOI or the
9 IPA may, in appropriate cases, require the refund of incentives availed of and impose
10 corresponding fines and penalties.

11
12 Any enterprise which violates any provision of this Act, its implementing rules and regulations,
13 the terms and conditions of its registration, or of any lawful directive of the BOI or the IPA, shall
14 be subject to a fine not to exceed One million pesos (P1,000,000.00), without prejudice to the
15 disapproval of its application for registration or cancellation of its registration: *Provided, That*
16 any willful commission of fraudulent misrepresentation in its application for registration or
17 submission of reports or gross violation of this Act and its implementing rules and regulations, a
18 fine of at least One million pesos (P1,000,000.00) but not to exceed Ten million pesos
19 (P10,000,000.00) shall be imposed, in addition to other penalties that may be imposed by the
20 BOI or the IPA.

21
22 The IPAs shall prepare a schedule of fines and penalties to be imposed on erring registered
23 enterprises depending on the violation incurred, which may be reduced in exceptional cases.

24
25 Responsible officers of such enterprises, including duly appointed external consultants-agents
26 who knowingly commit, aid or abet the commission of any of the acts mentioned above, shall be
27 subject to a fine of not less than One hundred thousand pesos (P100,000.00) but not more than
28 Three hundred thousand pesos (P300,000.00) without prejudice to disqualification from
29 appearing or doing business with the BOI or any IPA.

30
31 Government officers and employees who participate directly or indirectly in the commission of
32 the foregoing acts shall likewise be liable to a fine of not less than One hundred thousand pesos
33 (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00), in addition to any
34 criminal and administrative penalties imposable under the Civil Service Law, Revised Penal
35 Code, Republic Act No. 3019, otherwise known as the "Anti-Graft And Corrupt Practices Act",
36 Republic Act No. 6713, otherwise known as the "Code Of Conduct And Ethical Standards For
37 Public Officials", and other applicable laws.

1 If the offender is a foreign national, in addition to the imposable fines and penalties above, the
2 foregoing acts shall be grounds for his summary deportation.

3
4 SECTION 46. *Disposition of Savings from the Implementation of this Act.* – The total amount of
5 savings to be generated from the implementation of this Act shall be allocated annually and used
6 exclusively for the provision of scholarships under the CHED.

7
8 Such allocations shall be segregated as separate trust funds by the National Treasury and shall be
9 over and above the annual appropriations for similar purposes.

10
11 The earmarking provided under this provision shall be observed for ten (10) years starting from
12 the effectivity of this Act.

13
14 SECTION 47. *Implementing Rules and Regulations (IRR).* – The BOI, in coordination with
15 DOF, NEDA, the DBM, PEZA, other IPAs and other concerned government agencies, shall
16 promulgate rules and regulations to implement the intent and provisions of this Act within one
17 hundred twenty (120) days from the effectivity of this Act. Such rules and regulations shall take
18 effect fifteen (15) days following its publication in a newspaper of general circulation in the
19 Philippines.

20
21 SECTION 48. *Transitory Provision.* – Until the IRR of this Act take effect, the present rules and
22 regulations under the old investments laws shall apply to the extent that they are not inconsistent
23 with the provisions of this Act.

24
25 SECTION 49. *Separability Clause.* – The provisions of this Act are hereby declared to be
26 separable and, in the event any of such provisions is declared unconstitutional, the other
27 provisions which are not affected thereby, shall remain in force and effect.

28
29 SECTION 50. *Repealing Clause.* – The following provisions are hereby repealed:

- 30
31 a. Books I, V and VI of Executive Order No. 226, series of 1987, otherwise known as “The
32 Omnibus Investments Code of 1987”;
33 b. Sections 23 and 24 of Republic Act No. 7916, otherwise known as “An Act Providing for
34 the Legal Framework and Mechanisms for the Creation, Operation, Administration and
35 Coordination of Special Economic Zones in the Philippines, Creating for the Purpose the
36 Philippine Economic Zone Authority (PEZA), and for other Purposes (Special Economic
37 Zone Act of 1995)”;

- 1 c. Sections 17 and 18 of Presidential Decree No. 66, otherwise known as “Creating the
2 Export Processing Zone Authority and Revising Republic Act No. 5490”;
- 3 d. Fourth paragraph of Presidential Decree No. 529 (restored by FIRB Resolution 19-87),
4 otherwise known as “Granting to Petroleum Exploration Concessionaires under the
5 Petroleum Act of 1949 Exemption from Customs Duty and Compensating Tax on
6 Importations of Machinery and Equipment, Spare Parts and Materials Required for Their
7 Exploration Operations”;
- 8 e. Section 36(e) and (f) (1) and (2) of Presidential Decree No. 705, otherwise known as the
9 “Revised Forestry Code”;
- 10 f. Section 16 (c) and (d), and Section 17 of Republic Act No. 7844, otherwise known as
11 “An Act to Develop Exports as a Key Towards the Achievement of the National Goals
12 Towards the Year 2000 (Export Development Act of 1994)”;
- 13 g. Chapter XVI, Sections 90, 92, 93(a) and (b) of Republic Act No. 7492, otherwise known
14 as the “Philippine Mining Act of 1995”;
- 15 h. Section 9 of Republic Act No. 8479, otherwise known as the “Downstream Oil
16 Deregulation Act of 1998”;
- 17 i. Chapter II, Article II, Section 35(b), (c) and (d) of Republic Act No. 8550, otherwise
18 known as “The Philippine Fisheries Code of 1998”;
- 19 j. Section 5 of Proclamation No. 216, otherwise known as “Creating and Designating the
20 Area Covered by the Former Wallace Air Station and Contiguous Areas in Poro Point as
21 the Poro Point Special Economic and Freeport Zone and Transferring Lands to the Bases
22 Conversion Development Authority pursuant to Republic Act No. 7227”;
- 23 k. Section 6 of Proclamation No. 984, otherwise known as “Creating and Designating the
24 Municipality of Morong, Province of Bataan, including the Area of Philippine Refugee
25 Processing Center Complex (PRPCC) as the Morong Special Economic Zone pursuant to
26 Republic Act No. 7227 and transferring the land comprising the PRPCC to the Bases
27 Conversion Development Authority (BCDA)”;
- 28 l. Executive Order No. 528, series of 2006, Amending Executive Order No. 31, series of
29 2004, “Reducing the Rates of Duty on Capital Equipment, Spare Parts and Accessories
30 Imported by BOI-registered new and Expanding Enterprises”;
- 31 m. Section 1 of Executive Order No. 619, otherwise known as “Creating and Designating
32 Special Economic Zones Pursuant to Republic Act No. 7916, as Amended by Republic
33 Act No. 8784, in Relation to Republic Act No. 7227, as Amended by Republic Act No.
34 9400, Inside the Clark Freeport Zone”.
- 35 n. All other laws, acts, decrees, orders and issuances or provisions thereof inconsistent with
36 any of the provisions of this Act are hereby repealed or modified accordingly.
37

SECTION 51. *Survivor Clause.* – (a) The provisions of this Act to the contrary notwithstanding, the following laws, decrees and orders shall continue to have full force and effect:

- a. Section 1 of Republic Act No. 9281 entitled, “An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentives and its Mandated Funding Support, Amending for this Purpose Sections 109 and 112 of Republic Act No. 8435”;
- b. The provisions of this Act and Republic Act No. 9337 to the contrary notwithstanding, the following laws, decrees and orders shall continue to have full force and effect:
- c. Section 10(1) to (6) of Republic Act No. 7156, otherwise known as “An Act Granting Incentives to Mini-Hydro Electric Power Developers and for other Purposes (Mini-Hydroelectric Incentive Act)”;
- d. Sections 10, 16(a), (b) and (c) and Section 17(a) to (e) of Presidential Decree No. 972, as amended by Presidential Decree No. 1174, otherwise known as “Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal”;
- e. Section 12 of Presidential Decree No. 87, otherwise known as “An Act to Promote the Discovery and Production of Indigenous Petroleum, and Appropriating Funds Therefor”;
- f. Section 4(a) and (d) of Presidential Decree No. 1442, as restored by FIRB Resolution 19-87, otherwise known as “An Act to Promote the Exploration and Development of Geothermal Resources”; and
- g. Chapter II, Section 4(A), (B), (C) and (D); and Chapter VIII, Section 19(A), (B) and (C) of Republic Act No. 9295, Entitled “An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Shiprepair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and for other Purposes”:

Provided, That grantees or operators under their respective laws, decrees and orders shall have the option to avail of the incentives provided under this Act.

SECTION 52. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in a newspaper of general circulation, whichever is earlier.

Approved,