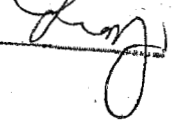


THIRTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

'04 JUN 30 P10:21

SENATE

RECEIVED BY: 

S. No. 1104

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**Introduced by Senator Franklin M. Drilon**

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**EXPLANATORY NOTE**

Under existing laws, the administration, implementation and issuance of investment promotion programs, the issuance of policies relative thereto, as well as the grant of fiscal and non-fiscal incentives to both foreign and domestic investors are being handled by various government agencies, such as the Board of Investments (BOI), the Philippine Economic Zone Authority (PEZA), the Subic Bay Metropolitan Authority (SBMA), the Clark Development Corporation (CDC), and several other agencies mandated under various laws to establish, maintain and manage special economic/freeport zones throughout the Philippines.

The system of having different agencies administer and implement various incentives laws creates a perception among foreign investors that the Philippines does not have unified and responsive investments promotion programs and policies. Hence, to establish uniform, harmonized, simplified, and consistent investment policies and programs to make the Philippine more competitive globally, it is imperative that only one governing statute regulate the incentives granted by the government.

The objective of the proposed bill is to harmonize and simplify the government's administration of programs and policies on the grant of fiscal and non-fiscal incentives to promote foreign and domestic investments in the Philippines. The proposed bill seeks to introduce fiscal and administrative amendments to the current Omnibus Investments Code of the Philippines.

The fiscal amendments will rationalize the grant of incentives that are clear, simple, time-bound, performance based and at par with the regional countries. The Investment Priorities Plan (IPP) will include industries with high comparative advantage, new product / service and export oriented products and will be valid for a period of three (3) years.

The incentives include the following:

- Income Tax Holiday (ITH) or Net Operating Loss Carry-Over (NOLCO)
  - Four years for all activities in the IPP and domestic-oriented activities located within NCR
  - Six years for export activities or domestic activities that produce/render new or distinct product/service and an additional two years for locators outside NCR

- Eight years for domestic activities with backward and forward linkages or strong potential for export development and listed in the IPP
  - An additional four years for Strategic Projects. Strategic projects shall be determined and approved as "STRATEGIC" by unanimous decision of an inter-agency committee composed of DTI, NEDA and DOF.
- Net Operating Loss Carry Over
    - Loss incurred within the first five (5) years from start of commercial operation may be carried over for the next five (5) years following such loss
    - Enterprises availing of ITH / NOLCO / additional deductions must first secure prior certification of entitlement from the concerned IPA
    - Filing of the ITR for the concerned registered enterprises shall be automatically extended for a period of sixty ( 60 ) days from the statutory filing without penalties, interests and surcharges
  - Five percent (5%) on gross income earned, in lieu of local and national taxes for enterprises located in the ecozones
  - Accelerated depreciation of plant, machinery, and equipment using a depreciation rate twice as fast as the normal rate
  - Capital Equipment Incentives
    - Tax and duty free importation of capital equipment for export-oriented enterprises
    - Domestic-oriented enterprises shall be entitled to importation of capital equipment subject to 1% duty and the prevailing VAT
    - Tax credit on domestic capital equipment
  - Raw Material Incentives
    - Tax credit shall be based on actual taxes and duties paid
    - Actual sales of BOI-registered domestic producers supplying to domestic companies enjoying tax and duty exemptions on their importations of capital equipment / machinery and raw materials shall be eligible for tax credit incentives
    - Application for tax credit must be acted upon within 90 days from official acceptance, otherwise, it shall be deemed automatically approved
  - Incentives on Breeding Stocks and Genetic Materials
  - Deferred Imposition of the Minimum Corporate Income Tax ( MCIT ) – the 2% MCIT shall be imposed to registered enterprises after full availment of all income tax- based incentives

*Additional Incentives for Ecozones*

- Exemption from real property tax on machinery and equipment
- Exemption from customs and internal laws and regulations or to local tax ordinances on merchandise brought into the zone

- Exemption from local taxes and licenses to the extent of their construction, operation or production inside the zone

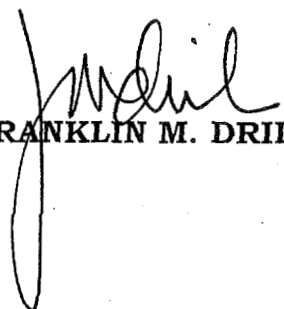
#### *Incentives to Foreign Nationals*

- Foreign stockholders of BOI- registered enterprises with investments of US\$ 150,000 are entitled to an indefinite Special Investor's Resident Visa and Foreign nationals granted with Special Non-immigrant's visa are entitled to the following incentives :
  - a) Exemption from obtaining alien certificate of registration and emigration clearance certificate ; and
  - b) Exemption from securing alien employment permits and all types of clearances, permits, licenses required by any government department or agency.

All Investment Promotion Agencies ( IPA ) will draw their incentives in the proposed bill. Likewise, the incentive administration policy of BOI will be applied uniformly by all IPAs. A cap on the total amount of incentives of a registered enterprise will be imposed. In addition, incentives without a specific period shall be enjoyed for a period of 20 years from date of registration or start of commercial operations, whichever is applicable except tax and duty free importation of capital equipment, machinery, spare parts, raw materials and supplies of enterprises registered with the ecozones.

Application for registration will now be filed with any other government office authorized by the Board to accept applications. The time frame for processing of registration has been shortened to 15 days and BOI registration shall be valid for a period of 20 years from commercial operation unless extended by the Board. Also, ASEAN nationals or firms effectively controlled by ASEAN shall be considered as Philippine nationals except when the proposed activity is reserved by the Constitution to Filipinos. Moreover, all registered projects are considered as preferred pioneer for purposes of tax treaties.

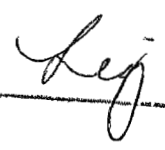
In view of the foregoing, immediate approval of this bill is earnestly sought.

  
**FRANKLIN M. DRILON**

THIRTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

'04 JUN 30 P10:22

SENATE

RECEIVED BY: 

S. No. 1104

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Introduced by Senator Franklin M. Drilon

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**THE INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES**

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

**Article 1. Title of the Code.** - This Code shall be known as "**The Investments and Incentives Code of the Philippines**". The incentives provided for in this Code shall govern all investment promotion agencies and sectors granting incentives under special laws.

**Article 2. Declaration of Investment Policies.** - The development of the national economy shall be promoted in consonance with the principles and objectives of achieving global competitiveness, fostering economic efficiency and encouraging and supporting investments that promote countrywide development and create productive and quality employment. Accordingly, the following are the declared policies of the State:

1. The State shall create and maintain a stable and market responsive investment regime that will encourage and support private sector investments;
2. The State shall extend fiscal and non-fiscal incentives to promote investments in activities that will significantly contribute to the achievement of the country's development objectives consistent with the medium term development plan of the Philippines.
3. The State shall grant incentives based on a system that is clear and simple to administer, time-bound, and performance-based taking into consideration the need to be competitive in attracting foreign investments vis-à-vis other countries in the region.
4. The State shall adopt an integrated, cohesive and comprehensive investment incentives law including a single administering agency, whenever applicable, that shall be

recognized as the governing statute on the grant of investment incentives. To this end, all investment incentive schemes shall be rationalized thereby harmonizing the fiscal incentives granted by all investment incentive giving agencies of government.

5. The State recognizes that industrial peace is an essential element of economic growth and it is the principal responsibility of the state to ensure that such condition prevails.
6. The State shall undertake investment promotion initiatives deemed crucial to the attainment of each investment goal and objective.

### **TITLE I - ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS**

**Article 3.** *The Board of Investments.* - The Board of Investments shall implement the provisions of this Code except as otherwise provided herein.

**Article 4.** *The Board of Governors; Management Committee -*

- A. *The Board of Governors.* - The Board of Investments shall be composed of nine (9) governors; The Secretary of Trade and Industry; the Director General of the National Economic Development Authority; the Secretary of Finance; three (3) Undersecretaries of Trade and Industry; and three (3) representatives from the private sector to be chosen by the President of the Philippines. The Secretary of Trade and Industry shall concurrently be the Chairman of the Board and the Undersecretary of the Department of Trade and Industry for Industry and Investments shall concurrently be the Vice Chairman of the Board and its Managing Governor. The other two (2) undersecretaries of Trade and Industry may designate their permanent representatives in cases of absence or unavailability. The three (3) representatives from the private sector shall be appointed by the President for a term of four (4) years, which may be extended by the President for another four (4) years: Provided, That one of the governors from the private sector shall serve the Board on a full-time basis; Provided, However, That upon the expiration of his term, a governor shall serve as such until his successor shall have been appointed and qualified: Provided further, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a governor of the Board in an acting capacity but all appointments shall be ad interim or permanent: Provided finally, That no governor from the private sector shall serve for more than eight (8) years.
- B. *The BOI Management Committee.* - The BOI Management Committee is hereby created and the Board of Governors

may delegate some of its functions thereto, in appropriate cases, in which case, the performance of such delegated functions shall no longer require Board approval and confirmation.

**Article 5. Qualifications of Governors of the Board.** – The governors of the Board shall be citizens of the Philippines, at least thirty (30) years old, of good moral character and of recognized competence in the fields of law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

**Article 6. Appointment of Board Personnel.** – The Board shall appoint its technical staff and other personnel subject to Civil Service law, rules and regulations.

**Article 7. Powers and Duties of the Board.** – The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary, generally once a week on such day as it may fix. Notice of regular and special meetings shall be given to all members of the Board. The presence of five (5) members of the Board shall constitute a quorum and the affirmative vote of five (5) members of the Board in a meeting validly held shall be necessary to exercise its powers and performs its duties, which shall be as follows:

- (1) Promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Code;
- (2) Process and approve, deny, suspend, revoke applications for registration with the Board, imposing terms and conditions as it may deem necessary to promote the objectives of this Code, including the refund and forfeiture of incentives when appropriate, restricting availment of certain incentives not needed by the project upon the determination of the Board, requiring performance bonds from BOI-accredited bonding companies, and payment of application, registration, publication and other necessary fees when warranted, may limit the availment of the tax holiday incentive to the extent that the investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines.
- (3) Delegate, in appropriate cases, some of its functions to the BOI Management Committee, or to any official of the Board with the rank equivalent to a Department Director;
- (4) After due hearing, decide controversies concerning the implementation of the relevant provisions of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision; Provided, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President for decision. To effectively exercise this power, the Board shall have the power to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences, and to cite for contempt

any person/organization that fails to comply with the aforesaid processes; Provided, That to arrive at the truth, the investigator(s) may grant immunity from prosecution to any person whose testimony or whose possessions of documents or other evidence is necessary or relevant to determine such truth in any investigation;

- (5) Recommend to the Commissioner of Immigration and Deportation the entry into the Philippines for employment of foreign nationals under this Code;
- (6) Periodically check and verify, either by inspection of the books or by requiring regular reports, the proportion of the participation of Philippine nationals in a registered enterprise to ascertain compliance with its qualification to retain registration under this Code;
- (7) Periodically check and verify the compliance by registered enterprises with the relevant provisions of this Code, the rules and regulations promulgated under this Code and the terms and conditions of registration;
- (8) After due notice, cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprise and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties, and levy properties of the registered enterprise, if appropriate, for (a) failure to maintain the qualifications required by this Code for registration with the Board or (b) for violation of any provisions of this Code, rules and regulations issued under this Code, the terms and conditions of registration, laws for protection of labor or the consuming public; Provided, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board;
- (9) Determine the organizational structure taking into account Article 6 of this Code; appoint, discipline and remove its personnel consisted with the provisions of the Civil Service Rules;
- (10) Prepare or contract for preparation of feasibility and other pre-investment studies, either upon its own initiative; or upon the request of Philippine nationals who commit themselves to invest therein and show the capability of doing so; Provided, That if the venture is implemented, then the amount advanced by the Board shall be paid within five (5) years from the date the commercial operation of said enterprise starts;
- (11) When feasible and considered desirable by the Board, require registered enterprises to list their shares of stock in any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees;

- (12) Formulate and implement industrial programs that would hasten economic growth and development including those relating to the implementation of international trade, investments and environmental agreements and protocols;
- (13) Recommend to the President of the Philippines, in appropriate cases, and subject to the conditions, which the Board deems necessary, the suspension of the nationality requirement provided for in this Code or any other nationalization statute;
- (14) Establish offices in the Philippines and abroad;
- (15) Prepare or contract for the preparation of industry and sectoral development programs, the National Plan for Investment Promotions (NPIP) and gather and compile statistical, technical, marketing, financial and other data required for the effective implementation of this Code;
- (16) Within four (4) months after the close of the fiscal year, submit annual reports to the President that shall cover its activities in the administration of this Code, including recommendations on investment policies;
- (17) Provide, directly or through Philippine Diplomatic Missions, such information as may be of interest to prospective foreign investors;
- (18) Collate, analyze and compile pertinent information and studies concerning activities/industries/sector that have been or may be in the Investment Priorities Plan;
- (19) Enter into agreements with other agencies of government for the simplification and facilitation of systems and procedures involved in the promotion of investments, operation of economic zones and registered enterprises, and other activities necessary for the effective implementation of this Code;
- (20) Generally, exercise all the powers necessary or incidental to attain the purposes of this Code and other Laws vesting additional functions on the Board.

**Article 8. Powers and Duties of the Chairman.** – The Chairman shall have the following powers and duties:

- (1) To preside over the meetings of the Governors;
- (2) To render annual reports to the President and such special reports as may be requested;
- (3) To act as liaison between investors seeking joint venture arrangements in particular areas of investments;



- (4) Recommend to the Board of Governors such policies and measures he may deem necessary to carry out the objectives of this Code; and
- (5) Generally, to exercise such other powers and perform such other duties as may be directed by the Board of Governors from time to time.

**Article 9.** *Powers and Duties of the Vice-Chairman.* – The Vice-Chairman shall have the following powers and duties:

- (1) To act as Managing Governor of the Board, thereby executing all acts of Administration;
- (2) To preside over the meetings of the Board of Governors in the absence of the Chairman;
- (3) Prepare the agenda for the meetings of the Board of Governors and submit for its consideration and approval the policies and measures which the Chairman deems necessary and proper to carry out the provisions of this Code;
- (4) Assist registered enterprises and prospective investors to have their papers processed with dispatch by all government offices, agencies, instrumentalities and financial institutions; and
- (5) Perform the other duties of the Chairman in the absence of the latter, and such other duties as may be assigned to him by the Board of Governors.

## TITLE II DEFINITION OF TERMS

**Article 10.** *Definition of Terms.* – As used herein, the following terms shall mean –

(A) “BOI” or “Board” shall mean the Board of Investments (BOI) created under this Code.

(B) “*Investment Promotion Agencies (IPA)*” shall include BOI, Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA) and all other government agencies granting incentives to specific sectors under special laws.

(C) “*Registered Enterprises*” shall mean any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippine Laws; and registered with the Board in accordance with this Book: Provided, however, That the term “registered enterprise” shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building

and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions.

(D) "*Technological assistance contracts*" shall mean contract for: (1) the transfer, by license or otherwise, of patents, processes, formulas or other technological rights of foreign origin; and/or (2) foreign assistance concerning technical and factory management, design, planning, construction, operation and similar matters.

(E) "*Foreign loans*" shall mean any credit facility or financial assistance other than equity investment denominated and payable in foreign currency or where the creditors has the option to demand payment in foreign exchange and registered with the Central Bank and the Board.

(F) "*Investment Priorities Plan (IPP)*" shall mean the list of industries and activities prepared by the BOI, which will be eligible for registration with the Board, which includes industries with high comparative advantage, activities that will produce new product/service and export-oriented industries.

(G) "*New product/service*" shall refer to any product/service not locally manufactured/rendered or not sufficiently manufactured/rendered to meet the demands for the said product/service.

The Board of Investments, in consultation with the National Economic and Development Authority (NEDA) shall prepare an annual list of products/services that are not sufficiently manufactured/rendered.

(H) "*Industries with High Comparative Advantage*" shall refer to industries which have export potential or those which have economically viable DRCS and/or High RCA indices.

(I) "*Domestic Resource Cost (DRC)*" refers to the economic value in pesos of domestic resources needed to save or earn foreign exchange.

(J) "*Revealed Comparative Advantage Index (RCA index)*" is the ratio of a given commodity's share in the country's total exports to that commodity's share in the total exports of the world.

(K) "*Gross Income Earned*", means all income derived from whatever source, including, but not limited to the following items:

- (1) Compensation for services in whatever form paid, including but not limited to fees, salaries, wages, commission, and similar items;

- (2) Gross income derived from the conduct of trade or business or the exercise of profession;
- (3) Gains derived from dealings in property;
- (4) Interests;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Annuities;
- (9) Prizes and Winnings;
- (10) Pensions; and
- (11) Partner's distributive share from the net income of the general professional partnership.

(L) "*Tax Credit*" shall mean any credits against taxes and/or duties equal to those actually paid or would have been paid to which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board, if so delegated by the Secretary of Finance. The tax credit certificate issued by the Board pursuant to this Code shall not be transferable. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government: Provided, that the tax credit issued under this Code shall form part of the gross income of the grantee for income tax purposes under Section 32 of the National Internal Revenue Code and therefore taxable: Provided further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance.

(M) "*Export Products*" means manufactured or processed products the total F.O.B. Philippine port value of the export of which did not exceed five million dollars in the United States Currency in the calendar year 1968. The above definition notwithstanding, the National Plan Investments Promotions may include other products for export subjects to such conditions and limited incentives as may be determined by the Board. Further, it may include other products for exports subject to such conditions and limited incentives as may be determined by the Board.

(N) "*Export Sales*" shall mean the sales values and/or revenues, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of products/service (1) shipped out of the country and sold in the territory of another country by registered enterprises (Direct exportation); or, (2) sold to other export producers whether registered enterprises or not, for further processing to be shipped out of the country and sold in the territory of another country by such export producers (Indirect exportation); or, (3) sales of export products/services by registered enterprise and/or export producers to entities/institutions allowed to import tax and duty-free goods for consumption in the country; or, (4) services rendered to clients abroad

such as knowledge, information, technology and systems and/or application or installation thereof in the projects sites including but not limited to the fields of engineering and construction design, logistics, repair and maintenance, and services provided to international airlines/shipping lines/military aircraft or seacraft even if rendered locally provided revenues are paid for in foreign currency, excluding mere deployment of people or individual practice of profession abroad (Constructive exportation).

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos abroad under the Internal Export Program of the government shall also be considered export sales.

(O) "Service enterprise" refer to an enterprise engaged or proposing to engage in rendering technical, professional or other services. The Board shall formulate an annual list of services not covered herein.

(P) An "Export enterprise" shall mean a manufacturer, processor or service provider that earns fifty percent (50%) of its annual sales from exports.

The Information Technology (IT) industry shall automatically be considered as export enterprise but subject to the preparation of a negative list by the Board.

(Q) A "Domestic enterprise" shall mean an enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistently export at least fifty percent (50%).

(R) "Production Cost" shall mean the total of the cost of direct labor, raw materials, and manufacturing overhead, determined in accordance with the generally accepted accounting principles, which are incurred in manufacturing or processing the products of a registered enterprise.

(S) "Processing" shall mean converting of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means or by a special treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing, that results in a change in the nature or state of the products. Merely packing or packaging shall not constitute processing.

### **TITLE III - INVESTMENTS WITH INCENTIVES**

#### **CHAPTER I - QUALIFIED ACTIVITIES**

**Article 11.** *INVESTMENT PRIORITIES PLAN (IPP)* – Not later than the end of June of every third year, the Board of Investments, after consultation with the appropriate government agencies and the private

sector, shall submit to the President the IPP; Provided, however, That the deadline for submission, may be extended by the President.

Upon approval of this Code, The IPP shall be prepared within 120 days by the BOI, in consultation with the NEDA, and the private sector and in accordance with the criteria for determining the list of industries entitled to incentives.

The IPP shall be prepared once every three (3) years by the BOI to be submitted to the President for his approval not later than the end of June of the year immediately preceding the three-year period to be covered by the IPP.

The IPP shall contain the industries or activities with high comparative advantage as evidenced by indicators such as DRC and RCA. It shall also include those that will engage in the production or manufacture of new product/service and export product service.

**Article 12. Criteria in the Investment Priorities Plan.**- No economic activity shall be included in the IPP unless it is shown to be economically, technically and financially sound after thorough investigation and analysis by the Board.

The determination of preferred areas of investment to be listed in the Investment Priorities Plan (IPP) shall be based on long-run comparative advantage, taking into account the value of social objectives and employing economic criteria along with market, technical and financial analyses.

The Board shall take into account the following:

- (a) Primarily, the economic soundness of the specific activity as shown by its economic internal rate of return;
- (b) The extent of contribution of an activity to a specific developmental goal;
- (c) Other indicators of comparative advantage (e.g., DRC, RCA);
- (d) The market and technical aspects and considerations of the activity proposed to be included.

**Article 13. Amendments.** - Subject to publication requirements and the criteria for investment priority determination, the Board of Investment may, at anytime, add additional areas in the IPP, alter any of the terms of the declaration of an investment area or terminate the status of preference. In no case, however, shall any amendment of the IPP impair whatever rights, that may have already been legally vested in qualified enterprises which shall continue to enjoy such rights to the full extent allowed under this Code. The Board shall not accept applications in an area of investment prior to the approval of the same as a preferred area nor after approval of its deletion as a preferred area of investment.

**Article 14. Publication.** - Upon approval of the IPP, in whole or in part, or upon approval of an amendment thereof, the IPP or the amendment, specifying and declaring the areas of investment shall be published in at least one (1) year newspaper of general circulation and all such areas shall be open for publication of an amendment or deletion thereof, or until the Board approves registration of enterprises.

## CHAPTER II -INCENTIVES TO REGISTERED ENTERPRISES

**Article 15.** *Governing Incentive Provision for Investment Promotion Agencies* – All existing and future Investment Promotion Agencies (IPA) vested with the power to grant incentives, including but not limited to the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Economic Zone Authority (CEZA) and Zamboanga City Special Economic Zone (ZCEZA), Phividec Industrial Authority, as well as industries granted investment incentives under special laws shall draw their incentives under this Code.

For this purpose, the incentives provisions of the governing laws of the investment promotion agencies and industries are hereby repealed accordingly.

**Article 16.** *Incentives to Registered Enterprises* – All investment promotion agencies may grant the following incentives to their respective registered enterprises to the extent of the activity/project:

### (A) INCOME TAX HOLIDAY OR NET OPERATING LOSS CARRYOVER

*INCOME TAX HOLIDAY (ITH)* – Registered enterprises shall be entitled to an income tax holiday from the start of their commercial operation to the extent of their activity under the following categories:

Category A – All activities listed in the IPP, which includes *inter alia*, *domestic* oriented activities located within NCR shall be entitled to four (4) income tax holiday.

Category B – Export-oriented activities located within NCR or domestic oriented activities producing/rendering distinct or new products/services shall be entitled to six (6) years income tax holiday.

Category C – Export-oriented activities located outside NCR or domestic oriented activities located within or outside NCR with (a) backward and forward linkages or strong potential for export development; and (b) listed in the IPP shall be entitled to eight (8) years income tax holiday.

Enterprise with existing operations that qualify for registrations shall be limited to their incremental capacities and/or incremental sales value for ITH availment.

Category D – The foregoing categories notwithstanding, an additional four (4) years shall be granted for “strategic projects”. Strategic Projects refer to activities which exhibit high social economic returns and comply with any of the following conditions:

- (a) Project would create high value-added;
- (b) Project would generate sizable employment;
- (c) Project would require large investment; or

- (d) Project would use new and internationally-accepted high level of technology.

A project shall be determined and approved as "STRATEGIC" by a unanimous decision of an inter-agency committee composed DTI-BOI, NEDA and DOF.

*NET OPERATING LOSS CARRYOVER* – The net operating loss of the business or enterprise during the first five (5) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over for the next five (5) consecutive taxable years from gross income immediately following the year of such loss; Provide however, That operating loss resulting from availment of incentives provided in this Code shall not be entitled to NOLCO.

A registered enterprise availing of ITH, NOLCO or additional deductions must secure a prior certification of entitlement from the concerned investment promotion agency (IPA) before filing their income tax returns (ITR) with the Bureau of Internal Revenue (BIR)

For this purpose, the statutory time for filing of the income tax returns (ITR) of the concerned registered enterprise with Bureau of Internal Revenue (BIR) shall be automatically extended for the period of sixty (60) days therefrom, without penalties, interests and surcharges.

Registered enterprises availing of the ITH as herein provided shall not be entitled to avail of the Net Operating Loss Carry Over (NOLCO) and vice-versa. Registered enterprises shall have the option to avail of the ITH or NOLCO at the time of registration, but once the option is made, no amendment shall be allowed.

#### (B) IMPOSITION OF A TAX RATE OF FIVE PERCENT (5%) ON GROSS INCOME EARNED

Except for real property taxes, no taxes, local and national, shall be imposed on business establishments operating within an economic zone or freeport. In lieu thereof, five percent (5%) of the gross income shall be paid and remitted as follows:

##### I. FOR ECONOMIC ZONES

- Three percent (3%) shall be remitted to the national government; and
- Two percent (2%) shall be remitted directly to the local government units concerned

##### II. FOR SUBIC BAY FREEPORT

- Three percent (3%) shall be remitted to the national government;
- One percent (1%) shall be remitted directly to the local government units concerned; and
- One percent (1%) to be included in a development fund to be utilized for the development of the municipalities

outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

### III. FOR THE ZAMBOANGA CITY ECONOMIC ZONE AND FREEPORT

- Two percent (2%) shall be remitted to the national government; and
- Three percent (3%) which shall be allocated as follows:
  - Two percent (2%) to the City of Zamboanga
  - One percent (1%) to Barabgay Special Development Fund

### IV. FOR THE CAGAYAN ECONOMIC ZONE AND FREEPORT

- Two percent (2%) shall be remitted to the national government;
- One percent (1%) shall be remitted directly to the Province of Cagayan;
- One percent (1%) to be shared by the municipalities affected by the declaration of the zone in proportion to their income from business activities within the zone; and
- One percent (1%) shall be remitted directly to the Cagayan Economic Zone Authority;

#### (C) ACCELERATED DEPRECIATION

Accelerated depreciation, in accordance with the rules and regulations prescribed by the Department of Finance, of plant, machinery, and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a depreciation rate twice as fast as the normal rate in accordance with the provisions of the National Internal Revenue Code (NIRC); and Provided further, That the taxpayer notifies in writing the Commissioner of Internal Revenue at the beginning of the depreciation period as to what depreciation rate allowed thereunder shall be used by it.

#### (D) CAPITAL EQUIPMENT INCENTIVES

(1) Importations of capital equipment, spare parts, production consumables, or those required for pollution abatement and control including consignment thereof, by registered export-oriented enterprises upon the effectivity of this law shall be exempt to the extent of one hundred percent (100%) of the taxes and custom duties; Provided, That the importation thereof shall be used exclusively by the registered enterprise in its registered activity; Provided further, That importation of source documents by enterprises engaged in information technology shall likewise be fully exempt for the period stated herein.

(2) The aforementioned importations of registered domestic-oriented enterprises shall be subject to payment of 1% custom duties and the prevailing value-added tax.



Board approval must be secured before any sale, transfer or disposition of the said items is made; Provide, that if such sale, transfer or disposition is made within the first five (5) years from date of importation, any of the following conditions must be present:

- (a) If made to another enterprise enjoying tax and duty exemption on imported capital equipment;
- (b) If made to another enterprise, upon payment of any taxes and duties due on the undepreciated portion of the item to be sold based on a normal rate of depreciation;
- (c) Exportation of the equipment, machinery, spare parts or source documents or those required for pollution abatement and control;
- (d) For reasons of proven technical obsolescence;
- (e) For purposes of replacement to improve and/or expand the operations of the registered enterprise; or
- (f) Repair of the imported item.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs other than paragraph (b), the registered firm shall not pay the taxes and duties waived on such items.

Provided further, That if the registered enterprise sells, transfers or disposes the aforementioned imported items without prior Board approval within five (5) years from date of importation, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax exemption given it;

Provided finally, that even if the Board approved the sale, transfer or disposition of the equipment after five (5) years from the date of importation, the registered enterprise is still liable to pay the taxes and duties on the undepreciated portion of the equipment, machinery or spare parts based on a normal rate of depreciation if it has violated any of its registration terms and conditions, otherwise, it shall no longer be subject to the payment of the taxes and duties waived thereon.

(3) A tax credit equivalent to the taxes and/or duties paid on raw materials, supplies, parts and semi-finished products used in the fabrication of the machinery and equipment shall be given to export-oriented firms which purchased machinery and equipment from a domestic manufacturer; Provided: (a) that said equipment, machinery and spare parts will be used exclusively by the registered enterprise in its registered activity; (b) that the equipment would have qualified for taxes for tax and duty importation; (c) that the value-added tax that has been paid and refunded to or for which tax credit has already been issued to the manufacturer of the equipment or machinery for such raw materials, supplies, spare parts or semi-finished products, shall no longer be available for the issuance of tax credit to the registered enterprise who

purchased the equipment; and (d) that the approval of the Board is obtained by the registered enterprise. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts, the provision in the preceding paragraphs for such disposition shall apply.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance: Provided however, That it shall form part of the gross income of the grantee for income tax purposes and therefore taxable; Provided finally, That applications for tax credit under this subsection must be filed within one (1) year from date of delivery, otherwise this incentive shall be considered as waived.

#### (E) RAW MATERIAL INCENTIVES

Every registered export enterprise shall enjoy a tax credit equivalent to the National Internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export enterprise, based on the actual taxes and duties paid for such materials/supplies/semi-manufactured products by the registered enterprise.

Provided further, That the actual sales of BOI registered domestic producers supplying raw materials, semi-manufactured/manufactured products and machineries/equipment to domestic companies enjoying tax and duty exemption on their importation of capital equipment, machinery, spare parts or raw materials/supplies by law, or by their charters or franchise shall be eligible for the tax credit incentives provided for in this Code.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance: Provided however, That it shall form part of the gross income of the grantee for income tax purposes and therefore taxable: Provided finally, That applications for tax credit under this subsection must be filled within two (2) years from exportation of the final product for indirect exports or one (1) year for direct exports, otherwise, this incentive shall be considered as waived.

All applications for tax credit must be acted upon within a period of ninety (90) days from official acceptance, otherwise, they shall be deemed automatically approved.

Registered export oriented enterprises shall have access to the utilization of the bonded warehousing system.

#### (F) INCENTIVES ON BREEDING STOCKS AND GENETIC MATERIALS

- (1) Importation of breeding stocks and genetic material within ten (10) years from the date of registration of commercial operation of the enterprise shall be exempt from all taxes and duties: Provided, that such breeding stocks and genetic materials are: (a) reasonably needed in the registered activity; and (b) approved by the Board.

- (2) A tax credit equivalent to one hundred percent (100%) of the value of customs duties that would have been waived on the breeding stocks and genetic materials had these items been imported shall be given to the registered enterprise which purchases breeding stocks and genetic materials from a domestic producer; Provided, (a) That said breeding stocks and genetic materials would have been qualified for tax and duty-free importation under the preceding paragraph; (b) That the breeding stocks and genetic materials are reasonably needed in the registered activity; (c) That the approval of the Board has been obtained by the registered enterprise; and (d) that the purchase is made within ten (10) years from the date of registration of commercial operation of the registered enterprise.

The tax credit certificate issued shall be valid for a period of ten (10) years from date of issuance; Provided however, that the tax credit shall form part of the gross income of the grantee for income tax purposes and therefore taxable.

(G) DEFERRED IMPOSITION OF THE MINIMUM CORPORATE INCOME TAX (MCIT)

The minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year shall be imposed when the minimum corporate income tax is greater than the tax computed under the National Internal Revenue Code (NIRC) as amended for the taxable year; Provided however, That said MCIT shall be imposed only after the enterprise' entitlement period to the income tax based incentives.

(H) EXEMPTION FROM REAL PROPERTY TAX ON MACHINERY AND EQUIPMENT

Ecozone registered enterprises shall be fully exempt from the payment of the real property tax on equipment and machineries imposed under the Local Government Code.

[ I ] TAX TREATMENT OF MERCHANDISE IN THE ZONE -

(1) Except as otherwise provided in this Code, 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 zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, 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 zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exported thereof shall be entitled to the benefits allowed by law for such transaction.

(3) Domestic merchandise sent from the zone 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 export processing zone, be subject to Internal Revenue Laws of the Philippines as domestic goods sold, transferred or disposed of for local consumption.

(4) Merchandise sent from the export processing zone to the customs territory shall, whether or not combined with or made part of other articles while in the zone, be subject to rules and regulations governing imported merchandise. The duties and taxes shall be assessed on the value of imported materials (except when the final product is exempt) and the internal revenue taxes on the values added.

(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 zone 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 authority may deem necessary when the identity of an article entered into the export processing zone under the immediately preceding paragraph has been lost, such article when removed from the zone 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 Custom Code.

(7) Articles produced or manufactured in the zone 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) Unless the contrary is shown, merchandise taken out of the zone shall be considered for tax purposes to have been sent to customs territory.

(J) EXEMPTION FROM LOCAL TAXES AND LICENSES

(1) Notwithstanding the provisions of law to the contrary, zone registered enterprise shall, to the extent of their construction, operation, or production inside the zone be exempt from the payment of any and all local government imposts, fees, licenses or taxes.

(2) Production equipment or machineries, not attached to real estate, used directly or indirectly, in the production, assembly or manufacture of the registered product of the zone registered enterprise shall be exempt from real property taxes.

(K) EMPLOYMENT OF FOREIGN NATIONALS

Subject to the provision of Section 29 of Commonwealth Act No.613, as amended, a registered enterprise may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding ten (10) years from its registration; Provide however, That the total number of foreign nationals employed shall not exceed five percent (5%) of the enterprise' total work force; Provided further, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of the president, treasures and general manager of their equivalents may be retained by foreign nationals beyond the period set forth herein and such officer is the owner or a stockholder owning at least ten percent (10%) of the outstanding capital stock of the registered enterprise and he remains the owner or maintains his stockholdings therein.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under eighteen (18) years of age, who are not excluded by Section 29 of Commonwealth Act numbered 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

The foreign national admitted herein, as well as their respective spouses and dependents shall be exempt from: (a) obtaining alien certificate of registration and emigration clearance certificates; and (b) securing the Alien Employment Permit (AEP) and all types of clearances, permits, licenses or their equivalents required by any government department or agency.

**Article 17. Incentive to investors** – When a foreign national covered under Article 16, paragraph (K) of this Code, invests an amount of at least US\$150,000.00 either in cash and/or equipment, in an enterprise engaged in an activity registered with the Board of Investments, he shall be entitled to a Special Investor's Resident Visa; Provided that,

1. He is at least eighteen (18) years of age;
2. He has not been convicted of a crime involving moral turpitude;
3. He is not afflicted of with any loathsome, dangerous or contagious disease;
4. He has not been institutionalized for any mental disorder or disability;

Provide further, That for purposes of compliance with this particular condition, the alien-applicant should prove that he has remitted such amount in acceptable foreign currency to BOI-accredited Philippine government banks or has brought into the Philippines the said equipment; Provided finally, That in securing the special investor's

resident visa, the alien-applicant shall be entitled to the same privileges provided for under Article 16 (K), last paragraph.

As a holder of the Special Investors Resident Visa, an alien shall be entitled to reside in the Philippines while his investment subsists. For this purpose, he should submit an annual report, in the form duly prescribed for the purpose, to prove that he has maintained his investments in the country. Should said alien withdraw his investments from the Philippines, then the Special Investors Resident Visa issued to him shall automatically expire.

The minimum amount for investment provided for under this Code shall be made applicable to visas granted to investors by the Philippine Economic Zone Authority, Subic Bay Metropolitan Authority, Clark Development Corporation, Cagayan Special Economic Zone and Zamboanga City Special Economic Zone.

### **CHAPTER III – REGISTRATION OF ENTERPRISES**

**Article 18.** *Qualifications of a Registered Enterprise.* – To be entitled to register to avail of incentives, an applicant must satisfy the following conditions:

- (1) He is a citizen of the Philippines, in case the applicant is a natural person, or in case of a corporation or partnership or any other association, it must be organized and existing under Philippine laws and that it must comply with all the qualifications provided under this code; Provided however; that for purposes of this Code and any law to the contrary notwithstanding, a natural-born ASEAN citizen or a corporation effectively controlled by ASEAN citizens shall be considered as a Philippine investor; Provided, that the investment is made in an activity where the constitution does not specifically require Filipino participation;
- (2) That it will engage in an activity included in the IPP;
- (3) That the activity it will engage in is not within the activities, reserved by the Constitution to the Philippine citizens or corporations owned and controlled by Philippine citizens, such as the operation of public utilities.

For this purpose and any law to the contrary notwithstanding, the business of constructing and repairing vessels or parts thereof shall not be considered a public utility and no certificate of public convenience shall be required therefore.

- (4) If the applicant is engaged or proposes to engage in undertaking or activities other than registered projects, it has installed or undertakes to install an accounting system adequate to identify the investments, revenues, costs, and profits or losses of each registered project undertaken by the enterprise separately from the aggregate investment,

revenues, costs, and profits or losses of the whole enterprise or to establish a separate corporation for each registered project if the Board should so require to facilitate proper implementation of this Code.

#### **CHAPTER IV - BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISE**

**Article 19. Protection of Investments** - All investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following:

(a) **Repatriation of Investments** - In the case of foreign investments, the right to repatriate the entire proceeds of the liquidation of the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation, subject to the provisions of Section 74 of the Republic Act No. 265 as amended;

For investments made pursuant to Executive Order No. 32 and its implementing rules and regulations, remittability shall be as provided therein.

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

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

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

(e) **Requisition of Investment**. - There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the

requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended.

## **CHAPTER V – ADMINISTRATIVE OF INCENTIVES**

**Article 20.** *Administrative and Implementation of Incentives.* - The investment promotion agencies shall be responsible for the implementation and administration of the incentives granted to their respective registered enterprises; Provided, that any incentive administration policy adopted by the Board of Governors shall be uniformly applied by all incentive administering agencies.

**Article 21.** *Application* – Applications shall be filed with the Board or any other government office authorized by the Board to accept applications, recorded in a registration book and the date appearing therein and stamped on the application shall be considered the date of official acceptance

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

**Article 22.** *Criteria Evaluation of Application.* – The following criteria will be considered in the evaluation of applications for registration under a preferred area:

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

**Article 23.** *Approval and Registration Procedures* – The Board is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribed criteria for the evaluation of several applications; devise standard forms for the use of applicants and delegate to the regional offices of the Department of Trade and Industry the authority to receive and process applications for enterprises to be located in their respective regions.

Applications filed shall be considered automatically approved if not acted upon by the Board within fifteen (15) working days from official acceptance thereof. Deferment by the Board shall be considered as an official action; Provided however, That the Board may defer action to a specific application not more than twice; and Provided finally that the Board shall act upon the application within ten (10) working days from compliance with the cause of the last deferment.



**Article 24. Certificate of Registration** - A registered enterprise under this Code shall be issued a Certificate of Registration under the seal of the Board of Investments and the signature of its Chairman and/or such other officer or employee of the Board as it may empower and designate for the purpose. The certificate shall be in such form and style as the Board may determine and shall state, among other matters:

- (a) The name of the registered enterprise
- (b) The area of investment in which the registered enterprise is proposing to engage;
- (c) The type of the activity it is undertaking or proposing to undertake; and
- (d) The other terms and conditions to be observed by the registered enterprise by virtue of the registration.

**Article 25. Validity of BOI registration.** - A firm's registration with the Board shall be valid for a period of twenty (20) years from the start of commercial operation unless extended by the Board.

**Article 26. Treaties on double taxation.** - All projects registered with the Board shall be considered as preferred pioneer areas of activities for purposes of the treaties on double taxation with other countries.

All enterprises registered with an Investment Promotion Agency shall be automatically registered with the Board of Investments for purposes of tax treaty privileges.

**Article 27. Capping of Incentives.** - As it may deem necessary, the BOI may impose a cap on the total amount of incentives that may be availed of by a registered enterprise within a given year. But in no case shall be the Board withdraw or commute the incentives granted after the firm's registration except for violations of its registration terms and conditions.

**Article 28. Extension of period of availment.** - The availment period of the incentives provided herein may be extended by the concerned investment promotion agency in the event that the registered enterprise has suffered operational force majeure that has impaired its viability.

**Article 29. Duration of Incentives.** - Export-Oriented enterprises registered with PEZA, SBMA, CDC, CEZ, ZCEZ may enjoy the ITH or NOLCO granted by the concerned IPA, prior to availment of the 5% GIE, but, in no case shall the cumulative availment of the ITH/NOLCO and the 5% GIE incentives exceed twenty (20) years.

Incentives provided under this Code where there is no specific period of availment shall terminate after a period of twenty (20) years from the date of registration or start-up of commercial operations of the registered enterprise, whichever is applicable; Provided however, that this shall not be applicable to the incentive of tax and duty free importation of

capital equipment, raw materials, supplies and spare parts of enterprises registered with PEZA, SBMA, CDC, CEZ, ZCEZ.

**Article 30.** *Payment in the form of foreign currencies.* - All investment promotion agencies may be allowed to receive foreign currencies as payment of application fees, fines and penalties, including refund of incentives.

### **TITLE III FINAL PROVISIONS**

**Article 31.** *Personnel.* - All positions in the Board shall be governed by a compensation, position classification systems, and qualification standards approved by the Managing Governor with the concurrence of the Board Governors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans of a government financial institution and shall be subject to periodic reviews by the Board no more than every two years without prejudice to yearly merit reviews or increases based on productivity. The Board shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.

**Article 32.** *Authority to retain funds.* - The Board shall have the authority to retain one-half of the funds arising from the collection of fees from applications/certifications of registration and/or incentives availment; fines, penalties and refund of incentives and other sources of income subject to the usual accounting process.

**Article 33.** *Vested Rights.* - Existing registered enterprises which are enjoying the incentives under the laws repealed by Books One and Six of this Code shall continue to enjoy such incentives for the period therein stated: Provided, however, That firms which made investments on projects approved or registered by BOI and PEZA six (6) months before the effectivity of this Code may opt to be governed by the provisions of this Code; Provided further, that PEZA enterprises enjoying the 5% GIE, regardless of date of registration, may opt to be governed by the provisions of this Code.

**Article 34.** *After Tax Profits.* - Without prior Bangko Sentral approval, after tax profits and other earnings of foreign investments of registered enterprises may be remitted outward in the equivalent foreign exchange through any of the banks licensed by the Bangko Sentral ng Pilipinas; Provided, however, That such foreign investments in said enterprises have been previously registered with the Bangko Sentral.

**Article 35.** *Protection of the Environment.* - The BOI, in coordination with the appropriate agencies, shall take concrete and appropriate steps and enact the proper measures for the protection of the environment.

**Article 36.** *Suspension and forfeiture of incentives; refund and penalties.* - When there is probable cause to believe that the registered

enterprise has violated its registration terms and conditions, the Board may suspend its incentives availment, until proven otherwise.

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

In case of cancellation of the Certificate granted under this Code, the Board may, in appropriate cases, require the refund of incentives availed of and impose corresponding fines and penalties.

Any enterprise which violates any provision of this Code, its implementing rules and regulations, the terms and conditions of its registration of any lawful directive of the Board, or willfully commits any fraudulent misrepresentation in the course of filing an application for registration, or in the availment of incentives, including all official reports required to be submitted by the Board, shall be subject to a fine of not more than One Million Pesos (P1,000,000.00), without prejudice to the disapproval of its application for registration or cancellation of its registration.

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

Responsible officers of such enterprises, including dully appointed external consultants-agents who knowingly commit, aid or abet the commission of any of the acts mentioned above, shall be subject to a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Three Hundred Thousand Pesos (P300,000.00).

Government Officers and employees who participate directly or indirectly in the commission of the foregoing acts shall likewise be liable to a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Three Hundred Thousand Pesos (P300,000.00), in addition to any criminal and administrative penalties imposable under the Civil Service Law, Revised Penal Code, Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), Republic Act No. 6713 (Code of Conduct And Ethical Standards For Public Officials) and other applicable laws.

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

**Article 37.** *Appeals from Board's Decision.* – All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision, unless a supersedes bond equivalent to the amount stated in the order or decision is posted by the appellant.

All appeals involving cases decided by the Board, except as provided in the next succeeding paragraph, shall be filed with the Court of Appeals within fifteen (15) days from notice of the order or decision or

shall be allowed, subject to the posting of the aforementioned supersedes bond which shall be limited to cash and/or surety bond from a BOI-accredited bonding company.

In cases involving the denial of an application for registration, the party adversely affected by such denial may appeal the same to the office of the president within thirty days from notice of the order denying the application for registration where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.

**Articl 38. Effectivity of Implementing Rules and Regulations.** - The BOI, in consultation with NEDA,DOF, Department of Trade and Industry and other appropriate government agencies shall promulgate rules and regulations to implement the intent and provisions of this Code. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

**Article 39. Separability Clause.** - The provisions of this Code are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

**Article 40. Repealing Clause.** - The following provisions or laws are hereby repealed:

- 1) Batas Pambansa 44
  - 2) Batas Pambansa 391
  - 3) Presidential Decree No. 218
  - 4) Presidential Decree No. 1419
  - 5) Presidential Decree No. 1623, as amended
  - 6) Presidential Decree No. 1789
  - 7) Presidential Decree No. 2032
  - 8) Presidential Decree No 538
  - 9) Executive Order No. 815
  - 10) Executive Order No. 1045
  - 11) Republic Act No. 7888
- (1) A. Book I of Executive Order No. 226 is hereby absolutely repealed;  
B. Books III and IV of Executive Order No. 226 are hereby repealed by Republic Act No. 8756; and  
C. Books V and VI of Executive Order No. 226 are hereby absolutely repealed.
  - (2) The provisions of Republic Act Nos. 7916 and 8748, which are inconsistent with this Code are hereby repealed or modified accordingly.
  - (3) The Provisions of Commonwealth Act No. 146, as amended are hereby modified accordingly.
  - (4) The provisions of Section 12 of Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992, Section 4, Paragraphs (e), (f) and (g) of Republic

Act No. 7903 otherwise known as "Zamboanga City Special Economic Zone Act of 1995" and Section 4, Paragraphs (b), (c) and (e) of Republic Act No. 7922 entitled, "Cagayan Special Economic Zone Act of 1995" which are inconsistent with this act, are hereby repealed or modified accordingly; Provided however, That they shall draw their respective incentives from any of those provided for under this Code.

- (5) The provisions of Section 3(e) and (f) of Republic Act No. 7042, as amended by Republic Act No. 8179 otherwise known as "The Foreign Investments Act as amended" are hereby modified by Sections 10 (Q) (R) of this Code. The provision of Section 5 RA 7103, is modified by Section 7 (20) of this Code.
- (6) The incentives provisions under other investment incentives laws catering to specific industries are hereby repealed as follows:

Section 36 of Presidential Decree No. 705, otherwise known as the "Revised Forestry Code"; Section 12 of Presidential Decree No. 87, otherwise known as the "Oil Exploration Development Act of 1972"; Sections 8, 9 and 10 of Presidential Decree No. 538 otherwise known as the "Philippine Veterans Investment Development Corporation", Sections 16 and 17 of Presidential Decree No. 972 otherwise known as the "Coal Development Act"; Section 4 (a) and (d) of Presidential Decree No. 1442, otherwise known as the "Geothermal Exploration and Development Act"; and

Section 10 and 11 of Republic Act No. 7156 otherwise known as the "Mini-hydroelectric Incentive Act"; Sections 6, 7 and 8 of Republic Act No. 7130 otherwise known as the "Iron and Steel Industry Act"; Sections 6 and 7 of Republic Act No. 7471 otherwise known as the "Philippine Overseas Shipping Development Act"; Sections 19 and 20 of Republic Act No. 7279 otherwise known as the "Urban Development and Housing Act of 1992"; Sections 61 and 62 of Republic Act No. 6938 otherwise known as the "Cooperative Code of Philippines"; Sections 16 and 17 of Republic Act No. 7844 otherwise known as the "Export Development Act of 1994"; Section 12 of Republic Act No. 8047 otherwise known as the "Book Publishing Industry Development Act"; Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942 otherwise known as the "Philippine Mining Act of 1995"; Section 12 of Republic Act No. 7718 otherwise known as the "Build-operate-transfer Law"; Section 3 (a), (c), (d) and (h) of Republic Act No. 8502 otherwise known as the "Jewelry Industry Development Act of 1998"; Section 35 of Republic Act No. 8550 otherwise known as the "Philippine Fisheries Code of 1998"; and Section 9 of Republic Act No. 8479 otherwise known as the "Downstream Oil Deregulation Act of 1998".

(7) All other laws, acts, decrees, orders and issuances inconsistent with any provisions of this Code are hereby repealed or modified accordingly.

**Article 41. Effectivity.** – This Code shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two newspapers of general circulation.

Approved,