



- 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.
- Enterprises with existing operations that qualify for registration shall be limited to their incremental capacities and/or incremental sales value for ITH availment.
  - An additional four years for Strategic Projects. Strategic projects shall be determined and approved as "STRATEGIC" by a 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
- 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 not the present average or standard rate
  - 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 ninety (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:

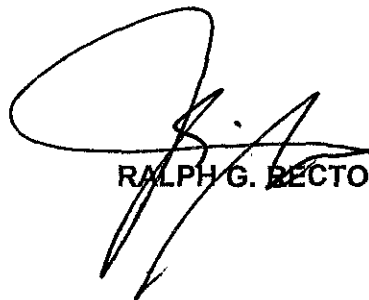
- (A) Exemption from obtaining alien certificate of registration and emigration clearance certificate; and
- (B) Exemption from securing alien employment permits and all types of clearances, permits, licenses required by any government department or agency.

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 twenty (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 may 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 fifteen (15) days and BOI registration shall be valid for a period of twenty (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 the Filipinos. Moreover, all registered projects are considered as preferred pioneer for purposes of tax treaties.

Immediate approval of this bill is thus earnestly sought.



RALPH G. RECTO

13<sup>TH</sup> CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
1<sup>ST</sup> Regular Session )

'04 JUL -6 AIO:19

SENATE

S. BILL NO. 1328

RECEIVED BY: \_\_\_\_\_

**Introduced by Senator RALPH G. RECTO**

**AN ACT**

**HARMONIZING AND RATIONALIZING THE ADMINISTRATION AND GRANT OF FISCAL AND NON-FISCAL INCENTIVES, REPEALING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987**

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

**PRELIMINARY TITLE**

**TITLE AND DECLARATION OF POLICY**

SECTION. 1. *Title of the Code.* - This Act 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.

SEC. 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, encouraging and supporting investments that promote countrywide development, and creating 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.

- 1 3. The State shall grant incentives based on a system that is clear and simple to  
2 administer, time-bound, and performance-based taking into consideration the  
3 need to be competitive in attracting foreign investments vis-à-vis other  
4 countries in the region.
- 5 4. The State shall adopt an integrated, cohesive and comprehensive investment  
6 incentives law including a single administering agency, whenever applicable,  
7 that shall be recognized as the governing statute on the grant of investment  
8 incentives. To this end, all investment incentive schemes shall be rationalized  
9 thereby harmonizing the fiscal incentives granted by all investment incentive  
10 giving agencies of government.
- 11 5. The State recognizes that industrial peace is an essential element of economic  
12 growth and it is the principal responsibility of the state to ensure that such  
13 condition prevails.
- 14 6. The State shall undertake investment promotion initiatives deemed crucial to  
15 the attainment of each investment goal and objective.

## 17 TITLE I

### 18 DEFINITIONS OF TERMS

19 SEC. 3. *Definition of Terms.* - As used herein, the term:

- 20
- 21 (a) “*BOI or Board*” shall mean the Board of Investments (BOI) created under  
22 this Code.
- 23 (b) “*Investment Promotion Agencies (IPAs)*” shall include BOI, Philippine  
24 Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority  
25 (SBMA), Clark Development Corporation (CDC), Cagayan Economic  
26 Zone Authority (CEZA), Zamboanga City Special Economic Zone  
27 Authority (ZCSEZA), Philippine Veterans Investment Development  
28 Corporation (Phivedec) Industrial Authority, and all other government  
29 agencies granting incentives to specific sectors under special laws.
- 30 (c) “*Registered Enterprises*” shall mean any individual, partnership,  
31 cooperative, corporation or other entity incorporated and/or organized and  
32 existing under Philippine laws; and registered with the Board in  
33 accordance with this Book: *Provided, however,* That the term “registered

1 enterprise" shall not include commercial banks, savings and mortgage  
2 banks, rural banks, savings and loan associations, building and loan  
3 associations, developmental banks, trust companies, investment banks,  
4 finance companies, brokers and dealers in securities, consumers  
5 cooperatives and credit unions, and other business organizations whose  
6 principal purpose or principal source of income is to receive deposits, lend  
7 or borrow money, buy and sell or otherwise deal, trade or invest in  
8 common or preferred stocks, debentures, bonds or other marketable  
9 instruments generally recognized as securities, or discharge other similar  
10 intermediary, trust or fiduciary functions.

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

16 (e) "*Foreign loans*" shall mean any credit facility or financial assistance other  
17 than equity investment denominated and payable in foreign currency or  
18 where the creditor has the option to demand payment in foreign exchange  
19 and registered with the *Bangko Sentral ng Pilipinas* (BSP) and the Board.

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

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

28  
29 The BOI, in consultation with the National Economic Development  
30 Authority (NEDA) shall prepare an annual list of products/services that  
31 are not sufficiently manufactured/rendered.

- 1 (h) *“Industries with High Comparative Advantage”* shall refer to industries  
2 which have export potential or those which have economically viable  
3 DRCs and/or High RCA indices.
- 4 (i) *“Domestic Resource Cost (DRC)”* shall refer to the economic value in  
5 pesos of domestic resources needed to save or earn foreign exchange.
- 6 (j) *“Revealed Comparative Advantage Index (RCA index)”* is the ratio of a  
7 given commodity’s share in the country’s total exports to that  
8 commodity’s share in the total exports of the world.
- 9 (k) *“Gross Income Earned or GIE”* shall mean all income derived from  
10 whatever source, including, but not limited to the following items:
- 11 (1) Compensation for services in whatever form paid, including but not  
12 limited to fees, salaries, wages, commission, and similar items;
- 13 (2) Gross income derived from the conduct of trade or business or the  
14 exercise of profession;
- 15 (3) Gains derived from dealings in property;
- 16 (4) Interests;
- 17 (5) Rents;
- 18 (6) Royalties;
- 19 (7) Dividends;
- 20 (8) Annuities;
- 21 (9) Prizes And Winnings;
- 22 (10) Pensions; and
- 23 (11) Partner’s distributive share from the net income of the general  
24 professional partnership.
- 25 (l) *“Tax Credit”* shall mean any credits against taxes and/or duties equal to  
26 those actually paid or would have been paid to evidence which a tax credit  
27 certificate shall be issued by the Secretary of Finance or his representative,  
28 or the Board, if so delegated by the Secretary of Finance. The tax credit  
29 certificates issued by the Board pursuant to this Code shall not be  
30 transferable. The tax credit certificate shall be used to pay taxes, duties,  
31 charges and fees due to the national government: *Provided*, That the tax  
32 credit issued under this Code shall form part of the gross income of the  
33 grantee for income tax purposes under Section 32 of the National Internal



1 Revenue Code (NIRC) and therefore taxable; *Provided* further, That such  
2 tax credits shall be valid only for a period of ten (10) years from date of  
3 issuance.

4 (m) "*Export Products*" shall mean manufactured or processed products the total  
5 freight on board (FOB) Philippine port value of the exports of which did not  
6 exceed five million dollars in the United States Currency in the calendar  
7 year 1968. The above definition notwithstanding, the National Plan for  
8 Investments Promotions (NPIP) may include other products for export  
9 subjects to such conditions and limited incentives as may be determined by  
10 the Board. Further, it may include other products for exports subject to such  
11 conditions and limited incentives as may be determined by the Board.

12 (n) "*Export Sales*" shall mean the sales values and/or revenues, determined  
13 from invoices, bills of lading, inward letters of credit, landing certificates,  
14 and other commercial documents, of products/services (1) shipped out of the  
15 country and sold in the territory of another country by registered enterprises  
16 (*direct exportation*); or, (2) sold to other export producers whether registered  
17 enterprises or not, for further processing to be shipped out of the country  
18 and sold in the territory of another country by such export producers  
19 (*indirect exportation*); or, (3) sales of export products/services by registered  
20 enterprise and/or export producers to entities/institutions allowed to import  
21 tax and duty-free goods for consumption in the country; or, (4) services  
22 rendered to clients abroad such as knowledge, information, technology and  
23 systems and/or application or installation thereof in the project sites  
24 including but not limited to the fields of engineering and construction  
25 design, logistics, repair and maintenance, and services provided to  
26 international airlines/shipping lines/military aircraft or seacraft even if  
27 rendered locally provided revenues are paid for in foreign currency,  
28 excluding mere deployment of people or individual practice of profession  
29 abroad (*constructive exportation*).

30  
31 Sales of locally manufactured or assembled goods for household and  
32 personal use to Filipinos abroad and other non-residents of the Philippines

1 as well as returning overseas Filipinos under the Internal Export Program of  
2 the government shall also be considered export sales.

3  
4 (o) "*Service enterprise*" shall refer to an enterprise engaged or proposing to  
5 engage in rendering technical, professional or other services. The Board  
6 shall formulate an annual list of services not covered herein.

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

9  
10 The Information Technology (IT) industry shall automatically be considered  
11 as export enterprise but subject to the preparation of a negative list by the  
12 Board.

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

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

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

26  
27 **TITLE II**

28 **ORGANIZATION AND FUNCTIONS OF THE BOI**

29  
30 **SEC. 4.** *The Board of Investments (BOI).* - The BOI shall implement the  
31 provisions of this Code except as otherwise provided herein.

1           **SEC. 5. *The Board Of Governors; Management Committee -***

2           **A. *The Board of Governors.*** – The BOI shall be composed of nine (9) governors:  
3 the Secretary of Trade and Industry; the Director General of the NEDA; the Secretary of  
4 Finance; three (3) Undersecretaries of Trade and Industry; and three (3) representatives  
5 from the private sector to be chosen by the President. The Secretary of Trade and  
6 Industry shall concurrently be the Chairman of the Board and the Undersecretary of the  
7 DTI for Industry and Investments shall concurrently be the Vice Chairman of the Board  
8 and its Managing Governor. The other two (2) undersecretaries of Trade and Industry  
9 may designate their permanent representatives in cases of absence or unavailability. The  
10 three (3) representatives from the private sector shall be appointed by the President for a  
11 term of four (4) years, which may be extended by the President for another four (4) years:  
12 *Provided*, That one of the governors from the private sector shall serve the Board on a  
13 full-time basis; *Provided, however*, That upon the expiration of his term, a governor shall  
14 serve as such until his successor shall have been appointed and qualified: *Provided*  
15 *further*, That no vacancy shall be filled except for the unexpired portion of any term, and  
16 that no one may be designated to be a governor of the Board in an acting capacity but all  
17 appointments shall be ad interim or permanent: *Provided finally*, That no governor from  
18 the private sector shall serve for more than eight (8) years.

19           **B. *The BOI Management Committee.*** -- The BOI Management Committee is  
20 hereby created and the Board of Governors may delegate some of its functions thereto, in  
21 appropriate cases, in which case, the performance of such delegated functions shall no  
22 longer require Board approval and confirmation.

23           **SEC. 6. *Qualifications of Governors of the Board.*** — The governors of the Board  
24 shall be citizens of the Philippines, at least thirty (30) years old, of good moral character,  
25 and of recognized competence in the fields of law, economics, finance, banking,  
26 commerce, industry, agriculture, engineering, management or labor.

27           **SEC. 7. *Appointment of Board Personnel.*** -- The Board shall appoint its technical  
28 staff and other personnel subject to Civil Service law, rules and regulations.

29           **SEC. 8. *Powers and Duties of the Board.*** -- The Board shall be responsible for the  
30 regulation and promotion of investments in the Philippines. It shall meet as often as may  
31 be necessary, generally once a week on such day as it may fix. Notice of regular and  
32 special meetings shall be given to all members of the Board. The presence of five (5)  
33 members of the Board shall constitute a quorum and the affirmative vote of five (5)

1 members of the Board in a meeting validly held shall be necessary to exercise its powers  
2 and perform its duties, which shall be as follows:

3 (1) Promulgate such rules and regulations as may be necessary to implement the  
4 intent and provisions of this Code;

5 (2) Process and approve, deny, suspend, revoke applications for registration with  
6 the Board, imposing terms and conditions as it may deem necessary to  
7 promote the objectives of this Code, including the refund and forfeiture of  
8 incentives when appropriate, restricting availment of certain incentives not  
9 needed by the project upon the determination of the Board, requiring  
10 performance bonds from BOI-accredited bonding companies, and payment of  
11 application, registration, publication and other necessary fees when warranted,  
12 may limit the availment of the tax holiday incentive to the extent that the  
13 investor's country law or treaties with the Philippines allows a credit for taxes  
14 paid in the Philippines;

15 (3) Delegate, in appropriate cases, some of its functions to the BOI management  
16 committee, or to any official of the Board with the rank equivalent to a  
17 Department Director;

18 (4) After due hearing, decide controversies concerning the implementation of the  
19 relevant provisions of this Code that may arise between registered enterprises  
20 or investors therein and government agencies, within thirty (30) days after the  
21 controversy has been submitted for decision; *Provided*, That the investor or  
22 the registered enterprise may appeal the decision of the Board within thirty  
23 (30) days from receipt thereof to the President for decision. To effectively  
24 exercise this power, the Board shall have the power to subpoena witnesses,  
25 administer oaths, and compel the production of books, papers, and other  
26 evidences, and to cite for contempt any person/organization that fails to  
27 comply with the aforestated processes; *Provided*, That to arrive at the truth,  
28 the investigator(s) may grant immunity from prosecution to any person whose  
29 testimony or whose possessions of documents or other evidence is necessary  
30 or relevant to determine such truth in any investigation;

31 (5) Recommend to the Commissioner of Immigration and Deportation the entry  
32 into the Philippines for employment of foreign nationals under this Code;

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

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

28 **SEC. 9. Powers and Duties of the Chairman.** — The Chairman shall have the  
29 following powers and duties:

- 30 (1) To preside over the meetings of the Board of Governors;
- 31 (2) To render annual reports to the President and such special reports as may  
32 be requested;

- 1 (3) To act as liaison between investors seeking joint venture arrangements in  
2 particular areas of investments;
- 3 (4) Recommend to the Board of Governors such policies and measures he  
4 may deem necessary to carry out the objectives of this Code; and
- 5 (5) Generally, to exercise such other powers and perform such other duties as  
6 may be directed by the Board of Governors from time to time.

7 **SEC. 10. Powers and Duties of the Vice-Chairman.** — The Vice-Chairman shall  
8 have the following powers and duties:

- 9 (1) To act as Managing Governor of the Board, thereby executing all acts of  
10 administration;
- 11 (2) To preside over the meetings of the Board of Governors in the absence of  
12 the Chairman;
- 13 (3) Prepare the Agenda for the meetings of the Board of Governors and  
14 submit for its consideration and approval the policies and measures which  
15 the Chairman deems necessary and proper to carry out the provisions of  
16 this Code;
- 17 (4) Assist registered enterprises and prospective investors to have their papers  
18 processed with dispatch by all government offices, agencies,  
19 instrumentalities and financial institutions; and
- 20 (5) Perform the other duties of the Chairman in the absence of the latter, and  
21 such other duties as may be assigned to him by the Board of Governors.
- 22
- 23

### TITLE III





1 IPP, alter any of the terms of the declaration of an investment area or terminate the status  
2 of preference. In no case, however, shall any amendment of the IPP impair whatever  
3 rights that may have already been legally vested in qualified enterprises which shall  
4 continue to enjoy such rights to the full extent allowed under this Code. The Board shall  
5 not accept applications in an area of investment prior to the approval of the same as a  
6 preferred area nor after approval of its deletion as a preferred area of investment.

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

## 12 **CHAPTER II – INCENTIVES TO REGISTERED ENTERPRISES**

13  
14  
15 **SEC. 15. *Governing Incentive Provision for IPAs.*** -- All existing and future IPAs  
16 vested with the power to grant incentives, including but not limited to the PEZA, SBMA,  
17 CDC, CEZA, ZCSEZA, and Phivedec Industrial Authority, as well as all industries  
18 granted investment incentives under special laws shall draw their incentives under this  
19 Code.

20 For this purpose, the incentives provisions of the governing laws of the IPAs and  
21 industries are hereby repealed accordingly.

22 **SEC. 16. *Incentives to Registered Enterprises.*** -- All IPAs may grant the following  
23 incentives to their respective registered enterprises to the extent of the activity/project:

### 24 25 (A) INCOME TAX HOLIDAY (ITH) OR NET OPERATING LOSS 26 CARRYOVER (NOLCO)

27  
28 (1) ITH – Registered enterprises shall be entitled to an income tax holiday from  
29 the start of their commercial operation to the extent of their activity under the following  
30 categories:

1 Category A - All activities listed in the IPP, which includes *inter alia*, domestic-  
2 oriented activities located within the National Capital Region  
3 (NCR) shall be entitled to four (4) years ITH.

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

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

12  
13 Enterprises with existing operations that qualify for registrations  
14 shall be limited to their incremental capacities and/or incremental  
15 sales value for ITH availment.

16  
17 Category D - The foregoing categories notwithstanding, an additional four (4)  
18 years shall be granted for "strategic projects". Strategic Projects  
19 refer to activities which exhibit high social economic returns and  
20 comply with any of the following conditions:

- 21 (a) Project would create high value-added;  
22 (b) Project would generate sizable employment;  
23 (c) Project would require large investments; or  
24 (d) Project would use new and internationally-accepted high  
25 level of technology.

26  
27 A project shall be determined and approved as "strategic" by a  
28 unanimous decision of an inter-agency committee composed DTI-  
29 BOI, NEDA and Department of Finance (DOF).

30  
31 (2) NOLCO - The net operating loss of the business or enterprise during the first  
32 five (5) years from start of commercial operation which had not been previously offset as  
33 deduction from gross income shall be carried over for the next five (5) consecutive

1 taxable years from gross income immediately following the year of such loss; *Provided*  
2 *however*, That operating loss resulting from availment of incentives provided in this Code  
3 shall not be entitled to NOLCO.

4  
5 A registered enterprise availing of ITH, NOLCO or additional deductions must  
6 secure a prior certification of entitlement from the concerned IPA before filing their  
7 income tax returns (ITR) with the Bureau of Internal Revenue (BIR).

8 For this purpose, the statutory time for filing of the ITR of the concerned  
9 registered enterprise with the BIR shall automatically be extended for a period of sixty  
10 (60) days therefrom, without penalties, interests and surcharges.

11 Registered enterprises availing of the ITH as herein provided shall not be entitled  
12 to avail of the NOLCO and vice-versa. Registered enterprises shall have the option to  
13 avail of the ITH or NOLCO at the time of registration, but once the option is made, no  
14 amendment shall be allowed.

15  
16 (B) IMPOSITION OF A TAX RATE OF FIVE PERCENT (5%) ON GIE

17  
18 Except for real property taxes, no taxes, local and national, shall be imposed on  
19 business establishments operating within an economic zone or freeport. In lieu thereof,  
20 five percent (5%) of the gross income shall be paid and remitted as follows:

21  
22 I. FOR ECONOMIC ZONES

- 23  
24 (a) three percent (3%) shall be remitted to the national government; and  
25 (b) two percent (2%) shall be remitted directly to the local government units  
26 concerned

27  
28 II. FOR SUBIC BAY FREEPORT

- 29  
30 (a) three percent (3%) shall be remitted to the national government;  
31 (b) one percent (1%) shall be remitted directly to the local government units  
32 concerned; and

- 1 (c) one percent (1%) to be included in a development fund to be utilized for the  
2 development of municipalities outside the City of Olongapo and the  
3 Municipality of Subic, and other municipalities contiguous to the base areas.  
4

5 III. FOR THE ZAMBOANGA CITY ECONOMIC ZONE AND FREEPORT  
6

- 7 (a) two percent (2%) shall be remitted to the national government; and  
8 (b) three percent (3%) which shall be allocated as follows:

- 9  
10 (i) two percent (2%) to the City of Zamboanga  
11 (ii) one percent (1%) to Barangay Special Development Fund  
12

13 IV. FOR THE CAGAYAN ECONOMIC ZONE AND FREEPORT  
14

- 15 (a) two percent (2%) shall be remitted to the national government;  
16 (b) one percent (1%) shall be remitted directly to the Province of Cagayan;  
17 (c) one percent ( 1%) to be shared by the municipalities affected by the  
18 declaration of the zone in proportion to their income from business activities  
19 within the zone; and  
20 (d) one percent (1%) shall be remitted directly to the CEZA;  
21

22 (C) ACCELERATED DEPRECIATION  
23

24 Accelerated depreciation, in accordance with the rules and regulations prescribed  
25 by the DOF, of plant, machinery, and equipment that are reasonably needed and actually  
26 used for the production and transport of goods and services may be depreciated using a  
27 depreciation rate twice as fast as the normal rate in accordance with the provisions of the  
28 NIRC; *Provided*, That the taxpayer notifies in writing the Commissioner of Internal  
29 Revenue at the beginning of the depreciation period as to what depreciation rate allowed  
30 thereunder shall be used by it.  
31

32 (D) CAPITAL EQUIPMENT INCENTIVES  
33

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

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

11 Board approval must be secured before any sale, transfer or disposition of the  
12 said items is made; *Provided*, That if such sale, transfer or disposition is made within the  
13 first five (5) years from date of importation, any of the following conditions must be  
14 present:

- 15 (a) If made to another enterprise enjoying tax and duty exemption on imported  
16 capital equipment;
- 17 (b) If made to another enterprise, upon payment of any taxes and duties due on  
18 the undepreciated portion of the item to be sold based on a normal rate of  
19 depreciation;
- 20 (c) Exportation of the equipment, machinery, spare parts or source documents  
21 or those required for pollution abatement and control;
- 22 (d) For reasons of proven technical obsolescence;
- 23 (e) For purposes of replacement to improve and/or expand the operations of the  
24 registered enterprise; or
- 25 (f) Repair of the imported item.
- 26

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

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

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

7           (3) A tax credit equivalent to the taxes and/or duties paid on raw materials,  
8 supplies, parts and semi-finished products used in the fabrication of the machinery and  
9 equipment shall be given to export-oriented firms which purchase machinery and  
10 equipment from a domestic manufacturer; *Provided*, That:

11           (a) said equipment, machinery and spare parts will be used exclusively by the  
12 registered enterprise in its registered activity;

13           (b) the equipment would have qualified for tax and duty-free importation;

14           (c) the value-added tax that has been paid and refunded to or for which tax  
15 credit has already been issued to the manufacturer of the equipment or  
16 machinery for such raw materials, supplies, spare parts or semi-finished  
17 products, shall no longer be available for the issuance of tax credit to the  
18 registered enterprise who purchased the equipment; and

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

23  
24           The tax credit certificate issued shall be valid for a period of ten (10) years from  
25 date of issuance: *Provided however*, That it shall form part of the gross income of the  
26 grantee for income tax purposes and therefore taxable; *Provided finally*, That applications  
27 for tax credit under this subsection must be filed within one (1) year from date of  
28 delivery, otherwise, this incentive shall be considered as waived.

29  
30           (E)     RAW MATERIALS INCENTIVES

31  
32           Every registered export enterprise shall enjoy a tax credit equivalent to the  
33 national internal revenue taxes and customs duties paid on the supplies, raw materials and

1 semi- manufactured products used in the manufacture, processing or production of its  
2 export products forming part thereof, exported directly and indirectly by the registered  
3 export enterprise, based on the actual taxes and duties paid for such  
4 materials/supplies/semi-manufactured products by the registered enterprise.

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

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

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

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

20  
21 (F) INCENTIVES ON BREEDING STOCKS AND GENETIC MATERIALS

22  
23 (1) Importation of breeding stocks and genetic materials within ten (10) years from  
24 the date of registration of commercial operation of the enterprise shall be exempt from all  
25 taxes and duties: *Provided*, That such breeding stocks and genetic materials are: (a)  
26 reasonably needed in the registered activity; and (b) approved by the Board.

27 (2) A tax credit equivalent to one hundred percent (100%) of the value of customs  
28 duties that would have been waived on the breeding stocks and genetic materials had  
29 these items been imported shall be given to the registered enterprise which purchases  
30 breeding stocks and genetic materials from a domestic producer; *Provided*, That:

31 (a) said breeding stocks and genetic materials would have been qualified for  
32 tax and duty-free importation under the preceding paragraph;

- 1 (b) the breeding stocks and genetic materials are reasonably needed in the  
2 registered activity;
- 3 (c) approval of the Board has been obtained by the registered enterprise; and
- 4 (d) the purchase is made within ten (10) years from the date of registration of  
5 commercial operation of the registered enterprise.

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

9

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

12

13 The MCIT of two percent (2%) of the gross income as of the end of the taxable  
14 year shall be imposed when the minimum corporate income tax is greater than the tax  
15 computed under the NIRC as amended for the taxable year; *Provided however*, That said  
16 MCIT shall be imposed only after the enterprise' entitlement period to the income tax  
17 based incentives.

18

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

21

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

24

25 (I) TAX TREATMENT OF MERCHANDISE IN THE ZONE. — (1) Except as  
26 otherwise provided in this Code, foreign and domestic merchandise, raw materials,  
27 supplies, articles, equipment, machineries, spare parts and wares of every description,  
28 except those prohibited by law, brought into the zone to be sold, stored, broken up,  
29 repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed,  
30 manipulated, manufactured, mixed with foreign or domestic merchandise whether  
31 directly or indirectly related in such activity, shall not be subject to customs and internal  
32 revenue laws and regulations nor to local tax ordinances, the provisions of law to the  
33 contrary notwithstanding.



1           (2)     Merchandise purchased by a registered zone enterprise from the customs  
2 territory and subsequently brought into the zone, shall be considered as export sales and  
3 the exported thereof shall be entitled to the benefits allowed by law for such transaction.

4           (3)     *Domestic merchandise sent from the zone to the customs territory shall,*  
5 *whether or not combined with or made part of other articles likewise of local origin or*  
6 *manufactured in the Philippines while in the export processing zone, be subject to*  
7 *internal revenue laws of the Philippines as domestic goods sold, transferred or disposed*  
8 *of for local consumption.*

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

14           (5)     Domestic merchandise on which all internal revenue taxes have been paid,  
15 if subject thereto, and foreign merchandise previously imported on which duty or tax has  
16 been paid, or which have been admitted free of duty and tax, may be taken into the zone  
17 from the customs territory of the Philippines and be brought back thereto free of quotas,  
18 duty or tax.

19           (6)     Subject to such regulations respecting identity and safeguarding of the  
20 revenue as the authority may deem necessary when the identity of an article entered into  
21 the export processing zone under the immediately preceding paragraph has been lost,  
22 such article. When removed from the zone and taken to the customs territory shall be  
23 treated as foreign merchandise entering the country for the first time, under the provisions  
24 of the Tariff and Customs Code.

25           (7)     Articles produced or manufactured in the zone and exported therefrom  
26 shall, on subsequent importation into the customs territory, be subject to the import laws  
27 applicable to similar articles manufactured in a foreign country;

28           (8)     Unless the contrary is shown, merchandise taken out of the zone shall be  
29 considered for tax purposes to have been sent to customs territory.

30  
31           (J)     EXEMPTION FROM LOCAL TAXES AND LICENSES. — (1)  
32 Notwithstanding the provisions of law to the contrary, zone registered enterprise shall, to

1 the extent of their construction, operation or production inside the zone be exempt from  
2 the payment of any and all local government imposts, fees, licenses or taxes.

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

6  
7 (K) EMPLOYMENT OF FOREIGN NATIONALS  
8

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

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

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

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

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

5 *Provided further*, That for purposes of compliance with this particular condition,  
6 the alien-applicant should prove that he has remitted such amount in acceptable foreign  
7 currency to BOI-accredited Philippine government banks or has brought into the  
8 Philippines the said equipment; *Provided finally*, That in securing the special investor's  
9 resident visa, the alien-applicant shall be entitled to the same privileges provided for  
10 under Sec. 16 (K), last paragraph.

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

17 The minimum amount for investment provided for under this Code shall be made  
18 applicable to visas granted to investors by the PEZA, SBMA, CDC, CSEZ, and ZCSEZ.

### 19 20 **CHAPTER III – REGISTRATION OF ENTERPRISES**

21  
22 **SEC. 18. *Qualifications of a Registered Enterprise.*** - To be entitled to register to  
23 avail of incentives, an applicant must satisfy the following conditions:

24 (1) He is a citizen of the Philippines, in case the applicant is a natural person, or in  
25 case of a corporation or partnership or any other association, it must be organized and  
26 existing under Philippine laws and that it must comply with all the qualifications  
27 provided under this Code; *Provided however*, that for purposes of this Code and any law  
28 to the contrary notwithstanding, a natural-born Association of Southeast Asian Nations  
29 (ASEAN) citizen or a corporation effectively controlled by ASEAN citizens shall be  
30 considered as a Philippine investor; *Provided*, That the investment is made in an activity  
31 where the Constitution does not specifically require Filipino participation;

32 (2) That it will engage in an activity included in the IPP;

1 (3) That the activity it will engage in is not within the activities, reserved by the  
2 Constitution to Philippine citizens or corporations owned and controlled by Philippine  
3 citizens, such as the operation of public utilities.

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

7 (4) If the applicant is engaged or proposes to engage in undertaking or activities  
8 other than registered projects, it has installed or undertakes to install an accounting  
9 system adequate to identify the investments, revenues, costs, and profits or losses of each  
10 registered project undertaken by the enterprise separately from the aggregate investment,  
11 revenues, costs and profits or losses of the whole enterprise or to establish a separate  
12 corporation for each registered project if the Board should so require to facilitate proper  
13 implementation of this Code.

14  
15 **CHAPTER IV — BASIC RIGHTS AND GUARANTEES**  
16 **OF REGISTERED ENTERPRISES**

17  
18 **SEC. 19.** *Protection of Investments.* — All investors and registered  
19 enterprises are entitled to the basic rights and guarantees provided in the Constitution.  
20 Among other rights recognized by the Government of the Philippines are the following:

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

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

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

32 (c) *Foreign Loans and Contracts.* — The right to remit at the exchange rate  
33 prevailing at the time of remittance such sums as may be necessary to meet the payments

1 of interest and principal on foreign loans and foreign obligations arising from  
2 technological assistance contracts, subject to the provisions of Section 74 of Republic Act  
3 No. 265 as amended;

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

12 (e) Requisition of Investment. — There shall be no requisition of the property  
13 represented by the investment or of the property of enterprises, except in the event of war  
14 or national emergency and only for the duration thereof. Just compensation shall be  
15 *determined and paid either at the time of requisition or immediately after cessation of the*  
16 *state of war or national emergency.* Payments received as compensation for the  
17 requisitioned property may be remitted in the currency in which the investment was  
18 originally made and at the exchange rate prevailing at the time of remittance, subject to  
19 the provisions of Section 74 of Republic Act No. 265 as amended.

20  
21 **CHAPTER V – ADMINISTRATION OF INCENTIVES**  
22

23 **SEC. 20.** *Administration and Implementation of Incentives.* The IPAs shall be  
24 responsible for the implementation and administration of the incentives granted to their  
25 respective registered enterprises; *Provided,* that any incentive administration policy  
26 adopted by the Board of Governors shall be uniformly applied by all incentive  
27 administering agencies.

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

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

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

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

12 **SEC. 23. *Approval and Registration Procedures.*** - The Board is authorized to  
13 adopt rules and regulations to facilitate action on applications filed with it; prescribe  
14 criteria for the evaluation of several applications; devise standard forms for the use of  
15 applicants and delegate to the regional offices of the DTI the authority to receive and  
16 process applications for enterprises to be located in their respective regions.

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

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

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

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

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

7           All enterprises registered with an IPA shall be automatically registered with the  
8 BOI for purposes of tax treaty privileges.

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

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

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

22           Incentives provided under this Code where there is no specific period of  
23 availment shall terminate after a period of twenty (20) years from date of registration or  
24 start-up of commercial operations of the registered enterprise, whichever is applicable;  
25 *Provided however, that this shall not be applicable to the incentive of tax and duty free*  
26 *importation of capital equipment, raw materials, supplies and spare parts of enterprises*  
27 *registered with PEZA, SBMA, CDC, CEZ, ZCEZ.*

28           **SEC. 30. *Payment in the form of foreign currencies.*** -- All IPAs may be allowed to  
29 receive foreign currencies as payment of application fees, fines and penalties, including  
30 refund of incentives.

31  
32   **TITLE IV**  
33   **FINAL PROVISIONS**

1

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

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

15           **SEC. 33. *Vested Rights.*** — Existing registered enterprises which are enjoying the  
16 incentives under Executive Order No. 226 shall continue to enjoy such incentives for the  
17 period therein stated: *Provided, however,* That firms which made investments on projects  
18 approved or registered by BOI and PEZA six (6) months before the effectivity of this  
19 Code may opt to be governed by the provisions of this Code; *Provided further,* That  
20 PEZA enterprises enjoying the 5% GIE, regardless of date of registration, may opt to be  
21 governed by the provisions of this Code.

22           **SEC. 34. *After Tax Profits.*** — Without prior BSP approval, after tax profits and  
23 other earnings of foreign investments of registered enterprises may be remitted outward  
24 in the equivalent foreign exchange through any of the banks licensed by the BSP;  
25 *Provided, however,* That such foreign investments in said enterprises have been  
26 previously registered with the BSP.

27           **SEC. 35. *Protection of the environment.*** — The BOI, in coordination with the  
28 appropriate agencies, shall take concrete and appropriate steps and enact the proper  
29 measures for the protection of the environment.

30           **SEC. 36. *Suspension and forfeiture of incentives; refund and penalties.*** — When  
31 there is probable cause to believe that the registered enterprise has violated its registration  
32 terms and conditions, the Board may suspend its incentives availment, until proven  
33 otherwise.



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

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

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

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

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

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

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

31           **SEC. 37. Appeals from Board's Decision.** — All orders or decisions of the Board  
32 in cases involving the provisions of this Code shall immediately be executory. No appeal  
33 from the order or decision of the Board by the party adversely affected shall stay such

1 order or decision, unless a supersedeas bond equivalent to the amount stated in the order  
2 or decision is posted by the appellant.

3 All appeals involving cases decided by the Board, except as provided in the next  
4 succeeding paragraph, shall be filed with the Court of Appeals within fifteen (15) days  
5 from notice of the order or decision or of the denial of the appellant's motion for new  
6 trial or reconsideration. Within the same period, the aggrieved party may file a motion for  
7 reinvestigation or reconsideration. Only one motion for reconsideration shall be allowed,  
8 subject to the posting of the aforementioned supersedeas bond which shall be limited to  
9 cash and/or surety bond from a BOI-accredited bonding company.

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

15 **SEC. 38. *Implementing Rules and Regulations.*** –The BOI, in consultation with  
16 NEDA, DOF, DTI and other appropriate government agencies shall promulgate rules and  
17 regulations to implement the intent and provisions of this Code.

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

21 **SEC. 40. *Repealing Clauses.*** – (1) The following provisions or laws are hereby  
22 repealed:

- 23 A. Batas Pambansa 44
- 24 B. Batas Pambansa 391
- 25 C. Presidential Decree 218
- 26 D. Presidential Decree 1419
- 27 E. Presidential Decree No 1623, as amended
- 28 F. Presidential Decree No. 1789
- 29 G. Presidential Decree 2032
- 30 H. Presidential Decree No. 538
- 31 I. Executive order 815
- 32 J. Executive Order 1045
- 33 K. Republic Act No. 7888

- 1 (2) Book I of Executive Order No. 226 is hereby absolutely repealed.
- 2 (3) Books III and IV of Executive Order No. 226 are hereby repealed by  
3 Republic Act No. 8756.
- 4 (4) Books V and VI of Executive Order No. 226 are hereby absolutely  
5 repealed.
- 6 (5) The provisions of Republic Act Nos. 7916 and 8748, which are  
7 inconsistent with this Code are hereby repealed or modified accordingly.
- 8 (6) The provisions of Commonwealth Act No. 146, as amended are hereby  
9 modified accordingly;
- 10 (7) The provisions of Section 12 of Republic Act No. 7227, otherwise known  
11 as the "Bases Conversion and Development Act of 1992, section 4,  
12 paragraphs (e), (f) and (g) of Republic Act no. 7903 otherwise known as  
13 "Zamboanga City Special Economic Zone Act of 1995" and section 4,  
14 paragraphs (b), (c) and (e) of Republic Act No. 7922 entitled, "Cagayan  
15 Special Economic Zone Act of 1995" which are inconsistent with this act,  
16 are hereby repealed or modified accordingly; *Provided*, however, That  
17 they shall draw their respective incentives from any of those provided for  
18 under this Code.
- 19 (8) The provisions of section 3(e) and (f) of Republic Act No. 7042, as  
20 amended by Republic Act no. 8179 otherwise known as "The Foreign  
21 Investments Act as amended" are hereby modified by Sections 10 (Q)(R)  
22 of this Code. The provision of Section 5 of RA 7103, is modified by  
23 Section 7 (20) of this Code.
- 24 (9) The incentives provisions under other investment incentives laws catering  
25 to specific industries are hereby repealed as follows:
- 26 A. Section 36 of Presidential Decree No. 705, otherwise known as the  
27 "Revised Forestry Code";
- 28 B. Section 12 of Presidential Decree no. 87, otherwise known as the  
29 "Oil Exploration Development Act of 1972";

- 1 C. Sections 8, 9 and 10 of Presidential Decree No. 538 otherwise  
2 known as the "Philippine Veterans Investment Development  
3 Corporation";
- 4 D. Sections 16 and 17 of Presidential Decree No. 972 otherwise known  
5 as the "Coal Development Act";
- 6 E. Sections 4(a) and (d) of Presidential Decree No. 1442, otherwise  
7 known as the "Geothermal Exploration and Development Act";
- 8 F. Sections 10 and 11 of Republic Act No. 7156 otherwise known as  
9 the "Mini-hydroelectric Incentive Act";
- 10 G. Sections 6, 7 and 8 of Republic Act No. 7103 otherwise known as  
11 the "Iron and Steel Industry Act";
- 12 H. Sections 6 and 7 of Republic Act No. 7471 otherwise known as the  
13 "Philippine Overseas Shipping Development Act";
- 14 I. Sections 19 and 20 of Republic Act No. 7279 otherwise known as  
15 the "Urban Development and Housing Act of 1992";
- 16 J. Sections 61 and 62 of Republic Act No. 6938 otherwise known as  
17 the "Cooperative Code of the Philippines";
- 18 K. Sections 16 and 17 of Republic Act No. 7844 otherwise known as  
19 the "Export Development Act of 1994";
- 20 L. Section 12 of Republic Act No. 8047 otherwise known as the "Book  
21 Publishing Industry Development Act";
- 22 M. Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942 otherwise  
23 known as the "Philippine Mining Act of 1995";
- 24 N. Section 12 of Republic Act No. 7718 otherwise known as the  
25 "Build-Operate-transfer Law";
- 26 O. Section 3 (a), (c), (d) and (h) of Republic Act No. 8502 otherwise  
27 known as the "Jewelry Industry Development Act of 1998";
- 28 P. Section 35 of Republic Act No. 8550 otherwise known as the  
29 "Philippine Fisheries Code of 1998; and

1                   Q. Section 9 of Republic Act No. 8479 otherwise known as the  
2                   “Downstream Oil Deregulation Act of 1998”.

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

5                   **SEC. 41. *Effectivity Clause.*** – This Act and its implementing rules and regulations  
6 shall take effect fifteen (15) days after its publication in at least two (2) newspapers of  
7 general circulation.

8                   Approved,