

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

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SENATE
S.B. NO. 1910

RECEIVED BY: _____

Introduced by Senator Biazon

EXPLANATORY NOTE

Fiscal incentives are valuable tools of the government in implementing its socio-economic goals. These incentives vary in terms of impacts but are generally aimed at spurring growth in selected industries. However, depending on the condition of the country, the efficacy of incentives must be reviewed in order to gauge the overall cost-benefit ratio. Today, it must be considered along with other measures as a means of generating much needed revenue for the State.

The current fiscal incentives in the country are diverse, even fragmented, and at times inefficient to the detriment of government. In effect, the difficult task of selecting which incentives must be continued and which must be repealed is inevitable.

Notwithstanding the gains in the past, several laws must now be set aside in order to explore other prospects of generating additional revenue for the government. The Board of Investments (BOI) incentives and other special laws granting fiscal incentives would have to be retained due to greater gains that are inherent in its existence. To date, there are 124 laws, and provisions of laws, granting tax and duty exemption privileges to private and government sectors. Amongst these, however, selected laws with minimal impact must be repealed for the greater good of the country.

On top of the problems posed by the grant of fiscal incentives on monitoring and management, is the problem of revenues foregone by the National Government. Last year, the cost to the government of the grant of fiscal incentives amounted to Php 229.4 Billion Pesos or 5.33 % of GDP. The grant of fiscal incentives grew by 61% from 2002 to 2003 while the GDP grew by a measly 9%.

Considering that the government is presently faced with serious budgetary constraints to finance its programs and operations, it is deemed essential and imperative to repeal the laws enumerated in this proposed bill. This bill proposes a radical reform in the fiscal incentives, specifically on special laws and provisions of laws granting fiscal incentives. This proposed legislation on the fiscal incentives will generate considerable revenues that are direly needed by the National Government.

For these reasons, early passage is earnestly requested.


RODOLFO G. BIAZON
Senator

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AN ACT ADOPTING
A CONSOLIDATED INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES

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

PRELIMINARY TITLE
TITLE AND DECLARATION OF POLICY

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

SEC. 2. *Declaration of Investment Policies.* – The national economy shall be developed so as to enhance its competitiveness in the global economy and encourage investments that promote countrywide development and generate employment. Accordingly, the following are declared policies of the State:

(1) The State shall pursue a market responsive investment regime and to that end shall ensure that the incentives it provides do not cause market distortion.

(2) The State shall grant incentives that are simple to administer, time bound and performance based.

(3) The State shall vigorously promote investments in basic infrastructure such as, but not limited to, power, roads, water and housing.

(4) The State recognizes that industrial peace is essential to attracting investments.

(5) The State shall undertake investment promotion activities.

TITLE I

ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

SEC. 3. *The Board of Investments (BOI).* – The Board of Investments hereinafter referred to as the “BOI” shall implement the provisions of this Code except as otherwise provided herein.

SEC. 4. *The Board of Governors.* – The BOI Board of Governors shall be composed of seven governors: the Secretary of the Department of Trade and Industry (DTI); three Undersecretaries of Trade and Industry; and three representatives from the private sector to be appointed by the President. 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 be the *ex officio* Vice Chairman of the Board and its Managing Governor. The other two Undersecretaries of Trade and Industry may designate their representatives in cases of absence. The three representatives from the private sector shall be appointed by the President for a term not exceeding four years: *Provided*, That a governor shall serve as such until his successor shall have been appointed and qualified.

SEC. 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 recognized competence in any of the following fields: law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

SEC. 6. *Appointment of Board Personnel.* – The Board shall appoint its technical staff and other personnel subject to civil service laws, rules and regulations.

SEC. 7. *Powers and Duties of the Board.* – The Board shall be responsible for the regulation and promotion of investments. It shall meet as often as necessary. Notice of regular and special meetings shall be given to all members of the Board. The presence of four members of the Board shall constitute a quorum and the affirmative vote of four members of the Board in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall include but not be limited to the following:

(1) Promulgate rules and regulations to implement the purposes of this Act and such other laws as the Board is mandated to implement;

(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 purposes of this Act, including the refund and forfeiture of incentives when appropriate, restricting availment of incentives not needed by the project as determined by the Board, requiring performance bonds from BOI-accredited bonding companies, and payment of application, registration, publication and other fees when warranted;

(3) Delegate when appropriate some of its functions to the BOI Management Committee, or to any official of the Board with the rank equivalent to not less than a Department Director;

(4) After due hearing, decide controversies arising from the implementation of this Act that may arise between BOI-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 for registration by the Board within thirty (30) days from receipt thereof to the President. The Board shall have the power to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence, and to cite for contempt any person/organization that fails to comply with the aforestated processes: *Provided, further*, That the Board may grant immunity from prosecution to any person whose testimony or documents or other evidence is necessary or relevant to the case;

(5) Recommend to the Commissioner of Immigration the employment of foreign nationals in registered enterprises;

(6) Ascertain semi-annually, by inspection or verified reports, the proportion of the participation of Philippine nationals in a registered enterprise to ensure compliance with its qualification to retain its registration under this Code;

(7) Verify annually the compliance by registered enterprises with the terms and conditions of its registration;

(8) After due notice and hearing, cancel the registration or suspend the incentives of a registered enterprise and/or require refund of incentives including interests and monetary penalties. The Board shall recommend to the appropriate bureau of the Department of Finance to levy properties of the registered enterprise for grave failure to comply with the substantive terms and conditions of registration: *Provided*, That the registration of an enterprise whose project timetable for implementation, as approved by the Board, shall be considered automatically cancelled if it is delayed by one year, unless otherwise reinstated as a registered enterprise by the Board;

(9) Determine the organizational structure of the BOI taking into account Section 6 of this Act; appoint, discipline or remove its personnel consistent with the provisions of civil service laws, rules and regulations;

(10) Prepare feasibility and other pre-investment studies, on its own initiatives or on the request of an investor under terms and conditions mutually agreed upon;

(11) Grant, as specified under Section 16, the special incentives therein provided to registered enterprises that list their shares of stock in the Philippine Stock Exchange or directly offer a portion of their capital stock to the public and/or their employees;

(12) The Board as the national authority on investments shall have monitoring functions and shall coordinate investment promotion activities of all Investment Promotion Agencies (IPAs);

(13) Formulate and implement industrial programs to hasten economic development including those relating to the implementation of international trade, investments and environmental agreements and protocols;

(14) Recommend to the President the restriction of imported goods covered by rationalization programs;

(15) Recommend to the President, subject to constitutional limitations and other nationalization laws, the suspension of the nationality requirement provided for in this Act in cases involving bilateral or regional investments or trading agreements of the Philippines with other countries or when the existing laws of another country where the investor comes from provides no nationality restrictions for Filipino investors or provides for reciprocal nationality accommodations;

(16) The Board may establish offices in the Philippines and abroad;

(17) Prepare industry and sectoral development programs, the National Plan for Investment Promotions (NPIP) and gather and compile data required for the effective implementation of this Act;

(18) Within four months after the close of the fiscal year, submit an annual report to the President on the Board's administration of this Act, including recommendations on investment policies;

(19) Prepare the Investment Priorities Plan;

(20) Enter into agreements with other agencies for the simplification 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 Act;

(21) 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 locally; and

(22) Generally, exercise all powers necessary or incidental to attain the purposes of this Act and other laws vesting additional functions on the Board.

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

(1) Preside over the meetings of the Board of Governors;

(2) Sign annual and special reports to the President;

(3) Act as liaison between investors seeking joint venture arrangements in preferred areas of investments;

(4) Recommend to the Board of Governors policies and measures necessary to carry out the objectives of this Act; and

(5) Generally exercise other powers and perform other duties as may be directed by the Board of Governors.

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

(1) Act as Managing Governor of the Board, thereby executing all acts of administration;

(2) 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 Act;

(4) Assist registered enterprises and prospective investors to have their papers processed quickly by all government offices, agencies, instrumentalities and financial institutions; and

(5) Perform the other duties of the Chairman in his absence, and such other duties as may be assigned to him by the Board of Governors.

TITLE II
DEFINITION OF TERMS

SEC. 10. *Definition of Terms.* – As used herein, the following shall mean:

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

(b) “Investment Promotion Agencies (IPAs)” shall include BOI, Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Bataan Technology Park Inc. (BTPI), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA) and all other government agencies administering incentives to specific sectors under special laws.

(c) “Registered enterprise” shall mean any individual, partnership, corporation, Philippine branch of a foreign corporation or other entity incorporated and/or organized and existing under Philippine laws engaged in any of the activities listed in the IPP as hereinafter defined; and registered for such activity with the Board or with other investment promotion agencies, in accordance with this Act: *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, developmental 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. The cessation or substantial reduction by the registered enterprise of the activity for which it was registered shall cause the loss of its registered status upon declaration of the Board.

(d) “Investment Priorities Plan (IPP)” shall refer to the list of industries, services and other activities, which will be eligible for incentives under this Act, prepared and determined as priority activities by the BOI, in consultation with the Department of Finance, National Economic and Development Authority, the Office of the President and other appropriate government agencies and the private sector and is certified in writing by NEDA and DOF in accordance with Title III, Chapter 1 of this Act.

(e) "New product/service" shall refer to any product/service not locally manufactured/rendered or not sufficiently manufactured/rendered to meet demand.

(f) "Gross income earned" refers to gross sales or gross revenues less sales returns, discounts and allowances and cost of goods and/or cost of services rendered as defined under Section 27 (E) (4) of the National Internal Revenue Code of 1997.

(g) "Tax credit" shall mean any credits against taxes and/or duties equal to those actually paid or would have been paid, to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or by the Board or concerned IPA, if so delegated by the Secretary of Finance. The tax credit certificate issued pursuant to this Code shall not be transferable and shall be valid only for a period of ten (10) years from date of issuance.

The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government.

(h) "Export sales" shall mean the sales values and/or revenues, determined from invoices, bills of lading, inward letters of credit, landing certificates, or other commercial documents, of products/services (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 application and/or installation of technology and systems in the project 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, or knowledge and/or information, even if rendered locally, excluding mere deployment of people or individual practice of profession abroad (constructive exportation).

The foregoing notwithstanding, services rendered locally by registered enterprises engaged in environmental and exploratory development projects that are paid for in freely convertible foreign currency shall be considered as "export sales".

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

(i) An “export enterprise” shall mean a registered enterprise which is a manufacturer, processor or service provider that exports or supplies to exporters fifty percent (50%) or more of its output and its activity is listed in the Investments Priorities Plan.

The Information Technology (IT) industry shall be considered an export enterprise if at least fifty percent (50%) of its services are paid for in freely convertible foreign currency.

An export trader which is a registered enterprise that buys and sells on its account products of micro-enterprises and small and medium enterprises and earns one hundred percent (100%) of its annual sales from exports of the same shall be deemed to be an export enterprise.

(j) A “domestic enterprise” shall mean a registered enterprise which produces goods for sale or renders services exclusively to the domestic market or does not export fifty percent (50%) or more of its output.

(k) “Service provider” is a registered enterprise engaged or proposing to engage in rendering technical, professional or other services listed by the Board.

(l) “Source documents” are input materials and documents reasonably needed by information technology (IT) and IT-enabled industries such as, but not limited to, books, directories, magazines, newspapers, brochures, pamphlets, medical records/files, legal records/files, instruction materials, drawings/blueprints/outlines.

(m) “Processing” shall mean converting 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.

(n) “Industrial Estate (IE)” refers to a tract of land subdivided and developed according to a comprehensive plan under a unified continuous management and with provisions for basic infrastructure and utilities, with or without pre-built standard factory buildings and community facilities for the use of a community of industries.

(o) “Export Processing Zone (EPZ)” refers to a specialized industrial estate located physically and/or administratively outside the customs territory and predominantly oriented to export

production. Enterprises located in export processing zones are allowed to import capital equipment and raw materials free from duties, taxes and other import restrictions.

(p) "Special Economic Zones (SEZ)" are ecozones or industrial estates devoted to exports whose metes and bounds are fixed or delimited by presidential proclamations for the purpose of applying incentives as provided in this Act.

(q) "Free Trade/Freeport Zone" is an isolated and policed area adjacent to a port of entry as defined by Section 3519 of the Tariff and Customs Code, where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import duties. However, movement of these imported goods from the free-trade area to a non-free-trade area in the country shall be subject to import duties.

(r) "IT Park" is an area which has been developed into a complex capable of providing infrastructure and other support facilities required by IT enterprises, as well as amenities required by professionals and workers involved in IT enterprises, or easy access to such amenities.

(s) "IT Building" is a building, the whole or part of which has been developed by public or private corporate entities to provide infrastructure and other support facilities required by IT enterprises, as well as amenities required by professionals and workers involved in IT enterprises, or easy access to such amenities.

TITLE III INVESTMENTS WITH INCENTIVES

CHAPTER I QUALIFIED ACTIVITIES

SEC. 11. *Investment Priorities Plan (IPP)*. – Not later than the end of June of every third year, the Board of Investments, after consultation with the Department of Finance (DOF), National Economic and Development Authority (NEDA), investment promotion agencies and other appropriate government agencies and the private sector and concurred in writing by the NEDA and DOF shall submit to the President the IPP for his approval: *Provided, however*, That the deadline for submission, may be extended by the President within a reasonable period.

Upon approval of this Code, the IPP shall be prepared within one hundred twenty (120) days by the BOI, in consultation with the DOF, NEDA, the Office of the President, the IPAs, other

appropriate government agencies and the private sector and certified in writing by NEDA and DOF and in accordance with the criteria for determining the list of industries eligible for incentives under Sections 15 and 16 of this Code.

The IPP shall be prepared once every three years by the BOI, in consultation with and certified in writing by the agencies enumerated in the preceding paragraph, 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, services or activities with high comparative advantage or significant competitive edge. It shall also include those that will engage in the (i) production or manufacture of new product/service or (ii) export product/service or (iii) stimulation of both forward and backward linkages or creation of value added activities or (iv) socially relevant, environment-friendly and economically viable undertaking.

SEC. 12. *Amendments.* – Subject to publication requirements and the criteria for investment priority determination, the Board of Investments, in a recorded consultation with and certified in writing by the aforementioned government agencies may, at any time, recommend to the President to 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 the case of activities under Section 16, such amendment shall be upon the recommendation of the Board with the concurrence of the Secretaries of Finance and Trade and Industry. In no case, however, shall any amendment of the IPP impair the incentives conferred on a registered enterprise. 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.

SEC. 13. *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 newspaper of general circulation and all such areas shall be open for application until publication of an amendment or deletion thereof, or until the Board approves registration of enterprises.

CHAPTER II INCENTIVES TO REGISTERED ENTERPRISES

SEC. 14. *Governing Incentive Provision for Investment Promotion Agencies.* – All existing and future Investment Promotion Agencies (IPAs) vested with the power to confer and administer

incentives, including but not limited to the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Bataan Technology Park, Inc. (BTPI), Cagayan Economic Zone Authority (CEZA) and Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA), shall offer only incentives provided in this Act. For this purpose, IPAs that were previously declared as special economic zones by virtue of presidential issuances shall be vested with the authority to confer and administer incentives provided herein.

SEC. 15. *Incentives to Registered Enterprises.* – All investment promotion agencies may administer the following incentives to their respective registered enterprises to the extent of the activity/project:

(a) Income Tax Holiday

Income Tax Holiday (ITH) – Registered enterprises shall be entitled to an income tax holiday from the start of their commercial operations to the extent of their activity under the following categories:

Category A – A registered domestic enterprise located in highly developed areas, as determined by the Board, shall be entitled to four years income tax holiday.

Category B – A registered domestic enterprise on the following shall be entitled to six years income tax holiday:

(i) located in less developed areas as defined by the Board; or

(ii) producing/rendering new products/services or having strong backward or forward linkages.

Category C – A registered export enterprise shall be entitled to six years income tax holiday: *Provided, however,* That if the export enterprise complies with the following: (1) large capital investments or sizeable employment generation, or (2) use high level of technology or (3) located outside Metro Manila, it shall be entitled to eight years income tax holiday.

Registered enterprises embarking on new investments that are listed in the current IPP shall be entitled to incentives provided herein pertaining to the new investments and subject to such terms and conditions as the Board may determine.

Additional investments in the project shall be entitled to income tax holiday equivalent to such investments and may be entitled to additional income tax holiday for as long as investment is

made in the same project, as the Board may decide: *Provided*, That the project is listed in the IPP at the time the additional investment in the project is made: *Provided, further*, That the entitlement period for additional investments shall not exceed three times the period provided under Subsection (a) of Section 15: *Provided, however*, That the total ITH period for an export enterprise availing of an eight year ITH shall not exceed twenty (20) years. Any unused incentives shall be deemed forfeited if not used during the incentive period.

The Bureau of Internal Revenue (BIR) shall require a registered enterprise availing of ITH or NOLCO to secure a certificate of eligibility from the appropriate IPA before filing an official copy of its Income Tax Return (ITR) with BOI or appropriate IPA for validation.

Failure to secure certification and/or to file the ITH or NOLCO availment for validation by the BOI or appropriate investment promotion agency within forty-five (45) days from the last day of statutory filing date for ITR shall cause the forfeiture of the availment for the taxable period.

(b) Net Operating Loss Carryover (NOLCO) – The net operating loss of the business or enterprise during the first three years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next five consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from availment of incentives provided in this Code shall not be entitled to NOLCO.

Registered enterprises availing of the ITH as herein provided shall not be entitled to avail of the Net Operating Loss Carry Over (NOLCO).

(c) Imposition of a Tax Rate of Five Percent (5%) On Gross Income Earned (GIE) – Except for real property tax on land, no local and national taxes as prescribed under Republic Act No. 8424, also known as “The National Internal Revenue Code of 1997 as amended”, such as income tax, excise tax, franchise taxes, shall be imposed on business establishments operating within a special economic zone, PIA or freeport. In lieu thereof, five percent (5%) of the gross income earned shall be paid. The allocation of the five percent (5%) GIE pertaining to the local government unit foregoing taxes hereunder shall be governed by the charter or governing law of the IPA.

The incentive of five percent (5%) tax rate on gross income earned shall not be available to BOI registered enterprises.

(d) Accelerated Depreciation. – Accelerated depreciation 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 rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

(e) Capital Equipment Incentives. – (1) Importations of capital equipment, spare parts, tools and die, or those required for pollution abatement and control, cleaner production and waste reduction including consignment thereof by registered export-oriented enterprises upon the effectivity of this law, shall be exempted to the extent of one hundred percent (100%) of the taxes and customs duties: *Provided*, That the importation thereof shall be used exclusively by the registered enterprise in its registered activity: *Provided, further*, That the importation of machinery and equipment and accompanying parts shall comply with the following conditions:

(i) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;

(ii) They are reasonably needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board or the concerned IPA is secured for the part time utilization of said equipment in a non-registered activity to maximize usage thereof or the proportionate taxes and duties are paid on a specific equipment and machinery being permanently used for non-registered activities; and

(iii) The approval of the Board or the concerned IPA was obtained by the registered enterprise for the importation of such machinery, equipment and spare parts.

Approval of the Board or the concerned IPA must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within the first five years from date of importation, any of the following conditions must be present:

(1) If made to another enterprise enjoying tax and duty exemption on imported capital equipment;

(2) If made to another enterprise, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(3) Exportation of the capital equipment, machinery, spare parts or source documents or those required for pollution abatement and control; and

(4) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs other than paragraph (2), 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 approval within five 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 and duty exemption given it: *Provided, finally,* That even if the sale, transfer or disposition of the capital equipment, machinery or spare parts is approved after five years from date of importation, the registered enterprise is still liable to pay the taxes and duties based on the net book value of the capital equipment, machinery or spare parts 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.

(2) The purchase of machinery and capital equipment and raw materials, supplies, parts and semi-finished products, used in the fabrication of machinery and capital equipment by a registered export-oriented enterprise, from a domestic manufacturer shall be subject to zero percent (0%) value-added tax.

The registered export-oriented enterprise shall be granted a tax credit equivalent to the amount of duties that would have been waived on the machinery; capital equipment; and raw materials, supplies, parts and semi-finished products used in the fabrication of machinery and capital equipment, had these items been imported, upon its submission to the DOF of the bill of materials evidencing the transaction value of such and other pertinent documents, for verification and proper endorsement.

The registered export enterprise availing of the incentives provided under the immediately preceding two paragraphs shall be subject to the following: (a) that said capital equipment, machinery and spare parts will be used exclusively by the registered enterprise in its registered activity; (b) that the capital equipment or machinery where the raw materials, supplies, parts and semi-finished products were used would have qualified for tax and duty-free importation; and (c) that the approval of the Board or the concerned IPA is obtained by the registered enterprise. If the registered enterprise sells, transfers or disposes of these machineries, capital equipment and spare parts, the provision in the preceding paragraphs for such disposition shall apply.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of delivery.

(f) The importation of source documents by information technology registered enterprises shall be eligible for tax and duty free importation.

(g) Raw Material Incentives. – Every registered export-oriented enterprise shall enjoy a tax credit equivalent to the internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products provided the same are not sufficient in quantity, quality or are not competitively priced which are used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export-oriented enterprise, based on the actual taxes and duties paid for such materials/supplies/semi-manufactured products by the registered enterprise.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of exportation of the final product.

(h) Incentives on Breeding Stocks and Genetic Materials. – Importation of breeding stocks and genetic materials 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 or the concerned IPA.

The registered enterprise availing of the incentives shall be subject to the following: (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 approval of the Board or the concerned IPA 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.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one year from date of delivery.

(i) Exemption from wharfage dues. – The provisions of law to the contrary notwithstanding, exports by a registered enterprise shall be exempted from wharfage dues.

(j) 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 income tax computed under the NIRC of 1997, 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.

(k) (1) *Tax Treatment of Merchandise in the Export Processing Zones.* – (a) 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, 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.

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

(c) Domestic merchandise sent from the export processing 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.

(d) 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 based on the value of said imported materials (except when the final product is exempt).

(e) 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 export processing zone from the customs territory of the Philippines and be brought back thereto free of quotas, duty or tax.

(f) Subject to such regulations respecting identity and safeguarding of the revenue as the concerned IPA may deem necessary when the identity of an article entered into the 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 Customs Code of the Philippines, as amended.

(g) Articles produced or manufactured in the export processing 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.

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

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

(2) *Tax Treatment of Merchandise in Free Trade/Freeport Zones.* – The free trade/freeport zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods within, into and exported out of the free trade/freeport zone. Importations of raw materials, and capital equipment are tax and duty free. However, exportation or removal of goods from the free trade/freeport zones to the other parts of the Philippine territory shall be subject to customs and internal revenue laws and regulations.

(3) *Tax Treatment of Services in the Special Economic Zones.* – (a) *Sale of service by an entity from the customs territory to a registered ecozone or free trade enterprise, or by a registered ecozone or freeport enterprise, or by a registered ecozone or freeport enterprise to another ecozone or freeport enterprise shall be treated as indirect export, and hence, entitled to the benefits allowed by law for such transaction.*

(b) *Sale or service by a registered ecozone or freeport enterprise to the customs territory shall be subject to applicable internal revenue laws and regulations.*

(l) *Registered export oriented enterprises shall have access to the utilization of the bonded warehousing system in accordance with the rules and regulations of the Bureau of Customs.*

(m) *Employment of Foreign Nationals.* – Subject to the provisions of Section 29 of Commonwealth Act No. 613, as amended, a registered enterprise may employ foreign nationals in supervisory or technical positions for a period not exceeding ten (10) years from its registration:

Provided, That when the majority of the capital stock of a registered enterprise is owned by foreign investors, the positions of the president, treasurer and general manager or 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 twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa, valid for a period of three years, to enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports. The validity of the multiple entry visa shall be extendible yearly.

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.

SEC. 16. *Other Incentives*. – Upon recommendation of the Board, the Secretaries of Trade and Industry and Finance may jointly grant other incentives subject to approval by the President to activities listed in the IPP that exhibit high social economic returns on the part of capital or labor intensive activities. In the exercise of this authority, the following criteria shall be taken into account: (1) large capital investments or sizeable employment generation or (2) use of high level technology.

The incentives may include, as determined by the Board to be appropriate in a particular industry or enterprise, any or all of the following:

(1) Investment Tax Allowance

An investment allowance to the extent of its actual investment, paid in cash or property, shall be allowed as a deduction from its taxable income but not to exceed thirty percent (30%) spread within three years to be availed after the income tax holiday: *Provided*, (1) That the investment is made in a subscription of shares in the original and/or increased capital stock of an enterprise; (2) That the shares are held for a period of not less than three years; and (3) That the investment is approved with the Board. If the shares are disposed within the three-year period, the enterprise shall lose the benefit of this deduction, its income tax liability will be recomputed and he shall pay

whatever additional sum be due plus interest thereon, within thirty (30) days from the date of disposition.

(2) Double Deduction for Training Expenses

Expenses incurred for local training given to employees for the development of skills identified as necessary by the appropriate government agencies, upon approval by the Board, shall entitle the registered enterprise to a special deduction from the taxable income equivalent to one hundred percent (100%) of the total expenses over and above the allowable ordinary and necessary business deductions for said expenses under the National Internal Revenue Code, as amended, for a period of five years after entitlement of other income tax based incentives.

(3) Double Deduction for Research and Development

Expenses incurred for research and development conducted in the Philippines relating to the business shall entitle the registered enterprise to a special deduction from taxable income equivalent to one hundred percent (100%) of the total expenses over and above the allowable ordinary and business deductions for said expenses under the National Internal Revenue Code, as amended, for a period of five years after entitlement of other income tax based incentives.

To raise the quality of basic education, a domestic enterprise that produces quality educational materials for the public school system shall be entitled to the incentive herein provided.

SEC. 17. *Non-Fiscal Incentive for Eco-Tourism Sites.* – Airline companies that will be accredited to serve eco-tourism sites duly designated by the President may enjoy landing privileges directly in those sites: *Provided,* That the airline company shall bring in a large number of tourists and subject to such rules and regulations as the Board, in consultation with the Civil Aeronautics Board (CAB), the Department of Tourism (DOT) and other appropriate government agencies may determine.

SEC. 18. *Incentive to Investors.* – A foreign national covered under Subsection (m) of Section 15 of this Act, who invests an amount of at least US\$150,000.00, either in cash and/or equipment, in a registered enterprise shall be entitled to an Investor's Visa: *Provided,* That,

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

Provided, further, That in securing the investor's visa, the alien-applicant shall be entitled to the same privileges provided for under Section 16 (M), last paragraph.

As a holder of the Investor's 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 investment in the country. Should said alien withdraw his investments from the Philippines, then the Investor's 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 PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA, PIA and other investment promotion agencies.

CHAPTER III REGISTRATION OF ENTERPRISES

SEC. 19. Qualifications of a Registered Enterprise. – To be entitled to register to avail of incentives, an applicant must satisfy the following conditions:

(a) 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, regardless of nationality, it must be organized and/or registered and existing under Philippine laws and that it must comply with all the qualifications provided under this Act: *Provided, however,* That for purposes of this Act 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, further,* That the investment is made in an activity where the Constitution does not specifically require Filipino participation;

(b) That it will engage in an activity included in the Investment Priorities Plan (IPP) or in an industry servicing eco-tourism sites duly designated by the President as provided under Section 17 of this Act;

(c) That the activity it will engage in is not within the activities reserved by the Constitution to Philippine citizens or corporations owned and controlled by Philippine citizens; and

(d) That if the applicant is engaged or proposes to engage in undertakings or activities other than the registered projects, it shall 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 or other IPAs should so require to facilitate proper implementation of this Act.

CHAPTER IV BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

SEC. 20. *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 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 the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended; and

(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 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 ADMINISTRATION OF INCENTIVES

SEC. 21. *Duties and Responsibilities of other IPAs.* – The following are the duties and responsibilities of other IPAs under this Act:

(a) to adopt consistent procedures of administering incentives in accordance with the guidelines established by the Board;

(b) to adopt and implement systems and procedures affecting trade and customs policies in accordance with the requirements established by the DOF and the Board;

(c) to submit data and information to the DOF and the Board as required by any of these agencies to ascertain consistency of investments policies and incentives, including their implementation as provided in (a), and to ensure the proper implementation of systems and procedures affecting trade and customs policies as provided in (b); and

(d) to perform all other duties and responsibilities, as may be required by the President.

SEC. 22. *Administration, Implementation and Monitoring of Incentives.* – The investment promotion agencies shall be responsible for the administration and implementation of the incentives granted to their respective registered enterprises: *Provided,* That any incentive administration policy adopted by the Board for incentives common to all registered enterprises shall be uniformly applied by all incentive administering agencies.

For proper monitoring, the BOI shall create a single database of all incentives provided by all incentives granting agencies and all information thereto. Double entry accounting shall be done by the Board in recording all incentives granted by the government for transparency purposes.

The Board, NEDA and DOF shall meet regularly to monitor and review the investments and incentives granted and a report shall be annually submitted to the Congressional Oversight Committee referred to under Section 37.

SEC. 23. *Application.* – Applications shall be filed with the IPAs 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. In no case shall double registration be allowed. In the event that an enterprise shall transfer to another investment promotion agency or government assets enjoying incentives will be privatized, only the remaining unutilized incentives shall be enjoyed by the enterprise or the transferee, vendee or assignee of the government corporation.

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.

SEC. 24. *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.

SEC. 25. *Approval and Registration Procedures.* – The Board is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribe 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.

SEC. 26. *Certificate of Registration.* – A BOI-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.

SEC. 27. *Validity of BOI Registration.* – An enterprise' registered activity with the Board shall be valid for a period of twenty (20) years from the start of commercial operation except on certain industries as may be determined by the Board.

SEC. 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, equivalent thereto.

SEC. 29. *Duration of Incentives.* – Enterprises registered with PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA and ZCSEZA, and PIA may enjoy the ITH or NOLCO granted by the concerned IPA, prior to availment of the five percent (5%) GIE.

Fiscal incentives under this Code shall be terminated after a cumulative period of twenty (20) years from date of registration or start of commercial operation, whichever is applicable, except that it could be extended with regard to industries deemed indispensable to national development: *Provided, further,* That the duration of incentives shall not be applicable to tax and duty free importation of capital equipment, raw materials, supplies and spare parts of enterprises registered with PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA, PIA and freeport zones.

The industries exempted from this provision shall be recommended by the Board, with the concurrence of the Secretaries of the Department of Finance and Trade and Industry.

SEC. 30. *Payment in the Form of Foreign Currencies.* – All IPAs may be allowed to receive only freely convertible foreign currencies as payment of application fees, fines and penalties, including refund of incentives.

SEC. 31. *The Fiscal Incentives Review Board.* - The Fiscal Incentives Review Board (FIRB) created under Presidential Decree No. 776, is hereby mandated to oversee the administration of

fiscal incentives in government-owned and -controlled corporations and other government agencies whose fiscal incentives under non-investment-related special laws are being repealed under this Act. The FIRB shall recommend to the President for his approval the incentives to be granted based on the annual importation requirement of the concerned agency: *Provided, however,* That applications for incentives shall be acted upon by the FIRB within sixty (60) days upon submission of the complete requirements by the applicant. Failure of the FIRB to act within the aforementioned date shall mean that the application for incentives by the concerned GOCC or government agency is considered recommended.

TITLE IV FINAL PROVISIONS

SEC. 32. *Authority to Retain Funds.* – Subject to accounting and auditing procedures, enterprises registered with the Board and other investment promotion agencies are required to share in the special development fund of the Board for projects relevant to the objectives of this Act equivalent to one percent (1%) of the ITH granted for every application.

SEC. 33. *Universal Coverage.* - Five years from the date this Act goes into effect, all existing registered enterprises enjoying the incentives under Books One, Five and Six of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, and all other enterprises registered under other laws shall be governed exclusively by this Act: *Provided,* That incentives arising from contracts or agreements entered into by an enterprise with the government, its instrumentalities and agencies shall continue in force and effect according to the terms thereof: *Provided, further,* That existing enterprises may opt to register and be governed by the provisions of this Act.

SEC. 34. *Protection of the Environment.* – The BOI, in coordination with the appropriate agencies, shall take concrete and appropriate steps to enact the proper measures for the protection of the environment, and shall coordinate with the Environmental Management Bureau of the Department of Environment and Natural Resources to avoid undue delay in the issuance of the required Environmental Compliance Certificate (ECC): *Provided, however,* That applications for environmental clearances, permits, and/or licenses of registered enterprises shall be acted upon by the appropriate government agency within one hundred twenty (120) days from date of official acceptance. In the event that the appropriate government agency failed to act within the aforementioned date, the application for the said environmental requirement shall be deemed complied with for purposes of operation of the registered activity: *Provided, finally,* That the Board

may withdraw the certificate of registration issued to the enterprise should the appropriate government agency eventually deny the application.

SEC. 35. *Suspension and Forfeiture of Incentives of BOI-registered Enterprises; 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 availment of incentives, 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: *Provided, however,* That the Board may cancel or abate only the imposition of fines, in meritorious cases.

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 or any lawful directive of the Board, or in the availment of incentives, including all official reports required to be submitted to the Board, shall be subject to a fine not to exceed One million pesos (P1,000,000.00) but, without prejudice to the disapproval of its application for registration or cancellation of its registration: *Provided,* That any willful commission of fraudulent misrepresentation in its application for registration or submission of reports or gross violation of this Code and its Implementing Rules and Regulations, a fine of at least One million pesos (P1,000,000.00) but not to exceed Ten million pesos (P10,000,000.00) shall be imposed, in addition to other penalties that may be imposed by the Board.

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

SEC. 36. *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 *supersedeas* 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 of the denial of the appellant's motion for new trial or reconsideration. Within the same period, the aggrieved party may file a motion for reinvestigation or reconsideration. Only one motion for reconsideration shall be allowed, subject to the posting of the aforementioned *supersedeas* 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 (30) 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.

SEC. 37. *Congressional Oversight Committee.* – A Congressional Oversight Committee, herein referred to as the Committee, is hereby constituted in accordance with the provisions of this Code. The Committee shall be composed of the Chairmen of the Committee on Ways and Means and Committee on Trade and Industry of the Senate and House of Representatives and four additional members from each house, to be designated by the Speaker of the House of Representatives and the Senate President, respectively.

The Committee shall, among others, in aid of legislation, monitor and ensure the proper implementation, especially Section 16 of this Act. The Committee is also empowered to require all IPAs submission of all pertinent information, including but not limited to, availment of fiscal

incentives, total investments, and cost-benefit analysis of incentives against investments, in a regular manner.

SEC. 38. *Effectivity of Implementing Rules and Regulations.* – The IPAs, 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.

SEC. 39. *Transitory Provision.* – Until the Implementing Rules and Regulations of this Code take effect, the present rules and regulations to implement the provisions of this Code shall apply.

For activities or entities, whether government or private, whose tax and/or duty exemptions or preferential treatment under special laws are withdrawn or repealed by this Act, pertinent provisions of the National Revenue Code (NIRC) of 1997, as amended; the Tariff and Customs Code, as amended; and the Local Government Code, shall apply.

SEC. 40. *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.

SEC. 41. *Repealing Clauses.* – The following laws or provisions of laws are hereby repealed:

(1) Batas Pambansa Blg. 44 – “An Act To Promote Investments in Less Developed Areas”

(2) Batas Pambansa Blg. 391 – “An Act Declaring the 1983 Investment Incentives Policy by Modifying the System on the Grant of Investment Incentives, Amending for the Purpose Presidential Decree No. 1689 and other Pertinent Laws”

(3) Presidential Decree No. 1623 – “Authorizing the Issuance of Special Investors Resident Visas to Aliens and for other Purposes (Repealed by Executive Order No. 226)”

Presidential Decree No. 1893 – “Further Amending Presidential Decree No. 1623 entitled “Authorizing the Issuance of Special Investors Resident Visas to Aliens and for other Purposes”, as amended.

(4) Presidential Decree No. 1789 – “A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investments Code (Repealed by Batas Pambansa Blg. 391)”

(5) Presidential Decree No. 2032 – “A Decree Declaring National Policies on Agricultural Development and Promulgating the Agricultural Incentives Act of 1986 (Repealed by Batas Pambansa Blg. 391)”

(6) Executive Order No. 815 – “To Safeguard and Promote the Development of the Philippine Semiconductor Electronics Industry”

(7) Executive Order No. 1045 – “Modifying Fiscal Incentives to BOI-Registered Enterprises”

(8) Presidential Decree No. 66 – “Creating the Export Processing Zone Authority and Revising Republic Act No. 5490”

(9) Republic Act No. 7888 – “An Act to Amend Article 7(13) of Executive Order No. 226, Otherwise Known as the Omnibus Investment Code of 1987)”

(10) Book I, V, VI of Executive Order No. 226 are hereby absolutely repealed;

(11) The incentive provisions under the following investment - related laws are hereby repealed as follows:

(a) Sections 36(f) of Presidential Decree No. 705, otherwise known as the “Revised Forestry Code”;

(b) Sections 6 and 7 of Republic Act No. 7103, otherwise known as the “Iron and Steel Industry Act”;

(c) Sections 6 and 7 of Republic Act No. 7471, otherwise known as the “Philippine Overseas Shipping Development Act” and Section 2 of Republic Act No. 9301 (An Act Amending Certain Provisions of Republic Act No. 7471 otherwise known as the “Philippine Overseas Shipping Development Act and For Other Purposes”;

(d) Section 19 of Republic Act No. 7279, otherwise known as the “Urban Development and Housing Act of 1992”;

(e) Sections 16 (a), (b), (c), (d), (e) and 17 of Republic Act No. 7844, otherwise known as the “Export Development Act of 1994”;

(f) Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942, otherwise known as the “Philippine Mining Act of 1995”;

(g) Section 35 (b), (c) and (d) of Republic Act No. 8550, otherwise known as the “Philippine Fisheries Code of 1998”;

(h) Section 9 of Republic Act No. 8479, otherwise known as the “Downstream Oil Deregulation Act of 1998”;

(i) Section 1 of Republic Act No. 9281, entitled “An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentives and its Mandated Funding Support, Amending for this Purpose Sections 109 and 112 of Republic Act No. 8435”;

(j) Section 45 of Republic Act No. 9003 also known as “Ecological Solid Waste Management Act of 2000”;

(k) Section 26 (A.1, A.1.1, A.1.2) of Republic Act No. 9275, entitled “The Philippine Clean Water Act of 2004”;

(l) Sections 4 and 19 of Republic Act No. 9295 also known as “An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and For Other Purposes”;

(m) Section 13 of Republic Act No. 8479 also known as the “Clean Air Act of 1999”;

(n) Section 16 of Republic Act No. 7844, entitled “An Act to Develop Exports as a Key Towards the Achievement of the National Goals Towards the Year 2000”.

(12) The provisions of:

(a) Section 12 (c) and (g) of Republic Act No. 7227, otherwise known as the “Bases Conversion and Development Act of 1992;”

(b) Section 6 of Proclamation 984 creating the Morong Special Economic Zone pursuant to Republic Act No. 7227;

(c) Section 5 of Proclamation 216 Creating the Poro Point Special Economic Zone pursuant to Republic Act No. 7227;

(d) Section 3 of Executive Order No. 32, Series of 1994 amending Executive Order No. 103, Series of 1993, establishing the John Hay Development Corporation;

(e) Section 4, paragraphs (e), (f) and (g) of Republic Act No. 7903, otherwise known as “Zamboanga City Special Economic Zone Act of 1995”;

(f) Section 4, paragraphs (b), (c) and (e) of Republic Act No. 7922, entitled “Cagayan Special Economic Zone Act of 1995”; and

(g) Sections 8, 9 and 10 of Presidential Decree No. 538, entitled “Creating and Establishing the PHIVIDEC Industrial Authority and Making its Subsidiary Agency of the Philippine Veterans Investment Development Corporation Defining Its Powers, Functions and Responsibilities and for Other Purposes” 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.

(13) The provisions of Republic Act No. 7916, otherwise known as “Special Economic Zone Act of 1995”, and Republic Act No. 8748, otherwise known as “An Act Amending Republic Act No. 7916” which are inconsistent with this Code are hereby repealed or modified accordingly.

(14) The provisions of Section 12 (b) of Republic Act No. 7227 and Section 5 of Republic Act No. 7103 are modified accordingly.

(15) The following incentive provisions under the specific laws cited herein are hereby absolutely repealed:

- (a) Last sentence of Section 17 of Republic Act No. 7820, "An Act Creating the Partido Development Administration, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes";
- (b) Section 8(d) of Republic Act No. 5487, "An Act to Regulate the Organization and Operation of Private Detective, Watchmen or Security Guard Agencies (The Private Security Agency Law)"; and
- (c) Section 8 of Republic Act No. 8436, "An Act Authorizing the Commission on Elections to Use an Automated Election system in the May 11, 1998 National or Local Elections and in Subsequent National or Local Electoral Exercises, Providing Funds Therefor and for Other Purposes" are hereby repealed.
- (d) Section 25 of Presidential Decree No. 857, "Providing for the Reorganization of Port Administration and Operation Functions in the Philippines, Revising Presidential Decree No. 505 Dated July 11, 1974, Creating the Philippine Port Authority, by Substitution, and for Other Purposes"; and
- (e) Sections 2 and 3 of Presidential Decree No. 1362, "Allowing Radio Broadcasting and Television Stations to Import Radio or Television Equipment, Spare Parts and Allied Technical and Program Materials to be Used Exclusively in their Broadcast Operations Subject to Certain Conditions".

(16) The tax and/or duty incentives granted to government-owned and -controlled corporations or government agencies under the following laws are hereby repealed: *Provided*, That the tax and/or duty exemptions withdrawn herein maybe recommended to be restored in whole or in part, after careful and objective evaluation, by the Fiscal Incentives Review Board (FIRB):

- (a) Section 14 of Republic Act No. 7354, "An Act Creating the Philippine Postal Corporation, Defining its Powers, Functions and Responsibilities, Providing for Regulation";
- (b) Title 9, Section 21 of Republic Act No. 7306, "An Act Providing for the Establishment of the People's Television Network, Inc., Defining its Powers and Functions, Providing for its Sources of Funding and For Other Purposes";
- (c) Sections 18, 19, 20 and 21 of Republic Act No. 6847, "An Act Creating and Establishing the Philippine Sports Commission, Defining its Powers, Functions and Responsibilities Appropriating Funds Therefor, and for Other Purposes";
- (d) Section 18 of Republic Act No. 8044, "An Act Creating the National Youth Commission, Establishing a National Comprehensive and Youth Development, Appropriating Funds Therefor, and for Other Purposes";
- (e) Subparagraph (a)(2) and last sentence of subparagraph (b) of Section 8 and Section 14 of Presidential Decree No. 269, "Creating the National Electrification Administration as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds

Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, The Repeal of Republic Act No. 6038, and for Other Purposes;

- (f) Section 14(b) of Republic Act No. 7308, "An Act to Promote And Develop the Seed Industry in the Philippines and Create a National Seed Industry Council and for Other Purposes";
- (g) Section 9 Subsection (e), last sentence of the first paragraph of subsection (f), second paragraph of subsection (i), and subsection (j) of Republic Act No. 7900, "An Act to Promote the Production, Processing, Marketing, and Distribution of High Value Crops, Providing Funds Therefor, and for Other Purposes".
- (h) Section 20 of Republic Act No. 7279, otherwise known as the "Urban Development and Housing Act of 1992"; and
- (i) Sections 1, 2, 3 and 4 of Republic Act No. 7109, entitled "An Act Granting Tax Exemption Privileges to Local Water Districts".

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

SEC. 42. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved