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DE GUZMAN, AGBAYANI, VELARDE AND ROMULO, PER COMMITTEE
REPORT NO. 1332

THE INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES

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

1 PRELIMINARY TITLE

2 CHAPTER I

3 TITLE AND DECLARATION OF POLICY

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

6 SEC. 2. *Declaration of Investment Policies.* – The national economy
7 shall be developed so as to enhance its competitiveness in the global economy
8 through investment promotion and industrial development activities geared
9 towards employment generation and countrywide development. Accordingly,
10 the following are the declared policies of the State:

11 (a) The State shall pursue a market-responsive investment regime;

1 (b) The State shall formulate industry and sectoral development
2 programs;

3 (c) The State shall undertake investment promotion activities;

4 (d) The State shall grant incentives that are simple to administer,
5 time-bound and performance-based; and

6 (e) The State recognizes that industrial peace is essential to attracting
7 investments.

8 CHAPTER II

9 ORGANIZATION AND FUNCTIONS OF THE BOARD OF INVESTMENTS

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

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

1 The Managing Governor of the BOI shall be assisted by two (2) career
2 officials with the rank of Deputy Managing Governor, who shall be appointed
3 by the Board, upon the recommendation of the Managing Governor.

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

6 SEC. 5. *Qualifications of the BOI Board of Governors.* – The
7 governors of the BOI shall be citizens of the Philippines, at least thirty-five
8 (35) years old, with proven probity and integrity, of good moral character and
9 of recognized competence in economics, business, marketing, advertising,
10 management or its equivalent.

11 SEC. 6. *Powers and Functions of the Board.* – The Board shall be
12 responsible for the regulation and promotion of investments. It shall hold
13 meetings at least once a week for the conduct of business or as often as may be
14 necessary upon the call of the Chairman or upon the request of the Managing
15 Governor. The notice of regular and special meetings shall be given to all the
16 members of the Board and the presence of five (5) members shall constitute a
17 quorum and the affirmative vote of five (5) members in a meeting validly held
18 shall be necessary to exercise its powers and perform its functions which shall
19 include the following:

20 A. Investment Promotion-Related Functions:

21 (1) Formulate an evolving National Framework for Investment
22 Promotions (NFIP) that will govern all Investments Promotion Agencies
23 (IPAs);

24 (2) Promulgate rules, regulations and policies to implement the NFIP in
25 consultation with all IPAs and exercise monitoring functions over all
26 investment promotion activities of all IPAs;

27 (3) Gather, consolidate and monitor investment data and information
28 (both domestic and foreign direct investments) from all IPAs and other

1 concerned government agencies for submission to the President and to
2 Congress;

3 (4) Enter into agreements with other agencies for the simplification of
4 systems and procedures involved in the promotion of investments, operation of
5 economic zones and registered enterprises, and other activities necessary for
6 the effective implementation of this Code;

7 (5) Establish the Investment Promotion Action Center (*i*-PAC);

8 (6) Establish and operate regional investment centers in the
9 Philippines, and establish and operate overseas investment offices.

10 B. Regulatory Functions:

11 (1) Formulate an evolving National Framework for Industrial
12 Development (NFID);

13 (2) Promulgate rules, regulations and policies to implement the NFID
14 in consultation with the private sector;

15 (3) Plan and implement industrial programs to hasten economic
16 development including those relating to the implementation of international
17 trade, investment and industry-related environmental agreements and
18 protocols;

19 (4) Formulate positions for bilateral, multilateral and regional
20 investments and investment-related trade agreements and/or arrangements;

21 (5) Act on investment projects covered by bilateral, multilateral, and
22 regional agreements subject to rules and guidelines to be formulated by the
23 Board;

24 (6) Recommend to the President the suspension of the nationality
25 requirement provided for in this Code in appropriate cases such as those
26 involving bilateral, multilateral, or regional investments, or other trading
27 agreements of the Philippines with other countries; or when the existing laws
28 of another country where the investor comes from provides no nationality

1 restrictions for Filipino investors or provides for reciprocal nationality
2 accommodations;

3 (7) Promulgate rules, regulations and policies on incentives which the
4 IPAs are mandated to implement;

5 (8) Gather, consolidate and monitor incentives data and information
6 from all IPAs and other concerned government agencies for submission to the
7 President, the DOF and Congress;

8 (9) Prepare the Investments Priorities Plan (IPP) in accordance with
9 Title III, Chapter I of this Code;

10 (10) Formulate rationalization programs for certain industries whose
11 operation may result in dislocation, oversupply or inefficient use of resources
12 that impedes economic growth. In the interest of national development and
13 upon approval of the President, the Board may restrict, either totally or
14 partially, the importation or exportation of any equipment, raw materials,
15 intermediate goods or finished goods;

16 (11) Prepare an annual list of products and services that are not
17 sufficiently manufactured/rendered locally;

18 (12) Assist micro and small enterprises in the preparation of feasibility
19 and other pre-investment project studies;

20 (13) Regulate the implementation of Regional Operating Headquarters,
21 Retail Trade Law, Long-Term Lease and other laws as mandated;

22 (14) Process and approve, deny, suspend, revoke applications for
23 registration, imposing terms and conditions as it may deem necessary to
24 promote the purposes of this Code, including the refund and forfeiture of
25 incentives when appropriate, restricting availment of incentives not needed by
26 the project as determined by the Board, requiring performance bonds from
27 BOI-accredited bonding companies, and payment of application, registration,
28 publication and other fees, when warranted;

1 (15) After due notice and hearing, cancel the registration or suspend the
2 incentives of a registered enterprise and/or require refund of incentives,
3 including interests and monetary penalties;

4 (16) Establish a mediation center to resolve controversies and/or
5 disputes between registered enterprises;

6 (17) After due hearing, decide controversies that may arise between
7 registered enterprises or investors therein which espouse conflicting interests
8 arising from the implementation of this Code. The Board shall have the power
9 to subpoena witnesses, administer oaths, and compel the production of books,
10 papers and other evidence, and to cite for contempt any person or organization
11 that fails to comply with the aforesated processes: *Provided*, That the Board
12 may grant immunity from prosecution to any person whose testimony or
13 documents or other evidence is necessary or relevant to the case:
14 *Provided, further*, That a registered enterprise may file a motion for
15 reconsideration of a decision or final order within fifteen (15) days from notice
16 thereof, with proof of service on the parties affected. No second motion for
17 reconsideration of a decision or final order by the same party shall be
18 entertained;

19 (18) Recommend to the Commissioner of the Bureau of Immigration
20 the employment of foreign nationals in registered enterprises and the grant of
21 Investor's Visa;

22 (19) Ascertain by inspection or verified reports, the proportion of the
23 participation of Philippine nationals in a registered enterprise to ensure
24 compliance with the nationality requirements of Philippine laws to retain
25 registration under this Code or to verify the compliance by registered
26 enterprises with the terms and conditions of registration;

27 (20) Waive, condone or reduce fines or penalties imposed on registered
28 enterprises;

1 (21) Determine the organizational structure of the BOI. Appoint,
2 discipline or remove its personnel consistent with the provisions of civil
3 service laws, rules and regulations; and

4 (22) Exercise all the powers necessary or incidental to attain the
5 purposes of this Code and other laws vesting additional functions on the
6 Board.

7 *SEC. 7. Appointment of BOI Personnel.* -- The Managing Governor,
8 upon recommendation of the Board, shall appoint its personnel subject to civil
9 service laws, rules and regulations. All positions in the BOI shall be governed
10 by compensation, position classification systems, and qualification standards
11 approved by the Board based on a comprehensive job analysis and audit of
12 actual duties and responsibilities. The compensation plan shall be comparable
13 with the prevailing compensation plan of Philippine Economic Zone Authority
14 (PEZA) and shall be subject to periodic review by the Board without prejudice
15 to yearly merit reviews or increases based on productivity. The BOI shall
16 therefore be exempt from existing laws, rules and regulations on compensation,
17 *position classification and qualification standards.*

18 *SEC. 8. The Investment Promotion Action Center (i-PAC).* -- There is
19 hereby created an *i-PAC* in the BOI in place of the current One Stop Action
20 Center (OSAC) created under Executive Order No. 136, series of 1987,
21 entitled "Establishing the Council for Investment in Trade, Industry, Tourism,
22 Agriculture, Natural Resources, Transportation, Communication and Services,
23 and for Other Purposes". The *i-PAC* shall serve as the source of investment
24 information and as the link to all government agencies to facilitate entry,
25 retention, expansion and diversification of investments.

26 The *i-PAC* shall be composed of all government agencies involved in
27 the establishment or operation of business including, but not limited to, all
28 IPAs, the Securities and Exchange Commission (SEC), the Bureau of Internal

1 Revenue (BIR), the Bureau of Customs (BOC), the Bureau of Immigration
2 (BI), the Department of Trade and Industry (DTI), the Department of the
3 Interior and Local Government (DILG), the Department of Agriculture (DA),
4 the Department of Environment and Natural Resources (DENR), the
5 Department of Labor and Employment (DOLE), the Department of Foreign
6 Affairs (DFA), the Department of Energy (DOE), the Department of Public
7 Works and Highways (DPWH), the Department of Agrarian Reform (DAR)
8 and such other agencies as may be determined by the Board. The government
9 agencies involved shall designate representatives to the *i*-PAC that are clothed
10 with authority to act and approve/deny any matter relative to their respective
11 agencies.

12 SEC. 9. *Powers and Functions of the i-PAC.* – The *i*-PAC shall
13 exercise and perform the following powers and functions:

14 (a) Provide advice, guidance, information and procedure on various
15 laws, rules and regulations governing investments and the conduct of business
16 in the Philippines.

17 (b) Ensure that all investment-related requirements are acted upon
18 within ten (10) working days. In cases of applications not acted upon within
19 ten (10) working days, the same shall be deemed approved: *Provided,*
20 *however,* That deferment shall be considered as an action.

21 (c) Recommend the streamlining of existing procedures to ensure that
22 all frontline agencies, dealing with the operation of business, perform their
23 tasks for identified government to business transactions.

24 (d) Establish an on-line investment facilitation system.

25 (e) Act, in coordination with appropriate government offices or
26 agencies, such as the *Office of the Ombudsman and the Civil Service*
27 *Commission (CSC)*, on complaints filed by any investor or potential investor
28 against any public official or employee or any office, agency or

1 instrumentality, including local government units (LGUs) and officials, as well
2 as any government-owned and -controlled corporation (GOCC), in connection
3 with any act or duty required by law to facilitate the entry of local and foreign
4 investments.

5 (f) Perform such other functions as may be directed by the Board.

6 SEC. 10. *Honoraria and Allowances.* – The Board shall provide for
7 reasonable honoraria and allowances for the *i*-PAC members and its personnel.

8 TITLE II

9 DEFINITION OF TERMS

10 SEC. 11. *Definition of Terms* – As used herein, the following shall
11 mean:

12 (a) “BOI” shall refer to the Board of Investments created under this
13 Code.

14 (b) “Investments promotion agencies (IPAs)” shall include the BOI, the
15 PEZA, the Bases Conversion Development Authority (BCDA), the Subic Bay
16 Metropolitan Authority (SBMA), the Clark Development Corporation (CDC),
17 the John Hay Management Corporation (JHMC), the Poro Point Management
18 Corporation (PPMC), the Bataan Technology Park Inc. (BTPI), the Cagayan
19 Economic Zone Authority (CEZA), the Zamboanga City Special Economic
20 Zone Authority (ZCSEZA), the PHIVIDEC Industrial Authority (PIA), the
21 Aurora Special Economic Zone Authority (ASEZA), and all other IPAs that
22 may be created by law.

23 (c) “Registered enterprise” shall mean any individual, partnership,
24 corporation, Philippine branch of a foreign corporation or other entity
25 incorporated and/or organized and existing under Philippine laws and
26 registered with an IPA, in accordance with this Code. *Provided, however,* That
27 the term “registered enterprise” shall not include any of the following service
28 enterprises such as, but not limited to, those engaged in customs brokerage,

1 trucking/forwarding services, parcel services, janitorial services, security
2 services, insurance and/or banking and other financial services, consumers
3 cooperatives, credit unions, consultancy services, restaurants or such other
4 services, within the economic zones, as may be determined by the IPA Board,
5 duly accredited and/or licensed by any of the IPAs and whose income derived
6 within the economic zones shall be subject to taxes under the National Internal
7 Revenue Code (NIRC) of 1997, as amended.

8 (d) "Investments priorities plan (IPP)" shall refer to the list of
9 industries, services and other economic activities, which will be eligible for
10 incentives under this Code, prepared and determined as priority or preferred
11 activities in accordance with Title III, Chapter 1 of this Code.

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

14 (f) "Gross income earned" refers to gross sales or gross receipts
15 derived from the registered activity less sales returns, discounts and allowances
16 and cost of goods sold.

17 (g) "Tax credit" shall mean any credits against taxes and/or duties
18 equal to those actually paid or would have been paid. Tax credit certificate
19 shall be issued by the Secretary of Finance or his representative,
20 or the concerned IPA, if so delegated by the Secretary of Finance. The tax
21 credit certificate issued pursuant to this Code shall not be transferable to
22 another registered enterprise under this Code. In case the industry is in a state
23 of distress, as declared by the Board, the tax credit certificate held by
24 enterprises of such distressed industry shall be freely transferable. The tax
25 credit shall be valid only for a period of five (5) years from the date of
26 issuance.

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

1 (h) "Export sales of goods" shall mean the sales revenues paid for in
2 freely convertible foreign currency, determined from invoices, bills of lading,
3 inward letters of credit, landing certificates, or other commercial documents, of
4 the following:

5 (1) the sale and actual shipment of goods from the Philippines to a
6 foreign country by a registered enterprise;

7 (2) sales of goods to an export enterprise registered in accordance with
8 this Code; to diplomatic missions and to agencies or institutions allowed to
9 import said goods tax and duty-free; to international shipping or international
10 air transport operations; and to foreign military aircraft or seacraft;

11 (3) sales to a nonresident buyer for delivery to a resident local export
12 enterprise of capital equipment, raw materials, production supplies, packaging
13 materials and other production requirements needed for the registered activity
14 of the export enterprise; or

15 (4) sales of goods to a nonresident buyer, except automobiles and
16 non-essential goods, manufactured or processed in the Philippines, for delivery
17 to a resident in the Philippines: *Provided*, That they are paid for in acceptable
18 foreign currency.

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

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

4 (i) “Export sales of services” shall mean the sales revenues or receipts,
5 determined from contracts, invoices, vouchers, official receipts, or other
6 commercial documents of the following:

7 (1) services rendered for clients abroad by registered enterprises;

8 (2) services rendered for an export enterprise registered in accordance
9 with this Code; to diplomatic missions and to other agencies or institutions
10 with tax and duty-free privileges;

11 (3) services rendered to international airlines or shipping lines, or
12 foreign military aircraft or seacraft, or information and communication
13 technology enterprises, even if rendered locally.

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

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

24 (j) An “export enterprise” shall mean a registered enterprise which is a
25 manufacturer, processor or service provider and whose export sale of its
26 products or services exceeds seventy percent (70%) of its total annual
27 production of the preceding taxable year.

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

5 (k) A “domestic enterprise” shall mean a registered enterprise, which
6 produces goods for sale or renders services exclusively to the domestic market
7 or does not comply with the minimum export requirement of an export
8 enterprise.

9 (l) “Service enterprise” is an enterprise engaged or proposing to
10 engage in rendering technical, professional or other services listed in the IPP.

11 Service enterprise that earns more than seventy percent (70%) of its
12 revenues paid for in foreign currency generated from nonresident clients shall
13 be entitled to the incentives provided to an “export” enterprise.

14 (m) “Source documents” shall refer to input materials and documents
15 reasonably needed by information technology (IT) and IT-enabled industries
16 such as, but not limited to, books, directories, magazines, newspapers,
17 brochures, pamphlets, medical records or files, legal records or files,
18 instruction materials, drawings, blueprints or outlines.

19 (n) “Processing” shall mean converting raw materials into marketable
20 form through physical, mechanical, chemical, electrical, biochemical,
21 biological or other means, or by a special treatment or a series of actions, such
22 as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing,
23 that results in a change in the nature or state of the products. Processing shall
24 include assembly provided that a distinct or new product is formed. Mere
25 packing or packaging shall not constitute processing.

26 (o) “Industrial Estate (IE)” shall refer to a tract of land subdivided and
27 developed according to a comprehensive plan under a unified continuous
28 management and with provisions for basic infrastructure and utilities, with or

1 without pre-built standard factory buildings and community facilities for the
2 use of a community of industries. It includes government industrial estates
3 such as the PHIVIDEC Industrial Authority.

4 (p) "ECOZONES" or "Special economic zones (SEZ)" shall refer to
5 selected areas with highly developed or which have the potential to be
6 developed into agro-industrial, industrial, supply chain city, information
7 technology, tourist/recreational, commercial, banking, investment and financial
8 centers, retirement and medical zones whose metes and bounds are fixed or
9 delimited by presidential proclamations. An ecozone may contain any or all of
10 the following: industrial estates (IEs), export processing zones (EPZs), supply
11 chain cities, ICT parks and centers, free trade zones and tourism estates:
12 *Provided, however,* That areas where mining operations are undertaken shall
13 not be declared as ecozones.

14 (q) "Ecozone developer" shall refer to a business entity duly registered
15 with the PEZA to develop, operate and maintain an ecozone that will put up
16 the required infrastructure facilities and utilities, to include among others, light
17 and power system, water supply and distribution system, sewerage and
18 drainage system, pollution control devices, communication facilities, paved
19 road network, administration building, standard factory buildings, and other
20 facilities as may be required by enterprises registered with the PEZA.

21 (r) "Export Processing Zone (EPZ)" or "Export Zone" shall refer to a
22 specialized industrial estate located physically and/or administratively outside
23 the customs territory and predominantly oriented to export production.

24 (s) "Freeport" is an isolated and policed area adjacent to a port of entry
25 as defined by Section 3519 of the Tariff and Customs Code, which shall be
26 operated and managed as a separate customs territory to ensure free flow or
27 movement of goods, except those expressly prohibited by law, within, into and
28 exported out in the freeport zone where imported goods may be unloaded for

1 immediate transshipment or stored, repacked, sorted, mixed or otherwise
2 manipulated without being subject to taxes and duties.

3 (t) "Tourism estate" is a tract of land with defined boundaries, suitable
4 for development into an integrated resort complex to render tourism services
5 for both local and foreign tourists, travelers and investors, with prescribed
6 carrying capacities, of tourist facilities and activities such as, but not limited to,
7 sport, gaming and recreation centers, accommodations including hotels,
8 apartelles, tourist inns/villas, pension houses, convention and cultural facilities,
9 food and beverage outlets, commercial establishments and other special
10 interest and attraction activities/establishments, and provided with roads, water
11 supply facilities, power distribution facilities, drainage and sewage systems,
12 and other necessary infrastructures and facilities. A tourism estate shall be
13 under unified and continuous management, and can either be a component of
14 an ecozone or the whole ecozone itself.

15 (u) "ICT park" or "information and communications technology (ICT)
16 park" shall refer to an area which has been developed into an integrated
17 development complex capable of providing infrastructure and other support
18 facilities required by ICT enterprises, as well as amenities required by
19 professionals and workers involved in ICT enterprises, or easy access to such
20 amenities.

21 (v) "ICT center" shall refer to a building which has been developed by
22 public or private corporate entities to provide infrastructure and other support
23 facilities required by ICT enterprises, as well as amenities required by
24 professionals and workers involved in ICT enterprises, or easy access to such
25 amenities.

26 (w) "Capital equipment" refers to machinery, equipment, major
27 components thereof, spare parts, accessories, tools, devices, apparatus,
28 fixtures, fittings and accompaniments which are directly and/or reasonably

1 needed in the registered activity of the enterprise and those required for
2 pollution abatement and control, cleaner production and water reduction/
3 conservation.

4 (x) "Supply chain city" shall refer to a self-contained zone that includes
5 manufacturing facility with hub operations in an economic zone. The
6 manufacturing facility covers whole or partial operations, and the hub
7 operations include Business Process Outsourcing (BPO) in support of the
8 manufacturing activity of the registered enterprise. The BPO activities cover
9 finance and accounting, high end processes such as marketing, client or buyer-
10 manufacturer relationship, procurement of materials, logistics management,
11 and other related activities of a borderless global manufacturing set-up.

12 (y) "Less Developed Area (LDA)" shall refer to an area that is included
13 in the list prepared by the BOI, after consultation with appropriate government
14 agencies. Such listing shall take into consideration the following criteria: low
15 per capita gross domestic product, low level of investments, high rate of
16 unemployment and/or underemployment and low level of infrastructure
17 development including its accessibility to developed urban centers.

18 TITLE III

19 INVESTMENTS WITH INCENTIVES

20 CHAPTER 1

21 QUALIFIED ACTIVITIES

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

26 In the listing of the activity in the IPP, the following shall be complied
27 with:

1 (a) The activity shall be covered by the current Medium Term
2 Philippine Development Plan (MTPDP) and Medium Term Philippine
3 Investment Plan (MTPIP) or its equivalent;

4 (b) The activity shall satisfy the following conditions:

5 (1) Substantial amount of investments;

6 (2) Considerable generation of employment;

7 (3) Use of modern or new technology; or

8 (4) Installation of adequate environmental protection systems:

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

13 (c) The activity must comply with the specific qualification
14 requirements and/or conditions for a particular sector or industry as set by the
15 Board and other limitations the Board may determine.

16 SEC. 13. *Amendments.* – Subject to publication requirements and the
17 criteria for investment priority determination, the Board may, at any time,
18 include additional areas in the IPP, alter any of the terms of the declaration of
19 an investment area, and temporarily or permanently suspend activities on the
20 IPP if it considers that such activity is no longer a priority. In no case,
21 however, shall any amendment of the IPP impair the incentives conferred on a
22 registered enterprise. The Board shall not accept applications in an area of
23 investment prior to the approval of the same as a preferred area or after
24 approval of its deletion as a preferred area of investment in the IPP.

25 SEC. 14. *Publication.* – Upon approval of the IPP, in whole or in part,
26 or upon approval of an amendment thereof, the IPP or the amendment,
27 specifying and declaring the areas of investment shall be published in at least

1 one (1) newspaper of general circulation and all such areas shall be open for
2 application until publication of an amendment or deletion thereof.

3 SEC. 15. *Strategic Projects.* – The President, upon recommendation of
4 the Board, may allow registration of a strategic project that may not be listed in
5 the IPP, but will locate in the country as a result of stiff competition with other
6 countries.

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

13 CHAPTER II

14 INCENTIVES TO REGISTERED ENTERPRISES

15 SEC. 16. *Performance-Based Incentives.* – This Act shall provide two
16 (2) types of performance-based incentives to qualified enterprises, as herein
17 classified: (1) the direct taxes incentives such as, Net Operating Loss
18 Carryover (NOLCO), accelerated depreciation and double deduction for
19 training expenses and double deduction for research and development; and (2)
20 the indirect taxes incentives, such as zero percent (0%) rate of value-added tax
21 (VAT) on sales, exemption from taxes and/or customs duties on importation of
22 capital equipment, raw materials and source documents and wharfage dues and
23 export tax.

24 Qualified enterprises which avail of the Income Tax Holiday (ITH), or
25 Reduced Income Tax, or the five percent (5%) tax rate on Gross Income
26 Earned (GIE), as the case may be, shall be precluded from availing of the
27 performance-based direct taxes incentives.

1 SEC. 17. *Incentives to Registered Export Enterprises.* – All IPAs may
2 administer the following incentives to their respective registered export
3 enterprises to the extent of their registered activity:

4 (a) *Income Tax Holiday (ITH).* – Activities of an export enterprise
5 shall be entitled to six (6) years of ITH from the date of start of its commercial
6 operations.

7 The BIR shall require a registered export enterprise availing of ITH to
8 secure a certificate of eligibility from the appropriate IPA before filing an
9 official copy of its income tax return (ITR). Thereafter, the registered export
10 enterprise shall file its claim with the appropriate IPA for validation.

11 Failure to secure certification and/or to file the ITH availment for
12 validation by the appropriate IPA shall cause the forfeiture of the ITH
13 availment for the taxable period.

14 (b) *Reduced Income Tax.* – After entitlement to ITH, a registered
15 export enterprise, regardless of location, may be entitled to a preferential tax
16 rate of fifteen percent (15%) of taxable income as defined under Section 31 of
17 the NIRC of 1997, as amended.

18 (c) *Five percent (5%) Tax Rate on Gross Income Earned (GIE).* –
19 Instead of the above Reduced Income Tax rate, a registered export enterprise
20 located inside or outside the ecozone, industrial estate or freeport zone may opt
21 and apply with the concerned IPA for the five percent (5%) tax of the GIE in
22 lieu of all national and local taxes, including but not limited to, VAT on their
23 registered activity, VAT on importation directly related to their registered
24 activity, documentary stamp taxes (DST) and excise taxes, except real property
25 tax on land owned by private developers. The allocation of the five percent
26 (5%) GIE pertaining to the LGU foregoing taxes hereunder shall be governed
27 by the charter or governing law of the IPA. Once the registered export

1 enterprise has made the choice, such choice shall be irrevocable for the
2 duration of its registration.

3 A registered export enterprise enjoying the five percent (5%) tax on GIE
4 may generate income from domestic sales up to thirty percent (30%) of its total
5 income from all sources: *Provided*, That should a registered export enterprise's
6 income from domestic sales exceed thirty percent (30%) of its total income
7 from all sources, the entire income shall be subject to the regular income tax. If
8 the thirty percent (30%) threshold is not exceeded, the domestic sales of a
9 registered export enterprise shall continue to enjoy the five percent (5%) tax on
10 GIE.

11 (d) Net Operating Loss Carryover (NOLCO). – The net operating loss
12 of the registered activity during the first five (5) years from start of commercial
13 operation which had not been previously offset as deduction from gross
14 income shall be carried over as a deduction from gross income for the next five
15 (5) consecutive taxable years immediately following the year of such loss:
16 *Provided, however*, That the NOLCO shall be the actual loss without the
17 benefit of the incentives provided herein.

18 The BIR shall require a registered export enterprise availing of the
19 NOLCO to secure a certificate of eligibility from the appropriate IPA before
20 filing an official copy of its ITR with the appropriate IPA for validation of the
21 NOLCO claim.

22 Failure to secure a certification and/or to file the NOLCO availment for
23 validation by the BOI or appropriate IPA shall cause the forfeiture of the
24 availment for the taxable period.

25 (e) Accelerated Depreciation. – Accelerated depreciation of plant,
26 machinery and equipment that are reasonably needed and actually used for the
27 production and transport of goods and services may be depreciated using a rate
28 not exceeding twice the rate which would have been used had the annual

1 allowance been computed in accordance with the rules and regulations
2 prescribed by the Secretary of Finance and the provisions of the NIRC of
3 1997, as amended.

4 (f) Double Deduction for Training Expenses or Training Expenses
5 Credit. – Expenses incurred for local training given to employees and training
6 expenses of potential employees for the development of skills identified as
7 necessary by the appropriate government agencies, upon approval by the
8 concerned IPA, shall entitle the registered export enterprise to a special
9 deduction from the taxable income equivalent to one hundred percent (100%)
10 of the total expenses over and above the allowable ordinary and necessary
11 business deductions for said expenses under the NIRC of 1997, as amended.
12 The same benefit of double deduction shall likewise extend to expenses paid or
13 incurred by the registered export enterprise in its training projects in
14 collaboration with schools and universities accredited by the Department of
15 Education (DepEd) or Commission on Higher Education (CHED).

16 The training expenses incurred shall be deductible from taxable income
17 on the taxable year the said training expenses were incurred.

18 The concerned IPA shall issue the corresponding certificate of
19 entitlement for this incentive upon filing of an application for training expenses
20 credit, otherwise, the training expense credit shall be deemed waived.

21 (g) Double Deduction for Research and Development or Research and
22 Development Credit. – Expenses incurred for research and development
23 conducted in the Philippines relating to the business shall entitle the registered
24 export enterprise to a special deduction from taxable income equivalent to one
25 hundred percent (100%) of the total expenses over and above the allowable
26 ordinary and business deductions for said expenses under the NIRC of 1997, as
27 amended.

1 The expenses for research and development shall be deductible from
2 taxable income on the taxable year the said research and development expenses
3 were incurred.

4 The concerned IPA shall issue the corresponding certificate of
5 entitlement for this incentive upon filing of an application for research and
6 development expenses credit; otherwise, the research and development
7 expenses credit shall be deemed waived.

8 (h) Capital Equipment Incentives. – (1) Importations of capital
9 equipment, including consignment thereof, by registered export enterprises
10 regardless of location and whether enjoying the ITH or reduced income tax or
11 the five percent (5%) tax on GIE shall be exempted to the extent of one
12 hundred percent (100%) of the taxes and customs duties: *Provided*, That the
13 following conditions are complied with:

14 (i) The capital equipment is directly and/or reasonably needed and will
15 be used exclusively in the registered activity of the export enterprise unless
16 prior approval of the IPA is secured for the part time utilization of said
17 equipment in a non-registered activity to maximize usage thereof or the
18 proportionate taxes and duties are paid on a specific equipment and machinery
19 being permanently used for non-registered activities; they are not manufactured
20 domestically in sufficient quantity, of comparable quality and at reasonable
21 prices; and

22 (ii) The approval of the IPA was obtained by the registered export
23 enterprise for the importation of such machinery, equipment and spare parts.

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

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

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

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

7 (dd) *For reasons of proven technical obsolescence.*

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

22 (2) The sale, by a domestic manufacturer to a registered export
23 enterprise of machinery and capital equipment and raw materials, supplies,
24 parts and semi-finished products, used in the fabrication of machinery and
25 capital equipment used in the registered activity of the latter shall be subject to
26 a zero-percent (0%) VAT rate.

27 The registered export enterprise availing of the incentives provided
28 under the immediately preceding two (2) paragraphs shall be subject to the

1 following: (i) that said capital equipment will be used exclusively by the
2 registered export enterprise in its registered activity; (ii) that the capital
3 equipment where the raw materials, supplies, parts and semi-finished products
4 were used would have qualified for tax and duty-free importation; and (iii) that
5 the approval of the concerned IPA is obtained by the registered export
6 enterprise. If the registered export enterprise sells, transfers or disposes of the
7 capital equipment, the provision in the preceding paragraphs for such
8 disposition shall apply.

9 (i) Raw Material Incentives. -- Importations of raw materials
10 exclusively used by a registered export enterprise in the manufacture,
11 processing or production of its export products shall be exempted from the
12 payment of customs duties and taxes.

13 (j) Tax and Duty-Free Importation of Source Documents. -- The
14 importation of source documents by ICT-registered export enterprises shall be
15 eligible for tax and duty-free importation.

16 (k) Zero Percent (0%) Rate of VAT on the Sale by a Domestic
17 Enterprise to a Registered Export Enterprise. -- The provisions of law to the
18 contrary notwithstanding, the sale by a domestic enterprise of goods and/or
19 services to a registered export enterprise, regardless of the latter's location and
20 whether enjoying the ITH, the Reduced Income Tax or the five percent (5%)
21 tax on GIE shall be subject to zero percent (0%) VAT rate: *Provided*, That
22 such goods and/or services are required by registered export enterprise's
23 activity.

24 (l) Exemption from Wharfage Dues and Export Tax. -- The provisions
25 of law to the contrary notwithstanding, exports by a registered export
26 enterprise shall be exempted from wharfage dues and export taxes.

27 (m) Access to Bonded Manufacturing Warehouse. -- Registered export
28 enterprises located outside ecozones or freeports shall have access to the

1 utilization of bonded warehousing system required by the project subject to
2 such guidelines as may be issued by the Board.

3 (n) Employment of Foreign Nationals. -- Subject to the provisions of
4 Section 29 of Commonwealth Act No. 613, as amended, a registered export
5 enterprise may employ foreign nationals in managerial, technical or advisory
6 positions.

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

12 SEC. 18. *Tax Treatment/Other Incentives for Registered Enterprises*
13 *in Ecozones and Freeport Zones.* -- In addition to the applicable incentives
14 provided under the preceding section on export incentives, registered
15 enterprises locating in the Special Economic Zones and Freeport Zones shall
16 be entitled to the following incentives:

17 (a) Tax Treatment of Merchandise in Ecozones or Freeports. -- (1)
18 Except as otherwise provided in this Code, foreign and domestic merchandise,
19 raw materials, supplies, articles, equipment, machineries, spare parts and wares
20 of every description, except those prohibited by law, brought into the ecozones
21 or freeports to be sold, stored, broken up, repacked, assembled, installed,
22 sorted, cleaned, graded, or otherwise processed, manufactured, mixed with
23 foreign or domestic merchandise whether directly or indirectly related in such
24 activity, shall not be subject to customs and internal revenue laws and
25 regulations nor to local tax ordinances, the provisions of law to the contrary
26 notwithstanding.

27 (2) Merchandise purchased by a registered enterprise located in the
28 ecozones or freeports from the customs territory, and subsequently brought

1 into the ecozones or freeports, shall be considered as export sales and
2 exportation thereof shall be entitled to the benefits allowed by law for such
3 transaction.

4 (3) Merchandise sent from the ecozones or freeports to the customs
5 territory shall, whether or not combined with or made part of other articles
6 likewise of local origin or manufactured in the Philippines while in the
7 ecozones or freeports, be subject to internal revenue and customs laws of the
8 Philippines as domestic goods sold, transferred or disposed of for local
9 consumption. If the finished goods have imported components, the duties shall
10 be based on the value of said imported materials, except when the final product
11 is exempt.

12 (4) Qualified merchandise or articles manufactured by registered
13 ecozone or freeport locators, which are made available for sale in the domestic
14 market shall be imposed the applicable ASEAN Common Effective
15 Preferential Tariff (CEPT) rate, if qualified, or applicable tariff rates under
16 bilateral or regional trade agreements, if qualified, or Most Favoured Nation
17 (MFN) rate on imported raw materials and MFN rates on non-qualified raw
18 materials used in the manufacture of the qualified merchandise or articles. In
19 case of bilateral agreements, the applicable rate shall be the agreed rate.

20 (5) Domestic merchandise on which all internal revenue taxes have
21 been paid, if subject thereto, and foreign merchandise previously imported on
22 which duty or tax has been paid, or which have been admitted free of duty and
23 tax, may be taken into the ecozones or freeports from the customs territory of
24 the Philippines and be brought back thereto free of quotas, duty or tax.

25 (6) Subject to such regulations respecting identity and safeguarding of
26 the revenue as the concerned IPA may deem necessary when the identity of an
27 article entered into the ecozones or freeports under the immediately preceding
28 paragraph has been lost, such article when removed from the ecozones or

1 freeports and taken to the customs territory shall be treated as foreign
2 merchandise entering the country for the first time, under the provisions of the
3 Tariff and Customs Code of the Philippines, as amended.

4 (7) Articles produced or manufactured in the ecozones or freeports and
5 exported therefrom shall, on subsequent importation into the customs territory,
6 be subject to the import laws applicable to like articles manufactured in a
7 foreign country.

8 (8) Articles regulated by law for sale to the domestic market shall only
9 be allowed to be used or consumed within the ecozones or freeports.

10 (9) Unless the contrary is shown, merchandise taken out of the
11 ecozones or freeports shall be considered, for tax purposes, to have been sent
12 to customs territory.

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

17 (b) Tax Treatment of Services in the Ecozones or Freeports. – (1) Sale
18 of service by an entity from the customs territory to a registered ecozone or
19 freeport enterprise or by a registered ecozone or freeport enterprise to another
20 ecozone or freeport enterprise shall be treated as indirect export, and hence,
21 shall not be subjected to internal revenue taxes for such transaction.

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

25 SEC. 19. *Incentives for Registered Domestic Enterprises.* – Registered
26 domestic enterprises not engaged in strategic projects under the sectors or
27 industries under the IPP including registered micro, small and medium

1 enterprises (SMEs) as defined by the appropriate agency, shall be qualified to
2 the following incentives to the extent of their registered activity:

3 (a) Income Tax Holiday (ITH). – Activities of a registered domestic
4 enterprise shall be entitled to four (4) years of ITH from the date of start of its
5 commercial operations.

6 The BIR shall require a registered domestic enterprise availing of ITH
7 to secure a certificate of eligibility from the appropriate IPA before filing an
8 official copy of its income tax return (ITR). Thereafter, the registered domestic
9 enterprise shall file its claim with the appropriate IPA for validation.

10 Failure to secure a certification and/or to file the ITH availment for
11 validation by the appropriate IPA shall cause the forfeiture of the ITH
12 availment for the taxable period.

13 (b) Net Operating Loss Carryover (NOLCO). – The net operating loss
14 of the registered activity during the first five (5) years from start of commercial
15 operation which had not been previously offset as deduction from gross
16 income shall be carried over as a deduction from gross income for the next five
17 (5) consecutive taxable years immediately following the year of such loss:
18 *Provided, however,* That the NOLCO shall be the actual loss without the
19 benefit of the incentives provided herein.

20 The BIR shall require a registered domestic enterprise availing of the
21 NOLCO to secure a certificate of eligibility from the appropriate IPA before
22 filing an official copy of its ITR with the appropriate IPA for validation of the
23 NOLCO claim.

24 Failure to secure a certification and/or to file the NOLCO availment for
25 validation by the BOI or appropriate IPA shall cause the forfeiture of the
26 availment for the taxable period.

27 (c) Accelerated Depreciation. – Accelerated depreciation of plant,
28 machinery and equipment that are reasonably needed and actually used for the

1 production and transport of goods and services may be depreciated using a rate
2 not exceeding twice the rate which would have been used had the annual
3 allowance been computed in accordance with the rules and regulations
4 prescribed by the Secretary of Finance and the provisions of the NIRC of
5 1997, as amended.

6 (d) Double Deduction for Training Expenses or Training Expenses
7 Credit. – Expenses incurred for local training given to employees and training
8 expenses of potential employees for the development of skills identified as
9 necessary by the appropriate government agencies, upon approval by the
10 concerned IPA, shall entitle the registered domestic enterprise to a special
11 deduction from the taxable income equivalent to one hundred percent (100%)
12 of the total expenses over and above the allowable ordinary and necessary
13 business deductions for said expenses under the NIRC of 1997, as amended.
14 The same benefit of double deduction shall likewise extend to expenses paid or
15 incurred by the registered domestic enterprise in its training projects in
16 collaboration with schools and universities accredited by the Department of
17 Education (DepEd) or the Commission on Higher Education (CHED).

18 The training expenses incurred shall be deductible from taxable income
19 on the taxable year the said training expenses were incurred.

20 The concerned IPA shall issue the corresponding certificate of
21 entitlement for this incentive upon filing of an application for training expenses
22 credit, otherwise, the training expense credit shall be deemed waived.

23 (e) Double Deduction for Research and Development or Research and
24 Development Credit. – Expenses incurred for research and development
25 conducted in the Philippines relating to the business shall entitle the registered
26 domestic enterprise to a special deduction from taxable income equivalent to
27 one hundred percent (100%) of the total expenses over and above the

1 allowable ordinary and business deductions for said expenses under the NIRC
2 of 1997, as amended.

3 The expenses for research and development shall be deductible from
4 taxable income on the taxable year the said research and development expenses
5 were incurred.

6 The concerned IPA shall issue the corresponding certificate of
7 entitlement for this incentive upon filing of an application for research and
8 development expenses credit; otherwise, the research and development
9 expenses credit shall be deemed waived.

10 (f) VAT and Duty Incentives on Importations of Capital Equipment
11 and/or Raw Material. – Importations of capital equipment and/or raw materials
12 by registered domestic enterprises shall be subject to a VAT and customs duty
13 refund mechanism.

14 In order to facilitate the immediate processing, clearance and release of
15 VAT and customs duty refunds as provided in this Act, a trust liability account
16 (TLA) is hereby authorized to be established in the Bureau of the Treasury
17 (BTr). All VAT and customs duty payments pertaining to the importation of
18 registered domestic enterprises of capital equipment or raw materials shall be
19 deposited in the TLA for the purpose of funding valid VAT and customs duty
20 refund claims. The claims for VAT and customs duty refunds shall be made by
21 the registered domestic enterprise to the DOF which, in turn, shall process,
22 approve and release the VAT and customs duty refund.

23 The VAT and customs duty paid on imported capital equipment may be
24 refunded: *Provided, That the capital equipment is being used by the registered*
25 *domestic enterprise pursuant to its registered activity.*

26 The amount of VAT and customs duty refund on a particular shipment
27 of raw materials shall be equivalent to the proportion of raw materials used in
28 the production to the total raw materials imported multiplied by the amount of

1 VAT and customs duty paid on such importation. No claim for refund shall be
2 allowed on VAT and customs duty paid on raw materials which are not or no
3 longer intended to be used in the registered activity.

4 The registered domestic enterprise shall file a claim for VAT and
5 customs duty refund within two (2) years after the payment was made. All
6 amounts paid but no longer allowed for refund shall immediately accrue to the
7 general fund of the national government.

8 All applications for VAT and customs duty refund shall be processed
9 and acted upon within thirty (30) days after submission of complete
10 documents. The refund shall be in a form of cash or manager's/cashier's check
11 payable to the registered domestic enterprise.

12 In case of dispute under the VAT and customs duty refund mechanism
13 provided in this section, the pertinent provisions of the NIRC of 1997, as
14 amended, and the Tariff and Customs Code of the Philippines, as amended,
15 shall apply.

16 The registered domestic enterprise availing of the above incentives shall
17 be subject to the following: (1) that said capital equipment will be used
18 exclusively by the registered domestic enterprise in its registered activity; (2)
19 that the capital equipment where the raw materials, supplies, parts and semi-
20 finished products were used would have qualified for tax and duty-free
21 importation; and (3) that the approval of the concerned IPA is obtained by the
22 registered domestic enterprise. If the registered domestic enterprise sells,
23 transfers or disposes of the capital equipment, the provision of subsection (h)
24 of Section 17 of this Act shall apply.

25 (g) Preferential Access to Financing and Acceptable Form of
26 Collaterals. – Registered SMEs shall be accorded access to financing from
27 government financial institutions at preferential rates below the market rates.

1 Further, capital goods acquired from loans secured from government
2 financial institutions shall be an acceptable form of collateral for the same
3 loan.

4 (h) Assistance in the Preparation of Project Study. – Registered SMEs
5 may be provided assistance in the preparation of project study for purposes of
6 registration under this Code.

7 SEC. 20. *Incentives for Domestic “Strategic” Enterprises.* – All IPAs
8 may administer the following incentives to registered domestic enterprises
9 engaged in strategic projects, as defined under Section 15 of this Act,
10 whenever applicable, to the extent of their registered activity:

11 (a) Income Tax Holiday (ITH). – A registered domestic “strategic”
12 enterprise shall be entitled to an ITH equivalent to six (6) years from the date
13 of start of its commercial operations.

14 The BIR shall require a registered domestic “strategic” enterprise
15 availing of the ITH to secure a certificate of eligibility from the appropriate
16 IPA before filing an official copy of its income tax return (ITR). Thereafter,
17 the registered domestic “strategic” enterprise shall file its claim with the
18 appropriate IPA for validation.

19 Failure to secure a certification and/or file the ITH availment for
20 validation by the appropriate IPA shall cause the forfeiture of the ITH
21 availment for the taxable period.

22 (b) Reduced Income Tax. – A registered domestic “strategic”
23 enterprise may be entitled to a preferential tax rate of fifteen percent (15%) of
24 taxable income as defined under Section 31 of the NIRC of 1997, as amended,
25 for a period of eight (8) years.

26 If the domestic “strategic” enterprise registers within the first six (6)
27 years from the effectivity of this Act, it may opt to avail of the ITH prior to the

1 reduced income tax: *Provided*, That the ITH together with the reduced income
2 tax shall be availed of for a period of eight (8) years.

3 (c) Net Operating Loss Carryover (NOLCO). – The net operating loss
4 of the registered activity during the first five (5) years from start of commercial
5 operation which had not been previously offset as deduction from gross
6 income may be carried over as a deduction from gross income for the next
7 eight (8) consecutive taxable years immediately following the year of such
8 loss: *Provided*, That the NOLCO shall be the actual loss without the benefit of
9 the incentives provided herein.

10 The BIR shall require a registered domestic “strategic” enterprise
11 availing of the NOLCO to secure a certificate of eligibility from the
12 appropriate IPA before filing an official copy of its ITR with the appropriate
13 IPA for validation of the NOLCO claim.

14 Failure to secure a certification and/or to file the NOLCO availment for
15 validation by the BOI or appropriate IPA shall cause the forfeiture of the
16 availment for the taxable period.

17 (d) Accelerated Depreciation. – Accelerated depreciation of plant,
18 machinery and equipment that are reasonably needed and actually used for the
19 production and transport of goods and services may be depreciated using a rate
20 not exceeding twice the rate which would have been used had the annual
21 allowance been computed in accordance with the provisions of the NIRC of
22 1997, as amended, and the rules and regulations prescribed by the Secretary of
23 Finance.

24 (e) *Double Deduction for Training Expenses.* – Expenses incurred for
25 local training given to employees and training expenses of potential employees
26 for the development of skills identified as necessary by the appropriate
27 government agencies, upon approval by the concerned IPA, may entitle the
28 registered domestic “strategic” enterprise to a special deduction from the

1 taxable income equivalent to one hundred percent (100%) of the total expenses
2 over and above the allowable ordinary and necessary business deductions for
3 said expenses under the NIRC of 1997, as amended. The same benefit of
4 double deduction shall likewise extend to expenses paid or incurred by the
5 registered domestic “strategic” enterprise in its training projects in
6 collaboration with schools and universities accredited by the Department of
7 Education (DepEd) or the Commission on Higher Education (CHED).

8 The training expenses incurred shall be deductible from taxable income
9 on the taxable year the said training expenses were incurred.

10 The concerned IPA shall issue the corresponding certificate of
11 entitlement for this incentive upon filing of an application, otherwise, the
12 training incentive shall be deemed waived.

13 (f) Double Deduction for Research and Development. – Expenses
14 incurred for research and development conducted in the Philippines relating to
15 the business may entitle the registered domestic “strategic” enterprise to a
16 special deduction from taxable income equivalent to one hundred percent
17 (100%) of the total expenses over and above the allowable ordinary and
18 business deductions for said expenses under the NIRC of 1997, as amended.

19 The expenses for research and development shall be deductible from
20 taxable income on the taxable year the said research and development expenses
21 were incurred.

22 The concerned IPA shall issue the corresponding certificate of
23 entitlement for this incentive upon filing of an application, otherwise, the
24 research and development incentive shall be deemed waived.

25 (g) VAT and Duty Incentives on Importations of Capital Equipment
26 and/or Raw Material. – Importations of capital equipment and/or raw materials
27 by registered domestic “strategic” enterprises shall be subject to a VAT and
28 customs duty refund mechanism.

1 In order to facilitate the immediate processing, clearance and release of
2 VAT and customs duty refunds as provided in this Act, a trust liability account
3 (TLA) is hereby authorized to be established in the Bureau of the Treasury
4 (BTr). All VAT and customs duty payments pertaining to the importation of
5 registered domestic “strategic” enterprises of capital equipment or raw
6 materials shall be deposited in the TLA for the purpose of funding valid VAT
7 and customs duty refund claims. The claims for VAT and customs duty
8 refunds shall be made by the registered domestic “strategic” enterprise to the
9 DOF which, in turn, shall process, approve and release the VAT and customs
10 duty refund.

11 The VAT and customs duty paid on imported capital equipment may be
12 refunded: *Provided*, That the capital equipment is being used by the registered
13 domestic “strategic” enterprise pursuant to its registered activity.

14 The amount of VAT and customs duty refund on a particular shipment
15 of raw materials shall be equivalent to the proportion of raw materials used in
16 the production to the total raw materials imported multiplied by the amount of
17 VAT and customs duty paid on such importation. No claim for refund shall be
18 allowed on VAT and customs duty paid on raw materials which are not or no
19 longer intended to be used in the registered activity.

20 The registered domestic “strategic” enterprise shall file a claim for VAT
21 and customs duty refund within two (2) years after the payment was made. All
22 amounts paid but no longer allowed for refund shall immediately accrue to the
23 general fund of the national government.

24 All applications for VAT and customs duty refund shall be processed
25 and acted upon within thirty (30) days after submission of complete
26 documents. The refund shall be in a form of cash or manager’s/cashier’s check
27 payable to the registered domestic “strategic” enterprise.

1 In case of dispute under the VAT and customs duty refund mechanism
2 provided in this section, the pertinent provisions of the NIRC of 1997, as
3 amended, and the Tariff and Customs Code of the Philippines, as amended,
4 shall apply.

5 The registered domestic “strategic” enterprise availing of the above
6 incentives shall be subject to the following: (1) that said capital equipment will
7 be used exclusively by the registered domestic “strategic” enterprise in its
8 registered activity; (2) that the capital equipment where the raw materials,
9 supplies, parts and semi-finished products were used would have qualified for
10 tax and duty-free importation; and (3) that the approval of the concerned IPA
11 is obtained by the registered domestic “strategic” enterprise. If the registered
12 domestic “strategic” enterprise sells, transfers or disposes of the capital
13 equipment, the provision of subsection (h) of Section 17 of this Act shall
14 apply.

15 (h) Employment of Foreign Nationals. – Subject to the provisions of
16 Section 29 of Commonwealth Act No. 613, as amended, a registered domestic
17 “strategic” enterprise may employ foreign nationals in managerial, technical or
18 advisory positions.

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

24 SEC. 21. *Incentives for Registered Domestic Enterprises in the Thirty*
25 *Poorest Provinces or Less Developed Areas (LDAs).* – Registered domestic
26 enterprises located in the thirty (30) poorest provinces as determined by the
27 appropriate agency or in LDAs as defined hereof are entitled to a twenty
28 (20)-year cumulative availment of the following incentives:

1 (a) Income Tax Holiday (ITH). -- Activities of a registered domestic
2 enterprise located in the thirty (30) poorest provinces or LDAs shall be entitled
3 to six (6) years of ITH from the date of start of its commercial operations.

4 (b) Reduced Income Tax After Entitlement to ITH or NOLCO. -- A
5 registered domestic enterprise located in the 30 poorest provinces or LDAs
6 shall be entitled to twelve (12) years of a preferential tax rate of fifteen percent
7 (15%) of taxable income as defined under Section 31 of the NIRC of 1997, as
8 amended.

9 (c) Net Operating Loss Carryover (NOLCO). -- The net operating loss
10 of the registered activity during the first five (5) years from start of commercial
11 operation which had not been previously offset as deduction from gross
12 income shall be carried over as a deduction from gross income for the next five
13 (5) consecutive taxable years immediately following the year of such loss:
14 *Provided, however,* That the NOLCO shall be the actual loss without the
15 benefit of the incentives provided herein.

16 The BIR shall require a registered domestic enterprise availing of the
17 NOLCO to secure a certificate of eligibility from the appropriate IPA before
18 filing an official copy of its ITR with the appropriate IPA for validation of the
19 NOLCO claim.

20 Failure to secure a certification and/or to file the NOLCO availment for
21 validation by the BOI or appropriate IPA shall cause the forfeiture of the
22 availment for the taxable period.

23 (d) Accelerated Depreciation. -- Accelerated depreciation of plant,
24 machinery and equipment that are reasonably needed and actually used for the
25 production and transport of goods and services may be depreciated using a rate
26 not exceeding twice the rate which would have been used had the annual
27 allowance been computed in accordance with the rules and regulations

1 prescribed by the Secretary of Finance and the provisions of the NIRC of
2 1997, as amended.

3 (e) Double Deduction for Training Expenses or Training Expenses
4 Credit – Expenses incurred for local training given to employees and training
5 expenses of potential employees for the development of skills identified as
6 necessary by the appropriate government agencies, upon approval by the
7 concerned IPA, shall entitle the registered domestic enterprise to a special
8 deduction from the taxable income equivalent to one hundred percent (100%)
9 of the total expenses over and above the allowable ordinary and necessary
10 business deductions for said expenses under the NIRC of 1997, as amended.
11 The same benefit of double deduction shall likewise extend to expenses paid or
12 incurred by the registered domestic enterprise in its training projects in
13 collaboration with schools and universities accredited by the Department of
14 Education (DepEd) or the Commission on Higher Education (CHED).

15 The training expenses incurred shall be deductible from taxable income
16 on the taxable year the said training expenses were incurred.

17 The concerned IPA shall issue the corresponding certificate of
18 entitlement for this incentive upon filing of an application for training expenses
19 credit, otherwise, the training expense credit shall be deemed waived.

20 (f) Double Deduction for Research and Development or Research and
21 Development Credit. – Expenses incurred for research and development
22 conducted in the Philippines relating to the business shall entitle the registered
23 domestic enterprise to a special deduction from taxable income equivalent to
24 one hundred percent (100%) of the total expenses over and above the
25 allowable ordinary and business deductions for said expenses under the NIRC
26 of 1997, as amended.

1 The expenses for research and development shall be deductible from
2 taxable income on the taxable year the said research and development expenses
3 were incurred.

4 The concerned IPA shall issue the corresponding certificate of
5 entitlement for this incentive upon filing of an application for research and
6 development expenses credit; otherwise, the research and development
7 expenses credit shall be deemed waived.

8 (g) VAT and Duty Incentives on Importations of Capital Equipment
9 and/or Raw Material. – Importations of capital equipment and/or raw materials
10 by registered domestic enterprises located in the thirty (30) poorest provinces
11 or LDAs shall be subject to a VAT and customs duty refund mechanism.

12 In order to facilitate the immediate processing, clearance and release of
13 VAT and customs duty refunds as provided in this Act, a trust liability account
14 (TLA) is hereby authorized to be established in the Bureau of the Treasury
15 (BTr). All VAT and customs duty payments pertaining to the importation of
16 registered domestic enterprises located in the thirty (30) poorest provinces or
17 LDAs of capital equipment or raw materials shall be deposited in the TLA for
18 the purpose of funding valid VAT and customs duty refund claims. The claims
19 for VAT and customs duty refunds shall be made by the registered domestic
20 enterprise to the DOF which, in turn, shall process, approve and release the
21 VAT and customs duty refund.

22 The VAT and customs duty paid on imported capital equipment may be
23 refunded: *Provided*, That the capital equipment is being used by the registered
24 domestic enterprise pursuant to its registered activity.

25 The amount of VAT and customs duty refund on a particular shipment
26 of raw materials shall be equivalent to the proportion of raw materials used in
27 the production to the total raw materials imported multiplied by the amount of
28 VAT and customs duty paid on such importation. No claim for refund shall be

1 allowed on VAT and customs duty paid on raw materials which are not or no
2 longer intended to be used in the registered activity.

3 Registered domestic enterprises located in the thirty (30) poorest
4 provinces or LDAs shall file a claim for VAT and customs duty refund within
5 two (2) years after the payment was made. All amounts paid but no longer
6 allowed for refund shall immediately accrue to the general fund of the national
7 government.

8 All applications for VAT and customs duty refund shall be processed
9 and acted upon within thirty (30) days after submission of complete
10 documents. The refund shall be in a form of cash or manager's/cashier's check
11 payable to the registered domestic enterprise.

12 In case of dispute under the VAT and customs duty refund mechanism
13 provided in this section, the pertinent provisions of the NIRC of 1997, as
14 amended, and the Tariff and Customs Code of the Philippines, as amended,
15 shall apply.

16 Registered domestic enterprises located in the thirty (30) poorest
17 provinces or LDAs availing of the above incentives shall be subject to the
18 following: (1) that said capital equipment will be used exclusively by the
19 registered domestic enterprise in its registered activity; (2) that the capital
20 equipment where the raw materials, supplies, parts and semi-finished products
21 were used would have qualified for tax and duty-free importation; and (3) that
22 the approval of the concerned IPA is obtained by the registered domestic
23 enterprise. If the registered domestic enterprise sells, transfers or disposes of
24 the capital equipment, the provision of subsection (h) of Section 17 of this Act
25 shall apply.

26 *SEC. 22. Incentives for Private Ecozone Developers.* – Private ecozone
27 developers may avail of the incentives provided herein as conferred by the
28 PEZA.

1 *SEC. 23. Incentives for Registered Enterprises in Supply Chain Cities.*

2 – Registered enterprises located in the supply chain cities shall be granted
3 incentives provided under Sections 17 and 18 hereof.

4 A registered enterprise under the supply chain city engaged in
5 manufacturing may subcontract a portion of its manufacturing processes to its
6 affiliated entities outside the Philippines. Moreover, a registered enterprise
7 may book sales in the Philippines which sales include others undertaken
8 partially outside the Philippines by its affiliated entities.

9 *SEC. 24 Phase-out of ITH Incentive.* – Upon recommendation of the
10 NEDA Board, the granting of the ITH incentive to a registered domestic
11 enterprise shall be terminated by a joint resolution passed by the Senate and
12 the House of Representatives: *Provided*, That export, agriculture, infrastructure
13 and shipping activities, projects located in the thirty (30) poorest provinces or
14 LDAs and strategic projects as defined under Section 15 hereof, shall not be
15 covered by the phase-out of the ITH.

16 *SEC. 25. Non-fiscal Incentives.* – Registered enterprises shall be
17 entitled to the following non-fiscal incentives:

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

27 (b) *Simplification of Customs and Internal Revenue Procedures.* –
28 Customs procedures for the importation of equipment, spare parts, raw

1 materials and supplies, exports of processed products by registered enterprises
2 shall be simplified by the BOC.

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

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

9 SEC. 26. *Entitlement to Investor's Visa by a Foreign National.* – A
10 foreign national who invests an amount of at least US\$150,000, either in cash
11 and/or equipment, in a registered enterprise shall be entitled to an Investor's
12 Visa: *Provided, That:*

13 (a) He is at least eighteen (18) years of age;

14 (b) He has not been convicted of a crime involving moral turpitude;

15 (c) He is not afflicted with any loathsome, dangerous or contagious
16 disease; and

17 (d) He has not been institutionalized for any mental disorder or
18 disability:

19 *Provided, further,* That as a holder of the Investor's Visa, an alien shall
20 be entitled to reside in the Philippines while his investment subsists. For this
21 purpose, he should submit an annual report, in the form duly prescribed for the
22 purpose, to prove that he has maintained his investments in the country. Should
23 said alien withdraw his investments from the Philippines, then the Investor's
24 Visa issued to him shall automatically expire.

25 The minimum amount for investment provided for under this Code shall
26 be made applicable to visas granted to investors by the BOI, the PEZA, the
27 SBMA, the CDC, the JHMC, the PPMC, the BTPI, the CEZA, the ZCSEZA,
28 the PIA, the ASEZA, and other IPAs that may be created under the law.

1 *Provided, further,* That the investment is made in an activity where the
2 Constitution does not specifically require Filipino participation;

3 (b) The activity it will engage in is not within the activities reserved by
4 the Constitution to Philippine citizens or corporations owned and controlled by
5 Philippine citizens;

6 (c) It will engage in an activity included in the IPP or in an export
7 activity or in an activity located in supply chain cities, thirty (30) poorest
8 provinces or LDAs or in an activity considered as “strategic project”.

9 (d) It will infuse new investments. For this purpose “new investments”
10 shall mean a new enterprise infusing new investments and undertaking new
11 activity. However, an enterprise with an existing operation may be qualified
12 for registration if it will undertake new activity. Further, an existing enterprise
13 undertaking the same activity that shall infuse additional investments of at least
14 fifty percent (50%) of its present actual investments shall be deemed to be
15 “new investments” but only to the extent of such additional investments.
16 Furthermore, government assets that will be privatized shall be deemed “new
17 investments”; and

18 (e) If the applicant is engaged or proposes to engage in undertakings or
19 activities other than the registered projects, it shall install an accounting system
20 adequate to identify the investments, revenues, costs, and profits or losses of
21 each registered project undertaken by the enterprise separately from the
22 aggregate investment, revenues, costs and profits or losses of the whole
23 enterprise, or to establish a separate corporation for each registered project if
24 the IPAs should so require to facilitate proper implementation of this Code.

25 CHAPTER IV

26 BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

27 SEC. 30. *Protection of Investments.* – All investors and registered
28 enterprises are entitled to the basic rights and guarantees provided in the

1 Constitution. Among other rights recognized by the Government of the
2 Philippines are the following:

3 (a) Repatriation of Investments. – In the case of foreign investments,
4 the right to repatriate the entire proceeds of the liquidation of the investment in
5 the currency in which the investment was originally made and at the exchange
6 rate prevailing at the time of repatriation, subject to the provisions of Section
7 74 of Republic Act No. 265, otherwise known as the “Central Bank Act”, as
8 amended.

9 For investments made pursuant to Executive Order No. 32, series of
10 1986, entitled “Directing the Establishment of a Program for the Conversion of
11 Philippine External Debt into Equity Investments”, and its implementing rules
12 and regulations, the repatriation of investments shall be as provided therein.

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

18 For investments made pursuant to Executive Order No. 32, series of
19 1986, and its implementing rules and regulations, the remittance of earnings
20 shall be as provided therein.

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

27 (d) Freedom from Expropriation. – There shall be no expropriation by
28 the government of the property represented by investments or of the property

1 of the enterprise except for public use, public interest, lawful purpose, or in the
2 interest of national welfare or defense and upon payment of just compensation.
3 In such cases, foreign investors or enterprises shall have the right to remit sums
4 received as compensation for the expropriated property in the currency in
5 which the investment was originally made and at the exchange rate at the time
6 of remittance, subject to the provisions of Section 74 of Republic Act No. 265,
7 as amended.

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

17 CHAPTER V

18 ADMINISTRATION OF INCENTIVES

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

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

26 SEC. 32. *No Double Registration of Enterprises.* – Export or domestic
27 enterprises shall not be allowed to register their export or domestic activity in
28 more than one (1) IPA. In the event that an enterprise shall transfer to another

1 IPA, only the remaining unutilized incentives shall be granted to the enterprise
2 or the transferee, vendee or assignee.

3 SEC. 33. *Criteria for Evaluation of Application* – The following
4 criteria shall be considered in the evaluation of applications for registration
5 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
10 adopted to local conditions; and

11 (e) Such other criteria as the Board may determine.

12 SEC. 34. *Environmental Protection and Corporate Social*
13 *Responsibility*. – Every registered enterprise shall prepare a Program for
14 Environmental Protection and Corporate Social Responsibility (CSR) covering
15 the period for its entitlement to fiscal incentives. Such Program shall be
16 undertaken on a per registration basis and shall be submitted as an
17 accompanying document to the application for registration to be submitted to
18 the appropriate IPA.

19 The environmental program shall include activities such as, but not
20 limited to, requiring registered firms to plant trees.

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

25 The amount spent for the CSR activities shall be reflected in the Notes
26 to the Audited Financial Statements.

27 SEC. 35. *Approval and Registration Procedures*. – The IPA is
28 authorized to adopt rules and regulations to facilitate action on applications

1 filed with it; prescribe criteria for the evaluation of applications; devise
2 standard forms for the use of applicants and delegate to the regional offices of
3 the DTI the authority to receive and process applications for enterprises
4 located in their respective regions.

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

12 **SEC. 36. *Certificate of Registration.*** – A registered enterprise under
13 this Code shall be issued a Certificate of Registration under the seal of the IPA
14 and the signature of its Chairman and/or such other official or officer of the
15 IPA as it may empower and designate for the purpose. The certificate shall be
16 in such form and style as the IPA may determine and shall state, among other
17 matters:

18 (a) The name of the registered enterprise;

19 (b) The activity in which the registered enterprise is proposing to
20 engage; and

21 (c) The terms and conditions to be observed by the registered
22 enterprise by virtue of the registration.

23 **SEC. 37. *Validity of Registration*** – The registration shall be valid for a
24 period of twenty (20) years from the date of start of commercial operation
25 except on certain industries as may be determined by the Board and those that
26 are registered with the PEZA.

27 **SEC. 38. *Extension of Period of Availment of Incentives.*** -- The
28 availment period of the incentives provided herein may be extended by the

1 concerned IPA in the event that the registered enterprise has suffered
2 operational *force majeure* or losses that have impaired the viability of the
3 registered activity.

4 SEC. 39. *Administration, Implementation and Monitoring of*
5 *Incentives.* – The BOI, the PEZA and the other IPAs shall be responsible for
6 the administration and implementation of incentives granted to their respective
7 registered enterprises. They shall submit to the DOF their respective tax
8 expenditures based on the computed cost in terms of revenue foregone on the
9 tax incentives granted to their registered enterprises, and other data related to
10 the grant of investment incentives, on a quarterly basis and to cover all their
11 registered enterprises including those whose incentives are provided by
12 investment incentive laws prior to the effectivity of this Act. For proper
13 monitoring, the DOF shall create a single database of all incentives provided
14 by all IPAs. The DOF shall monitor and review the incentives granted and
15 submit an annual report to the President and to the Chairman of the Committee
16 on Ways and Means of both Houses of Congress.

17 TITLE IV

18 FINAL PROVISIONS

19 SEC. 40. *Vested Right.* – Any provision of law to the contrary
20 notwithstanding, incentives granted to existing registered enterprises pursuant
21 to contracts or agreements entered into with government
22 instrumentalities/corporations shall continue to be legally binding in
23 accordance with the terms and conditions stated in their respective contracts or
24 agreements, as provided under existing laws.

25 SEC. 41. *Authority to Retain Funds.* – Registered enterprises availing
26 of fiscal incentives, except those located in the thirty (30) poorest provinces or
27 LDAs, shall be assessed with a maximum fee of one percent (1%) of the
28 amount of incentives granted. Said amount shall automatically accrue to the

1 Board of Investments to be allotted for investment promotions activities and
2 other special projects to achieve the objectives of this Code, subject to the
3 usual accounting and auditing rules and procedures.

4 SEC. 42. *Protection of the Environment.* – The IPAs, in coordination
5 with the appropriate agencies, shall take appropriate steps to enact the proper
6 measures for the protection of the environment, and shall coordinate with the
7 Environmental Management Bureau of the Department of Environment and
8 Natural Resources (EMB-DENR) to avoid undue delay in the issuance of the
9 required Environmental Compliance Certificate (ECC): *Provided, however,*
10 That applications for environmental clearances, permits, and/or licenses of
11 registered enterprises shall be acted upon by the appropriate government
12 agency within thirty (30) days from date of official acceptance. In the event
13 that the appropriate government agency failed to act within the aforementioned
14 date, the application for the said environmental requirement shall be deemed
15 complied with for purposes of operation of the registered activity.

16 SEC. 43. *Appeals.* – All orders or decisions of the BOI or the IPA in
17 cases involving the provisions of this Code shall immediately be executory. No
18 appeal from the order or decision of the BOI or the IPA by the party adversely
19 affected shall stay such order or decision, unless a *supersedeas* bond
20 equivalent to the amount stated in the order or decision is posted by the
21 appellant.

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

1 bond which shall be limited to cash and/or surety bond from a BOI-accredited
2 bonding company.

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

9 SEC. 44. *Suspension and Forfeiture of Incentives of Registered*
10 *Enterprises, Refund and Penalties.* – When there is probable cause to believe
11 that the registered enterprise has violated its registration terms and conditions,
12 the BOI or the IPA may suspend its availment of incentives, until proven
13 otherwise.

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

18 In case of cancellation of the Certificate of Registration granted under
19 this Code, the BOI or the IPA may, in appropriate cases, require the refund of
20 incentives availed of and impose corresponding fines and penalties.

21 Any enterprise which violates any provision of this Code, its
22 implementing rules and regulations, the terms and conditions of its registration,
23 or of any lawful directive of the BOI or the IPA, shall be subject to a fine not
24 to exceed One million pesos (P1,000,000.00), without prejudice to the
25 disapproval of its application for registration or cancellation of its registration:
26 *Provided, That any willful commission of fraudulent misrepresentation in its*
27 *application for registration or submission of reports or gross violation of this*
28 *Code and its implementing rules and regulations, a fine of at least One million*

1 pesos (P1,000,000.00) but not to exceed Ten million pesos (P10,000,000.00)
2 shall be imposed, in addition to other penalties that may be imposed by the
3 BOI or the IPA.

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

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

13 Government officers and employees who participate directly or
14 indirectly in the commission of the foregoing acts shall likewise be liable to a
15 fine of not less than One hundred thousand pesos (P100,000.00) but not more
16 than Three hundred thousand pesos (P300,000.00), in addition to any criminal
17 and administrative penalties imposable under the Civil Service Law, Revised
18 Penal Code, Republic Act No. 3019, otherwise known as the “Anti-Graft And
19 Corrupt Practices Act”, Republic Act No. 6713, otherwise known as the “Code
20 Of Conduct And Ethical Standards For Public Officials”, and other applicable
21 laws.

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

25 *SEC. 45. Disposition of Savings from the Implementation of this Act. –*
26 The total amount of savings to be generated from the implementation of this
27 Act shall be allocated annually and used exclusively for the provision of
28 scholarships under the CHED.

1 Such allocations shall be segregated as separate trust funds by the
2 National Treasury and shall be over and above the annual appropriations for
3 similar purposes.

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

6 SEC. 46. *Implementing Rules and Regulations (IRR)*. – The DTI, the
7 DOF, the NEDA, the DBM, the BOI, the PEZA, other IPAs and other
8 concerned government agencies, shall promulgate rules and regulations to
9 implement the intent and provisions of this Code within one hundred twenty
10 (120) days from the effectivity of this Code. Such rules and regulations shall
11 take effect fifteen (15) days following its publication in a newspaper of general
12 circulation in the Philippines.

13 SEC. 47. *Transitory Provision*. – The incentives under Section 17 of
14 this Act shall be applicable to existing BOI-registered export enterprises,
15 particularly the tax and duty-free importation of equipment and raw materials
16 by the said BOI-registered export enterprises.

17 Until the IRR of this Act take effect, the present rules and regulations
18 under the old investments laws shall apply to the extent that they are not
19 inconsistent with the provisions of this Act.

20 SEC. 48. *Separability Clause*. – The provisions of this Code are hereby
21 declared to be separable and, in the event any of such provisions is declared
22 unconstitutional, the other provisions which are not affected thereby, shall
23 remain in force and effect.

24 SEC. 49. *Repealing Clause*. – The following provisions are hereby
25 repealed:

26 (a) Title I, Chapter III, Article 32(1)(B); Title III, Article 39(a), (b),
27 (d), (e), (g), (i), (j), (k), (l), (m) and (n); Title IV, Article 40(a) and (b); Book
28 III, Chapter II, Articles 61 and 62; Book III, Chapter III, Articles 63, 64, 65,

1 66 and 67; Book IV, Articles 69 and 70; and Book VI, Article 77 of Executive
2 Order No. 226, series of 1987, otherwise known as “The Omnibus Investments
3 Code of 1987”;

4 (b) Section 24 of Republic Act No. 7916, otherwise known as “An Act
5 Providing for the Legal Framework and Mechanisms for the Creation,
6 Operation, Administration and Coordination of Special Economic Zones in the
7 Philippines, Creating for the Purpose the Philippine Economic Zone Authority
8 (PEZA), and for other Purposes (Special Economic Zone Act of 1995)”;

9 (c) Section 17(1), (2), (3), (4), (5), (6), (7), (8) and Section 18 (a), (b)
10 and (c) of Presidential Decree No. 66, otherwise known as “Creating the
11 Export Processing Zone Authority and Revising Republic Act No. 5490”;

12 (d) Fourth paragraph of Presidential Decree No. 529 (restored by FIRB
13 Resolution 19-87), otherwise known as “Granting to Petroleum Exploration
14 Concessionaires under the Petroleum Act of 1949 Exemption from Customs
15 Duty and Compensating Tax on Importations of Machinery and Equipment,
16 Spare Parts and Materials Required for Their Exploration Operations”;

17 (e) Sections 8, 9 and the second sentence of the first paragraph and
18 second paragraph of Section 10 of Presidential Decree No. 538, otherwise
19 known as “Creating and Establishing the PHIVIDEC Industrial Authority and
20 Making Its Subsidiary Agency of the Philippine Veterans Investment
21 Development Corporation Defining Its Powers, Functions and Responsibilities,
22 and for Other Purposes”;

23 (f) Section 36(e) and (f) (1) and (2) of Presidential Decree No. 705,
24 otherwise known as the “Revised Forestry Code”;

25 (g) Section 16(a), (c), (d), (e) and Section 17 of Republic Act
26 No. 7844, otherwise known as “An Act to Develop Exports as a Key Towards
27 the Achievement of the National Goals Towards the Year 2000 (Export
28 Development Act of 1994)”;

1 (h) Chapter XV, Section 83; Chapter XVI, Sections 90, 91, 92, 93(a)
2 and (b) of Republic Act No. 7492, otherwise known as the “Philippine Mining
3 Act of 1995”;

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

6 (j) Chapter II, Article II, Section 35(b), (c) and (d) of Republic Act
7 No. 8550, otherwise known as “The Philippine Fisheries Code of 1998”;

8 (k) Section 5 of Proclamation No. 216, otherwise known as “Creating
9 and Designating the Area Covered by the Former Wallace Air Station and
10 Contiguous Areas in Poro Point as the Poro Point Special Economic and
11 Freeport Zone and Transferring Lands to the Bases Conversion Development
12 Authority pursuant to Republic Act No. 7227”;

13 (l) Section 6 of Proclamation No. 984, otherwise known as “Creating
14 and Designating the Municipality of Morong, Province of Bataan, including
15 the Area of Philippine Refugee Processing Center Complex (PRPCC) as the
16 *Morong Special Economic Zone* pursuant to Republic Act No. 7227 and
17 transferring the land comprising the PRPCC to the Bases Conversion
18 Development Authority (BCDA)”;

19 (m) Section 1 and Section 2(a) and (b) and Section 6 of Executive
20 Order No. 528, series of 2006, Amending Executive Order No. 31, series of
21 2004, “Reducing the Rates of Duty on Capital Equipment, Spare Parts and
22 Accessories Imported by BOI-registered new and Expanding Enterprises”;

23 (n) Section 4(e) of Republic Act No. 7903, otherwise known as
24 “Zamboanga City Special Economic Zone Act of 1995”;

25 (o) Sections 4(b) of Republic Act No. 7922 otherwise known as the
26 “Cagayan Special Economic Zone Act of 1995”;

27 (p) Section 12(b) of Republic Act No. 7227, otherwise known as the
28 “Bases Conversion and Development Act of 1992”;

1 (q) Section 1(b), Sections 5, 6 and 7 of Republic Act No. 9400,
2 otherwise known as, “An Act Amending Republic Act No. 7227, as Amended,
3 Otherwise Known as the Bases Conversion and Development Act of 1992, and
4 for Other Purposes”; and

5 (r) Section 1 of Executive Order No. 619, otherwise known as
6 “Creating and Designating Special Economic Zones Pursuant to Republic Act
7 No. 7916, as Amended by Republic Act No. 8784, in Relation to Republic Act
8 No. 7227, as Amended by Republic Act No. 9400, Inside the Clark Freeport
9 Zone”.

10 All other laws, acts, decrees, orders and issuances or provisions thereof
11 inconsistent with any of the provisions of this Act are hereby repealed or
12 modified accordingly.

13 SEC. 50. *Survivor Clause.* – (a) The provisions of this Act to the
14 contrary notwithstanding, the following laws, decrees and orders shall continue
15 to have full force and effect:

16 (1) Book VI, Article 78 of Executive Order No. 226, series of 1987,
17 otherwise known as “The Omnibus Investments Code of 1987”;

18 (2) Section 18(f) of Presidential Decree No. 66, otherwise known as
19 “Creating the Export Processing Zone Authority and Revising Republic Act
20 No. 5490”;

21 (3) Section 23 of Republic Act No. 7916, otherwise known as “An Act
22 Providing for the Legal Framework and Mechanisms for the Creation,
23 Operation, Administration and Coordination of Special Economic Zones in the
24 Philippines, Creating for the Purpose the Philippine Economic Zone Authority
25 (PEZA), and for other Purposes (Special Economic Zone Act of 1995)”;

26 (4) Section 1 of Republic Act No. 9281 entitled, “An Act to Strengthen
27 Agriculture and Fisheries Modernization in the Philippines by Extending the

1 Effectivity of Tax Incentives and its Mandated Funding Support, Amending for
2 this Purpose Sections 109 and 112 of Republic Act No. 8435”;

3 (b) The provisions of this Act and Republic Act No. 9337 to the
4 contrary notwithstanding, the following laws, decrees and orders shall continue
5 to have full force and effect:

6 (1) Section 10(1) to (6) of Republic Act No. 7156, otherwise known as
7 “An Act Granting Incentives to Mini-Hydro Electric Power Developers and for
8 other Purposes (Mini-Hydroelectric Incentive Act)”;

9 (2) Sections 10, 16(a), (b) and (c) and Section 17(a) to (e) of
10 Presidential Decree No. 972, as amended by Presidential Decree No. 1174,
11 otherwise known as “Promulgating an Act to Promote an Accelerated
12 Exploration, Development, Exploitation, Production and Utilization of Coal”;

13 (3) Section 12 of Presidential Decree No. 87, otherwise known as “An
14 Act to Promote the Discovery and Production of Indigenous Petroleum, and
15 Appropriating Funds Therefor”;

16 (4) Section 4(a) and (d) of Presidential Decree No. 1442, as restored by
17 FIRB Resolution 19-87, otherwise known as “An Act to Promote the
18 Exploration and Development of Geothermal Resources”; and

19 (5) Chapter II, Section 4(A), (B), (C) and (D); and Chapter VIII,
20 Section 19(A), (B) and (C) of Republic Act No. 9295, Entitled “An Act
21 Promoting the Development of Philippine Domestic Shipping, Shipbuilding,
22 Shiprepair and Ship Breaking, Ordaining Reforms in Government Policies
23 Towards Shipping in the Philippines and for other Purposes”:

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

1 SEC. 51. *Effectivity.* – This Act shall take effect fifteen (15) days
2 following its publication in the *Official Gazette* or in a newspaper of general
3 circulation, whichever is earlier.

Approved,

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