

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

8 JUN -4 P256

SENATE  
S.B. No. **2375**

RECEIVED BY: 

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Introduced by Senator Loren Legarda

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### EXPLANATORY NOTE

The 1987 Constitution of the Philippine provides that the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. It is in this regard that the State shall endeavor to enhance the economy's competitiveness through investment promotion and industrial development activities geared towards employment generation and countrywide development.

Since then, the government has been putting in place incentives to attract investments. Because of this endeavour, there are now many laws that intend to encourage the same resulting in a confusing plate of basis in granting incentives, thus causing an administrative nightmare.

This bill seeks to harmonize the incentives that shall be given to investors in order to streamline regulation. The Board of Investments (BOI) shall be given the authority to oversee all investment promotion activities and are thus tasked with significant responsibilities such as:

1. Formulate an evolving National Framework for Investment Promotions that will govern all investment promotion agencies;
2. Prepare the Investments Priorities Plan;
3. Establish the Investment Promotion Action Center (*i*-PAC);
4. Recommend to the President the suspension of the nationality requirement provided for in this Code in appropriate cases such as those involving bilateral, multilateral, or regional investments agreements of the Philippines with other countries; or when the existing laws of another country where the investor comes from provides no nationality restrictions for Filipino investors or provides for reciprocal nationality accommodations;
5. Enter into agreements with other agencies for the simplification of systems and procedures involved in the promotion of investments, operation of economic zones and registered enterprises, and other activities necessary for the effective implementation of this Code;
6. Process and approve, deny, suspend, revoke applications for registration, imposing terms and conditions as it may deem necessary; and
7. Assist micro and small enterprises in the preparation of feasibility and other investment.

The rationalization and harmonization of incentives are necessary in order to streamline regulation, which is considered as a requisite in attracting investments, among other things. This undertaking is also identified as a legislative priority in the 14<sup>th</sup> Congress as the same will finally bring about the much-needed reform that will improve the investment climate and likewise, the administrative activities.

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

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop that starts from the left, goes up and over, and then comes back down to the left, with a smaller loop underneath.

**LOREN LEGARDA**

Senator

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

8 JUN -4 P2:36

SENATE  
S.B. No. 2375

RECEIVED BY: 101

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Introduced by Senator Loren Legarda

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## THE INVESTMENTS AND INCENTIVES CODE OF THE PHILIPPINES

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

### PRELIMINARY TITLE

#### Chapter I. TITLE AND DECLARATION OF POLICY

SECTION 1. *Title.* This Act shall be known as "The Investments and Incentives Code of the Philippines".

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

1. The State shall pursue a market responsive investment regime.
2. The State shall formulate industry and sectoral development programs.
3. The State shall undertake investment promotion activities.
4. The State shall grant incentives that are simple to administer, time- bound and performance-based.
5. The State recognizes that industrial peace is essential to attracting investments.

#### Chapter II - ORGANIZATION AND FUNCTIONS

##### THE BOARD OF INVESTMENTS

Section 3. *The Board of Investments (BOI).* The Board of Investments hereinafter referred to as the "BOI" shall be the national investments promotion agency and shall be responsible for sectoral and industrial development programs, which shall be attached to the Department of Trade and Industry (DTI) and under the supervision of the Industry and Investments Group (IIG) of the DTI.

Section 4. *Composition of the BOI Board of Governors.* The BOI Board of Governors shall be composed of seven (7) governors: the Secretaries of Trade and three (3) DTI Undersecretaries, and three (3) representatives from the private sector. The Secretary of Trade and Industry shall concurrently be the Chairman of the BOI while the DTI Undersecretary for IIG shall serve as the Vice Chairman. The three (3) representatives from the private sector shall be appointed by the President for a term not exceeding four (4) years: *Provided*, that a governor may be reappointed; *Provided further*, that a governor shall serve as such until his successor shall have been appointed and qualified.

The DTI Undersecretary for Investment and Industry Group shall be the Managing Governor and shall be assisted by four (4) career officials with the rank of Deputy Governors, who shall be appointed by the BOI Board, upon the recommendation of the Managing Governor.

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

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

Section 6. *Powers and Functions of the BOI Board.* The BOI Board shall hold meetings at least once a week for the conduct of business or as often as may be necessary upon the call of the Chairman or upon request of the Managing Governor. The notice of regular and special meetings shall be given to all the members of the Board and the presence of four (4) members shall constitute a quorum and the affirmative vote of four (4) members in a meeting validly held shall be necessary to exercise its powers and perform its functions which shall include the following:

- (1) Formulate an evolving National Framework for Investment Promotions (NFIP) that will govern all Investment Promotion Agencies (IPAs);
- (2) Promulgate rules, regulations and policies to implement the NFIP;
- (3) Exercise oversight functions over all investment promotion activities of all IPAs;
- (4) Gather, consolidate and monitor investment data and information (both domestic and foreign direct investments) from all IPAs and other concerned government agencies for submission to Congress;
- (5) Enter into agreements with other agencies for the simplification of systems and procedures involved in the promotion of investments, operation of economic zones and registered enterprises, and other activities necessary for the effective implementation of this Code;
- (6) Manage the investment promotion funds contributed by all IPAs;

- (7) Establish the Investment Promotion Action Center (*i-PAC*);
- (8) Establish and operate regional investment centers in the Philippines;
- (9) Establish and operate overseas investment offices;
- (10) Determine the organizational structure and staffing pattern of the BOI. Appoint, promote, transfer, assign personnel any provision of the law to the contrary notwithstanding, and discipline, or remove its personnel consistent with the provisions of *civil service laws, rules and regulations*;
- (11) Conduct and implement industrial and sectoral programs on economic development related to investments;
- (12) *Formulate positions for bilateral, multilateral, and regional investments agreements and/or arrangements*;
- (13) Act on investment projects covered by bilateral, multilateral, and regional agreements subject to rules and guidelines to be formulated by the Board;
- (14) Recommend to the President the suspension of the nationality requirement provided for in this Code in appropriate cases such as those involving bilateral, multilateral, or regional investments agreements of the Philippines with other countries; or when the existing laws of another country where the investor comes from provides no nationality restrictions for Filipino investors or provides for reciprocal nationality accommodations;
- (15) Promulgate rules, regulations and policies on incentives which the IPAs are mandated to implement;
- (16) Gather, consolidate, and monitor incentives data and information from all IPAs and other concerned government agencies for submission to the President;
- (17) Prepare the Investments Priorities Plan (IPP) in accordance with Title III, Chapter I of this Code;
- (18) Formulate rationalization programs for certain industries whose operation may result in dislocation, over-supply or inefficient use of resources that impedes economic growth. In the interest of national development and upon approval of the President, the Board may restrict, either totally or partially, the importation or exportation of any equipment, raw materials, intermediate goods or finished goods;
- (19) Assist micro and small enterprises in the preparation of feasibility and other pre-investment project study;
- (20) Process and approve, deny, suspend, revoke applications for registration, imposing terms and conditions as it may deem necessary to promote the purposes of this Code, including the refund and forfeiture of incentives when appropriate, restricting availment of incentives, in any manner, as may be determined by the Board, requiring performance bonds from accredited bonding companies, and payment of application, registration, publication and other fees, when warranted;

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

(22) Establish an arbitration and mediation center to resolve controversies and/or disputes between registered enterprises;

(23) After due hearing, decide controversies concerning the implementation of this Code that may arise between registered enterprises or investors therein, and government agencies. The BOI shall have the power to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence, and to cite for contempt any person or organization that fails to comply with the afore-stated processes; *Provided* that, a registered enterprise may file a motion for reconsideration of a decision or final order within fifteen days (15) from notice thereof, with proof of service on the parties affected. No second motion for reconsideration of a decision or final order by the same party shall be entertained;

(24) Recommend to the Commissioner of Immigration and Deportation the employment of foreign nationals in registered enterprises and the grant of Investor's Visa under Section 22 of this Code;

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

(26) Waive, condone or reduce fines or penalties imposed on registered enterprises;

(27) Implement the Regional Operating Headquarters, Retail Trade Law, Long Term Lease and other laws as mandated; and

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

Section 7. *Appointment of BOI Personnel.* The BOI Board shall appoint its personnel subject to civil service laws, rules and regulations. All positions in the BOI shall be governed by compensation, position classification systems, and qualification standards approved by the BOI Board based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan of other Investment Promotion Agencies or government financial institutions and shall be subject to periodic review by the BOI Board no more than once every five (5) years without prejudice to yearly merit reviews or increases based on productivity. The BOI shall therefore be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards.

Section 8. *The Investment Promotion Action Center.* There is hereby created an Investment Promotion Action Center (i-PAC) under the supervision and control of the BOI in place of the current One Stop Action Center (OSAC) created under Executive Order No. 136, Series of 1987, entitled "Establishing the Council for Investment in

Trade, Industry, Tourism, Agriculture, Natural Resources, Transportation, Communication and Services, and for Other Purposes". The *i*-PAC shall promote, coordinate, and facilitate investment development efforts of the government and shall serve as the link to all government agencies to facilitate entry, retention, expansion and diversification of investments and source of investment information.

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

Section 9. *Powers and Functions of the i-PAC.* The *i*-PAC shall exercise and perform the following powers and functions:

- (1) Provide advice, guidance, information and procedure on various laws, rules and regulations governing investments and the conduct of business in the Philippines.
- (2) Member government agencies shall act on investment-related requirements within ten (10) working days from filing thereof, otherwise, such request shall be deemed approved.
- (3) Recommend the streamlining of existing procedures to ensure that all frontline agencies, dealing with the operation of business, perform their tasks for identified government to business transactions.
- (4) Establish an on-line investment facilitation system.
- (5) Coordinate with appropriate government offices or agencies, such as the Office of the Ombudsman and the Civil Service Commission (CSC), any complaints filed by a investor or potential investor against any public official or employee or any office, agency or instrumentality, including local government units (LGUs) and officials, as well as any government-owned and controlled corporation (GOCC), in connection with any act or duty required by law to facilitate the entry of local and foreign investments.
- (6) Perform such other functions as may be directed by the BOI Board.

Section 10. *Honoraria and Allowances.* The BOI Board shall provide for reasonable honoraria and allowances for the *i*-PAC members and its personnel.

## TITLE II. DEFINITION OF TERMS

Section 11. *Definition of Terms.* As used herein, the following shall mean-

- A. "BOI" shall refer to the Board of Investments created under this Code.
- B. "Investment Promotion Agencies (IPAs)" shall include the BOI, Philippine Economic Zone Authority (PEZA), Bases Conversion Development Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Bataan Technology Park Inc. (BTPI), Cagayan Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone Authority (ZCSEZA), PHIVIDEC Industrial Authority (PIA), Aurora Economic Zone (AEZ), and all other IPAs that may be created by law.
- C. "Registered Enterprise" shall mean any individual, partnership, corporation, Philippine branch of a foreign corporation or other entity incorporated and/or organized and existing under Philippine laws; and registered with an IPA, in accordance with this Code: *Provided, however,* That the term "registered enterprise", unless provided for under the charters of the IPAs, shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, developmental banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumers cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions.
- D. "Investment Priorities Plan (IPP)" shall refer to the list of industries, services and other economic activities that will be eligible for incentives under this Code, prepared and determined as priority or preferred activities in accordance with Title III, Chapter 1 of this Code.
- E. "New product or service" shall refer to any product or service not locally or not sufficiently manufactured/rendered to meet demand.
- F. "Gross income earned" refers to gross sales or gross revenues derived from the registered activity within the zones or freeports, less sales returns, discounts and allowances and cost of goods sold and/or cost of services rendered, as defined under Section 27(E)(4) of the National Internal Revenue Code of 1997.
- G. "Tax Credit" shall mean any credits against taxes and/or duties equal to those actually paid or would have been paid. Tax credit certificate shall be issued by the Secretary of Finance or his representative, or by the BOI Board or concerned IPA, if so delegated by the Secretary of Finance. The tax credit certificate issued pursuant to this Code shall be transferable to another registered enterprise under this Code. In case the industry is in a state of distress, as declared by the BOI Board, the tax credit certificate shall be freely transferable. The tax credit shall be valid only for a period of ten (10) years from date of issuance.



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

H. (a) "*Export sales of goods*" shall mean the sales values, determined from invoices, bills of lading, inward letters of credit, landing certificates, or other commercial documents, of the following:

- i. the sale and actual shipment of goods from the Philippines to a foreign country by a registered enterprise;
- ii. sales of goods to an export enterprise registered in accordance with this Code; to diplomatic missions and to agencies or institutions allowed to import said goods tax and duty-free; to international shipping or international air transport operations; and to foreign military aircraft or seacraft;
- iii. sales to a nonresident buyer for delivery to a resident local export enterprise, of capital equipment, raw materials, production supplies, packaging materials and other production requirements needed for the registered activity of the export enterprise; or
- iv. sales of goods to a nonresident buyer, except automobiles and non-essential goods, manufactured or processed in the Philippines, for delivery to a resident in the Philippines.

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

(b) "*Export sales of services*" shall mean the sales revenues, determined from contracts, invoices, vouchers, official receipts, or other commercial documents of the following:

- i. services rendered for clients abroad by registered enterprises;
- ii. services rendered for an export enterprise registered in accordance with this Code; to diplomatic missions and to other agencies or institutions with tax and duty-free privileges;
- iii. transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country; or

iv. services rendered to international airlines or shipping lines, or military aircraft or seacraft, or information and communication technology enterprises, even if rendered locally.

Provided, that: in the case of (ii) above, only services for an export enterprise performed by subcontractors and/or contractors in the manufacture or processing of goods; other services necessary for the registered activity of an export enterprise; and overhaul, repair and maintenance services for international shipping or air transport operations, and foreign military aircraft or seacraft, shall be entitled to incentives for export enterprises under this Code.

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

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

I. An "*export enterprise*" shall mean a manufacturer, processor that exports at least fifty percent (50%) of its output.

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

J. A "*domestic enterprise*" shall mean an enterprise which produces goods for sale or renders services exclusively to the domestic market or does not comply with the minimum export requirement of an export enterprise.

K. "*Service enterprise*" is an enterprise engaged or proposing to engage in rendering technical, professional or other services listed in the IPP.

Service enterprise that earns at least thirty percent (30%) of its revenues paid for in foreign currency generated from non-resident clients shall be entitled to the incentives provided to an "export" enterprise.

L. "*Source documents*" shall refer to input materials and documents reasonably needed by information technology (IT) and IT-enabled industries such as, but not limited to, books, directories, magazines, newspapers, brochures, pamphlets, medical records or files, legal records or files, instruction materials, drawings, blueprints, or outlines.

M. "*Processing*" shall mean converting raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means, or by a special treatment or a series of actions, such as slaughtering,

milling, pasteurizing, drying or desiccating, quick freezing, that results in a change in the nature or state of the products. Processing shall include assembly provided that a distinct or new product is formed.

N. *"Industrial Estate Zone (IEZ)"* shall refer to a tract of land subdivided and developed according to a comprehensive plan under a unified continuous management and with provisions for basic infrastructure and utilities, with or without pre-built standard factory buildings and community facilities for the use of a community of industries. It includes government industrial estates such as the PHIVIDEC Industrial Authority.

O. *ECOZONES or "Special Economic Zones" (SEZ)* shall refer to selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ecozone may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist, recreational centers, ICT Park/Centers; Provided however, that areas where mining operations are undertaken shall not be declared as ecozones.

P. *"Export Processing Zone (EPZ) or Export Zone"* shall refer to a specialized industrial estate located physically and/or administratively outside the customs territory and predominantly oriented to export production. Enterprises located in export processing zones are allowed to import capital equipment and raw materials free from duties, taxes and other import restrictions.

Q. *"Free Trade Zone"* shall refer to an isolated and policed area adjacent to a port of entry as a seaport or airport, as defined in Section 3519 of the Tariff and Customs Code, where imported goods that are not expressly prohibited by law, may be unloaded for immediate transshipment or stored, repacked, sorted, mixed, or otherwise manipulated without being subject to import. However, movement of these imported goods from the free-trade area to a non-free trade area in the country shall be subject to customs and internal revenue rules and regulations.

R. *"Freeport Zone"* shall refer to an isolated and policed area adjacent to a port of entry which shall be operated and managed as a separate customs territory ensuring free flow or movement of goods, except those expressly prohibited by law, within, into and exported out of the freeport zone.

S. *"ICT Park"* shall refer to an area which has been developed into an integrated development complex capable of providing infrastructure and other support facilities required by ICT enterprises, as well as amenities required by

professionals and workers involved in ICT enterprises, or easy access to such amenities.

T. "ICT Center" shall refer to a building which has been developed by public or private corporate entities to provide infrastructure and other support facilities required by ICT enterprises, as well as amenities required by professional and workers involved in ICT enterprises, or easy access to such amenities.

U. "Capital Equipment" refers to machinery, equipment, major components thereof, spare parts, accessories, those required for pollution abatement and control, tools, devices, apparatus, fixtures, fittings and accompaniments which are directly and/or reasonably needed in the registered activity of the enterprise.

### TITLE III - INVESTMENTS WITH INCENTIVES

#### CHAPTER I - QUALIFIED ACTIVITIES

Section 12. *Investment Priorities Plan (IPP)*. The BOI, upon consultation with the Department of Finance, National Economic and Development Authority, the Office of the President, concerned Investments Promotion Agencies and appropriate government agencies and the private sector shall formulate the IPP to be submitted to the President for his approval.

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

1. The activity shall be in the plans and programs of the current Medium Term Philippine Development Plan (MTPDP) and Medium Term Philippine Investment Plan (MTPIP) or its equivalent;
2. The activity shall satisfy the following conditions:
  - a. substantial amount of investments;
  - b. considerable generation of employment;
  - c. use of modern or new technology; or
  - d. installation of adequate environmental protection systemsand,
3. The activity must comply with the specific qualification requirements and/or conditions for a particular sector or industry as set by the Board.

Further, the following limitations shall apply:

1. Except for items 2 (a) and (d) which shall be present in all activities, the application of the conditions thereto set forth shall depend on the activity.

2. The threshold amount of investments and employment generation required for a specific activity shall be subject to a periodic review every three (3) years taking into consideration international standards and other indicators.

3. Such other limitations as the Board may determine.

The first IPP under this Code shall be valid until the year 2010. Subsequently, the IPP shall be prepared once every three years.

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

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

Section 15. *Strategic Projects.* The President, upon recommendation of the Board, may allow registration to a "strategic project" that may not be listed in the IPP, in order to be competitive with global economies.

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

Strategic Project shall also include projects that locate in the country as a result of competition with other countries.

## CHAPTER II - INCENTIVES TO REGISTERED ENTERPRISES

Section 16. *Universal Incentives.* Registered enterprises are entitled to the following incentives to the extent of their registered activity:

A. Net Operating Loss Carryover (NOLCO). The net operating loss of the registered activity during the first five (5) years from start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next ten (10) consecutive taxable years immediately following the year of such loss.

Registered enterprises availing of the ITH as herein provided shall not be entitled to avail of the NOLCO.

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

Failure to secure certification and/or to file the NOLCO availment for validation by the appropriate investment promotion agency shall cause the forfeiture of the availment for the taxable period.

*B. Capital Equipment Incentives.*

(1) Importations of capital equipment, including consignment thereof, by registered enterprises upon the effectivity of this law, shall be exempted to the extent of one hundred percent (100%) of the taxes and customs duties; Provided that the following conditions are complied:

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

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

- i If made to another enterprise enjoying tax and duty exemption on imported capital equipment;
- ii If made to another enterprise, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- iii Exportation of the capital equipment, machinery, spare parts or source documents or those required for pollution abatement and control; or,

iv For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs other than paragraph (2), the registered enterprise shall not pay the taxes and duties waived on such items: *Provided further,* That if the registered enterprise sells, transfers or disposes the aforementioned imported items without prior approval within five (5) years from date of importation, the registered enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the tax and duty exemption given it: *Provided, finally,* That even if the sale, transfer or disposition of the capital equipment, is approved after five (5) years from date of importation, the registered enterprise is still liable to pay the taxes and duties based on the net book value of the capital equipment, if it has violated any of its registration terms and conditions. Otherwise, it shall no longer be subject to the payment of the taxes and duties waived thereon.

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

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

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

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one (1) year from date of delivery of such machinery; capital equipment; and raw materials, supplies, parts and semi-finished products.

Domestic enterprises shall be entitled to this incentive for a period of five (5) years from date of registration.

*C. Accelerated Depreciation.* Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the production and transport of goods and services may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

*D. Double Deduction for Training Expenses or Training Expenses Credit.* Expenses incurred for local training given to employees for the development of skills identified as necessary by the appropriate government agencies, upon approval by the concerned IPA, shall entitle the registered enterprise to a special deduction from the taxable income equivalent to one hundred (100%) percent of the total expenses over and above the allowable ordinary and necessary business deductions for said expenses under the National Internal Revenue Code, as amended.

The training expenses incurred shall be deducted from the taxable income after entitlement to other income tax based incentives or when the registered enterprise deems it necessary. The total deferred deduction shall be spread uniformly over a period of five (5) years. Any unused deduction after the said period shall be deemed waived and in no case shall it be extended.

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

*E. Double Deduction for Research and Development and Research and Development Credit.* Expenses incurred for research and development conducted in the Philippines relating to the business shall entitle the registered enterprise to a special deduction from taxable income equivalent to one hundred percent (100%) of the total expenses over and above the allowable ordinary and business deductions for said expenses under the National Internal Revenue Code, as amended.

The expenses for research and development shall be deducted from the taxable income after entitlement to other income tax based incentives. The total deferred deduction shall be spread uniformly over a period of five (5) years. Any unused deduction after the said period shall be deemed waived and in no case shall it be extended.

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

*F. Incentives for Necessary and Major Infrastructure and Public Facilities.* Registered enterprises establishing necessary and major infrastructure works in the area of its



activity shall be entitled to deduct from their taxable income an amount equivalent to one hundred percent (100%) of the works it may have undertaken with the prior approval of the IPA; Provided, That the title to all such infrastructure works shall upon completion be transferred to the Philippine Government; Provided further, That any amount not deducted for a particular year may be carried over for deduction for subsequent years not exceeding ten (10) years from commercial operation.

Section 17. *Export Incentives.* Export enterprises regardless of location shall be entitled to the following incentives to the extent of its registered activity:

A. *Income Tax Holiday (ITH).* Activities of an export enterprise shall be entitled to eight (8) years of Income Tax Holiday (ITH) from the date of start of its commercial operations.

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

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

B. *Reduced Income Tax.* After entitlement to ITH, a registered export enterprise located outside the zones or freeports shall be imposed a preferential tax rate of fifteen percent (15%) of taxable income as defined under Section 31 of the National Internal Revenue Code of 1997, as amended, for a period of twelve (12) years.

C. *Duty Free Importation of Source Documents.* The importation of source documents by information and communication technology (ICT) registered enterprises shall be eligible for tax and duty free importation.

D. *Raw Material Incentives.* Registered export-oriented enterprise located outside the zones or freeports shall enjoy a tax credit equivalent to the internal revenue taxes and customs duties paid on the supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of its export products forming part thereof, exported directly and indirectly by the registered export-oriented enterprise, based on the actual taxes and duties paid for such materials, supplies, or semi-manufactured products by the registered enterprise.

This incentive shall be deemed waived if application for tax credit under this subsection was not filed within one (1) year from date of exportation of the final product.

E. *Access to Bonded Manufacturing Warehouse.* Registered export enterprises located outside zones or freeports shall have access to the utilization of bonded

warehousing system required by the project subject to such guidelines as may be issued by the IDB Board.

*F. Exemption from Wharfage Dues and Export Tax.* The provisions of law to the contrary notwithstanding, exports by a registered enterprise shall be exempted from wharfage dues and export taxes.

*G. Exemption from Value-Added-Tax on Local Purchases of Goods and Services.* The provision of law to the contrary notwithstanding, local purchases of goods and services required by the activity of a registered export enterprise shall be exempt from the value added tax.

**Section 18. Zonal or Freeport Incentives.** In addition to the applicable incentives provided under the preceding section on export incentives, registered enterprises locating in the Special Economic Zones, Free Trade and Freeport Zones shall be entitled to the following incentives:

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

The foregoing provision notwithstanding, mining and other projects that will affect public health and morals shall not be exempted from excise tax.

*B. Exemption from Local Taxes and Licenses.* Notwithstanding the provisions of law to the contrary, zone or freeport registered enterprise shall, to the extent of their construction, operation or production inside the zone or freeport be exempt from the payment of any and all local government imposts, fees, licenses or taxes including, but not limited to business permit, health permit, garbage permit, construction permit.

*C. (1.) Tax Treatment of Merchandise in Zones or Freeports.*

(a) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zones or freeports to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs

and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

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

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

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

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

(f) Subject to such regulations respecting identity and safeguarding of the revenue as the concerned IPA may deem necessary when the identity of an article entered into the zones or freeports under the immediately preceding paragraph has been lost, such article when removed from the zones or freeports and taken to the customs territory shall be treated as foreign merchandise entering the country for the first time, under the provisions of the Tariff and Customs Code of the Philippines, as amended.

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

(h) Articles prohibited or regulated by law for sale to the domestic market shall only be allowed to be used or consumed within the zones or freeports.

(i) Unless the contrary is shown, merchandise taken out of the zones or freeports shall be considered, for tax purposes, to have been sent to customs territory.

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

*C. (2.) Tax Treatment of Services in the Zones or Freeports.*

(a) Sale of service by an entity from the customs territory to a registered zone or freeport enterprise or by a registered zone or freeport enterprise to another zone or freeport enterprise shall be treated as indirect export, and hence, shall not be subjected to internal revenue taxes for such transaction.

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

Section 19. *Locational Incentives.* Domestic enterprises located in the thirty (30) poorest provinces and less developed areas (LDAs) as determined by the appropriate agency may opt to choose from any of the following incentives:

A. *Income Tax Holiday (ITH).* As provided under Section 19(A); and

B. *Investment Tax Allowance (ITA).* After availment of income tax holiday, domestic enterprises incurring capital expenditure shall be entitled to a twelve (12) year investment tax allowance of thirty percent (30%) which can be utilized to offset against 100% of the taxable income; or

C. *Reduced Income Tax (RIT).* In lieu of ITH and ITA, a registered domestic enterprise under this section may avail of a preferential tax rate of fifteen percent (15%) of taxable income as defined under Section 31 of the National Internal Revenue Code of 1997, as amended for a period of twenty (20) years from the date of start of commercial operation.

The exercise of the option to avail of RIT over the ITH and ITA shall be deemed irrevocable.

Section 20. *Incentives to Micro, Small and Medium Enterprises.* Micro, small and medium enterprises as defined by the appropriate agency shall be qualified to the following incentives to the extent of their registered activity:

A. *Income Tax Holiday (ITH)*. Activities of micro, small and medium enterprise shall be entitled to an eight (8) year ITH from the start of their commercial operations, regardless of location.

B. *Exemption from Local Taxes for Micro Enterprise*. Micro enterprises shall be exempted from payment of local taxes.

C. *Preferential Access to Financing and Acceptable Form of Collaterals*. Access to financing from government financial institutions at preferential rates below the market rates shall be extended.

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

D. *Assistance in the Preparation of Project Study*. Micro and small enterprises may be provided assistance in the preparation of project study for purposes of registration under this Code.

Section 21. *Universal Non-fiscal Incentives*. Registered enterprises shall be entitled to the following non-fiscal incentives:

A. *Employment of Foreign Nationals*. Subject to the provisions of Section 29 of Commonwealth Act No. 613, otherwise known as "The Philippine Immigration Act of 1940," as amended, a registered enterprise may employ foreign nationals in managerial, supervisory or technical positions provided that the registered enterprise shall train Filipinos as understudies of foreign nationals in administrative, supervisory and technical skills and shall submit annual reports of such training to the IPA.

Foreign nationals under employment contract within the purview of this incentive, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, as amended, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals. They shall be issued a multiple entry visa, valid for a period of five (5) years. The foreign national may enter and leave the Philippines without further documentary requirements other than valid passports or other travel documents in the nature of passports.

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

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

*C. Simplification of Customs and Internal Revenue Procedures.*- Customs procedures for the importation of equipment, spare parts, raw materials and supplies, exports of processed products by registered enterprises shall be simplified by the Bureau of Customs (BOC).

Internal revenue procedures for the availment of incentives provided herein shall be simplified by the Bureau of Internal Revenue (BIR) for registered enterprises.

*D. Reduction and Harmonization of Documentary Requirements Submitted to Government Agencies.* The BOI Board shall formulate guidelines for the reduction and harmonization of related documentary requirements submitted to government agencies.

Section 22. *Incentive to Investors.* A foreign national who invests an amount of at least US\$150,000.00, either in cash and/or equipment, in a registered enterprise shall be entitled to an Investor's Visa: *Provided, That:*

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

*Provided, further,* That in securing the investor's visa, the alien-applicant shall be entitled to the same privileges provided for under Section 23(A), paragraph 3.

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

The minimum amount for investment provided for under this Code shall be made applicable to visas granted to investors by the BOI, Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), Poro Point Management Corporation (PPMC), Bataan Technology Park, Inc. (BTPI), Cagayan Special Economic Zone Authority (CEZA), Zamboanga City Special Economic Zone

Authority (ZCSEZA), Phividec Industrial Authority (PIA), Aurora Economic Zone (AEZ), and other IPAs that may be created under the law.

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

Section 23. *Governing Incentive Provision for Investment Promotion Agencies.* All existing and future IPAs vested with the power to confer and administer incentives shall offer incentives provided in this Code. Further, incentives provided under this Code to registered enterprise shall be applicable to the extent of the registered activity or project.

Section 24. *Relationship of Investment Promotion Agencies and the Board of Investments and Other Government Agencies.* IPAs shall maintain their functions as provided for in their respective Charters except to the extent that these have been modified by the provisions of this Code.

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

Further, all IPAs are required to contribute such amount as may be determined by the BOI Board to a common fund for the conduct of national investment promotion activities. The common fund shall be administered by the BOI Board.

### CHAPTER III - REGISTRATION OF ENTERPRISES

Section 25. *Qualifications of a Registered Enterprise.* To qualify for registration and be entitled to avail of incentives, an applicant must satisfy the following conditions:

(1) He is a citizen of the Philippines, in case the applicant is a natural person, or in case of a corporation or partnership or any other association, regardless of nationality, it must be organized and/or registered and existing under Philippine laws and that it must comply with all the qualifications provided under this Code: *Provided however,* That for purposes of this Code and any law to the contrary notwithstanding, a natural-born ASEAN citizen or a corporation effectively controlled by ASEAN citizens, or a corporation organized in any ASEAN country shall be considered as a Philippine investor; *Provided, further,* That the investment is made in an activity where the Constitution does not specifically require Filipino participation;

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

(3) It will engage in an activity included in the Investment Priorities Plan (IPP) or in an export activity or in an industry servicing eco-tourism sites duly designated by the President as provided under this Code;

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

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

#### CHAPTER IV – BASIC RIGHTS AND GUARANTEES OF REGISTERED ENTERPRISES

Section 26. *Protection of Investments.* All investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. Among other rights recognized by the Government of the Philippines are the following:

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

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

(b) *Remittance of Earnings.* In the case of foreign investments, the right to remit earnings from the investment in the currency in which the investment was originally



made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265;

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

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

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

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

## CHAPTER V – ADMINISTRATION OF INCENTIVES

Section 27. *Application for Registration.* Applications shall be filed with an IPA or any other government office authorized by the BOI to accept applications, recorded in a registration book and the date appearing therein and stamped on the application shall be considered the date of official acceptance. In no case shall double registration be allowed. In the event that an enterprise shall transfer to another IPA, only the remaining unutilized incentives shall be granted to the enterprise or the transferee, vendee or assignee.

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

Section 28. *Criteria for Evaluation of Application.* The following criteria shall be considered in the evaluation of applications for registration under a preferred area:

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

Section 29. *Approval and Registration Procedures.* The IPA is authorized to adopt rules and regulations to facilitate action on applications filed with it; prescribe criteria for the evaluation of applications; devise standard forms for the use of applicants and delegate to the regional offices of the Department of Trade and Industry the authority to receive and process applications for enterprises located in their respective regions.

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

Section 30. *Certificate of Registration.* A registered enterprise under this Code shall be issued a Certificate of Registration under the seal of the IPA and the signature of its Chairman and/or such other officer or employee of the IPA as it may empower and designate for the purpose. The certificate shall be in such form and style as the IPA may determine and shall state, among other matters:

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

Section 31. *Validity of Registration.* The registration shall be valid for a period of twenty (20) years from the date of start of commercial operation except on certain industries as may be determined by the Board.

Section 32. *Extension of Period of Availment of Incentives.* The availment period of the incentives provided herein may be extended by the concerned IPA in the event that

the registered enterprise has suffered operational force majeure that has impaired the viability of the registered activity.

Section 33. *Duration of Incentives.* Enterprises registered with PEZA, SBMA, CDC, JHMC, PPMC, BTPI, CEZA, ZCSEZA, PIA, and AEZ may enjoy the ITH or NOLCO prior to availment of the five percent (5%) GIE.

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

## TITLE IV

### FINAL PROVISIONS

Section 34. *Authority to Retain Funds.* Subject to accounting and auditing procedures, registered enterprises availing of fiscal incentives shall be assessed with a fee equivalent to one percent (1%) of the amount of incentives granted. The amount collected shall be placed in the special development fund of the IPA and BOI for use in activities to achieve the objectives of this Code.

Section 35. *Vested Right.* Incentives of existing registered enterprises arising from contracts or agreements entered into by an enterprise with the government, its instrumentalities and agencies shall continue to be in force and effect according to the terms thereof; *Provided,* that within five years from the date of the effectivity of this Code, such existing registered enterprises may opt to register and be governed by the provisions of this Code.

Section 36. *Protection of the Environment.* The IPAs, in coordination with the appropriate agencies, shall take appropriate steps to enact the proper measures for the protection of the environment, and shall coordinate with the Environmental Management Bureau of the Department of Environment and Natural Resources (EMB-DENR) to avoid undue delay in the issuance of the required Environmental Compliance Certificate (ECC): *Provided, however,* That applications for environmental clearances, permits, and/or licenses of registered enterprises shall be acted upon by the appropriate government agency within one hundred twenty (120) days from date of official acceptance. In the event that the appropriate government agency failed to act within the aforementioned date, the application for the said environmental requirement shall be deemed complied with for purposes of operation of the registered activity:

*Provided, finally,* That the IPA may withdraw the certificate of registration issued to the enterprise should the appropriate government agency eventually deny the application.

Section 37. *Appeals.* All orders or decisions of the BOI or IPA in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the BOI or IPA by the party adversely affected shall stay such order or decision, unless a *supersedeas* bond equivalent to the amount stated in the order or decision is posted by the appellant.

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

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

Section 38. (A) *Fines and Penalties.* When there is probable cause to believe that the registered enterprise has violated its registration terms and conditions, the BOI or IPA may suspend its availment of incentives, until proven otherwise.

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

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

Any enterprise which violates any provision of this Code, its implementing rules and regulations, the terms and conditions of its registration, or of any lawful directive of the BOI or IPA, shall be subject to a fine not to exceed One Million Pesos (P1,000,000.00), without prejudice to the disapproval of its application for registration or cancellation of its registration; *Provided,* that any willful commission of fraudulent misrepresentation in its application for registration or submission of reports or gross violation of this Code and its Implementing Rules and Regulations, a fine of at least One Million Pesos (P1,000,000.00) but not to exceed Ten Million Pesos (P10,000,000.00) shall be imposed, in addition to other penalties that may be imposed by the BOI/IPA.

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

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

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

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

(B) Government officers and employees, whether employed in the national or local government or in government owned and controlled corporation, who violate, directly or indirectly, the provisions of this Code shall be subject to any administrative penalty imposed under the Civil Service Law, Republic Act No. 3019, Republic Act No. 6713, and other applicable laws.

Section 39. *Effectivity of Implementing Rules and Regulations.* The BOI, IPAs and other concerned government agencies, shall promulgate rules and regulations to implement the intent and provisions of this Code within one hundred twenty (120) days from effectivity of this Code. Such rules and regulations shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Section 40. *Transitory Provision.* Until the Implementing Rules and Regulations of this Code take effect, the present rules and regulations under the old investments laws shall apply.

Employees currently employed with the BOI who will be affected by the creation of the BOI shall be entitled to four (4) months compensation for every year of service and fraction thereof, and such other gratuities and benefits under existing laws.

Section 41. *Separability Clause.* The provisions of this Code are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

Section 42. *Repealing Clauses.* The following laws or provisions of laws are hereby repealed:

- 1) Batas Pambansa 44 – “An Act To Promote Investments in Less Developed Areas”
- 2) Batas Pambansa 391 – “An Act Declaring the 1983 Investment Incentives Policy by Modifying the System on the Grant of Investment Incentives, Amending for the Purpose Presidential Decree No. 1689 and other Pertinent Laws”
- 3) Presidential Decree No 1623 – “Authorizing the Issuance of Special Investors Resident Visas to Aliens and for other Purposes (Repealed by E.O. 226)”  
P.D. 1893 – “Further Amending P.D. 1623 entitled “Authorizing the Issuance of Special Investors Resident Visas to Aliens and for other Purposes”, as amended.
- 4) Presidential Decree No. 1789 – “A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investments Code (Repealed by B.P. 391)”
- 5) Presidential Decree 2032 – “A Decree Declaring National Policies on Agricultural Development and Promulgating the Agricultural Incentives Act of 1986 (Repealed by Batas Pambansa Blg. 391)”
- 6) Executive Order 815 – “To Safeguard and Promote the Development of the Philippine Semiconductor Electronics Industry”
- 7) Executive Order 1045 – “Modifying Fiscal Incentives to BOI-Registered Enterprises.”
- 8) Presidential Decree No. 66 – “Creating the Export Processing Zone Authority and Revising Republic Act No. 5490”
- 9) Republic Act No. 7888 – “An Act to Amend Article 7(13) of Executive Order No. 226, Otherwise Known as the Omnibus Investment Code of 1987).”
- 10) Book I, V, VI of Executive Order No. 226 are hereby absolutely repealed;
- 11) The incentive provisions under the following investment incentive related laws are hereby repealed as follows:
  - a.) Section 36(f) of Presidential Decree No. 705, otherwise known as the “Revised Forestry Code”;
  - b.) Sections 16 and 17 of Presidential Decree No. 972 otherwise known as the “Coal Development Act”;
  - c.) Sections 4(a) and (d) of Presidential Decree No. 1442, otherwise known as the “Geothermal Exploration and Development Act”;
  - d.) Sections 10 and 11 of Republic Act No. 7156 otherwise known as the “Mini-hydroelectric Incentive Act”;
  - e.) Sections 6 and 7 of Republic Act No. 7103 otherwise known as the “Iron and Steel Industry Act”;
  - f.) Sections 6 and 7 of Republic Act No. 7471 otherwise known as the “Philippine Overseas Shipping Development Act” and Section 2 of Republic Act 9301 (An Act Amending Certain Provisions of Republic Act No. 7471 otherwise known as the “Philippine Overseas Shipping Development Act “ and For Other Purposes”;
  - g.) Sections 19 and 20 of Republic Act No. 7279 otherwise known as the “Urban Development and Housing Act of 1992”;
  - h.) Sections 16 and 17 of Republic Act No. 7844 otherwise known as the “Export Development Act of 1994”;
  - i.) Sections 83, 90, 91, 92 and 93 of Republic Act No. 7942 otherwise known as the “Philippine Mining Act of 1995”;

- j.) Section 35 of Republic Act No. 8550 otherwise known as the "Philippine Fisheries Code of 1998;
- k.) Section 9 of Republic Act No. 8479 otherwise known as the "Downstream Oil Deregulation Act of 1998";
- l.) Section 1 of Republic Act No. 9281 entitled "An Act to Strengthen Agriculture and Fisheries Modernization in the Philippines by Extending the Effectivity of Tax Incentives and its Mandated Funding Support, Amending for this Purpose Sections 109 and 112 of Republic Act No. 8435";
- m.) Section 45 of Republic Act No. 9003 also known as "Ecological Solid Waste Management Act of 2000";
- n.) Section 26 (A.1, A.1.1,A.1.2) of Republic Act No. 9275 entitled "The Philippine Clean Water Act of 2004";
- o.) Section 4 of Republic Act No. 9295 also known as "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Shiprepair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and For Other Purposes";
- p.) Sec. 13 of RA 8479 also known as the "Clean Air Act of 1999";
- q.) Sections 1, 2, 3 and 4 of Republic Act No. 7109, entitled "An Act Granting Tax Exemption Privileges To Local Water Districts";
- r.) Last paragraph of Section 17, and Section 18 OF RA 7884, "An Act Creating the National Dairy Authority To Accelerate the Development of the Dairy Industry in the Philippines, Providing for a Dairy Development Fund, and For Other Purposes";
- s.) Section 3 of Republic Act No. 9290, also known as "Footwear, Leather Goods and Tannery Industries Development Act";
- t.) Section 12 Of Republic Act No. 7718 Otherwise Known As The "Build-Operate-Transfer Law";
- u.) Section 3 (A), (C), (D) And (H) Of Republic Act No. 8502 Otherwise Known As The "Jewelry Industry Development Act Of 1998" and
- v.) Section 6 of RA 7471, "An Act to Promote the Development of Philippine Overseas Shipping and For Other Purposes";
- w.) Section 2 of RA 9301, "An Act Amending Certain Provisions of RA 7471, Entitled "An Act to Promote the Development of Philippine Overseas Shipping and For Other Purposes";
- x.) Sections 4 and 19 of RA 9295, "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines, and For Other Purposes";
- y.) Section 16 of RA 7844 entitled "An Act to Develop Exports as a Key Towards the Achievement of the National Goals Towards the Year 2000".

12.) The provisions of:

- a.) Section 12 (c) and (g) of Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992;
- b.) Section 6 of Proclamation 984 creating the Morong Special Economic Zone pursuant to RA 7227;
- c.) Section 5 of Proclamation 216 creating the Poro Point Special Economic zone pursuant to RA 7227;
- d.) Section 3 of Executive Order No. 32, Series of 1994 amending E.O. 103, Series of 1993, establishing the John Hay Development Corporation;
- e.) Section 4, paragraphs (e), (f) and (g) of Republic Act no. 7903 otherwise known as "Zamboanga City Special Economic Zone Act of 1995";
- f.) Section 4, paragraphs (b), (c) and (e) of Republic Act No. 7922 entitled, "Cagayan Special Economic Zone Act of 1995"; and
- g.) Sections 8, 9 and 10 of Presidential Decree No. 538 entitled "Creating and Establishing the PHIVIDEC Industrial Authority and Making its Subsidiary Agency of the Philippine Veterans Investment Development Corporation Defining Its Powers , Functions and Responsibilities and for Other Purposes";

that are inconsistent with this Code, are hereby repealed or modified accordingly; *Provided, however,* That they shall draw their respective incentives from any of those provided for under this Code.

13.) The provisions of Republic Act Nos. 7916, otherwise known as "Special Economic Zone Act of 1995", and 8748, otherwise known as "An Act Amending R.A.7916," which are inconsistent with this Code are hereby repealed or modified accordingly.

14.) The provisions of Section 12 (b) of R.A. 7227 and Section 5 of R.A. 7103 are modified accordingly.

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

Section 43. *Effectivity.* This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved,