



Implementation *Bulletin*



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RA 11453: AN ACT FURTHER STRENGTHENING THE POWERS AND FUNCTIONS OF THE AUTHORITY OF THE FREEPORT AREA OF BATAAN

This law expands the territory of the Freeport Area of Bataan (FAB) in Mariveles, Bataan and raises its capital stock to PhP 2.5 billion. Locators are exempt from paying local and national taxes. Instead, they are subject to a five percent final tax on gross income earned, of which 1 percent goes to the national government, 1 percent to the province of Bataan, one percent to the host LGU, and 2 percent to the Authority of the Freeport Area of Bataan (AFAB). The law also empowers AFAB to act as an offshore financial center offering international financial and business services such as banking, offshore fund management, and cryptocurrency mining.

The implementing rules and regulations (IRR) of this law were posted on the AFAB website on June 2, 2020¹.

Atty. Reschel Amor D. Apigo of AFAB informed the Senate of the following updates on the implementation of this law, as well as the issues and concerns that the agency encountered.

Expansion areas of the Freeport Area of Bataan

RA 11453 provides for the declaration of FAB expansion areas, subject to the concurrence of affected local government units and the approval of appropriate national government agencies, government-owned-and-controlled corporations and instrumentalities, and the AFAB Board. On July 29, 2020, the AFAB Board approved for implementation the policy on the declaration of FAB expansion areas. The document specifies the fees and processes involved in the evaluation and approval of such areas.

Atty. Apigo reported that as of August 20, 2020, the Board has approved nine applications for declaration as FAB expansion areas. Four of these are in Mariveles, where AFAB's main facilities are

¹ <https://afab.gov.ph/?p=8512> (accessed September 15, 2020)

located, while the remaining five are located outside the municipality. However, six of nine approved applications have yet to receive concurrence from the affected local government units. LGU concurrence was identified as a major bottleneck in the processing of applications.

LGU permits

LGUs require FAB locators and FAB expansion areas to secure permits and settle fees before a concurrence is issued. Atty. Apigo noted that this requirement is imposed by LGUs based on the assumption that uncollected fees will instead be paid to AFAB. "This is an incorrect assumption as this posits that the applicant would still push through with the project even if they have to secure all these permits from the LGU. However, that may not be the case as losing the possible tax and fiscal incentives, even at the onset, could prove to be a deal breaker for potential investors, especially foreign investors," said Atty. Apigo.

Moreover, investors and/or locators may be influenced to file their application for other permits (e.g. building permits) with the LGUs when these are supposed to be issued by AFAB.

Inspection of shipments

AFAB's Enterprise Assistance Division conducts examination of incoming and outgoing shipments of FAB Registered Enterprises (FRE) either in the FREs' premises or in the AFAB designated examination area. The FREs' proximity to AFAB offices is one of the factors for the efficient and timely examination of shipments. The creation of FAB expansion areas would spread out FREs across the province, making it more difficult for examiners to attend to requests for inspections.

Considering that there are several entry points in Bataan, the creation of expansion areas also present challenges with respect to the inspection of shipments being brought in or out by FREs. Traditionally, to ensure that shipments are properly documented, inspection is also done at the gates of its main facility in Mariveles, Bataan. Atty. Apigo noted that "these issues boil down to the lack of manpower and facility to equip the AFAB for these events and scenarios".

Further inspection is also conducted at the AFAB gates. This is to ensure that the shipments are properly documented. Considering that there are several entry points in Bataan, it will be a challenge to ensure that the shipments being brought in or out by the FREs are properly documented. Thus, there is a need to set-up security control to properly monitor the movement of goods to and from the FAB expansion areas.

To help address these issues, AFAB is looking into the construction of temporary or alternative inspection facilities. For instance, designated examination areas which will also serve as checkpoints may be placed at strategic entry and exit points across Bataan province.

Assumption of regulatory functions

AFAB has gradually assumed the regulatory functions vested to it by the law. In particular, it exercised its regulatory mandate over a private port terminal facility by imposing certain requirements, conditions,

restrictions and standards for some port-related activities; enforcing compliance; assessing and collecting vessel and cargo charges; and issuing permits and licenses related to its operations. AFAB has acquired four private port terminals as part of the exercise of its new powers.

However, AFAB is facing bottlenecks in the assumption of some of its regulatory duties as some national government agencies continue to exercise such functions, resulting in

overlaps and confusion. Some government agencies also insist on conducting their activities within FAB without prior coordination with AFAB to the detriment of locators and businesses inside their facilities. Specific concerns are as follows:



AFAB building in Mariveles, Bataan (Philippine News Agency)

Resistance of Philippine Ports Authority on AFAB's assumption of port regulation

The Philippine Ports Authority (PPA) is reportedly insisting that PPA and AFAB exercise concurrent jurisdiction of ports and port operations within FAB. PPA allegedly claims that RA 11453 did not remove PPA's authority to regulate ports within AFAB's jurisdiction, including its expansion areas. As a result, Atty. Apigo said that there was no proper turnover of functions and processes from PPA's Bataan-Aurora office. Moreover, AFAB has "minimal to no control over the holding environment where the port facilities are located".

Philippine National Police jurisdiction over FAB

The Philippine National Police (PNP) claims that prior coordination or "any semblance thereof" with the AFAB police is not required for PNP law enforcement agents to arrest, investigate, or conduct any of its activities within FAB. AFAB is planning to execute a Memorandum of Agreement with PNP to clarify this issue. Moreover, a usufruct agreement for the establishment of a PNP substation within AFAB is in the works.

Enforcement of the national building code

Atty. Apigo informed that residents inside FAB continuously disregard AFAB's authority to enforce the national building code by undertaking construction activities without securing the necessary permits from AFAB. "Their usual position is that the land is private and not covered by the Presidential Proclamations from which AFAB anchors its ownership."

AFAB hopes that other government agencies and Congress can assist in clarifying the functions vested in AFAB to prevent confusion. There is a "strong need to recognize AFAB as a government entity possessing

regulatory functions which is separate, exclusive and distinct from the LGUs and other government agencies which exercise similar functions as that of AFAB,” noted Atty. Apigo.

For its part, AFAB is planning to coordinate with other investment promotion agencies to prevent duplication of incentives. Moreover, it will clarify with the Bureau of Internal Revenue whether a business with its own books of account, or a declared branch, is sufficient to satisfy the requirements of the law. Under the law, a FAB registered enterprise “must establish a separate business organization to conduct business exclusively within the FAB which shall be a separate taxable entity,” said Atty. Apigo.

Blockchain and fintech initiatives

According to its website², AFAB has instituted measures to assist companies intending to use blockchain technology and fintech, as spelled out in its Offshore Blockchain and Financial Technology Solutions (OBFTS) Policy. An OBFTS Group, composed of Grand Innovasia Concept Corporation (GICC) and Impero Consortium Management Corp., is tasked with evaluating, processing, verifying, and endorsing all applications of local service providers and offshore licensees to engage and operate OBFTS business activities within FAB.

The table below outlines activities and entities covered by the OBFTS group:

Blockchain	Fintech
<ul style="list-style-type: none"> • Digital asset related exchange, tokenization and crowd funding platform; • Companies engaging in token offerings, including but not limited to, Security Token Offering (STO), Token Generation Event (TGE), Initial Coin Offering (ICO); • Payment providers using blockchain technology to store data or generate funds; • Blockchain developer service and/or software platform provider that is blockchain based; • Utilization of a digital wallet that stores virtual currencies either through a website or a mobile application; • Tokens or digital securities within the business model; • Distributed Ledger Technology; and, • Any blockchain-enabled financial technology solution 	<ul style="list-style-type: none"> • Any foreign exchange trading company; • Online trading companies for securities, commodities; • Online or mobile payment solutions and wallets; • Loan or mortgage disbursing or processing company; • Financial consultancy or financial advisory companies; • Insurance or insurance processing company; • Company or service that seeks to serve disadvantaged or low-income individuals who do not have access to traditional banks or mainstream financial services companies; and • Company or individual brokering or hedging on digital asset exchanges or other exchanges

² https://afab.gov.ph/?page_id=8235 (accessed August 31, 2020)

Manpower, facilities, and equipment

Atty. Apigo noted that the current manpower complement of AFAB is insufficient to fully implement the agency's expanded mandate as set out in the law. AFAB likewise acknowledges the need for "capacity building, partnerships, membership and involvement in relevant activities (e.g. future technology, blockchain, port-related, etc.) to acquire more knowledge and technical expertise."

Other plans

AFAB will hold benchmarking activities related to emerging and future technology, and port processes and operations.

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